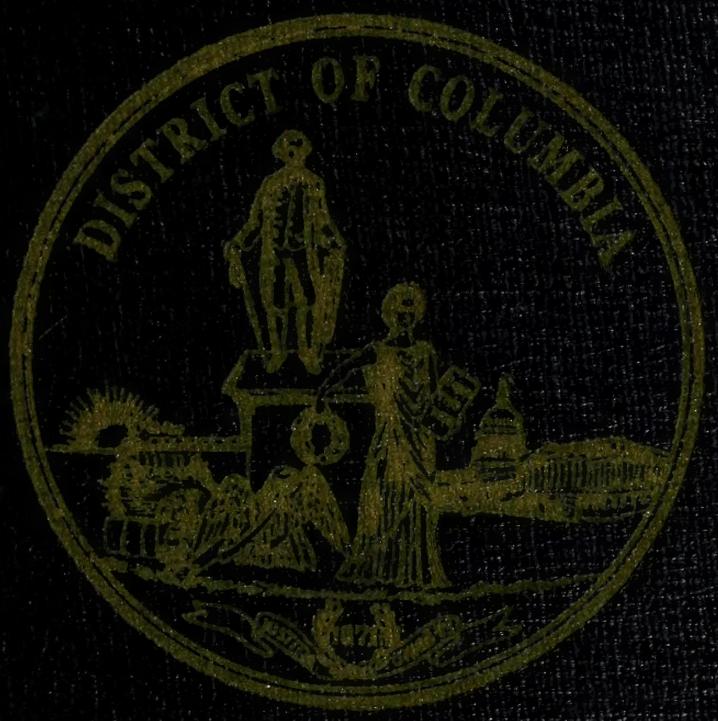
District of Columbia Code

1951 EDITION ★ ★ PART V



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DISTRICT OF COLUMBIA CODE

1951 EDITION

(Annotated)

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), IN FORCE ON JANUARY 2, 1951

VOLUME TWO

Part V.—General Statutes
Tables and Cumulative Index

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CONTENTS

	Page
PREFACE	VII
TABLE OF TITLE AND CHAPTER HEADINGS	IX
PART V, GENERAL STATUTES	787
PARALLEL REFERENCE TABLES	1535
TABLES OF CASES	1597
GENERAL INDEX	1663

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PREFACE

This is the third edition of the Code of Laws of the District of Columbia prepared and published pursuant to the Act of May 29, 1928 (45 Stat. 1007), as amended by the Act of March 2, 1929 (45 Stat. 1541). This edition contains all the general and permanent laws relating to or in force in the District of Columbia, on January 2, 1951, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in their nature. The Code is prima facie evidence of existing law.

Many new features and improvements were incorporated in the 1940 edition, reflecting, as far as practicable, the preferences of the users of the Code who responded to a questionnaire sent out by the Committee on Revision of the Laws to several thousand attorneys and Government officers and employees within the District of Columbia.

An entirely new arrangement of subject matter was adopted which presents all the procedural statutes in Volume One and the general statutes, in modern alphabetical arrangement, in Volume Two. A complete index to the statutes contained in the Code will be found at the back of Volume Two, together with complete reference tables. In addition, the 1929 edition citation is indicated in brackets next to the section number of each section of the text.

A modern method of numbering the sections was adopted. The number before the dash indicates the title; the last two numbers indicate the section; and the middle number or numbers indicates the chapter. No chapter in any title has more than 60 sections. An example: Section 11–1208 would be found as Section 8 of chapter 12 in Title 11. Section 1–240 would be Title 1, chapter 2, section 40.

Provision has been made for future annual supplements in the form of pocket parts rather than separate volumes.

The 1940 edition was the first official Code containing the annotations of the court decisions interpreting these laws. Numerous cross references and historical notes have been added to increase the usefulness of this Code. These annotations, cross references and historical notes are brought up to date in this edition and will be kept current in the future annual supplements.

The work of preparing copy was done by the Committee on the Judiciary of the House of Representatives with the assistance of the Matthew Bender & Company, Inc., of Albany, N. Y. The Committee acknowledges especially the valuable assistance rendered by Charles J. Zinn, law revision counsel for the Committee. Acknowledgment is also made to the numerous officials of the District and Federal governments and the members of the bench and bar of the District whose suggestions have been most helpful.

The Committee invites all criticisms and suggestions looking to the improvement of the Code.

Emanuel Celler

Chairman.

John L. Burns

M. C.

Chairman, Subcommittee No. 4.

WASHINGTON, D. C., *June 30, 1951.*

TABLE OF TITLES AND CHAPTER HEADINGS

PART I.—GOVERNMENT OF DISTRICT (JUDICIARY EXCEPTED)

TITLE 1.—ADMINISTRATION

Chapter		Section
1.	Creation of District—General Provisions	1–101
2.	Commissioners and Other Officers	1–201
3.	Officers and Employees Generally	1–301
4.	Commissioners of Deeds	1–401
5.	Notaries Public	1–501
6.	Surveyor	1–601
7.	Inspection—Regulatory Provisions	1–701
8.	Contracts	1–801
9.	Claims against District	1–901

TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

1.	Healing Arts Practice Act	2–101
2.	Anatomical Board	2–201
3.	Dentists	2–301
4.	Nurses	2–401
5.	Optometrists	2–501
6.	Pharmacy	2–601
7.	Podiatry	2–701
8.	Veterinarians	2–801
9.	Accountants	2–901
10.	Architects	2–1001
11.	Barbers	2–1101
12.	Boxing Commission	2–1201
13.	Cosmetologists	2–1301
14.	Plumbers	2–1401
15.	Steam and Other Operating Engineers	2–1501
16.	Transferred.	
17.	Armory Board	2–1701
18.	Professional Engineers	2–1801

TITLE 3.—BOARD OF PUBLIC WELFARE

1.	Board of Public Welfare	3–101

TITLE 4.—POLICE AND FIRE DEPARTMENTS

1.	Metropolitan Police	4–101
2.	United States Park Police	4–201
3.	White House Police	4–301
4.	Fire Department	4–401
5.	Police and Firemen's Relief Fund	3–501
6.	Trial Boards	4–601
7.	Awards for Meritorious Service	4–701
8.	Salaries	4–801
9.	Miscellaneous Provisions	4–901

TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

1.	Alley Dwellings	5–101
2.	Building Lines	5–201
3.	Fire Escapes and Safety Provisions	5–301
4.	Zoning and Height of Buildings	5–401
5.	Unsafe Structures	5–501
6.	Insanitary Buildings	5–601
7.	Housing Redevelopment	5–701
8.	Preservation of Historic Places and Areas in the Georgetown Area	5–801

TITLE 6.—HEALTH AND SAFETY

1.	Health Department—Organization	6–101
2.	Blindness in Infants—Prevention	6–201
3.	Vital Statistics	6–301
4.	Drainage of Lots	6–401
5.	Garbage	6–501
6.	Manufacture, Renovation, and Sale of Mattresses	6–601
7.	Privies	6–701
8.	Smoke Prevention	6–801
9.	Weeds and Plant Diseases	6–901
10.	Black-outs in War Time	6–1001
11.	Federal Government Restaurants	6–1101
12.	Office of Civil Defense	6–1201

TITLE 7.—HIGHWAYS, STREETS, BRIDGES

1.	Highway Plans	7–101
2.	Land for Streets	7–201
3.	Alleys and Minor Streets	7–301
4.	Closing Streets, Alleys, or Highways	7–401
5.	Bridges, Viaducts, and Subways	7–501
6.	Repair and Construction	7–601
7.	Street Lighting	7–701
8.	Removal of Snow and Ice	7–801
9.	Rental of Vaults under Sidewalks	7–901
10.	Real Estate Sale or Rent Signs	7–1001
11.	Barbed-Wire Fences	7–1101
12.	Miscellaneous	7–1201
13.	Washington National Airport	7–1301
14.	Public Airports	7–1401

TITLE 8.—PARKS AND PLAYGROUNDS

1.	Parks and Playgrounds	8–101
2.	Recreation Board	8–201

TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

1.	Regulating Provisions	9–101
2.	Construction of Public Buildings	9–201
3.	Sale of Public Lands	9–301

TITLE 10.—WEIGHTS, MEASURES, AND MARKETS

1.	Weights, Measures, and Markets	10–101

PART II.—CIVIL PROCEDURE

TITLE 11.—JUDICIARY AND JURISDICTION

Chapter		Section
1.	General Provisions	11–101
2.	United States Court of Appeals for the District of Columbia	11–201
3.	District Court of the United States for the District of Columbia	11–301
4.	Clerk of District Court	11–401
5.	Probate Court	11–501
6.	Police Court	11–601
7.	Municipal Court and Municipal Court of Appeals	11–701
8.	Small Claims and Conciliation Branch of Municipal Court	11–801
9.	Juvenile Court	11–901
10.	District Attorney	11–1001
11.	Marshal	11–1101
12.	Coroner	11–1201
13.	Attorneys	11–1301
14.	Juries and Jury Commissioners	11–1401
15.	Fees and Costs	11–1501

TITLE 12.—RIGHT TO REMEDY—CONDITIONS AFFECTING

1.	Abatement and Revivor	12–101
2.	Limitation of Actions	12–201
3.	Statute of Frauds	12–301
4.	Fraudulent Conveyances	12–401

TITLE 13.—PROCESS, PLEADINGS AND PARTIES

1.	Process	13–101
2.	Pleadings	13–201
3.	Amendment of and Mistakes in Pleadings and Proceedings	13–301
4.	Parties	13–401

TITLE 14.—PROOF

1.	Evidence in General	14–101
2.	Depositions	14–201
3.	Competency of Witnesses	14–301
4.	Documentary Evidence	14–401
5.	Absence for Seven Years	14–501

TITLE 15.—JUDGMENTS AND EXECUTION OF JUDICIAL POWERS

1.	Judgments and Decrees	15–101
2.	Executions	15–201
3.	Proceedings in Aid of Execution	15–301
4.	Exemptions	15–401

TITLE 16.—SPECIAL REMEDIES AND PROCEEDINGS

1.	Account	16–101
2.	Adoption	16–201
3.	Attachment and Garnishment	16–301
4.	Divorce and Separation	16–401
5.	Ejectment	16–501
6.	Eminent Domain	16–601
7.	Gaming Transactions	16–701
8.	Habeas Corpus	16–801
9.	Joint Contracts	16–901
10.	Mandamus	16–1010
11.	Name, Change of	16–1101
12.	Negligence Causing Death	16–1201
13.	Partition and Assignment of Dower	16–1301
14.	Payment of Money into Court	16–1401
15.	Quieting Title Obtained by Adverse Possession	16–1501
16.	Quo Warranto	16–1601
17.	Reference of Questions of Law and Fact	16–1701
18.	Replevin	16–1801
19.	Set-Off	16–1901
20.	Sureties	16–2001

TITLE 17.—REVIEW

1.	Jurisdiction and Method	17–101

PART III.—PROBATE LAW AND PROCEDURE

TITLE 18.—DECEDENTS' ESTATES AND THEIR DISTRIBUTION

1.	Law of Descents	18–101
2.	Dower and Curtesy Rights	18–201
3.	Assets of Estate	18–301
4.	Inventory of Assets	18–401
5.	Claims of Creditors	18–501
6.	Sale of Assets	18–601
7.	Distribution of Surplus—Beneficiaries	18–701
8.	Family Allowance and Administration of Small Estates	18–801

TITLE 19.—WILLS

1.	Wills in General	19–101
2.	Devises by Will	19–201
3.	Probate of Wills	19–301
4.	Register of Wills	19–401

TITLE 20.—ADMINISTRATORS, EXECUTORS, AND COLLECTORS

1.	General Provisions	20–101
2.	Administrators	20–201
3.	Executors	20–301
4.	Collectors	20–401
5.	Suits	20–501
6.	Accounts	20–601
7.	Estates of Absentees and Absconders	20–701

TITLE 21.—GUARDIAN AND WARD, AND INSANE PERSONS

1.	Infants and Other Incompetents	21–101
2.	Property of Infants and Persons Non Compos Mentis	21–201
3.	Insane Persons, Inquests	21–301
4.	Drunkards and Drug Addicts	21–401

PART IV.—CRIMINAL LAW AND PROCEDURE

TITLE 22.—CRIMINAL OFFENSES

Chapter		Section
1.	General Provisions	22–101
2.	Abortion	22–201
3.	Adultery	22–301
4.	Arson	22–401
5.	Assault—Mayhem—Threat of Bodily Harm	22–501
6.	Bigamy	22–601
7.	Bribery—Obstructing Justice	22–701
8.	Cruelty to Animals	22–801
9.	Domestic Relations	22–901
10.	Fornication	22–1001
11.	Disorderly Conduct	22–1101
12.	Embezzlement	22–1201
13.	False Pretenses—False Personation	22–1301
14.	Forgery—Frauds	22–1401
15.	Gambling	22–1501
16.	Game and Fish Laws	22–1601
17.	Harbor Regulations	22–1701
18.	Housebreaking	22–1801
19.	Incest	22–1901
20.	Indecent Publications	22–2001
21.	Kidnaping	22–2101
22.	Larceny—Receiving Stolen Goods	22–2201
23.	Libel—Blackmail	22–2301
24.	Murder—Manslaughter	22–2401
25.	Perjury	22–2501
26.	Prison Breach—Misprisions	22–2601
27.	Prostitution—Pandering—Houses of Prostitution	22–2701
28.	Rape	22–2801
29.	Robbery	22–2901
30.	Seduction	22–3001
31.	Trespass—Injuries to Property	22–3103
32.	Weapons	22–3201
33.	Vagrancy	22–3301
34.	Miscellaneous	22–3401
35.	Sexual Psycopaths	22–3501

TITLE 23.—CRIMINAL PROCEDURE

1.	General Provisions	23–101
2.	Indictments	23–201
3.	Search Warrants	23–301
4.	Fugitives from Justice	23–401
5.	Uniform Act on Fresh Pursuit	23–501
6.	Professional Bondsmen	23–601
7.	Death Penalty	23–701

TITLE 24.—PRISONERS AND THEIR TREATMENT

1.	Probation	24–101
2.	Indeterminate Sentences and Paroles	24–201
3.	Insane Criminals	24–301
4.	Prisons and Prisoners	24–401
5.	Rehabilitation of Alcoholics	24–501

THE FOLLOWING TITLES APPEAR IN VOLUME 2

PART V.—GENERAL STATUTES

TITLE 25.—ALCOHOLIC BEVERAGES

Chapter		Section
1.	Alcoholic Beverage Control Act	25–101

TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

1.	Banking Institutions in General	26–101
2.	Joint Accounts—Adverse Claimants—Trust Accounts	26–201
3.	Trust, Loan, Mortgage, Safe Deposit and Title Corporations	26–301
4.	Building Associations	26–401
5.	Credit Unions	26–501
6.	Money Lenders—Licenses	26–601
7.	Common Trust Funds	26–701

TITLE 27.—CEMETERIES AND CREMATORIES

1.	Cemetery Associations — Regulatory Provisions	27–101

TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

Negotiable Instruments—Uniform Law

1.	Form and Interpretation	28–101
2.	Consideration	28–201
3.	Negotiation	28–301
4.	Rights of Holder	28–401
5.	Liabilities of Parties	28–501
6.	Presentment for Payment	28–601
7.	Notice of Dishonor	28–701
8.	Discharge of Negotiable Instruments	28–801
9.	Bills of Exchange	28–901
10.	Promissory Notes and Checks	28–1001

Sales—Uniform Act

11.	Formation of Contract	28–1101
12.	Transfer of Property as Between Seller and Buyer	28–1201
13.	Performance of Contract	28–1301
14.	Rights of Unpaid Seller against Goods	28–1401
15.	Actions for Breach of Contract	28–1501
16.	Interpretation of Uniform Sales Act	28–1601
17.	Bulk Sales Law	28–1701

Warehouse Receipts—Uniform Law

18.	Issuance of Warehouse Receipts	28–1801
19.	Obligations and Rights of Warehousemen upon Their Rights	28–1901
20.	Negotiation and Transfer of Receipts	28–2001

Chapter		Section
21.	Criminal Offenses	28–2101
22.	Interpretation	28–2201
23.	Fiduciaries—Uniform Act	28–2301
24.	Bonds and Undertakings	28–2401
25.	Assignment of Choses in Action	28–2501
26.	Assignments for Benefit of Creditors	28–2601
27.	Interest and Usury	28–2701
28.	Computation of Time	28–2801
29.	Stock transfers	28–2901

TITLE 29.—CORPORATIONS

1.	General Provisions	29–101
2.	Business Corporations	29–201
3.	Boards of Trade	29–301
4.	Institutions of Learning	29–401
5.	Religious Societies	29–501
6.	Charitable, Educational and Religious Associations	29–601
7.	Dissolution	29–701
8.	Cooperative Associations	29–801

TITLE 30.—DOMESTIC RELATIONS

1.	Marriage	30–101
2.	Property Rights	30–201

TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

1.	Board of Education	31–101
2.	Compulsory School Attendance and Work Permits	31–201
3.	Tuition of Nonresidents	31–301
4.	Free Textbooks	31–401
5.	Vocational Rehabilitation of Residents of the District of Columbia	31–501
6.	Teachers, School Officers and Other Employees in General	31–601
7.	Retirement of Public School Teachers	31–701
8.	Use of School Buildings	31–801
9.	Medical and Dental Colleges	31–901
10.	The Columbia Institution for the Deaf	31–1001
11.	Miscellaneous	31–1101
12.	Aviation Education in High Schools	31–1201
13.	Educational Agency for Surplus Property	31–1301

TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL AND PENAL INSTITUTIONS AND AGENCIES

1.	Association for Works of Mercy	32–101
2.	Washington Humane Society	32–201
3.	Hospitals and Asylums—General Provisions	32–301
4.	Saint Elizabeths Hospital	32–401
5.	Industrial Home School	32–501
6.	District Training School	32–601
7.	Home Care for Dependent Children	32–701
7A.	Aid to Dependent Children	32–751
7B.	Placement of Children in Family Homes	32–781
8.	National Training School for Boys	32–801
9.	National Training School for Girls	32–901
10.	Miscellaneous	32–1001

TITLE 33.—FOOD AND DRUGS

Chapter		Section
1.	Adulteration	33–101
2.	Candy	33–201
3.	Milk, Cream and Ice Cream	33–301
4.	Uniform Narcotic Drug Act	33–401
5.	Meats and Meat Products	33–501

TITLE 34.—HOTELS AND LODGING-HOUSES

1.	Rights and Liabilities	34–101

TITLE 35.—INSURANCE

1.	Insurance Department—General Provisions	35–101
2.	Provisions Applicable to More Than One Kind of Insurance	35–201
3.	Life Insurance Act—Definitions	35–301
4.	Department of Insurance with Respect to Life Companies	35–401
5.	Domestic Life Companies	35–501
6.	Foreign and Alien Life Companies	35–601
7.	Provisions Relating to All Life Insurance Companies	35–701
8.	Life Insurance Act—Penalties—Constitutionality	35–801
9.	Fraternal Benefit Associations	35–901
10.	Industrial Life Insurance	35–1001
11.	Marine Insurance	35–1101
12.	Insurance Agents Other Than Life	35–1201
13.	Fire, Casualty and Marine Insurance	35–1301
14.	Regulation of Fire Insurance Rates	35–1401
15.	Regulation of Casualty and Other Insurance Rates	35–1501

TITLE 36.—LABOR

1.	Apprentices	36–101
1A.	Voluntary Apprentices	36–121
2.	Child Labor and Work Permits	36–201
3.	Employment of Women	36–301
4.	Minimum Wage Law	36–401
5.	Workmen's Compensation	36–501

TITLE 37.—LIBRARIES

1.	Public Libraries	37–101

TITLE 38.—LIENS

1.	Mechanics, Materialmen and Contractors	38–101
2.	Garage Keepers and Liverymen	38–201
3.	Hospitals	38–301

TITLE 39.—MILITARY

1.	Composition, Organization and Control	39–101
2.	Commissioned Officers	39–201
3.	Noncommissioned Officers	39–301
4.	Enlisted Personnel	39–401
5.	Armament, Equipment and Supplies	39–501
6.	Active Military Duty	39–601
7.	Courts-Martial	39–701
8.	Pay and Allowances	39–801
9.	Miscellaneous Provisions	39–901

TITLE 40.—MOTOR VEHICLES

Chapter		Section
1.	Registration of Motor Vehicles	40–101
2.	Inspection	40–201
3.	Operators' Permits	40–301
4.	Owners' Financial Responsibility Act	40–401
5.	Public-Owned Vehicles	40–501
6.	Regulation of Traffic	40–601
7.	Liens on Motor Vehicles or Trailers	40–701
8.	Regulation of Parking	40–801

TITLE 41.—PARTNERSHIPS

1.	Limited Partnerships	41–101
2.	Dissolution and Payment of Debts	41–201

TITLE 42.—PERSONAL PROPERTY

1.	Recordation of Instruments	42–101

TITLE 43.—PUBLIC UTILITIES

1.	Definition of Terms and Application of Law	43–101
2.	Creation of Public Utilities Commission—Members—Counsel—Employees	43–201
3.	Service, Valuation, Accounts	43–301
4.	Rates, Examinations, Investigations, and Hearings	43–401
5.	Sale and Merger of Utilities	43–501
6.	Gas and Electric Corporations	43–601
7.	Orders and Court Proceedings	43–701
8.	Issuance of Securities	43–801
9.	Penal Provisions	43–901
10.	General Provisions	43–1001
11.	Electric Light and Power Companies—Special Acts	43–1101
12.	Gas Companies—Special Acts	43–1201
13.	Private Conduits	43–1301
14.	Telegraph and Telephone Companies	43–1401
15.	Water Supply, Assessments, and Rates	43–1501

TITLE 44.—RAILROADS AND OTHER CARRIERS

1.	Railroads	44–101
2.	Street Railways and Bus Lines	44–201
3.	Passenger Motor Vehicles for Hire	44–301
4.	Employers' Liability Act	44–401

TITLE 45.—REAL PROPERTY

1.	Conveyable Estates and Methods of Conveyance	45–101
2.	Interpretation of Instruments	45–201
3.	Forms—Covenants and Warranties	45–301
4.	Acknowledgments	45–401
5.	Effective Date and Recording of Deeds	45–501
6.	Mortgages and Deeds of Trust	45–601
7.	Recorder of Deeds	45–701
8.	Estates in Land	45–801
9.	Landlord and Tenant	45–901
10.	Powers	45–1001
11.	Sale of Contingent and Limited Interests	45–1101
12.	Uses and Trusts	45–1201
13.	Waste	45–1301
14.	Real Estate and Business Brokers' License Act	45–1401
15.	Ownership by Aliens	45–1501
16.	Rent Control	45–1601
17.	Servicemen's Readjustment	45–1701

TITLE 46.—SOCIAL SECURITY

1.	Care of Blind	46–101
2.	Old Age Assistance	46–201
3.	Unemployment Compensation	46–301

TITLE 47.—TAXATION AND FISCAL AFFAIRS

1.	General Provisions	47–101
2.	Budget Estimates	47–201
3.	Collection and Disbursement of Taxes	47–301
4.	Designation of Property for Assessment and Taxation	47–401
5.	Rates, Records and Surplus Funds	47–501
6.	Tax Assessor	47–601
7.	Assessment of Real Property	47–701
8.	Exemptions from Taxation	47–801
9.	Family Dwellings Occupied by Owners	47–901
10.	Real Property Tax Sales	47–1001
11.	Special Assessments	47–1101
12.	Taxation of Personal Property	47–1201
13.	Enforcement of Personal Property Taxes by Distraint or Levy	47–1301
14.	Enforcement of Personal Property Taxes by Acquisition of Lien	47–1401
15.	Income Tax	47–1501
16.	Inheritance and Estate Taxes	47–1601
17.	Financial Institution, Guaranty Company and Public Utility Taxes	47–1701
18.	Insurance Companies	47–1801
19.	Motor Fuel Tax	47–1901
20.	Dog Tax	47–2001
21.	Private Employment Agency Licenses	47–2101
22.	Public Auction Permits	47–2201
23.	General License Law	47–2301
24.	Board of Tax Appeals	47–2401
25.	Miscellaneous Provisions	47–2501
26.	Gross Sales Tax	47–2601
27.	Compensatory-Use Tax	47–2701
28.	Cigarette Tax	47–2801

TITLE 48.—TRADE-MARKS AND TRADE NAMES

1.	Registration of Mineral Water Bottles	48–101
2.	Registration of Milk Containers	48–201
3.	Registration of Containers for Beverages Composed Principally of Milk	48–301
4.	Registration of Labor Union Labels	48–401

TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

1.	General Provisions	49–101
2.	Rules of Construction	49–201
3.	Laws Remaining in Force	49–301

THE CODE OF THE DISTRICT OF COLUMBIA

PART V

GENERAL STATUTES

TITLE 25.—ALCOHOLIC BEVERAGES

Chap. Sec.
1. Alcoholic Beverage Control Act 25–101

Chapter 1.—ALCOHOLIC BEVERAGE CONTROL ACT

Sec.
25–101. Partial repeal of National Prohibition Act.
25–102. Citation—Application.
25–103. Definitions.
25–104. Alcoholic Beverage Control Board—Appointment—Term—Salary—Employees.
25–104a. Classification of positions of members of board.
25–105. Interest of board member or employee in manufacture, transporting, or storing of alcoholic beverages forbidden.
25–106. Jurisdiction of board over licenses—Appeal from revocation—Duties.
25–107. Powers of Commissioners—Rules and regulations—Licenses.
25–108. Alcohol for nonbeverage purposes not affected—Penalty for unlawful sales.
25–109. Sale without license prohibited—Exceptions.
25–110. Licenses—Applications for—To whom granted—Records.
25–111. License classifications—Fees.
25–111a. Appropriation of portion of license fees for manufacture or sale of alcoholic beverages.
25–112. Authority of Commissioners to forbid transportation of liquor into District—Permit may be granted.
25–113. Holding of license of more than one class forbidden—Definition of "licensee."
25–114. Description in license of premises—Sale limited to premises—Storage not on premises—Expiration of licenses—Monthly licenses—Proportionate fees.
25–115. Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property-owners—Removal of bonded liquor from government warehouses—Bond—Penalty.
25–116. Issuing licenses in certain districts restricted.
25–117. Transfer of license—Fee—Conditions imposed.
25–118. Revocation of license—Causes—Hearing—Discretionery closing for one year.
25–119. Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.
25–120. Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.
25–121. Sale to minors or intoxicated persons—Liability of licensee.
25–122. License forfeited on licensee becoming bail.
Sec.
25–123. Monthly reports of sales and purchases.
25–124. Beverage tax—Stamps—Seizure and disposition of beverage upon which tax not paid—Absence of stamp prima facie evidence of nonpayment—Penalty for counterfeiting or forging stamps—Class C or D licensees—Reports.
25–125. Sale, distribution, furnishing of beverages by convicted persons and minors.
25–126. Power of board to compel testimony—Witness fees—Perjury.
25–127. Intoxicated person not to operate locomotive, streetcar, elevator, watercraft or horse-drawn vehicle—Penalty—Traffic acts not affected.
25–128. Drinking of alcoholic beverage in street, alley, park, parking, or unlicensed public place forbidden—Intoxication in street, alley, park or parking forbidden—Penalty.
25–129. Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.
25–130. Minor misrepresenting age to procure beverage—Penalty.
25–131. Issuance of new permits under Beverage License Act of 1933 forbidden—Surrender of permit and refund of fees—Repeal.
25–132. Penalty for violation where no specific penalty provided—Prosecution by corporation counsel in police court—Prosecution for felonies by United States Attorney.
25–133. Sale by retailer of beverages on credit prohibited—Exceptions.
25–134. Containers to be labeled—Content.
25–135. Offenses under National Prohibition Act to be prosecuted.
25–136. Saving clause.
25–137. Unlawful transportation—Penalty.
25–138. Tax on beer.

§ 25–101 [20: 1901]. Partial repeal of National Prohibition Act.

The National Prohibition Act, as amended and supplemented, insofar as it affects the manufacture, sale, and possession in the District of Columbia, and the transportation in, into, and from the District of Columbia, of alcoholic beverages, is hereby repealed, with the exception of title III, and section 4 of title II insofar as it affects denatured alcohol. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 1.)

COMPILER'S NOTE

The act of August 27, 1935, 49 Stat. 872, ch. 740, repealed titles I and II of the National Prohibition Act, October 28, 1919 (41 Stat. 305), and all laws amendatory of, or supplementary thereto. Title III is also affected thereby.

CROSS REFERENCE

Previous violation or seizures under National Prohibition Act not affected, § 25–135.

NOTES TO DECISIONS

In General

This act did not repeal the Liquor Taxing Act of 1934. *Sims* v. *Rives* (66 App. D. C. 24, 84 Fed. (2d) 871, cert. den. 298 U. S. 682, 80 L. Ed. 1402, 56 Sup. Ct. 960).

§ 25–102 [20: 1902]. Citation—Application.

This chapter may be cited as the "District of Columbia Alcoholic Beverage Control Act." It shall apply only to the District of Columbia and shall not authorize the delivery of alcoholic beverages outside of the District of Columbia in violation of the law of the place of delivery. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 2.)

Cross Reference

Application and exemptions from act, §§ 25–108, 25–109, 25–115, 25–127, 25–137.

§ 25–103 [20: 1903]. Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning:

(a) The word "alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or by whatever processes produced.

(b) The word "spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including brandy, rum, whisky, cordials, and gin.

(c) The word "wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling, artificially carbonated and fortified wine. No other product obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar shall be called "wine" unless designated by appropriate prefix descriptions of the fruit or other product from which the same was predominantly produced, or as artificial or imitation wine. Light wines shall mean wines containing 14 per centum or less of alcohol by volume, other than champagne.

(d) The word "beer" means any fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute therefor.

(e) The words "alcoholic beverage" or "beverage" include the four varieties of liquor above defined (alcohol, spirits, wine, and beer) and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties above defined is considered as belonging to that variety which has the higher percentage of alcohol, according to the order in which they are above defined, except as provided in subsection (c) hereof. The provisions of this section and of this chapter shall not apply to any liquid or solid containing less than one half of 1 per centum of alcohol by volume, nor shall anything contained in this chapter be construed as affecting the manufacture of apple cider or the sale thereof.

(f) The word "Board" shall mean the Alcoholic Beverage Control Board created by this chapter.

(g) The word "club" means a corporation for the promotion of some common object (not including corporations organized for any commercial or business purpose, the object of which is money profit), owning, hiring, or leasing a building or space in a building of such extent and character as in the judgment of the board may be suitable and adequate for the reasonable and comfortable use and accommodations of its members and their guests, and including such space outside of the building and adjoining it as may be approved by the board, and provided with such suitable and adequate kitchen and dining-room space and equipment, implements, and facilities, and employing such a sufficient number of employees for cooking, preparing, and serving meals for its members and their guests, as shall satisfy the board that the sale of beverages intended is not more than an incident to and is not the prime source of revenue from such space; and the affairs and management of such corporation are conducted by a board of directors, executive committee, or similar body chosen by the members at least once each calendar year and no officer, agent, or employee of the club is paid directly or indirectly, or receives in the form of salary or other compensation, any profit from the disposition or sale of beverages to the club or to the members of the club or guests introduced by members beyond the amount of such salary as may be fixed and voted by the members, or by its directors, or other governing body.

(h) The word "Commissioners" shall mean the Commissioners of the District of Columbia.

(i) The word "District" shall mean the District of Columbia.

(j) The word "hotel" means a suitable building or other structure, approved by the board, including such suitable space outside of the building and adjoining it as may be approved by the board, kept, used, maintained, advertised, or held out to the public to be a place where meals are served and sleeping accommodations offered for pay to transient guests; in which thirty or more rooms are used for the sleeping accommodations of such transient guests, and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building or in connecting buildings, and such building or buildings, structure or structures being provided with such adequate kitchen and dining-room equipment and capacity and having employed therein such number and kinds of employees for preparing, cooking, and serving meals for its guests as shall satisfy the board that such dining room is intended for use primarily as a place for preparing, cooking, and serving meals and that the chief source of revenue to be derived from the operation of such dining room shall be from the preparation, cooking, and serving of meals and not from the sale of beverages. No such dining room shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of meals, except such a business as is incidental to a bona fide dining room.

(k) The word "manufacture" shall include rectification.

(*l*) The word "meals" means the usual assortment of foods commonly ordered at various hours of the day; and such food and victuals as sandwiches and salads shall not be regarded as a "meal."

(m) The word "person" includes an individual, partnership, corporation, and association.

(n) The word "restaurant" means a suitable space in a suitable building, approved by the board, including such suitable space outside of the building and adjoining it as may be approved by the board, kept, used, maintained, advertised, or held out to the public to be a place where meals are served, such space being provided with such adequate kitchen and dining-room equipment and capacity, and having employed therein such number and kinds of employees for preparing, cooking, and serving meals for its guests as shall satisfy the board that such space is intended for use primarily as a place for preparing, cooking, and serving meals, and that the chief source of revenue to be derived from the operation of such place shall be from the preparation, cooking, and serving of meals and not from the sale of beverages. No such space shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of meals, except such a business as is incidental to a bona fide restaurant.

(*o*) The word "sell" or "sale" shall include offering for sale, keeping for sale, trafficking in, bartering, delivering for value, exchanging for goods, or in any way other than purely gratuitously, and every delivery of any alcoholic beverage made otherwise than by purely gratuitous title shall constitute a sale.

(p) The word "table" shall not include a counter, bar, or similar contrivance.

(q) The word "tavern" means a suitable space in a suitable building approved by the board, including such suitable space outside the building and adjoining it, as may be approved by the board, kept, used, maintained, advertised, or held out to the public to be a place where sandwiches or light lunches are prepared and served for consumption on the premises in such quantities as to satisfy the board that the sale of beer and light wines intended is no more than an incident to and not the prime source of revenue of such "tavern." (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 3; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 1.)

AMENDMENT

Act of 1934 was amended by act of 1935 to include "light wines" in section (q).

CROSS REFERENCES

"Licensee" defined, § 25–113.
"Manufacturer" defined, § 25–119.
"Wholesaler" defined, § 25–120.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

The act of March 3, 1893 (27 Stat. 563, ch. 204), regulating the sale of intoxicating liquors in the District of Columbia, applied to clubs organized for social and literary purposes and such clubs were required to obtain a license. *Army & Navy Club* v. *District of Columbia* (8 App. D. C. 544).

A barroom is a place in which intoxicating liquors are sold to be drunk on the premises. *Army & Navy Club* v. *District of Columbia* (8 App. D. C. 544).

§ 25–104 [20: 1904]. Alcoholic Beverage Control Board—Appointment—Term—Salary—Employees.

The Commissioners of the District of Columbia shall appoint a Board of three persons, subject to removal by the Commissioners, to be called the "Alcoholic Beverage Control Board," each of the members of which shall be a citizen of the United States and a resident of the District of Columbia for at least three years immediately preceding his appointment and have during that period claimed residence nowhere else. Of the three persons first appointed as members of said Board, one shall be appointed for two years, one for three years and one for four years, and thereafter all appointments shall be for the term of four years, except such appointments as may be made for the remainder of unexpired terms. Vacancies caused by death, resignation, or otherwise shall be filled by the Commissioners only for the unexpired terms. Members shall be eligible for reappointment. The Commissioners shall designate one of the members of the Board to be chairman thereof. The salary of each of the members of the Board shall be five thousand dollars per annum. The Commissioners are authorized to employ such other personal services, including three additional assistant corporation counsel, as may be necessary to carry out the provisions of this chapter, and to provide for the expenses of the Board. The salaries of employees, other than members of the Board, shall be fixed in accordance with the provisions of the Classification Act of 1923, as amended (U. S. C., title 5, ch. 13). The Commissioners shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized. (Jan. 24, 1934, 48 Stat. 321, ch. 4, § 4.)

STATUTORY REFERENCE

Federal Alcohol Administration Act of August 29, 1935. U. S. C., title 27, § 201 et seq.

REPEAL IN PART

Sec. 2 of the Act of April 20, 1948 (62 Stat. 176, ch. 217, § 2) provided that the sentence reading "The salary of each of the members of the Board shall be $5,000 per annum" shall remain in force and effect until the classification provided for by Sec. 25–104a shall have been effected and thereafter the sentence shall stand repealed.

§ 25–104a. Classification of positions of members of board.

The positions of members of the Alcoholic Beverage Control Board for the District of Columbia shall be classified in accordance with the Classification Act of 1923, as amended. (April 20, 1948, 62 Stat. 176, ch. 217, § 1.)

§ 25–105 [20: 1905]. Interest of board member or employee in manufacture, transporting, or storing of alcoholic beverages forbidden.

No member or employee of the board, directly or indirectly, individually, or as a member of a partnership or association, or stockholder in a corporation shall have any interest whatsoever in dealing in, manufacturing, transporting, or storing alcoholic beverages, nor receive any commission or profit what-

soever from any person authorized by virtue of this chapter to manufacture or sell alcoholic beverages. No provision of this section, however, shall prevent any such member or such employee from purchasing, transporting, and keeping in his possession any alcoholic beverage for the personal use of himself or members of his family or guests. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 5.)

CROSS REFERENCE

Business interests forbidden, §§ 25–113, 25–115, 25–119, 25–120.

§ 25–106 [20: 1906]. Jurisdiction of board over licenses—Appeal from revocation—Duties.

The right, power, and jurisdiction to issue, transfer, revoke, and suspend all licenses under this chapter shall be vested solely in the board, and the action of the Board on any question of fact shall be final and conclusive; except that, in case a license is revoked or is suspended for a period of more than thirty days by the Board, the licensee may, within ten days after the order of revocation, or the order of suspension for a period of more than thirty days is entered, appeal in writing to the Commissioners to review said action of the Board, the hearings on said appeal to be submitted either orally or in writing at the discretion of the Commissioners, and the Commissioners shall not be required to take evidence, either oral, written, or documentary. The decision of the Commissioners on any question of fact involved in such appeal shall be final and conclusive. Pending such appeal, the license shall stand suspended unless the Commissioners shall otherwise order.

That the right and power be vested in the Board, for good cause shown, to issue permits for the sales of stocks of beverages located in the District of Columbia by individuals, corporations or associations, partnerships, executors, administrators, being owners thereof, receivers or other representatives of a court, to persons licensed under this chapter.

Said Board shall have such other authority and perform such other duties as the Commissioners may, by regulation, prescribe. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 6; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 2.)

AMENDMENT

The 1935 amendment inserted provisions relating to suspension of licenses, and added the entire second paragraph.

CROSS REFERENCES

Causes for revocation or suspension of licenses, §§ 25–115, 25–118, 25–119, 25–120, 25–122.

Other provisions concerning rules and regulations, § 25–107 and notes.

Permits under Beverage License Law, § 25–131.

Refund of fees when license is refused, § 47–1018.

Rules and regulations in general, § 1–226 and notes.

Suspension or revocation of license for violation of the Uniform Narcotic Drug Act, § 33–418.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

NOTES TO DECISIONS

INDEFINITE SUSPENSION

While license of any person appealing from order of Alcoholic Beverage Control Board revoking license is suspended until final decision of Board of Commissioners of District of Columbia, the commissioners have no right to cause suspension of license to continue indefinitely by arbitrarily refusing to decide issue of fact. *Lambros* v. *Young*, 1944 (145 F. 2d 341, 79 U. S. App. D. C. 247).

INJUNCTION AGAINST REVOCATION

Where this section provided that decision of Board of Commissioners of District of Columbia on questions of fact on appeal from Alcoholic Beverage Control Board should be final, but order revoking liquor license was upheld by a one to one vote, an injunction would be granted against enforcement of order which would terminate when appeal was reinstated, and after appeal was reinstated the license would stand suspended during time reasonably necessary for commissioners to reach a final decision. *Lambros* v. *Young*, 1944 (145 F. 2d 341, 79 U. S. App. D. C. 247).

INTERIM AFFIRMANCE

The effect of a one to one vote of Board of Commissioners of District of Columbia upholding order of Alcoholic Beverage Control Board revoking liquor license is an interim affirmance of the Board which suspends the license until final decision of the commissioners. *Lambros* v. *Young*, 1944 (145 F. 2d 341, 79 U. S. App. D. C. 247).

MANDAMUS

In action in the nature of a petition for writ of mandamus to require Alcoholic Beverage Control Board to issue a retailers' Class "C" license to petitioning restaurant, question before the court was whether action of the Board was based upon substantial evidence, and if it was, mandamus would not lie, whereas if it was not, next question was whether action of Board was arbitrary or capricious. *Clore Restaurant* v. *Payne* (D. C., D. C. 1947, 72 F. Supp. 677).

QUESTIONS OF FACT

Under this section governing appeal to Board of Commissioners of District of Columbia from Alcoholic Beverage Control Board, provision that decision of commissioners on questions of fact should be final means that the Board of Commissioners must actually make a decision. *Lambros* v. *Young*, 1944 (145 F. 2d 341, 79 U. S. App. D. C. 247).

A one to one vote of Board of Commissioners of District of Columbia upholding order of Alcoholic Beverage Control Board revoking liquor license did not constitute a "decision of fact" within statute providing that decision of commissioners on question of fact should be final. *Lambros* v. *Young*, 1944 (145 F. 2d 341, 79 U. S. App. D. C. 247).

SCOPE OF REVIEW

Where the ruling of the majority of the Alcoholic Beverage Control Board denying application for a retailers' Class "C" license is based upon sound legal principles and upon substantial evidence, the federal court would not be justified in interfering, but if there is no substantial evidence upon which to predicate a rejection, the action of the Board is subject to judicial review. *Clore Restaurant* v. *Payne* (D. C., D. C. 1947, 72 F. Supp. 677).

§ 25–107 [20: 1907]. Powers of Commissioners—Rules and regulations—Licenses.

The Commissioners are hereby authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to carry out the purposes thereof and to control and regulate the manufacture, sale, keeping for sale, offer for sale, solicitation of orders for sale, importation, exportation, and transportation of alcoholic beverages in the District of Columbia for the protection of the public health, comfort, safety, and morals.

The Commissioners shall have specific authority to make rules and regulations for the issuance, transfer, and revocation of licenses; to facilitate and insure the collection of taxes; to govern the operation of the business of licensees, with full power and authority to prescribe the terms and conditions

under which alcoholic beverages may be sold by each class of licensees; to forbid the issuance of licenses for manufacture, sale, or storage of alcoholic beverages in such localities in, and such sections and portions of, the District of Columbia as they may deem proper in the public interest; to limit the number of licenses of each class to be issued in the District of Columbia and to limit the number of licenses of each class in any locality in, or sections or portions of, the District of Columbia as they may deem proper in the public interest; to forbid the issuance of licenses for businesses conducted on such premises as they, in the public interest, may deem inappropriate; to forbid the issuance of any class or classes of licenses for businesses established subsequent to January 24, 1934, near or around schools, colleges, universities, churches, or public institutions, to prescribe the hours during which beverages may be sold and to forbid the sale on Sundays; but the commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on Sundays other than light wines and beer, and any such sale is hereby prohibited. The powers and authorities expressly enumerated are to be construed as in addition to, and not by way of limitation of, the general powers herein granted. Different regulations may be prescribed for the different classes of licenses, for the different classes of beverages, and for different localities in or sections or portions of the District of Columbia.

Any regulations promulgated hereunder shall become effective five days after being published in any daily newspaper of general circulation in the District of Columbia. Such regulations may be altered or amended from time to time as the commissioners may deem desirable. The Commissioners shall also have authority in any time of public emergency, without previous notice or advertisement, to prohibit the sale of any or all beverages during the period of such emergency. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 7.)

CROSS REFERENCES

Other provisions for rules and regulations under this chapter, §§ 25–106, 25–112, 25–115, 25–138.

Penalties for violations of act or rules and regulations, §§ 25–118, 25–132.

Rules and regulations generally, § 1–226 and notes.

NOTES TO DECISIONS

DOUBLE JEOPARDY

Convictions for violations of this act and the Liquor Taxing Act of 1934, held not to have placed defendant in double jeopardy, the evidence required in the two cases being different. *Sims* v. *Rives* (66 App. D. C. 24, 84 Fed. (2d) 871, cert. den. 298 U. S. 682, 80 L. Ed. 1402, 56 Sup. Ct. 960).

§ 25–108 [20: 1908]. Alcohol for nonbeverage purposes not affected—Penalty for unlawful sales.

No provision of this chapter shall apply to alcohol intended for use in the manufacture and sale of any of the following when they are unfit for beverage purposes, namely:

(a) Denatured alcohol produced and used pursuant to Acts of Congress and regulations promulgated thereunder;

(b) Patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;

(c) Flavoring extracts, syrups, and food products;

(d) Scientific, chemical, mechanical, and industrial products.

Any person who shall knowingly sell any of the products enumerated in paragraphs (a), (b), (c), or (d) for beverage purposes, or who shall sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purposes, shall be subject to the penalties provided for in section 25–132. (Jan. 24, 1934, 48 Stat. 323, ch. 4, § 8.)

CROSS REFERENCE

Exemption from taxation, § 25–124.

STATUTORY REFERENCE

Provisions for regulation of denatured or industrial alcohol, U. S. C., title 27, §§ 71–89.

§ 25–109 [20: 1909]. Sale without license prohibited—Exceptions.

(a) No individual, partnership, association, or corporation shall, within the District of Columbia, manufacture for sale, keep for sale, or sell any alcoholic beverage without having first obtained a license under this chapter for such manufacture or sale, except as provided in section 25–131.

(b) No individual shall, within the District of Columbia, offer for sale or solicit any order for the sale of any alcoholic beverage, irrespective of whether such sale is to be made within or without the District of Columbia, unless such individual has first obtained a license of the character described in section 25–111, subsection (k).

Nothing in this subsection shall apply to any offer for sale or solicitation made upon the premises designated in the license of the vendor.

No individual shall within the District of Columbia offer any beverage for sale to, or solicit orders for the sale of any beverage from, any person not a licensee under this chapter, irrespective of whether such sale is to be made within or without the District of Columbia.

(c) A physician may administer alcoholic beverages to a bona fide patient in cases of actual need when, in the judgment of the physician, the use of alcoholic beverages is necessary.

(d) A dentist who deems it necessary that a bona fide patient being then under treatment by him is in actual need of and should be supplied with alcoholic beverages as a stimulant or restorative, may administer to the patient alcoholic beverages.

(e) A veterinarian who deems it necessary may, in the course of his practice, administer or cause to be administered alcoholic beverages to a dumb animal.

(f) A person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may administer or cause to be administered alcoholic beverages to any bona fide patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medic-

inal purposes, and may charge for the alcoholic beverages so administered. (Jan. 24, 1934, 48 Stat. 323, ch. 4, § 9.)

COMPILER'S NOTE

As originally enacted, the exception set forth included § 32 of the act as well as § 31 (§ 25–131). Section 32 dealt with manufacturer's permits under the National Prohibition Act and has been omitted as obsolete. See also compiler's notes to §§ 25–101 and 25–132.

NOTES TO DECISIONS

AFFIDAVITS OF JUROR

Affidavit in present case does not present facts justifying an exception to the rule that jurors in the federal courts will not be heard for the purpose of impeaching the verdict returned where the facts sought to be shown are such that they essentially inhere in the verdict. Only an extreme case will bring about an exception. *Edwards* v. *District of Columbia* (D. C. Mun. App. 1949, 68 A. 2d 286).

ARGUMENT TO JURY

No prejudicial error was committed by the prosecuting attorney, who, in his argument to the jury, explained the failure to introduce the marked money by saying "it had not been introduced because it could not be determined which was used for the purchase of the whiskey and which was used for other purposes." Assuming that "other purposes" referred to the purchase of lottery tickets, there was no prejudicial error since there was no testimony in respect of claim that defendants were anywise connected with the sale of lottery tickets. *Edwards* v. *District of Columbia* (D. C. Mun. App. 1949, 68 A. 2d 286).

PLACE OF COMMITTING OFFENSE

Failure of government in prosecution for keeping and selling alcoholic beverages without a license, to offer specific proof offenses were committed in District of Columbia, but merely giving location of house by its street number, was not ground for reversal. *Hoover* v. *District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

SEARCH WARRANT

Where defendants were charged with violating statute in the sale of alcoholic beverages, the intervention of Sunday did not prevent a valid execution of the search warrant. The relevancy of the validity of the search warrant was not apparent where under the ruling of the trial court, no evidence seized under the warrant was used in evidence against defendant. *Edwards* v. *District of Columbia* (D. C. Mun. App. 1949, 68 A. 2d 286).

SEPARATE OFFENSES

In prosecution for keeping and selling alcoholic beverages without a license, the admission of evidence that defendant, who had been identified as person who paid rent for house and one by whose bedside whisky and marked money were found, had come from an adjoining bedroom into room where liquor was being sold and consumed, and joined in a crap game, was not erroneous as allowing proof of separate offense. *Hoover* v. *District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

SUPPRESSION OF EVIDENCE

Where counsel for defendant charged with keeping and selling alcoholic beverages without a license objected to admission of bottles of liquor and marked money on ground search warrant had not been produced in evidence, without moving to suppress during more than two weeks between arraignment and trial, admission of testimony that raiding officers who came upon premises after the first group of officers had made their purchases were there pursuant to a search warrant, was not error. *Hoover* v. *District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

§ 25–110 [20: 1910]. Licenses — Applications for — To whom granted—Records.

The board is authorized to issue licenses to individuals, partnerships, or corporations, but not to unincorporated associations, on application duly made therefor, for the manufacture, sale, offer for sale, or solicitation of orders for sale of alcoholic beverages within the District of Columbia. The board shall keep a full record of all applications for licenses, and of all recommendations for and remonstrances against the granting of licenses and of the action taken thereon. (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 10.)

NOTES TO DECISIONS

MANDAMUS

Rejection by the Alcoholic Beverage Control Board, of application for a retailers' Class "C" license on ground that area was adequately serviced, was arbitrary and capricious, in absence of any evidence on the point. *Clore Restaurant* v. *Payne* (D. C., D. C. 1947, 72 F. Supp. 677).

In action in the nature of a petition for writ of mandamus to require Alcoholic Beverage Control Board to issue a retailers' Class "C" license to petitioning restaurant, question before the court was whether action of the Board was based upon substantial evidence, and if it was, mandamus would not lie, whereas if it was not, next question was whether action of Board was arbitrary or capricious. *Clore Restaurant* v. *Payne* (D. C., D. C. 1947, 72 F. Supp. 677).

§ 25–111 [20: 1911]. License classifications—Fees.

Licenses issued under authority of this chapter shall be of eleven kinds: (a) *Manufacturer's license, class A.*—To operate a rectifying plant, a distillery, or a winery. Such a license shall authorize the holder thereof to operate a rectifying plant for the manufacture of the products of rectification by purifying or combining alcohol, spirits, wine, or beer; a distillery for the manufacture of alcohol or spirits by distillation or redistillation; or a winery for the manufacture of wine; at the place therein described, but such license shall not authorize more than one of said activities, namely, that of a rectifying plant, a distillery, or a winery, and a separate license shall be required for each such plant. Such a license shall also authorize the sale from the licensed place of the products manufactured under such license by the licensee to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this chapter. The annual fee for such license for a rectifying plant shall be $5,775; for a distillery shall be $5,775; and for a winery shall be $825: *Provided,* however, That if a manufacturer shall operate a distillery only for the manufacture of alcohol and more than 50 per centum of such alcohol is sold for nonbeverage purposes, the annual fee shall be $1,650. If said manufacturer holding a license issued at the rate last mentioned shall sell during any license period 50 per centum or more of said alcohol for beverage purposes, he shall pay to the Collector of Taxes the difference between the license fee paid and the license fee for a distiller of spirits.

(b) *Manufacturer's license, class B.*—To operate a brewery. Such a license shall authorize the holder thereof to operate a brewery for the manufacture of beer at the place therein described. It shall also

authorize the sale from the licensed place of the beer manufactured under such license to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer. Said manufacturer may sell beer to the consumer only in barrels, kegs, and sealed bottles and said barrels, kegs, and bottles shall not be opened after sale, nor the contents consumed, on the premises where sold. The annual fee for such license shall be $4,125.

(c) *Wholesaler's license, class A.*—Such a license shall authorize the holder thereof to sell beverages from the place therein described to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, and, in addition, in the case of beer or light wines, to a consumer, said beverages to be sold only in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale, nor the contents consumed, on the premises where sold. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this chapter. No holder of such a license except a wholesale druggist or a wholesale grocer shall be engaged in any business on the premises for which the license is issued other than the sale of alcoholic and nonalcoholic beverages. The annual fee for such license shall be $2,475.

(d) *Wholesaler's license, class B.*—Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described to another license holder for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale nor the contents consumed on the premises where sold. The annual fee for such license shall be $1,250.

(e) *Retailer's license, class A.*—Such a license shall authorize the holder thereof to sell beverages from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be $1,250.

(f) *Retailer's license, class B.*—Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be $165.

(g) *Retailer's license, class C.*—Such a license shall be issued only for a bona fide restaurant, hotel, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of restaurants and passenger-carrying marine vessels and club cars or dining cars on a railroad, said spirits and wine, except light wines, shall be sold or served only to persons seated at public tables, and beer and light wines shall be sold and served only to persons seated at public tables or at bona fide lunch counters, except that spirits, wine, and beer may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of hotels, said beverages may be sold and served only in the private room of a registered guest or to persons seated at public tables or to assemblages of more than six individuals in a private room, when such room has been previously approved by the Board. Beer and light wines may also be sold and served to persons seated in bona fide lunch counters. And in the case of clubs, said beverages may be sold and served in the private room of a member or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, $825 per annum; for a hotel, under one hundred rooms, $825 per annum; for a hotel of one hundred or more rooms, $1,650 per annum; for a club, $425 per annum; for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, $3 per month or $20 per annum: *Provided,* That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of $100; for all other passenger-carrying marine vessels serving meals, $75 per month or $825 per annum.

(h) *Retailer's license, class D.*—Such a license shall be issued only for a bona fide restaurant, tavern, hotel, or club, or a passenger-carrying marine vessel serving meals, light lunches, or sandwiches, or a club car or a dining car on a railroad. Such a license shall authorize the holder thereof to sell beer and light wines at the place therein described for consumption only in said place. Except

in the case of clubs and hotels, no beer or light wines shall be sold or served to a customer in any closed container. In the case of restaurants, taverns, and passenger-carrying marine vessels and club cars or dining cars on a railroad, said beer and light wines shall be sold or served only to persons seated at public tables or at bona fide lunch counters, except that beer and light wines may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of hotels, beer and light wines may be sold and served only in the private room of a registered guest or to persons seated at public tables or at bona fide lunch counters or to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. And in the case of clubs, beer and light wines may be sold and served in the private room of a member, or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license.

The annual fee for such a license shall be $330 except that in the case of a marine vessel the fee shall be $30 per month or $330 per annum, and in the case of each railroad dining car or club car $1.50 per month or $15 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of $50.

(i) *Retailer's license, class E.*—Such a license shall authorize a person entitled to retail, compound, and dispense medicines and poisons, to sell from the place therein described, beverages in sealed packages, not to exceed one quart each, for medical purposes, and only upon prescription of a duly-licensed practicing physician for liquors as defined by the United States Pharmacopoeia. Such package shall not be opened after sale, nor its contents consumed, on the premises where sold. Such prescription, when filled, shall be canceled by writing across its face the word "Canceled" together with the date on which it is presented and filled, and such prescriptions shall be numbered consecutively as filled and kept on file in consecutive order. No such prescription shall be refilled. The annual fee for such license shall be $40.

(j) *Retailer's license, class F.*—Such license shall authorize the holder thereof temporarily to sell beer and light wines on the premises therein described for consumption on the premises where sold. Such permits may be issued for a banquet, picnic, bazaar, fair, or similar public or private gathering, where food is served for consumption on the premises. No beer or light wines shall be sold or served to a customer in any unopened container. The issuance of such a permit shall be solely in the discretion of the Board. The fee for each such license shall be $7.50 per day.

(k) *Solicitor's licenses.*—Such a license shall authorize the licensee to offer for sale to or solicit orders from licensees for the sale of any beverage on behalf of the vendor whose name appears upon such license and whom the solicitor represents. The name of only one vendor shall appear upon the license but if solicitor represents more than one vendor a license may be issued such solicitor for each vendor such solicitor represents.

The annual fee for such license shall be $100.

Nothing in this chapter shall be construed as repealing any portion of section 7 of the District of Columbia Appropriation Act for the fiscal year ending June 30, 1903, approved July 1, 1902, as amended (32 Stat. 622, ch. 1352, § 7). (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 398, 899, ch. 756, §§ 3–7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501.)

EFFECTIVE DATE

Sec. 509 of the act of May 27, 1949, provided: "The provisions of this title shall become effective on the first day of the first month succeeding the sixtieth day after the approval of this Act."

AMENDMENTS

The act of April 30, 1934, amended this section by adding at the end of the first paragraph of subsection (c): "It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the commissioner under the act."

The act of June 18, 1934, inserted in the third sentence of subsection (g) the following words: "and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more." This act also changed the provisions as to fees.

Act of July 2, 1935, amended subsections (g) and (h) by adding at the end of the first paragraph of each the words: "All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser."

The act of August 27, 1935, amended the first sentences of subsections (a), (b), (c), and (d) by inserting the words "under this act" following the words "license holder." In subsections (b), (c), and (d), "dealer outside of the District of Columbia" was changed to read "dealer licensed under the laws of any state or territory of the United States," and in subsection (c) the second sentence was added. In subsection (h) the words "and light wines" were inserted after "beer" in the fourth and fifth sentences.

The 1938 act amended the second paragraph of subsection (g) to read as above, and added the proviso to subsection (h).

The Act of May 27, 1949, increased the fees of all classes of licensees except solicitors, and clarified the provisions of subsection (k) in the case of solicitors representing more than one vendor. Sec. 502 of said act provided: "Notwithstanding the provisions of this Act, where prior to the effective date of this Act a solicitor's license has been issued which sets forth the name of more than one vendor the solicitor may continue to offer for sale or to solicit orders from licensees for the sale of any beverage on behalf of any vendor named in such license until the expiration of such license."

CROSS REFERENCES

Refund of fees under Beverage License Act, § 25–131.
Refund of fees when license refused, § 47–1018.

§ 25–111a. Appropriation of portion of license fees for manufacture or sale of alcoholic beverages.

Six per centum of the annual fees for licenses for the manufacture or sale of alcoholic beverages, except for retailer's license, class E, imposed by section 25–111, is hereby permanently appropriated

to carry out the purposes of chapter 5, Title 24. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 14; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 504.)

AMENDMENT

The act of May 27, 1949, substituted the present language in lieu of the previous 10 per centum tax by which license fees, except retailer's license, class E, were increased to carry out the provisions of chapter 5, title 24.

EFFECTIVE DATE

See note for § 25–111.

§ 25–112 [20: 1911a]. Authority of Commissioners to forbid transportation of liquor into District—Permit may be granted.

The Commissioners of the District of Columbia are hereby authorized in their discretion to require by regulation that no licensee holding a retailer's license, class A, B, C, D, or E, as provided in this chapter, shall transport, or cause to be transported, in any manner whatsoever into the District of Columbia any alcoholic beverage (except the regular stock on hand in a licensed railroad club or dining car or passenger-carrying marine vessel); and said Commissioners are also authorized to permit such importation under a special permit or permits, to be issued by the Alcoholic Beverage Control Board, upon application by licensee and upon such terms and conditions and in such manner as may be prescribed by the said Commissioners. Any such regulation, permit, or system of permits may be suspended, amended, revoked, or abolished at any time by the said Commissioners. (Aug. 27, 1935, 49 Stat. 903, ch. 756, § 18.)

CROSS REFERENCES

Other provisions concerning rules and regulations, § 25–107 and notes.

Other provisions concerning transportation, §§ 25–137, 25–138.

§ 25–113 [20: 1912]. Holding of license of more than one class forbidden—Definition of "licensee."

(a) The holder of a manufacturer's or wholesaler's license issued hereunder shall not be entitled to hold any other class of license. A person, not licensed hereunder, owning an establishment for the manufacture of beverages located outside the District of Columbia may hold one wholesale license, and shall not be entitled to hold any other license.

(b) No licensee holding a retailer's license, class C or class D, shall, by direct ownership, stock ownership, or interlocking directors, hold, directly or indirectly, any license other than retailer's licenses class C, class D, or class E. No licensee holding a retailer's license class A or class B shall, by direct ownership, stock ownership, or interlocking directors, hold, directly or indirectly, more than one license except retailer's licenses class E. When used in this subsection the word "licensee" shall include any stockholder holding directly or indirectly twenty-five per centum or more of the common stock or any officer of such licensee if such licensee is a corporation. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 12.)

CROSS REFERENCE

Business interests forbidden, §§ 25–105, 25–115, 25–119, 25–120.

§ 25–114 [20: 1913]. Description in license of premises—Sale limited to premises—Storage not on premises—Expiration of licenses—Monthly licenses—Proportionate fees.

Every license shall particularly describe the place where the rights thereunder are to be exercised, and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place so described in his license: *Provided, however,* That the holder of a manufacturer's or wholesaler's license or the holder of a retailer's license, class C, and class D, issued for a passenger-carrying marine vessel or club car or a dining car on a railroad may store beverages, with the consent of the Board, upon premises other than the premises designated in the license. Every annual license shall date from the 1st day of February in each year and expire on the 31st day of January next after its issuance, except as hereinafter provided. Licenses issued at any time after the beginning of the license year shall date from the first day of the month in which the license was issued and end on the last day of the license year above described, and payments shall be made of the proportionate amount of the annual license fee. Every monthly license shall date from the first day of the month in which it is issued and expire on the last day of the month named in the license. Monthly licenses shall not be issued for periods exceeding six months. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 13; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 8.)

AMENDMENT

Prior to the 1935 amendment the first sentence of the proviso read as follows: *"Provided, however,* That the holder of a manufacturer's or wholesaler's license may store beverages, with the consent of the board, upon premises other than designated in the license."

§ 25–115 [20: 1914]. Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property-owners—Removal of bonded liquor from Government warehouses—Bond—Penalty.

(a) Any individual, partnership, or corporation desiring a license under this chapter shall file with the Board an application in such form as the Commissioners may prescribe, and such application shall contain such additional information as the Board may require, and (except in the case of an application for a manufacturer's license, retailer's license, class E, or solicitor's license) shall contain a statement setting forth the name and address of the true and actual owner of the premises upon which the business to be licensed is to be conducted. Before a license is issued the Board shall satisfy itself:

1. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers and directors, is of good moral character and generally fit for the trust to be in him reposed.

2. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers, is a citizen of the United States, not less than

twenty-one years of age, and has not, within five years prior to the filing of such application, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior to such filing, been convicted of any felony.

3. Except in the case of an application for a solicitor's license, that the applicant is the true and actual owner of the business for which the license is desired, and that he intends to carry on the business authorized by the license for himself and not as the agent of any individual, partnership, association, or corporation, and that he intends to superintend in person the management of the business licensed, or intends to have some other person, to be approved by the Board, manage the business for him, which said manager must possess all of the qualifications required of a licensee hereunder.

4. That in the case of an applicant for a wholesaler's license or a retailer's license (except a retailer's license class E), no manufacturer or wholesaler of beverages other than the applicant (including a stockholder holding 25 per centum or more of the common stock, or an officer of any manufacturer or wholesaler of beverages, if such manufacturer or wholesaler is a corporation), has such a substantial interest, direct or indirect, in the business for which the license is requested, or in the premises in respect of which such license is to be issued, as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer or wholesaler, and that such business will not be conducted with any money, equipment, furniture, fixtures, or property rented from or loaned or given by any such manufacturer or wholesaler (including such stockholder or officer) or sold by such manufacturer or wholesaler (including such stockholder or officer) to any such licensee for less than the fair market value or upon a conditional sale agreement or chattel trust.

5. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired.

(b) Before granting a retailer's license, except a retailer's license class E or class F, the Board shall give notice by advertisement published once a week and for at least two weeks in some newspaper of general circulation published in the District of Columbia. The advertisement so published shall contain the name of the applicant and a description by street and number, or other plain designation, of the particular location for which the license is requested and the class of license desired. Such notice shall state that remonstrants are entitled to be heard before the granting of such licenses and shall name the time and place of such hearing. There shall also be posted by the Board a notice, in a conspicuous place, on the outside of the premises. This notice shall state that remonstrants are entitled to be heard before the granting of such license and shall name the same time and place for such hearing as set out in the public advertisement; and, if remonstrance against the granting of such license is filed, no final action shall be taken by the Board until the remonstrant shall have had an opportunity to be heard, under rules and regulations prescribed by said Board. Any person wilfully removing, obliterating, marring, or defacing said notice shall be deemed guilty of a violation of this chapter. The provisions of this subsection relating to notice by advertisement in some newspaper of general circulation shall not apply to the issuance of a license to a retailer for any place of business if such retailer is the holder of a license of the same class for the same place and if said last-mentioned license is in effect on the date the application for the new license is filed.

(c) Except in the case of a retailer's license class C or class D, to be issued for a hotel or club, or a retailer's license class B or class E, no place for which a license under this chapter has not been issued and in effect on the date the written objections hereinafter provided for are filed, shall be deemed appropriate if the owners of a majority of the real property within a radius of six hundred feet of the boundary lines of the lot or parcel of ground upon which is situated the place for which the license is desired, shall, on a form to be prescribed by the Commissioners filed with the Board, object to the granting of such license. In determining the sufficiency of such objections the owners of all such property not lying within a residential use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission shall be taken as consenting to the granting of such license, except that the Commissioners shall have power to file objections on behalf of any property lying within such radius owned by the United States or the District of Columbia. This subsection shall be construed as a limitation upon the discretion of the Board in granting a license and not as a limitation upon the discretion of the Board in refusing a license: *Provided, however,* That none of the provisions of this chapter shall prevent the Board from promulgating regulations to permit the lawful bona fide owners of warehouse receipts for bonded liquors stored in Government warehouses either in the District of Columbia or elsewhere from withdrawing such bonded liquors for personal use on payment to the Collector of Taxes for the District of Columbia, taxes at such rates as provided in this chapter: *Provided,* That such bona fide holder of such warehouse receipts held legal title to such warehouse receipts prior to the passage of this chapter.

(d) A separate application shall be filed with respect to each place of business, except that a company engaged in interstate commerce may file one application for a license for the operation thereunder of all of its dining, club, and lounge cars operated on railroads within the District of Columbia. The required license fee shall be paid to the collector of taxes and his duplicate receipt shall accompany the application for license. In the event

the license is denied the fee shall be returned. Every such application shall be verified by the affidavit of the applicant, if an individual, or by all of the members of a partnership, or by the president or vice president of a corporation. If any false statement is knowingly made in such application, or in any accompanying statement under oath which may be required by the Commissioners or the Board, the person making the same shall be deemed guilty of perjury. The making of a false statement in any such application, or in any such accompanying statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for the revocation of the license. (Jan. 24, 1934, 48 Stat. 327–329, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3.)

AMENDMENTS

The 1937 amendment added the last sentence of paragraph (b) and deleted a provision in paragraph (d) requiring a bond.

The 1938 amendment added the rest of the first sentence of paragraph (c) following the comma after the word "business."

CROSS REFERENCES

Business interests forbidden, §§ 25–105, 25–113, 25–119, 25–120.

Other provisions concerning rules and regulations, § 25–107 and notes.

For the National Prohibition Act, as amended and supplemented, see Compiler's Note, § 25–101.

NOTES TO DECISIONS

MANDAMUS

Rejection by the Alcoholic Beverage Control Board, of application for a retailers' Class "C" license on ground that area was adequately serviced, was arbitrary and capricious, in absence of any evidence on the point. *Clore Restaurant* v. *Payne* (D. C., D. C. 1947, 72 F. Supp. 677).

In action in the nature of a petition for writ of mandamus to require Alcoholic Beverage Control Board to issue a retailers' Class "C" license to petitioning restaurant, question before the court was whether action of the Board was based upon substantial evidence, and if it was, mandamus would not lie, whereas if it was not, next question was whether action of Board was arbitrary or capricious. *Clore Restaurant* v. *Payne* (D. C., D. C. 1947, 72 F. Supp. 677).

§ 25–116 [20: 1915]. Issuing licenses in certain districts restricted.

No retailer's licenses except of classes B or E shall be issued for any business conducted in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission, except for a restaurant or tavern conducted in a hotel, apartment house, or club, and then only when the entrance to such restaurant or tavern is entirely inside of the hotel, apartment house, or club and no sign or display is visible from the outside of the building.

No wholesaler's license shall be issued for any establishment conducted in such residential-use district and no manufacturer's license shall be issued for any establishment conducted in a residential or first commercial-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission. Nothing herein contained shall be construed as permitting the establishment of a bottling works in violation of said zoning regulations. (Jan. 24, 1934, 48 Stat. 328, ch. 4, § 15; June 16, 1934, 48 Stat. 974, ch. 552.)

AMENDMENT

The June 16, 1934 amendment added class B to the exception.

CROSS REFERENCE

See compiler's note to § 25–132.

§ 25–117 [20: 1916]. Transfer of license—Fee—Conditions imposed.

No license shall be transferred by the licensee to any other person or to any other place, except with the written consent of the Board, upon a regular application therefor in writing and after notice and hearing, as herein provided for an original application for license, and the fee to be paid by the party applying for such transfer shall be $100, which shall be paid to the Collector of Taxes for the District of Columbia before such transfer is made: *Provided,* That the Board shall not allow the transfer of the license of any person against whom there is pending in the courts or before the Board any charge of keeping a disorderly house, or of violating this law or the laws against gambling in the District of Columbia. (Jan. 24 1934, 48 Stat. 330, ch. 4, § 16; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 503.)

AMENDMENT

The May 27, 1949, amendment increased the fee for transfer of a license from $25 to $100. For effective date of increase, see note to § 25–111.

§ 25–118 [20: 1917]. Revocation of license—Causes—Hearing—Discretionary closing for 1 year.

If during the period for which any license was issued the licensee shall be convicted of any felony, or if any licensee violates any of the provisions of this chapter or any of the rules or regulations promulgated pursuant thereto or fails to superintend in person, or through a manager approved by the Board, the business for which the license was issued, or allows the premises with respect to which the license of such licensee was issued, to be used for any unlawful, disorderly, or immoral purpose, or knowingly employs in the sale or distribution of beverages any person who has, within five years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior thereto, been convicted of any felony, or such licensee otherwise fails to carry out in good faith the provisions of this chapter, the license of said licensee may be revoked or suspended by the Board after the licensee has been given an opportunity to be heard in his defense, subject to review by the Commissioners in case of revocation or in case of suspension for a period of more than thirty days, as herein provided. In case a license issued hereunder shall be revoked or suspended, no part of the license fee shall be returned, and the Board may, in its discretion, subject to review by the Commissioners, as a part of the order of revocation provide that no license shall be granted for the same place for the period of one year next after such revocation, and in case such order shall be made no license shall, during said year, be issued

for said place or to a person or persons whose license is so revoked for any other location.

In the event the Board at any time shall order the suspension of any license a notice may be posted by the Board, in a conspicuous place, on the outside of the licensed premises, at or near the main street entrance thereto; which notice shall state that the license theretofore issued to the licensee has been suspended and shall state the time for which said license is suspended, and state that the suspension is ordered because of a violation of this chapter, or of the Commissioners' regulations adopted under authority of this chapter. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3: Apr. 26, 1950, 64 Stat. 88, ch. 106.)

AMENDMENTS

The 1950 amendment added the words "during the period for which any license was issued the licensee shall be convicted of any felony, or if" after the word "If" at the beginning of the first sentence of the first paragraph.

The 1935 amendment added the words "or suspended" both times they appear and the words "in case of revocation or in case of suspension for a period of more than thirty days" in the first paragraph, and added the second paragraph which the 1937 amendment amended by deleting the word "shall" and inserting in lieu thereof the word "may" in the second line hereof.

CROSS REFERENCES

General penalties for violations of chapter or rules and regulations, § 25–132.

Refund of fees when license refused, § 47–1018.

NOTES TO DECISIONS

INJUNCTION

An injunction against enforcement of order of Alcoholic Beverage Control Board revoking liquor license should not issue for any period while failure of Board of Commissioners of District of Columbia to reach a decision on appeal is caused by unavoidable circumstances such as absence of a commissioner or necessary delay in considering and deciding the case. *Lambros* v. *Young,* 1944 (145 F. 2d 341, 79 U. S. App. D. C. 247).

§ 25–119 [20: 1918]. Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.

If any manufacturer of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage, or lien, or by any other means shall have such a substantial interest, whether direct or indirect, in the business of any wholesale or retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer, the Board may, in its discretion, revoke the license issued in respect of the business in which such manufacturer is interested, subject to review by the Commissioners as herein provided. No such manufacturer of beverages shall loan or give any money to any wholesale or retail licensee, or sell, rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or give or sell any service to such licensee: *Provided, however,* That with the prior approval of the Board, a manufacturer may sell, give, rent, or loan to a wholesale or retail licensee any service or article of property costing such manufacturer not more than $10. No wholesale or retail licensee shall receive or accept any loan or gift of money from any such manufacturer or purchase from, rent from, borrow or receive by gift from such manufacturer any equipment, furniture, fixtures, or property, or accept or receive any service from such manufacturer: *Provided, however,* That, with the prior approval of the Board, a wholesale or retail licensee may purchase from, rent from, borrow, or receive by gift from such manufacturer any service or article of property costing such manufacturer not more than $10. Nothing herein contained, however, shall prohibit the sale of alcoholic and nonalcoholic beverages and the reasonable extension of credit therefor by a manufacturer to a wholesale or retail licensee. When used in this section the word "manufacturer" shall include any stockholder holding directly or indirectly 25 per centum or more of the common stock or any officer of a manufacturer of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E, or to the wholesale license held by a person not licensed as a manufacturer hereunder owning an establishment for the manufacture of beverages outside of the District of Columbia. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 18; Aug. 27, 1935, 49 Stat. 902, ch. 756, § 15.)

AMENDMENT

The 1935 amendment deleted the words "to such licensee for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent, loan or give to such licensee any equipment, furniture, fixtures or property, or give or sell any service to such licensee for less than the fair market value thereof," and inserted in lieu thereof the remainder of the second sentence after the word "sell" the first time it is used; inserted the words "rent from, borrow or receive by gift from" in the third sentence; deleted from the third sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent from, borrow or receive by gift from such manufacturer" following the word "manufacturer" the second time it is used in said sentence; deleted in the third sentence the words "for less than the fair market value thereof" and inserted in lieu thereof the proviso in such sentence; deleted from the last sentence the words "hereunder owning an establishment for the manufacture of beverages" and inserted in lieu thereof the concluding words of the last sentence following the word "licensed."

CROSS REFERENCES

Business interests forbidden, §§ 25–105, 25–113, 25–115, 25–120.

Other provisions concerning sale of beverages on credit, §§ 25–120, 25–133.

§ 25–120 [20: 1919]. Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.

If any wholesaler of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage or lien or by any other means shall have such a substantial interest either direct or indirect in the business of any retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such wholesaler, the board may in its discretion revoke the license issued in respect of the business in

which such wholesaler is interested, subject to review by the commissioners as herein provided. No such wholesaler of beverages shall lend or give any money to any retail licensee or sell to such licensee, any equipment, furniture, fixtures, or property, except merchandise sold at the fair market value for resale by such licensee, or rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or give or sell any service to such licensee: *Provided, however,* That, with the prior approval of the Board, a wholesaler may sell, give, rent, or loan to such licensee any service or article of property costing such wholesaler not more than $10. No retail licensee shall receive or accept any loan or gift of money from any such wholesaler or purchase from any such wholesaler any equipment, furniture, fixtures, or property, except merchandise purchased at the fair market value for resale, or rent from, borrow, or receive by gift from such wholesaler any equipment, furniture, fixtures, or property, or receive any service from such wholesaler: *Provided, however,* That with the prior approval of the Board, a retail licensee may purchase from, rent from, borrow or receive by gift from such wholesaler any service or article of property costing such wholesaler not more than $10. Nothing herein contained, however, shall prohibit the reasonable extension of credit by a wholesaler for merchandise sold to a retail licensee for resale as herein permitted. When used in this section the word "wholesaler" shall include any stockholder holding directly or indirectly 25 per centum or more of the common stock or any officer of a wholesaler of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E. (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 19; Aug. 27, 1935, 49 Stat. 903, ch. 756, § 16.)

AMENDMENT

The 1935 amendment deleted from the second sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent, loan or give to such licensee" following the word "licensee" the first time it is used in said sentence; added the words "except merchandise sold at the fair market value for resale by such licensee, or rent, loan or give to such licensee any equipment, furniture, fixtures, or property" in the second sentence; added the proviso in the second sentence; deleted from the third sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent from, borrow or receive by gift from such wholesaler" following the word "wholesaler" the second time it is used in said sentence; added the proviso in the third sentence; added the last five words in the fourth sentence.

CROSS REFERENCES

Business interests forbidden, §§ 25–105, 25–113, 25–115, 25–119.

Other provisions concerning sale of beverages on credit, §§ 25–119, 25–133.

§ 25–121 [20: 1920]. Sale to minors or intoxicated persons—Liability of licensee.

Licenses issued hereunder shall not authorize the sale or delivery of beverages, with the exception of beer and light wines, to any person under the age of twenty-one years, or beer or light wines to any person under the age of eighteen years, either for his own use or for the use of any other person; or the sale, service, or delivery of beverages to any intoxicated person, or to any person of notoriously intemperate habits, or to any person who appears to be intoxicated; and ignorance of the age of such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to sell such alcoholic beverages. (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 20; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 10.)

AMENDMENT

The 1935 amendment added the words "service or delivery" following the word "sale" following the first semicolon.

§ 25–122 [20: 1921]. License forfeited on licensee becoming bail.

If any person holding a license under this chapter shall become bail for any person complained of for the violation of any provisions of this chapter, his license shall become void as of the date of becoming such bail. (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 21.)

§ 25–123 [20: 1922]. Monthly reports of sales and purchases.

(a) Each holder of a manufacturer's license shall, on or before the 10th day of each month, furnish to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverages, except beer, manufactured during the preceding calendar month. Beverages shall not be considered as manufactured within the meaning of this section and section 25–124 until they are ready for sale.

(b) Each holder of a wholesaler's or retailer's license shall, on or before the 10th day of each month, furnish to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverages, except beer, purchased by him during the preceding calendar month, and also showing the date of each such purchase, the name of the person from whom purchased, giving the license number of the vendor, if licensed hereunder, and the quantity and kind of beverages in each such purchase.

(c) The Commissioners may at any time suspend or revoke in whole or in part the requirements of this section. (Jan. 24, 1934, 48 Stat. 332, ch. 4, § 22; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 2.)

AMENDMENT

The April 30, 1934 amendment added paragraph (c).

CROSS REFERENCE

Report of sales of beer, § 25–138.

§ 25–124 [20: 1923]. Beverage tax — Stamps — Seizure and disposition of beverage upon which tax not paid—Absence of stamp prima facie evidence of nonpayment—Penalty for counterfeiting or forging stamps—Class C or D licensees—Reports.

(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District of Columbia by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the

District of Columbia by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: (1) A tax of 15 cents on every wine-gallon of wine containing more than 14 per centum of alcohol by volume, except champagne, or any wine artificially carbonated and a proportionate tax at a like rate on all fractional parts of such gallon; (2) a tax of 22½ cents on every wine-gallon of champagne or any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (3) a tax of 75 cents on every wine-gallon of spirits, and a proportionate tax at a like rate on all fractional parts of such gallon; (4) and a tax of $1.25 on every wine-gallon of alcohol, and a proportionate tax at a like rate on all fractional parts of such gallon.

(b) Said taxes shall be collected by and paid to the Collector of Taxes of the District of Columbia and shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(c) Said taxes shall be collected and paid by the affixture of a stamp or stamps secured from the Collector of Taxes of the District of Columbia denoting the payment of the amount of the tax imposed by this chapter upon such beverage, such affixture to be upon the immediate container of the beverage, unless the Commissioners shall by regulation permit otherwise.

(d) The Collector of Taxes of the District of Columbia shall furnish suitable stamps, to be prescribed by the Commissioners, denoting the payment of the taxes imposed by this chapter, and shall by the sale of such stamps at the amounts indicated on the faces thereof cause the said taxes to be collected.

(e) Upon taxable beverages manufactured in the District of Columbia by a manufacturer licensed under this chapter, the stamps required by this chapter shall be affixed before the removal of the beverage from the place of business or warehouse of the said manufacturer for delivery to a purchaser. Upon taxable beverages, except taxable light wines, imported or brought into the District of Columbia by any wholesaler licensed under this chapter, the stamps required by this chapter shall be affixed before the removal of the beverage from the place of business or warehouse of the said wholesaler for delivery to a purchaser; upon taxable light wines imported or brought into the District of Columbia by any wholesaler licensed under this chapter, the said stamps shall be affixed within twenty-four hours (excluding Sunday from the count) after the wines are received at the licensed premises of the wholesaler and before said wines are sold by such wholesaler. Upon beverages purchased outside the District of Columbia by any retailer licensed under this chapter, the stamps required by this chapter shall be affixed within twenty-four hours (excluding Sunday from the count) after the beverage is received at the licensed premises of said retailer and before said beverage is sold by such retailer.

(f) No person shall use or cause to be used for the payment of any tax imposed by this chapter a stamp or stamps already theretofore used for the payment of any such tax.

(g) No tax shall be levied and collected on any alcohol exempt from tax under the laws of the United States, or on any alcohol sold for nonbeverage purposes by the holder of a manufacturer's or wholesaler's license, in accordance with the regulations promulgated by the Commissioners.

(h) If any Act of Congress shall hereafter prescribe for a Federal volume tax on alcoholic beverages under which a portion of said tax shall be returned to the District of Columbia, the taxes levied under this section shall not be collected after the effective date, January 24, 1934.

(i) The possession by any licensee of any beverage after its removal from the licensed premises of a manufacturer or wholesaler within the District of Columbia or after twenty-four hours (Sunday being excluded from the count) after its receipt from outside the District of Columbia, upon which the tax required has not been paid, shall render such beverage liable to seizure wherever found, and to forfeiture by the District of Columbia. And the absence of the proper stamps from any container (or wrapper if such be permitted) after the time at which the affixture of the stamp is required by this chapter shall be notice to all persons that the tax has not been paid thereon and shall be prima facie evidence of the nonpayment thereof. Such beverage so liable to forfeiture shall be proceeded against in the District Court of the United States for the District of Columbia by the corporation counsel of the District of Columbia, and if condemned, the said beverage shall be disposed of by destruction or delivered for medicinal, mechanical, or scientific uses to any department or agency of the United States government or the District of Columbia government or any hospital or other charitable institution in the District of Columbia, or sold at public auction, as the court may direct. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, and all such proceedings shall be at the suit of and in the name of the District of Columbia.

(j) Any person who shall counterfeit or forge any stamp required by this chapter shall, upon conviction, be subject to a fine not exceeding $5,000 or to imprisonment for a period of not more than two years, or to both such fine and imprisonment.

(k) No taxing provision of subsection (a), (c), (e), and (i) of this section shall apply in the case of a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, except as set forth in this subsection.

The tax as specified in subsection (a) of this section shall be paid on all such beverages as are sold and served by said licensee while passing through or when at rest in the District of Columbia, in the following manner: A record shall be made and kept by the licensee for each passenger-carrying marine vessel operating in and beyond the District of Columbia, and for each club car or dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or

class D, has been issued under this chapter, of all alcoholic beverages sold and served in the District of Columbia, which record shall be subject to inspection by the board. Each holder of such a license shall, on or before the 10th day of each month, forward to the board on a form to be prescribed by the commissioners, a statement under oath, showing the quantity of each kind of beverage, except beer and nontaxable light wines, sold under such license in the District of Columbia during the preceding calendar month, to which said statement shall be attached stamps denoting the payment of the tax imposed under this chapter upon the beverages set forth in said report. (Jan. 24, 1934, 48 Stat. 332, ch. 4, § 23; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 3; June 18, 1934, 48 Stat. 1014, 1015, ch. 600, §§ 1, 2; Aug. 27, 1935, 49 Stat. 901, 903, ch. 756, §§ 11, 17; May 27, 1949, 63 Stat. ch. 146, title V, § 505.)

COMPILER'S NOTE

Section 24 of the act of January 24, 1934, as amended by § 4 of the act of April 30, 1934, which appeared as § 1294 of D. C. 1929, Supp. V, title 20, is omitted as obsolete.

AMENDMENTS

The April 30, 1934, amendment struck out the former section and inserted in lieu thereof the present section down through (j), except as amended as hereafter shown.

The June 18, 1934, amendment amended subsection (a) by adding the exception, and amended subsection (e) by inserting the word "taxable" after the word "upon" in the beginning of the first and the beginning of the second sentence.

The 1935 amendment added subsection (k) and, in subsection (a) changed the rate from 35 cents to 10 cents in (1) and from 50 cents to 15 cents in (2).

The 1949 amendment, in subsection (a), changed the rate from 10 cents to 15 cents in (1); from 15 cents to 22½ cents in (2); from 50 cents to 75 cents in (3); and from $1.10 to $1.25 in (4).

Sections 506 and 507 of the 1949 act provided respectively as follows:

"SEC. 506. Within ten days after the effective date of this title, every holder of a retailer's license under said District of Columbia Alcoholic Beverage Control Act shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners of the District of Columbia showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him on the day on which this title becomes effective, or on the following day if the effective date be a Sunday, other than stamps affixed to the containers of beverages manufactured in or imported into the District of Columbia prior to the effective date of this title, and shall, within fifteen days after the effective date of this title, pay to the Collector of Taxes the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act as amended by this title, represented by such stamps.

"SEC. 507. Within ten days after the effective date of this title, every holder of a manufacturer's license, class A, and every holder of a wholesaler's license under the District of Columbia Alcoholic Beverage Control Act shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the amount and kind of all beverages, except (1) beer, (2) wine containing 14 per centum or less of alcohol by volume other than champagne and wine artificially carbonated, and (3) beverages upon which required stamps have been affixed, held, or possessed by him in the District of Columbia at the beginning of the day this title becomes effective and shall state the number of each kind and denomination of stamps necessary for the stamping of such beverages so held or possessed. Every such licensee, within ten days after the effective date of this title, shall also file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners of the District of Columbia showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him at the beginning of the day on which this title becomes effective, other than stamps affixed to the containers of beverages manufactured in or imported into the District of Columbia prior to the effective date of this title. Every such licensee shall within fifteen days after the effective date of this title pay to the Collecor of Taxes for all stamps not necessary for the stamping of beverages shown on the sworn statement hereinbefore required to be filed with the Alcoholic Beverage Control Board the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, represented by such stamps. Should the number of any kind or denomination of stamps so held by a licensee be less than the number necessary for the stamping of the beverages shown on said sworn statement, the Collector of Taxes is authorized and directed to sell to such licensee, at the rates prescribed for such stamps prior to the effective date of this title, such stamps as may be necessary for the stamping of such beverages. In the event any of the beverages shown on said sworn statement are sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under the Alcoholic Beverage Control Act, such sale shall, within ten days thereafter, be reported to the Alcoholic Beverage Control Board and within said ten days such licensee shall pay to the Collector of Taxes on all stamps held by him for the stamping of such beverages the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, represented by such stamps."

EFFECTIVE DATE

For effective date of 1949 amendment, see note for § 25–111.

CROSS REFERENCES

Tax on beer, § 25–138.

When beverage considered "manufactured," § 25–123 (a).

§ 25–125 [20: 1925]. Sale, distribution, furnishing of beverages by convicted persons and minors.

No licensee under this chapter shall allow any person who has, within ten years prior thereto, been convicted of any felony, to sell, give, furnish, or distribute any beverage, nor allow any minor under the age of twenty-one years of age to sell, give, furnish, or distribute any beverage, except beer and light wines, or any minor under the age of eighteen years to sell, give, furnish, or distribute beer and light wines. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 25; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 12.)

AMENDMENT

The 1935 amendment deleted the words "within five years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented or," which followed the words "convicted of," and added the words "and light wines" both times they now appear.

§ 25–126 [20: 1926]. Power of board to compel testimony—Witness fees—Perjury.

Said board is hereby authorized and empowered to summon any person before it to give testimony on oath or affirmation, or to produce all books, records,

papers, documents, or other legal evidence as to any matter affecting the operation of this chapter and any member of said board shall have the power to administer all oaths and affirmations for the purposes of the administration of this chapter. Such summons may be served by any member of the Metropolitan police department. If any witness having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event any member of the board may report that fact to the District Court of the United States for the District of Columbia or one of the justices thereof and said court or any justice thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Witnesses, other than those employed by the District of Columbia or the United States Government, summoned to appear before said board shall be entitled to the same fees as are paid witnesses for attendance before the District Court of the United States for the District of Columbia, but said fees need not be paid said witnesses in advance of their appearing and testifying, or producing books, records, papers, documents, or other legal evidence before said board. Any person who shall wilfully swear falsely in any proceeding, matter, or hearing before said board shall be deemed guilty of perjury. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 26.)

§ 25–127 [20: 1927]. Intoxicated person not to operate locomotive, street car, elevator, watercraft, or horse-drawn vehicle—Penalty—Traffic acts not affected.

(a) No person shall be intoxicated while in charge of or operating any locomotive or while acting as a conductor or brakeman of a car or train of cars, or while in charge of or operating any street car, elevator, watercraft, or horse-drawn vehicle in the District of Columbia.

(b) Any person violating the provisions of this section shall be punished by a fine of not more than $300, or by imprisonment for not longer than three months, or by both such fine and imprisonment in the discretion of the court.

(c) Nothing herein contained shall be construed as repealing or modifying any provision of sections 40–301 to 40–304 and 40–603 to 40–612. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 27.)

COMPILER'S NOTE

Sections 40–301 to 40–304, 40–603 to 40–612 contain provisions concerning operation of motor vehicles.

§ 25–128 [20: 1928]. Drinking of alcoholic beverage in street, alley, park, parking, or unlicensed public place forbidden—Intoxication in street, alley, park, or parking forbidden—Penalty.

(a) No person shall in the District of Columbia drink any alcoholic beverage in any street, alley, park, or parking; or in any vehicle in or upon the same; or in any place to which the public is invited for which a license has not been issued hereunder permitting the sale and consumption of such alcoholic beverage upon such premises; or in any place to which the public is invited (for which a license under this chapter has been issued) at a time when the sale of such alcoholic beverage on the premises is prohibited by this chapter or by the regulations promulgated thereunder. No person shall be drunk or intoxicated in any street, alley, park, or parking, or in any vehicle in or upon the same or in any place to which the public is invited or at any public gathering and no person anywhere shall be drunk or intoxicated and disturb the peace of any person.

(b) Any person violating the provisions of this section shall be punished by a fine of not more than $100 or by imprisonment for not more than thirty days or by both such fine and imprisonment in the discretion of the court for the first offense; by a fine of not more than $200 or by imprisonment for not more than sixty days or by both such fine and imprisonment in the discretion of the court for the second offense, or by a fine of not more than $500 or by imprisonment for not more than six months or by both such fine and imprisonment in the discretion of the court for each subsequent offense. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 28; Aug. 27, 1935, 49 Stat. 901, 902, ch. 756, §§ 13, 14.)

AMENDMENT

The 1935 amendment added that part of the first sentence of paragraph (a) that follows the last semicolon, and that part of paragraph (b) that follows the word "court" the first time it appears in the said paragraph.

NOTES TO DECISIONS

FINES AND IMPRISONMENT

Where defendant, convicted of being drunk in a public park and unable to pay fine, was imprisoned, his argument that general authority given by § 11–606 and 11–616 is limited by the later § 25–128, is without merit where the general statute existed before the special one Congress must have been aware of the older statutes, and had it intended later to modify the earlier, would have done so. *Peoples* v. *District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

§ 25–129 [20: 1929]. Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.

(a) A search warrant may be issued by any judge of the police court of the District of Columbia or by a United States Commissioner for the District of Columbia when any alcoholic beverages are manufactured for sale, kept for sale, or sold in violation of the provisions of this chapter, and any such alcoholic beverages and any other property designed for use in connection with such unlawful manufacture for sale, keeping for sale, or selling may be seized thereunder, and shall be subject to such disposition as the court may make thereof, and such alcoholic beverages may be taken on the warrant from any house or other place in which it is concealed.

(b) A search warrant can not be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the

application or probable cause for believing that they exist.

(e) If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant signed by him with his name of office to the major and superintendent of police of the District of Columbia or any member of the Metropolitan police department, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the place named for the property specified and to bring it before the judge or commissioner.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or commissioner must insert a direction in the warrant that it be served in the daytime unless the affidavit is positive that the property is in the place to be searched in which case he must insert a direction that it be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(*l*) The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the clerk of the police court.

(n) Whoever shall knowingly and wilfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than $1,000 or imprisoned not more than two years.

(*o*) If the accused be discharged, the beverages and other property seized shall be returned to the person in whose possession they were found; if he be convicted, the said beverages and other property shall be forfeited, and may be destroyed by the police department or delivered for medicinal, mechanical, or scientific uses to any department or agency of the United States Government or the District of Columbia government or any hospital or other charitable institution in the District of Columbia, or sold at public auction, as the court may direct.

(p) If any of said property so seized, other than the said beverages and the containers thereof, shall be subject to a lien which is established by intervention or otherwise to the satisfaction of the court as being bona fide and as having been created without the lienor's having any notice that said property was to be used in connection with the illegal manufacture for sale, keeping for sale, or selling of alcoholic beverages, the court, upon the conviction of the accused, shall order a sale of said property at public auction and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure and the cost of the sale, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof. (Jan. 24, 1934, 48 Stat. 334, ch. 4, § 29.)

CROSS REFERENCES

Other provisions concerning disposition of property coming into hands of police, § 4–151 et seq.
Search warrants generally, § 23–301 et seq.

§ 25–130 [20: 1930]. Minor misrepresenting age to procure beverage—Penalty.

Any minor who falsely represents his age for the purpose of procuring any beverage shall be deemed guilty of a misdemeanor and be fined for each offense not more than $25 and, in default in the payment of such fine, shall be imprisoned not exceeding ten days. (Jan. 24, 1934, 48 Stat. 335, ch. 4, § 30.)

§ 25–131 [20: 1931]. Issuance of new permits under Beverage License Act of 1933 forbidden—Surrender of permit and refund of fees—Repeal.

After the date of the approval of this chapter no permit shall be issued under the Act of Congress entitled "An Act to provide revenue for the District of Columbia by the taxation of beverages and for other purposes," approved April 5, 1933, and no permits issued thereunder shall be renewed, but the Commissioners are hereby authorized to extend the expiration dates of permits issued under said act to a date designated by them not to exceed sixty days after the approval of this chapter, upon such terms and conditions, including the payment of such fees as the Commissioners may prescribe. Any permittee thereunder may make an application for a license under this chapter and, if said application is approved by

the Board, such permittee shall surrender his permit and he shall be allowed a refund of the permit fee prorated as hereinafter provided. Any permittee under said Act of April 5, 1933, may surrender his permit and receive a refund of the permit fee prorated from the date of surrender of such permit to the date of expiration thereof. All such refunds shall be paid from the permanent indefinite appropriation for refunding erroneously paid taxes in the District of Columbia. All permits issued under said Act of April 5, 1933, shall remain in force and effect for the respective periods for which they were issued, unless sooner surrendered. After the approval of this chapter no taxes shall be collected under section 11 of the Act approved April 5, 1933. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 31.)

COMPILER'S NOTE

The Beverage License Act, §§ 1801–1816, inclusive, of D. C. 1929 Supp. V, title 20 (act of Apr. 5, 1933, 48 Stat. 25, ch. 19, §§ 1–16) was repealed by § 31 of the act of 1934, effective one year from the date of approval of this chapter.

§ 25–132 [20: 1933]. Penalty for violation where no specific penalty provided—Prosecution by corporation counsel in police court—Prosecution for felonies by United States Attorney.

Whosoever violates any of the provisions of this chapter for which no specific penalty is provided, or any of the rules and regulations promulgated pursuant thereto, shall be punished by a fine of not more than $1,000 or by imprisonment for not longer than one year or by both such fine and imprisonment in the discretion of the court.

Prosecutions for violations of this chapter shall be on information filed in the police court by the corporation counsel or any of his assistants, except for such violations as are felonies, and prosecutions for such violations as are felonies shall be by the United States Attorney in and for the District of Columbia or any of his assistants. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 33.)

COMPILER'S NOTE

Section 32 of the act of 1934, which appeared as title 20, § 1932 of Supp. V of D. C. Code 1929, is omitted as obsolete. See also note to § 20–101.

Section 34 of the said act, which appeared as title 20, § 1934 of Supp. IV of D. C. Code 1929, provided as follows: "All laws which prohibit the sale of alcoholic beverages in certain defined sections or parts of the District of Columbia are hereby repealed."

NOTES TO DECISIONS

CONSOLIDATION

It was not error for trial court to refuse to consolidate the counts of keeping liquor for sale where motion was made at end of government's case on ground that appellant could have asked for a bill of particulars before trial and could have pleaded a defective information. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 522).

EXAMINATION OF WITNESSES

A court may not limit cross-examination upon a pertinent subject at the outset, but after a substantial exploration of the subject, a judge is within his right in limiting examination which may become needlessly protracted. Where the record discloses that during a trial for the illegal sale of alcoholic beverages, appellant's counsel was permitted freely and fully to cross-examine all government witnesses, there was no undue restriction or limitation upon the right of cross-examination. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 209; Appeal denied 180 F. 2d 909, 85 U. S. App. D. C. 430).

Where government witness admitted that during a recess, he had talked with another government witness who had been excluded from the court room, trial court did not abuse its discretion in permitting him to testify. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 209, appeal denied, 180 F. 2d 909).

FAILURE TO REPORT VIOLATION

It is an offense for any officer to fail to report prohibition violations to the corporation counsel. *Donnelley* v. *United States* (276 U. S. 505, 72 L. Ed. 767, 48 Sup. Ct. 400).

INSTRUCTION

Police officers who, though privately employed, are engaged in keeping law and order in a public place, are neither informers nor detectives engaged in the business of spying for hire and are not the type of witnesses whose testimony the court must instruct must be received with caution. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 209, appeal denied, 180 F. 2d 909).

Where judge's charge stated "I charge you it is his constitutional right not to take the stand if he [the appellant] wishes not to do so," it was not prejudicial error not to have stated that the fact appellant had not taken the witness stand, should not be construed in any way to his prejudice. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 522).

OFFICERS OF THE UNITED STATES

Prohibition agent appointed by the commissioner, with the approval of the Secretary of Treasury, is not an "officer of the United States"; however police captains are officers of the District but not of the United States. *Keehn* v. *United States* ((C. C. A. 1), 300 Fed. 493).

§ 25–133 [20: 1935]. Sale by retailer of beverages on credit prohibited—Exceptions.

No holder of a retailer's license, except a retailer's license, class E, shall sell on credit any beverages except beer and light wines. This section shall not prohibit a club from extending credit to its members or the guests of members or a hotel from extending credit to its registered guests. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 35.)

CROSS REFERENCE

Other provisions concerning sale of beverages on credit, §§ 25–119, 25–120.

§ 25–134 [20: 1936]. Containers to be labeled—Content.

No rectified or blended spirits shall be sold unless the container in which it is sold shall bear a legible label firmly affixed thereto stating the nature and percentage of each ingredient therein (except water), the age of each such ingredient, and the alcoholic content of such spirits by volume. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 36.)

§ 25–135 [20: 1937]. Offenses under National Prohibition Act to be prosecuted.

Any offense committed, or any right accrued, or any penalty or obligation incurred, or any seizure or forfeiture made, prior to the effective date of this chapter, under the provisions of the National Prohibition Act, as amended and supplemented, or under any permit or regulation issued thereunder, or under any other provision of law repealed by this chapter, may be prosecuted or enforced in the same manner and with the same effect as if this chapter had not been enacted. (Jan. 24, 1934, 48 Stat. 337, ch. 4, § 37.)

§ 25–136 [20: 1938]. Saving clause.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Jan. 24, 1934, 48 Stat. 337, ch. 4, § 38.)

§ 25–137 [20: 1939]. Unlawful transportation—Penalty.

(a) It shall be unlawful for anyone, except a public or common carrier or the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter, to transport, import, bring, or ship or cause to be transported, imported, brought, or shipped into the District of Columbia from without the District of Columbia any wines, spirits, or beer in a quantity in excess of one gallon at any one time.

(b) No public or common carrier shall transport or bring into the District of Columbia wine, spirits, or beer in a quantity in excess of one gallon at any one time for delivery to any one person in the District of Columbia other than the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

(c) The provisions of this section shall not apply to bona fide possessors of old stocks who are moving into the District of Columbia nor to embassies or diplomatic representatives of foreign countries, nor to wines imported for religious or sacramental purposes, nor to wine, spirits, and beer to be delivered to the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

(d) The penalty for violation of this section shall consist of the forfeiture of the beverages transported, imported, or shipped or caused to be transported, imported, brought, or shipped in violation of this section, and a fine of not more than $500 or imprisonment for not more than six months. (Jan. 24, 1934, ch. 4, § 39, as added Aug. 25, 1937, 50 Stat. 803, ch. 766, § 4.)

CROSS REFERENCE

Other provisions concerning transportation, §§ 25–112, 25–138.

§ 25–138 [20: 1940]. Tax on beer.

(a) There shall be levied and collected by the District of Columbia on all beer sold by the holder of a manufacturer's or wholesaler's license, except such beer as may have been purchased from a licensee under this chapter, and except such beer as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beer purchased for resale by the holder of a retailer's license, except such beer as may have been purchased from a licensee under this chapter, a tax of $1 for every barrel containing not more than thirty-one gallons and at a like rate for any other quantity or for the fractional parts thereof. Unless the Commissioners shall by regulation prescribe otherwise, the collection and payment of such tax shall be in the manner following:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the 10th day of each month, furnish to the assessor of the District of Columbia, on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beer subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the 15th day of each month, pay to the collector of taxes of the District of Columbia the tax hereby imposed upon the quantity of beer subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia for resale any beer, other than the regular stock on hand in a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the beer for which the permit is requested. Such permit shall specifically set forth the quantity, character, and brand or trade name of the beer to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such beer during its transportation in the District of Columbia to the licensed premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immediately upon receipt of the beer by the retail licensee, be marked "canceled" and retained by him.

(b) The Commissioners are authorized and empowered to prescribe by regulation such other methods or devices or both for the assessment, evidencing of payment, and collection of the taxes imposed by this section in addition to or in lieu of the method hereinbefore set forth whenever, in their judgment, such action is necessary to prevent frauds or evasions.

(c) The taxes imposed hereby, when collected, shall be deposited in the Treasury of the United States to the credit of the District of Columbia. (Jan. 24, 1934, ch. 4, § 40, as added May 16, 1938, 52 Stat. 376, ch. 223, § 8; May 27, 1949, 63 Stat. 136, ch. 146, title V, § 508.)

AMENDMENT

The 1949 amendment amended subsection (a) by striking out the figures and word "50 cents" and inserting in lieu thereof the figures "$1". For effective date, see note for § 25–111.

See note for § 25–124.

CROSS REFERENCES

Beverage taxes generally, § 25–124.

Other provisions concerning rules and regulations, § 25–107 and notes.

Other provisions concerning transportation, §§ 25–112, 25–137.

TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

Chap.		Sec.
1.	Banking institutions in general	26–101
2.	Joint accounts—Adverse claimants—Trust accounts	26–201
3.	Trust, loan, mortgage, safe deposit and title corporations	26–301
4.	Building associations	26–401
5.	Credit unions	26–501
6.	Money lenders—Licenses	26–601
7.	Common trust funds	26–701

Chapter 1.—BANKING INSTITUTIONS IN GENERAL

Sec.

26–101. Banking institutions to be under supervision of Comptroller of Currency—Sections 161, 163, and 164 of Title 12, United States Code applicable.

26–102. Examination by Comptroller of the Currency—Section 84 of Title 12, United States Code, extended to banks and trust companies—Reserves.

26–103. Banking—Foreign corporations not to engage in—Approval of Comptroller of the Currency—"Branches" defined—Building associations—Dissolution of solvent banking corporations—Penalties.

26–104. Liability of stockholders of bank or savings company—"Entered into or incurred" defined—Certain provisions of United States Code extended to District of Columbia—Shareholders' liability not applicable to new stock issues.

26–105. Shareholders' liability terminated after July 1, 1937—Conditions.

26–106. Dividends—Payment—Restrictions.

26–107. Restriction on use of words "bank" and "trust company"—Penalty.

26–108. False statements against banking institutions—Penalty—Defense.

26–109. Certain limitations on member banks of Federal Reserve System extended to nonmembers.

26–110. Authority of notaries public employed by bank or trust company.

§ 26–101 [5: 298]. Banking institutions to be under supervision of Comptroller of Currency—Sections 161, 163, and 164 of Title 12, United States Code applicable.

All savings banks, or savings companies, or trust companies, or other banking institutions, organized under authority of any act of Congress to do business in the District of Columbia, or organized by virtue of the laws of any of the States of this Union, and having an office or banking house located within the District of Columbia where deposits or savings are received, shall be, and are hereby, required to make to the Comptroller of the Currency and to publish all the reports which national banking associations are required to make and publish under the provisions of sections 161, 163, and 164 of Title 12 of the Code of the Laws of the United States, and shall be subject to the same penalties for failure to make such reports as are therein provided, which penalties may be collected by suit before the District Court of the United States for the District of Columbia. And the Comptroller shall have power, when in his opinion it is necessary, to take possession of any such bank or company, for the reasons and in the manner and to the same extent as are provided in the laws of the United States with respect to national banks: *Provided, however,* That banking institutions having offices or banking houses in foreign countries as well as in the District of Columbia shall only be required to make and publish the reports provided for in this section semiannually: *And provided further,* That all publications authorized or required by section 161 of Title 12 of the Code of the Laws of the United States, and all other publications authorized or required by existing law to be made in the District of Columbia, shall be printed in one or more daily newspapers of general circulation, published in the city of Washington. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 713; June 30, 1902, 32 Stat. 534, ch. 1329; June 25, 1906, 34 Stat. 458, ch. 3533; Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 2.)

COMPILER'S NOTE

This section does not repeal § 26–104.

AMENDMENTS

The 1902 amendment omitted a second paragraph of this section which read as follows: "And all savings or other banks now organized, or which shall hereafter be organized, in the District of Columbia, under any act of Congress, which shall have capital stock paid up in whole or in part, shall be subject to all the provisions of the Revised Statutes and of all acts of Congress applicable to national banking associations, so far as the same may be applicable to such savings or other banks: *Provided,* That any savings banks established before 1874 shall not be required to have a paid-up capital exceeding one hundred thousand dollars."

The 1906 amendment inserted in the first sentence the words "or organized by virtue of the laws of any of the States of this Union, and having an office or banking house located within the District of Columbia where deposits or savings are received," and added the second sentence.

The 1933 amendment changed the requirement as to publication from "two or more daily newspapers" to "one or more daily newspapers" and omitted the requirement that one of them should be a morning newspaper.

CROSS REFERENCES

Amendment of charter, § 29–238.

Application to credit unions, § 26–506.

Conveyances of real estate, formal requisites, § 45–302.

Excise and license taxes, § 47–1701 et seq.

Exempted from operation of Money Lenders Law, § 26–610.

General provisions concerning trust companies, § 26–301 et seq.

Liability as forwarding agent, § 28–1010.

Mistake or error in paying instruments, damages, § 28–1009.

Payment of checks or other instruments more than a year after date, § 28–1004.

Payment of forged or altered instruments, § 28–1008.

Suits, § 26–104.

Trust companies required to obtain certificate from Comptroller showing capital stock paid and deposit of securities with Comptroller, § 26–307.

Trust or joint deposits, accounts, or safety deposit boxes, § 26–201 et seq.

See compiler's note to § 26–102.

NOTES TO DECISIONS

AUTHORITY TO TAKE POSSESSION

Comptroller's authority and power to take possession was precisely the power given him by statute to take possession of a national bank; and, if we are correct in this position, then it follows equally that under the powers vested in him by law he was authorized to investigate the condition of the bank and declare it insolvent, and to appoint a receiver and make an assessment against the stockholders. *Dunn* v. *O'Connor* (67 App. D. C. 76, 89 Fed. (2d) 820).

CONSTITUTIONALITY

This act was held constitutional. *Lyons* v. *Bank of Discount* ((C. C.-N. Y.), 154 Fed. 391).

CONSTRUCTION

Determination of Comptroller of Currency as to necessity for assessments is conclusive. *Harper* v. *Moran* (64 App. D. C. 210, 76 Fed. (2d) 980, cert. den. 296 U. S 592, 80 L. Ed. 419, 56 Sup. Ct. 104).

This act incorporates all the United States Bank Acts which have to do with administration in the case of insolvent banks and gives to the Comptroller the same control and management as in the case of national banks. *Hamilton* v. *Offutt* (64 App. D. C. 385, 78 Fed. (2d) 735).

FOREIGN BANK

Where foreign bank establishes house in District of Columbia, it submitted itself to the provisions of this act. *Washington Loan & Trust Co.* v. *Allman* (63 App. D. C. 116, 70 Fed. (2d) 282).

The liquidation of bank organized under West Virginia law and doing business solely in District of Columbia was governed by this chapter, and not by law of West Virginia. *Parsons* v. *Barry* (D. C., D. C. 1944, 59 F. Supp. 221, affirmed 148 F. 2d 21, certiorari denied 66 S. Ct. 32, 90 L. Ed. 431).

INSOLVENCY

Where the Comptroller of the Currency has held a bank to be insolvent and has appointed a receiver for it, the court will not substitute its judgment for the judgment of the Comptroller, unless it appears by convincing proof that the Comptroller's action is plainly arbitrary, and made in bad faith. *United States Sav. Bank* v. *Morgenthau* (66 App. D. C. 234, 85 Fed. (2d) 811).

LIABILITY OF STOCKHOLDERS

This section does not impose double liability on stockholders where State laws impose none. *Hamilton* v. *Offutt* (64 App. D. C. 385, 78 Fed. (2d) 735, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 121); *Hamilton* v. *Bergling* (66 App. D. C. 83, 85 Fed. (2d) 249).

Though bank stockholders' liability under state law may be enforced in the District of Columbia by a receiver appointed by the Comptroller of the Currency, both the existence and the duration of the liability must be determined by the law of the state of the bank's incorporation. *Moran* v. *Cobb,* 1941 (120 F. 2d 16, 73 App. D. C. 200, certiorari dismissed 62 S. Ct. 134, 314 U. S. 703, 86 L. Ed. 562).

NATIONAL SAVINGS BANK

The National Savings Bank of the District of Columbia was organized by the act of May 24, 1870, to accept deposits from depositors, to invest such funds for their benefit, and disburse revenues to the depositors. The corporators have no shares and receive no profits, and have not such interest as will warrant an action for an account and distribution of the profits. *Huntington* v. *National Sav. Bank* (96 U. S. 388, 24 L. Ed. 777).

PAYMENT OF INTEREST IN LIQUIDATION

When assets of insolvent bank being liquidated under Comptroller of the Currency are sufficient to pay more than 100 percent of principal amount of depositors' claims, depositors are entitled to interest on their claims from date of suspension until paid, computed at statutory or legal rate of jurisdiction in which the liquidation is had. *Parsons* v. *Barry* (D. C., D. C. 1944, 59 F. Supp. 221, affirmed 148 F. 2d 21, certiorari denied 66 S. Ct. 32, 90 L. Ed. 431).

Interest on time and savings deposits should be computed to date of bank's closing at contract rate, and after closing, deposits, whether savings or demand, should bear interest at local statutory rate on judgments. *Parsons* v. *Barry* (D. C., D. C. 1944, 59 F. Supp. 221, affirmed 148 F. 2d 21, certiorari denied 66 S. Ct. 32, 90 L. Ed. 431).

A judgment of United States Court of Appeals for District of Columbia that no part of assets of closed bank organized under state authority and doing business in District of Columbia could be turned over by receiver to stockholders until after principal and interest on debts were paid was res judicata of depositors' right to interest on their deposits. *Parsons* v. *Barry* (D. C., D. C. 1944, 59 F. Supp. 221, affirmed 148 F. 2d 21, certiorari denied 66 S. Ct. 32, 90 L. Ed. 431).

PERSONAL LIABILITY OF DIRECTORS

Directors of bank not liable personally for deposits made after expiration of charter, where bank continued business. *Thompson* v. *Park Sav. Bank* (64 App. D. C. 308, 77 Fed. (2d) 955, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 104).

RECEIVER

Receiver is the mere instrument of the Comptroller, and the declaration of the Comptroller, rather than the receiver, is the essential factor in determining the necessity for the assessment. Here the Comptroller has made the decision, and his conclusion is not subject to attack or open to review except for fraud. *Harper* v. *Moran* (64 App. D. C. 210, 76 Fed. (2d) 980).

Plaintiff was appointed and qualified as receiver of the bank by the Comptroller of the Currency. *Moran* v. *Schlosberg* (67 App. D. C. 163, 90 Fed. (2d) 408).

REORGANIZATION PLAN

Comptroller of the Currency was acting within his statutory authority in holding that the plan of reorganization proposed by appellant was not fair and equitable as to the depositors and other creditors of the bank, and is not in the public interest, and that the Comptroller was right in refusing to adopt appellant's proposed plan, and consequently that his action in this behalf was not arbitrary or capricious. *Cooper* v. *Woodin* (63 App. D. C. 311, 72 Fed. (2d) 179).

§ 26–102 [5: 299]. Examination by Comptroller of the Currency—Section 84 of Title 12, United States Code, extended to banks and trust companies—Reserves.

(a) The Comptroller of the Currency, in addition to the powers now conferred upon him by law for the examination of national banks, is hereby further authorized, whenever he may deem it advisable, to cause examination to be made into the condition of any bank mentioned in section 26–101. The expense of such examination shall be paid in the manner provided by section 482, Title 12, U. S. Code relating to the examination of national banks.

(b) The provisions of section 84, Title 12, U. S. Code are hereby extended to apply to all banks and trust companies doing business in the District of Columbia.

(c) Each bank and trust company doing business in the District of Columbia and not a member of the Federal Reserve System shall within six months from March 4, 1933, establish and maintain reserves on the same basis and subject to the same conditions as may by law on March 4, 1933, or thereafter be prescribed for national banks located in the District of Colum-

bia, except that such reserves shall be established and maintained at such agency or agencies which shall have the approval of the Comptroller of the Currency: *Provided, however,* (1) That the required reserves carried by such bank or trust company with an agency or agencies may, under the regulations and subject to such penalties as may be prescribed by the Comptroller of the Currency, be checked against and withdrawn by such bank or trust company for the purpose of meeting existing liabilities, and (2) that no such bank or trust company shall at any time make new loans or shall pay any dividends unless and until the total reserves required by law shall be fully restored. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 714; Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 3.)

COMPILER'S NOTES

The act of March 4, 1933, cited to text, entitled "An Act to further regulate banking, banks, trust companies, and building and loan associations in the District of Columbia, and for other purposes," provides in section 9 as follows: "The right to alter, amend, or repeal this act is hereby expressly reserved. If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Section 84, title 12, U. S. Code, mentioned in paragraph (b), limits the liability of any person to bank.

AMENDMENT

The first paragraph of this section originally provided that the Comptroller might cause examination of any bank in the District organized under act of Congress, that he might, at his discretion, report thereon to Congress, and that the expense should be paid out of any appropriation made by Congress for special bank examinations. The 1933 amendment changed this paragraph to read as above and added subsections (b) and (c).

CROSS REFERENCES

Application to credit unions, § 26–506.

Examination of building and homestead associations, § 26–404.

General provisions concerning trust companies, § 26–301 et seq.

Suits, § 26–104.

NOTES TO DECISIONS

BANK ESTABLISHED IN ANOTHER STATE

When Alabama bank established a banking house in Washington, D. C., and all its officers and directors and substantially all of its stockholders resided in the District; and when all meetings of its stockholders and directors and all assets and records were kept here, the bank was governed by this section. *Thompson* v. *Park Sav. Bank* (64 App. D. C. 308, 77 Fed. (2d) 955, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 104).

Alabama corporation doing business in Washington, D. C., paying dividends and making reports to Comptroller of Currency, was examined by Comptroller under this section. *Thompson* v. *Park Sav. Bank* (68 App. D. C. 272, 96 Fed. (2d) 544).

PERSONAL LIABILITY OF DIRECTORS

Continuance of bank in business after expiration of charter—liability of directors personally for deposits. *Thompson* v. *Park Sav. Bank* (64 App. D. C. 308, 77 Fed. (2d) 955, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 104, cert. den. 305 U. S. 606, 83 L. Ed. 391, 59 Sup. Ct. 72).

PLAN OF REORGANIZATION

Comptroller of Currency was acting within his statutory authority in holding that the plan of reorganization proposed by appellant was not fair and equitable as to the depositors and other creditors of the bank, and is not in the public interest, and that the Comptroller was right in refusing to adopt appellant's proposed plan, and consequently that his action in this behalf was not arbitrary or capricious. *Cooper* v. *Woodin* (63 App. D. C. 311, 72 Fed. (2d) 179).

§ 26–103 [5: 300]. Banking—Foreign corporations not to engage in—Approval of Comptroller of the Currency—"Branches" defined—Building associations—Dissolution of solvent banking corporations—Penalties.

(a) No banking business shall be done in the District of Columbia except by corporations organized in accordance with the provisions of this Code, as amended, or by national banking associations organized in accordance with the laws of the United States, except that this paragraph shall not apply to (1) corporations engaged in and doing a banking business on March 4, 1933, (2) individuals, partnerships, associations, or corporations primarily engaged as brokers in buying, selling, exchanging, and/or otherwise dealing in stocks, bonds, and/or other securities, for the account of others, and incidentally thereto conducts banking transactions, (3) individuals, partnerships, associations, or corporations not doing a bank-of-deposit business.

(b) No corporation shall engage in or do the business of a bank of deposit or a fiduciary business in the District of Columbia nor shall any branch be established to carry on any phase of such banking or fiduciary business in the District of Columbia until the approval and consent of the Comptroller of the Currency is secured. The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any place of business located in the District of Columbia, at which deposits are received, or checks paid, or money lent, or at which the public is served or any phase of business conducted by the parent institution.

(c) No building association, incorporated or unincorporated, shall do a building-association business or maintain any office in the District of Columbia until it shall have secured the approval and consent of the Comptroller of the Currency; and the Comptroller of the Currency shall not give consent or approval to any building association to maintain any office or place of business in the District of Columbia, where such association is not incorporated under the laws of the District of Columbia in accordance with sections 26–401 to 26–416, except that this paragraph shall not apply to associations, incorporated or unincorporated, engaged in and doing a building-association business on March 4, 1933.

(d) Any solvent financial institution in the District of Columbia under the supervision of the Comptroller of the Currency may go into liquidation and discontinue business by the vote of its shareholders owning two-thirds of its stock. Whenever a vote is taken to go into liquidation it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the institution, by its president, secretary, or cashier to the Comptroller of the Currency, and publication thereof to be made for a period of two weeks in a newspaper published in

the District of Columbia, that the institution has discontinued business and is winding up its affairs, and notifying its creditors to present claims against the institution for payment. The shareholders shall at the time of going into liquidation elect a committee or liquidating agent who shall liquidate the institution. No institution which has gone into voluntary liquidation shall be permitted to resume business but until its liquidation is complete shall remain a legal corporation or association for the purpose of suing or being sued. The liquidating agent shall give satisfactory surety bond to the board of directors of the institution and shall annually, on request of the Comptroller of the Currency, render such reports to the Comptroller as he shall require. Any such institution in liquidation may be examined by the Comptroller of the Currency who, if he finds such institution insolvent, may appoint a receiver and wind up its affairs in the same manner as provided by law for national banking associations.

(e) If any financial institution under the supervision of the Comptroller of the Currency, which has not gone into liquidation and for which a receiver has not already been appointed for other lawful cause, shall discontinue its operations for a period of sixty days, the Comptroller of the Currency may, if he deems it advisable, appoint a receiver for such institution.

(f) Any financial institution over which the Comptroller of the Currency has or had supervision which prior to March 4, 1933, had in any manner ceased to do a banking business shall not resume such banking business and shall advise the Comptroller of the Currency when its business has been fully liquidated, whereupon by operation of this section its charter is terminated. Such financial institution may in the discretion of the Comptroller of the Currency be subject to all the provisions of paragraph (d) of this section.

(g) Each person, copartnership, each director, liquidating committee or liquidating agent, and each one of the officers and employees of an association or corporation violating any of the provisions of this section shall be punished by a fine not exceeding $1,000, or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court. (Apr. 26, 1922, 42 Stat. 500, ch. 147; Mar. 4, 1933, 47 Stat. 1564, ch. 274, § 1.)

AMENDMENT

As originally enacted this section provided: "That no corporation that is not now engaged in the business of banking in the District of Columbia shall, after the passage of this act, be permitted to enter upon said business in the said District, nor shall any corporation now or hereafter engaged in the business of banking be permitted to establish branch banks in said District, until after it shall have secured the approval and consent of the Comptroller of the Currency; and each one of the officers of such corporation so offending shall be punished by a fine not exceeding $1,000 or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court."

CROSS REFERENCES

General provision concerning trust companies, § 26–301 et seq.

Suits, § 26–104.

See compiler's note to § 26–102.

NOTES TO DECISIONS

BANKS OPERATING PRIOR TO STATUTE

Bank incorporated under a state law operating a bank in the District of Columbia prior to April 26, 1922, was entitled to continue. (33 O. A. G. 395.)

STATE LAW DETERMINING LIABILITY

In absence of words creating liability claimed, or finding by necessary implication that the section plainly and convincingly adopts the national banking law of double liability, the law of Virginia as the place where bank was created would govern in measuring liability of appellees as stockholders. *Hamilton* v. *Offutt* (64 App. D. C. 385, 78 Fed. (2d) 735).

§ 26–104 [5: 300a]. Liability of stockholders of bank or savings company—"Entered into or incurred" defined—Certain provisions of United States Code extended to District of Columbia—Shareholders' liability not applicable to new stock issues.

(b) The shareholders, on March 4, 1933, of every savings bank or savings company other than building associations organized under authority of any Act of Congress to do business in the District of Columbia, and of every banking institution organized by virtue of the laws of any of the states of this Union to do or doing a banking business in the District of Columbia, shall be held individually responsible, equally and ratably, and not one for another for all contracts, debts, and engagements of such savings bank, savings company, or banking institution, entered into or incurred subsequent to March 4, 1933, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares. The words "entered into or incurred" as used in this section, shall be held to include any extension or renewal of any contracts, debt, and engagement renewed or extended after March 4, 1933. The additional liability imposed by this subsection upon the shareholders of the savings banks, savings companies, and banking institutions specified in this subsection shall not apply with respect to shares in any such savings bank, savings company or banking institution issued after February 16, 1934.

(c) The provisions of U. S. Code, title 12, sections 55, 192, 193, 194, 198, 199, 200, 67, 191, 65, 197, and 62, are extended to apply to any bank, savings bank, or trust company organized, hereafter organized, or doing a banking business in the District of Columbia and to the shareholders of such institutions, except as limited by the provisions of paragraph (b) of this section: *Provided, however,* That the provisions of section 26–101 shall not be construed to be repealed by this section but shall have application to the banks, savings banks, savings companies, other than building associations, and trust companies embraced within this section.

(d) That portion of section 24 of the Judicial Code, as amended, applying to suits against national-banking associations (U. S. C., title 28, sec. 41, par. 16) shall be extended and shall apply to all actions arising under the provisions of this section. (Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 4; Feb. 16, 1934, 48 Stat. 352, ch. 14, § 2.)

COMPILER'S NOTE

This section originally contained a paragraph (a) which was repealed by the act of February 16, 1934 (48 Stat. 352,

ch. 14, § 1). It provided as follows: "The shareholders of every savings bank or savings company other than building associations now or hereafter organized under authority of any Act of Congress to do business in the District of Columbia and of every banking institution organized by virtue of the laws of any of the States of the Union to do or doing a banking business in the District of Columbia, who acquire in any manner the shares of any such savings bank or savings company or such banking institutions other than building associations after the enactment of this Act, shall be held individually responsible equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank or company, to the extent of the amount of their stock so acquired therein, at the par value thereof in addition to the amount invested in such shares."

AMENDMENT

The last sentence of subsection (b) was added by the 1934 amendment which repealed the former subsection (a). See compiler's note.

CROSS REFERENCES

Stockholder's liability in trust, loan, mortgage, safe deposit, and title corporations, § 26–322.

See compiler's note to section 26–102.

NOTES TO DECISIONS

FOREIGN BANK DOING BUSINESS IN DISTRICT

When there was, at the time, no statute in the District creating double liability in the case of a stockholder of a foreign bank doing business exclusively in the District, the liability of the stockholder is determined by the charter of incorporation and laws of the State in which incorporation is had. *Hamilton* v. *Bergling* (66 App. D. C. 83, 85 Fed. (2d) 249).

§ 26–105. Shareholders' liability terminated after July 1, 1937—Conditions.

The additional liability imposed by section 26–104 upon the shareholders of savings banks, savings companies, and banking institutions and the additional liability imposed by section 26–322 upon the shareholders of trust companies, shall cease to apply on July 1, 1937, with respect to such savings banks, savings companies, banking institutions, and trust companies which shall be transacting business on such date: *Provided,* That not less than six months prior to such date, the savings bank, savings company, banking institution or trust company, desiring to take advantage hereof, shall have caused notice of such prospective termination of liability to be published in a newspaper published in the District of Columbia and having general circulation therein. In the event of failure to give such notice as and when above provided, a termination of such additional liability may thereafter be accomplished as of the date six months subsequent to publication in the manner above provided. (Aug. 23, 1935, 49 Stat. 720, ch. 614, § 337.)

CROSS REFERENCE

General provisions concerning trust companies, § 26–301 et seq.

§ 26–106. Dividends—Payment—Restrictions.

Each such savings bank, savings company, banking institution, and trust company shall, before the declaration of a dividend on its shares of common stock, carry not less than one-tenth part of its net profits of the preceding half year to its surplus fund until the same shall equal the amount of its common stock: *Provided,* That for the purposes of this section, any amounts paid into a fund for the retirement of any preferred stock or debentures of any such savings bank, savings company, banking institution, or trust company, out of its net earnings for such half-year period shall be deemed to be an addition to its surplus if, upon the retirement of such preferred stock or debentures, the amount so paid into such retirement fund for such period may then properly be carried to surplus. In any such case the savings bank, savings company, banking institution, or trust company shall be obligated to transfer to surplus the amount so paid into such retirement fund for such period, on account of the preferred stock or debentures as such stock or debentures are retired. (Aug. 23, 1935, 49 Stat. 720, ch. 614, § 337.)

CROSS REFERENCE

General provisions for trust companies, § 26–301 et seq.

§ 26–107 [5: 300b]. Restriction on use of words "bank" and "trust company"—Penalty.

No corporation, association, partnership, or individual shall carry on any business in the District of Columbia under any name or title containing the word "bank" or the words "trust company" unless (1) the business is being carried on under the name or title on March 4, 1933, or (2) the business is carried on under the supervision of the Comptroller of the Currency and the name or title is approved by the Comptroller of the Currency. Any individual who, or corporation, association, or partnership which, violates any of the provisions of this section, and any officer of any such corporation or association and any officer or member of any such partnership, who assents to any such violation, shall, upon conviction thereof, be fined not more than $5,000. (Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 6.)

CROSS REFERENCES

General provisions concerning trust companies, § 26–301 et seq.

Suits, § 26–104.

See compiler's note to § 26–102.

§ 26–108 [5: 300c]. False statements against banking institutions—Penalty—Defense.

Any person who maliciously makes or repeats to, or in the hearing of, or under such circumstances that it becomes known to, any other person any false statement imputing insolvency or unsound financial condition to any bank, trust company, or building and loan association in the District of Columbia, or tending to cause a general withdrawal of deposits or funds from any such institution, shall, upon conviction thereof, be fined not more than $5,000 or imprisoned not more than five years, or both: *Provided,* That the truth of said statement, established by the maker thereof, shall be a complete defense in any prosecution under the provisions of this section. (Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 7.)

CROSS REFERENCES

General provisions concerning trust companies, § 26–301 et seq.

Suits, § 26–104.

See compiler's note to § 26–102.

§ 26–109 [5: 300d]. Certain limitations on member banks of Federal Reserve System extended to nonmembers.

All acts prohibited by the provisions of sections 503, 591, and 592, Title 12, U. S. Code, in the case of Federal Reserve Banks or member banks thereof, or of directors, officers, or employees of such banks, are likewise prohibited, respectively, in the case of banks in the District of Columbia which are not members of a Federal reserve bank, or of directors, officers, or employees of such banks, and shall be punishable by the respective penalties provided in such section. (Mar. 4, 1933, 47 Stat. 1568, ch. 274, § 8.)

CROSS REFERENCES

Suits, § 26–104.
See compiler's note to § 26–102.

§ 26–110 [5: 304]. Authority of notaries public employed by bank or trust company.

It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank, trust company, or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonacceptance or nonpayment drafts, checks, notes, acceptances, or other negotiable instruments which may be owned or held for collection by such corporation: *Provided,* That it shall be unlawful for any notary public to take the acknowledgment of an instrument executed by or to a bank or corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument: *Provided further,* That it shall be unlawful for any notary public to take the oath of an officer or director of any bank or trust company of which he is an officer, or to take an oath of any person verifying a report of such bank or trust company to the Comptroller of the Currency. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 5.)

CROSS REFERENCE

General provisions concerning trust companies, § 26–301 et seq.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Although a notary is a stockholder of a bank and its president, protest of notes by him is not invalid. *Roberts* v. *International Bank* (58 App. D. C. 87, 25 Fed. (2d) 214).

Chapter 2.—JOINT ACCOUNTS—ADVERSE CLAIMANTS—TRUST ACCOUNTS

Sec.
26–201. Deposits or shares of stock in names of two or more persons—Payments—Liability of bank.
26–202. Safe deposit boxes in names of two or more persons—Right of access—Liability of bank.
26–203. Notice of adverse claim to deposit.
26–204. Payment of trust accounts on death of trustee.

§ 26-201 [19: 1]. Deposits or shares of stock in names of two or more persons—Payments—Liability of bank.

When a deposit shall have been made in, or shall after May 15, 1928, be made in, or any collection item shall have been placed or shall after May 15, 1928, be placed with, any bank, trust company, savings bank, building association, or other banking institution, including national banks, transacting business in the District of Columbia, or when any shares of stock shall have been issued or shall after May 15, 1928, be issued by any building association, transacting business in the District of Columbia, in the names of two or more persons, including husband and wife, payable to either, or payable to either or the survivor or survivors, such deposit, or in any part thereof, or any interest or dividend thereon, and such collection item or its proceeds, or any interest or dividend thereon, or such shares of stock issued by a building association or any interest or dividend thereon, may be paid or delivered to either of said persons whether the other or others be living or not; and the receipt or acquittance of the person to whom such payment or delivery is made shall be a valid, sufficient, and complete release and discharge of the bank, trust company, savings bank, building association, or other banking institution, including national banks, for any payment or delivery so made. (May 15, 1928, 45 Stat. 533, ch. 568, § 1.)

CROSS REFERENCE

Uniform Fiduciary Act, § 28–2301 et seq.

NOTES TO DECISIONS

GIFT CAUSA MORTIS

Where depositor, not in contemplation of impending death, had brother's name added to bank account, but did not pass a present interest therein to brother, and retained control of account, there was no "gift causa mortis". *Gibson* v. *Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

GIFT INTER VIVOS

Where depositor had brother's name appended to bank account but passed no present interest thereto and retained control of account and passbook, there was no "gift inter vivos" to brother. *Gibson* v. *Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

JOINT ACCOUNT

A showing that name of depositor's brother was merely appended to bank account, without more, is insufficient to establish intention of depositor to establish a joint account with right of survivorship. *Gibson* v. *Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

§ 26–202 [19: 2]. Safe deposit boxes in names of two or more persons—Right of access—Liability of bank.

When a safety deposit box or vault shall have been hired from any bank, trust company, savings bank, building association, or other banking institution, including national banks, or any other corporation, transacting business in the District of Columbia, in the names of two or more persons, including husband and wife, with the right of access being given to either, or with access to either or the survivor or survivors of said persons, or property is held for safekeeping by any such bank, trust company, savings bank, building association, or other corporation or banking institution, including national banks, for two

or more persons, including husband and wife, with the right of delivery being given to either, or with the right of delivery to either or the survivor or survivors of said persons, any one or more of such persons, whether the other or others be living or not, shall have the right of access to such safety deposit box or vault and to remove the contents thereof, or any part of such contents, or to have delivered to him or them, the property so held for safe-keeping, or any part thereof, and in case of such removal or delivery the said bank, trust company, savings bank, building association, or other corporation or banking institution, including national banks, shall be exempt from any liability for permitting such access or removal or for the delivery to such person or persons. (May 15, 1928, 45 Stat. 534, ch. 568, § 2.)

§ 26–203 [19: 3]. Notice of adverse claim to deposit.

Notice to any bank or trust company doing business in the District of Columbia of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank or trust company to recognize said adverse claimant unless said adverse claimant shall also either (1) procure a restraining order, injunction, or other appropriate process against said bank or trust company from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons; or (2) execute to such bank or trust company, in form and with sureties acceptable to it, a bond indemnifying said bank or trust company from any and all liability, loss, damage, costs, and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company: *Provided,* That this section shall not apply to any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, together with the facts showing reasonable cause of belief on the part of the said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant. (Apr. 5, 1939, 53 Stat. 566, ch. 37, § 2.)

§ 26–204 [19: 4]. Payment of trust accounts on death of trustee.

Whenever a deposit, which is in form in trust for another, shall be made by any person in any bank or trust company doing business in the District of Columbia, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank or trust company, such deposit, or any part thereof, together with the dividends, or interest thereon, may, in the event of the death of the trustee, be paid to the person for whom such deposit was made or to his legal representative. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 4.)

Chapter 3.—TRUST, LOAN, MORTGAGE, SAFE DEPOSIT AND TITLE CORPORATIONS

Sec.
26–301. Purposes for which formed.
26–302. Title insurance companies may become perpetual.
26–303. Trust companies to have perpetual succession.
26–304. Organization certificate—Content.
26–305. Commissioners of the District may grant or refuse charter.
26–306. Notice of application to Commissioners.
26–307. Recording charter—Certificate to be secured from Comptroller of Currency.
26–308. Reports to Comptroller—Powers of Comptroller.
26–309. Powers of companies—Liability as trustee.
26–310. May be appointed trustee, receiver, administrator, collector, guardian, or committee.
26–311. Oath as fiduciary.
26–312. Stock to be security when fiduciary.
26–313. Existing companies.
26–314. Real estate which may be owned.
26–315. Duration of charter.
26–316. Capital stock—Deposit with Comptroller required.
26–317. Shares, par value—Calls—Sale of stock upon failure to pay call.
26–318. Annual reports to Comptroller.
26–319. Liability of directors or trustees—Exception.
26–320. False swearing—Misappropriation made larceny.
26–321. Stock deemed personal estate of holder—Transfer—Face to show par value, amount paid.
26–322. Liability of stockholders.
26–323. Stock to be paid up in money only—Exception—Companies doing business prior to January 1, 1902.
26–324. Number of directors or trustees—Election—Tenure.
26–325. Officers—Bond.
26–326. By-laws.
26–327. Directors or trustees liable for debts if dividends are declared whereby corporation is rendered insolvent or debt is created thereby.
26–328. Directors or trustees objecting to such dividends and filing certificate, exempt.
26–329. Directors or trustees personally liable when liabilities exceed assets.
26–330. Executors, administrators, guardians, or trustees not liable as stockholder—Estate liable.
26–331. Increase or decrease of capital stock—Approval by Comptroller—Distribution of assets.
26–332. Copy of certificate to be evidence.
26–333. No bond to be required when company appointed fiduciary—Capital stock and property to be considered as security for performance of duties.
26–334. Bond as fiduciary may be required—Examination for cause.
26–335. Compliance required of corporations organized under State laws—Penalty.
26–336. Right to amend or repeal reserved to Congress.

§ 26–301 [5: 341]. Purposes for which formed.

Corporations may be formed within the District of Columbia for the purposes hereinafter mentioned in the following manner:

Any number of natural persons, citizens of the United States, not less than twenty-five, may associate themselves together to form a company for the purpose of carrying on, in the District of Columbia, any one of the three classes of business herein specified, to wit:

First. A safe deposit, trust, loan, and mortgage business.

Second. A title insurance, loan, and mortgage business.

Third. A security, guarantee, indemnity, loan, and mortgage business: *Provided,* That the capital stock of any of said companies shall not be less than one million dollars, and that any of said companies may also do a storage business when their capital stock amounts to the sum of not less than one million two hundred thousand dollars. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 715.)

COMPILER'S NOTE

The act of July 26, 1939 (53 Stat. 1107, ch. 367, title IV, § 2 (a)), provided, in part, as follows: "So much of the act approved October 1, 1890, entitled, 'An Act to provide for the incorporation of trust, loan, mortgage, and certain other corporations within the District of Columbia' as is inconsistent with the provisions of this section is hereby repealed." See § 47–1701 and notes.

CROSS REFERENCES

Amendment of charter, § 29–238.
Excise and license taxes, § 47–1701 et seq.
Exempted from operation of Money Lenders Law, § 26–610.
Existing corporation may avail itself of the provisions of this chapter, § 26–313.
Provisions applicable to trust and fiduciary companies, §§ 26–101 to 26–110.
Special powers of companies organized hereunder, § 26–309.
Title insurance excepted from operation of Fire, Casualty, and Marine Insurance Act, § 35–1302.

NOTES TO DECISIONS

IN GENERAL

Language of the act of incorporation "liable to the creditors" does not create an independent and direct property right of creditors enforceable only by them in an equity suit, but it is a right which, though created for their benefit, accrues to the Comptroller and through him to his receiver, by whom alone it is enforceable in the administration of the trust estate. *Dunn* v. *O'Connor* (67 App. D. C. 76, 89 Fed. (2d) 820).

§ 26–302 [5: 342]. Title insurance companies may become perpetual.

Any company formed prior to January 1, 1902, agreeably to law, for the purpose of insuring titles to real estate may become perpetual by filing, in the office of the recorder of deeds, a certificate to that effect, in like manner as is provided by law for the filing of the original certificate of incorporation. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 641.)

§ 26–303 [5: 342a]. Trust companies to have perpetual succession.

Any company transacting the business of a trust company and heretofore or hereafter organized or operating under the provisions of this title shall have perpetual succession from the date of its organization, or until such time as it be dissolved, or until its franchise shall become forfeited by reason of violation of law, or until terminated by either a general or special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him. (Mar. 3, 1901, ch. 854, § 641, as added June 24, 1936, 49 Stat. 1898, ch. 743.)

CROSS REFERENCE

Voluntary liquidation and discontinuance of business, § 26–103.

§ 26–304 [5: 343]. Organization certificate—Content.

The persons referred to in section 26–301 shall, under their hands and seals, execute before some officer in said District competent to take the acknowledgment of deeds, an organization certificate, which shall specifically state—

First. The name of the corporation.

Second. The purposes for which it is formed.

Third. The term for which it is to exist, which shall not exceed the term of fifty years, and be subject to alteration, amendment, or repeal by Congress at any time.

Fourth. The number of its directors and the names and residences of the officers who for the first year are to manage the affairs of the company.

Fifth. The amount of its capital stock and its subdivision into shares. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 716.)

CROSS REFERENCE

No corporation may use the words "trust company" unless operated under supervision of Comptroller of the Currency, § 26–107.

§ 26–305 [5: 344]. Commissioners of the District may grant or refuse charter.

This certificate shall be presented to the Commissioners of the District, who shall have power and discretion to grant or refuse to said persons a charter of incorporation upon the terms set forth in the said certificate and the provisions of this title. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 717.)

CROSS REFERENCE

Power of Comptroller of the Currency over trust companies, § 26–101 et seq.

§ 26–306 [5: 345]. Notice of application to Commissioners.

Previous to the presentation of the said certificate to the said Commissioners, notice of the intention to apply for such charter shall be inserted in two newspapers of general circulation, printed in the District of Columbia, at least four times a week for three weeks, setting forth briefly the name of the proposed company, its character and object, the names of the proposed corporators, and the intention to make application for a charter on a specified day; and the proof of such publication shall be presented with said certificate when presentation thereof is made to said Commissioners. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 718.)

§ 26–307 [5: 346]. Recording charter—Certificate to be secured from Comptroller of Currency.

If the charter be granted as aforesaid, it, together with the certificate of the commissioners granting the same indorsed thereon, shall be filed for record in the office of the recorder of deeds for the District of Columbia, and shall be recorded by him. On the filing of the said certificate with the said recorder of deeds as herein provided, approved as aforesaid by the said commissioners, the persons named therein and their successors shall thereupon and thereby be and become a body corporate and politic, and as such shall be vested with all the powers and charged with all the liabilities conferred upon and imposed by this title upon companies organized under the provisions hereof: *Provided, however*, That no corporation created and organized under the provisions hereof, or availing itself of the provisions hereof as contained in section 26–313, shall be authorized to transact the business of a trust company, or any business of a fiduciary character, until it shall have filed with the Comptroller of the Currency a copy of

its certificate of organization and charter, and shall have obtained from him and filed the same for record with the said recorder of deeds, a certificate that the said capital stock of said company has been paid in and the deposit of securities made with said comptroller in the manner and to the extent required by this title. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 719.)

CROSS REFERENCE

Power of Comptroller over trust companies, § 26–101 et seq.

§ 26–308 [5: 347]. Reports to Comptroller—Powers of Comptroller.

All companies organized under this title, or which shall, under the provisions hereof, become entitled to transact the business of a trust company, shall report to the Comptroller of the Currency in the manner prescribed by U. S. C., title 12, sections 161, 163, 164, in the case of national banks, and all acts amendatory thereof or supplementary thereto, and with similar provisions for compensating examiners, and shall be subject to like penalties for failure to do so. The comptroller shall have and exercise the same visitorial powers over the affairs of the said corporations as is conferred upon him by U. S. C., title 12, sections 481–485, in the case of national banks. He shall also have power, when in his opinion it is necessary, to take possession of any such company for the reasons and in the manner and to the same extent as are provided in the laws of the United States with respect to national banks. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 720.)

CROSS REFERENCE

Other provisions concerning powers of Comptroller over trust companies, § 26–101 et seq.

NOTES TO DECISIONS

IN GENERAL

Purpose of this section is to make trust companies and State incorporated banks doing business in the District subject to the authority of the Comptroller both in operation and insolvency. *Dunn* v. *O'Connor* (67 App. D. C. 76, 89 Fed. (2d) 820).

REAL ESTATE

Virginia real estate owned by insolvent trust company of the District, being administered by the Comptroller of the Currency is subject to attachment in Virginia court by Virginia creditors. *Loudoun Nat. Bank* v. *Continental Trust Co.* (164 Va. 536, 180 S. E. 548).

§ 26–309 [5: 348]. Powers of companies—Liability as trustee.

All companies organized under this title are hereby declared to be corporations possessed of the powers and functions of corporations generally, and shall have power—

First. To make contracts.

Second. To sue and be sued, plead and be impleaded, in any court as fully as natural persons.

Third. To make and use a common seal and alter the same at pleasure.

Fourth. To loan money.

Fifth. When organized under subdivision 1 of section 26–301, to accept and execute trusts of any and every description which may be committed or transferred to them, and to accept the office and perform the duties of receiver, assignee, executor, administrator, collector of estate or property of any decedent, guardian of the estate of minors with the consent of the guardian of the person of such minor, and committee of the estates of lunatics and idiots whenever any trusteeship or any such office or appointment is committed or transferred to them, with their consent, by any person, body politic or corporate, or by any court in the District of Columbia; and all such companies organized under the first subdivision of section 26–301 are further authorized to accept deposits of money for the purposes designated herein, upon such terms as may be agreed upon from time to time with depositors, and to act as agent for the purpose of issuing or countersigning the bonds or obligations of any corporation, association, municipality, or state, or other public authority, and to receive and manage any sinking fund on any such terms as may be agreed upon, and shall have power to issue its debenture bonds upon deeds of trust or mortgages of real estate to a sum not exceeding the face value of said deeds of trust or mortgages, and which shall not exceed fifty per centum of the fair cash value of the real estate covered by said deeds or mortgages, to be ascertained by the Comptroller of the Currency; but no debenture bonds shall be issued until the securities on which the same are based have been placed in the actual possession of the trustee named in the debenture bonds, who shall hold said securities until all of said bonds are paid; and when organized under the second subdivision of section 26–301 said company is authorized to insure titles to real estate and to transact generally the business mentioned in said subdivision; and when organized under the third subdivision of section 26–301 said company is hereby authorized, in addition to the loan and mortgage business therein mentioned, to secure, guarantee, and insure individuals, bodies politic, associations, and corporations against loss by or through trustees, agents, servants, or employees, and to guarantee the faithful performance of contracts and obligations of whatever kind entered into by or on the part of any person or persons, association, corporation, or corporations, and against loss of every kind: *Provided*, That any corporations formed under the provisions of this chapter when acting as trustee shall be liable to account for the amounts actually earned by the moneys held by it in trust in addition to the principal so held; but such corporation may be allowed a reasonable compensation for services performed in the care of the trust estate. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 721.)

CROSS REFERENCES

Bylaws, § 26–326.

Conveyances of real estate, formal requisites, § 45–302.

False statements against trust companies, § 26–108.

Insurance companies authorized to write title insurance, § 35–1103.

Liability as forwarding agent, § 28–1010.

Mistake or error in paying instruments, damages, § 28–1009.

Number and powers of trustees or directors, § 26–324.

Other provisions concerning power of Comptroller over trust companies, § 26–101 et seq.

Payment of checks or other instruments more than a year after date, § 28–1004.

Payment of forged or altered instrument, § 28–1008.

Trust or joint deposits, accounts, or safety deposit boxes, § 26–201 et seq.

See notes to § 26–301.

See note to § 26–308. *Loudoun Nat. Bank* v. *Continental Trust Co.* (164 Va. 536, 180 S. E. 548).

§ 26–310 [5: 349]. May be appointed trustee, receiver, administrator, collector, guardian, or committee.

In all cases in which application shall be made to any court in the District of Columbia, or wherever it becomes necessary or proper for said court to appoint a trustee, receiver, administrator, collector, guardian of the estate of a minor, or committee of the estate of a lunatic, it shall and may be lawful for said court (but without prejudice to any preference in the order of any such appointments required by law) to appoint any such company organized under the first subdivision of section 26–301, with its assent, such trustee, receiver, administrator, collector, committee, or guardian, with the consent of the guardian of the person of such minor: *Provided, however,* That no court or judge who is an owner of or in any manner financially interested in the stock or business of such corporation shall commit by order or decree to any such corporation any trust or fiduciary duty. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 722.)

§ 26–311 [5: 350]. Oath as fiduciary.

Whenever any corporation operating under this Code shall be appointed such trustee, executor, administrator, collector, receiver, assignee, guardian, or committee, as aforesaid, the president, vice-president, secretary, or treasurer of said company shall take the oath or affirmation required by law to be made by any trustee, executor, administrator, collector, receiver, assignee, guardian, or committee. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 723.)

§ 26–312 [5: 351]. Stock to be security when fiduciary.

When any court shall appoint the said company a trustee, receiver, administrator, collector, or such guardian or committee, or shall order the deposit of money or other valuable with said company, or where any individual or corporation shall appoint any of said companies a trustee, executor, assignee, or such guardian, the capital stock of said company subscribed for or taken, and all property owned by said company, together with the liability of the stockholders and officers as herein provided, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 724.)

§ 26–313 [5: 352]. Existing companies.

Any safe-deposit company, trust company, surety or guaranty company, or title insurance company incorporated on or before January 1, 1902, and operating under the laws of the United States in the District of Columbia or of any of the States, and doing business in said District on or before January 1, 1902, may avail itself of the provisions of this chapter on filing in the office of the recorder of deeds of the District of Columbia, or with the Comptroller of the Currency, a certificate of its intention to do so, which certificate shall specify which one of the three classes of business set out in section 26–301 it will carry on, and shall be verified by the oath of its president to the effect that it has in every respect complied with the requirements of existing law, especially with the provisions of this chapter, that its capital stock is paid in as provided in section 26–323 and is not impaired; and thereafter such company may exercise all powers and perform all duties authorized by any one of the subdivisions of section 26–301 in addition to the powers lawfully exercised by such company on January 1, 1902. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 725.)

NOTES TO DECISIONS

STATE BANK OPERATING IN DISTRICT

Comptroller has the same control and management of an insolvent State bank operating in the District as in the case of national banks. It likewise includes all provisions for the collection of debts and the distribution of assets, and as well the enforcement of the liability of stockholders. *Hamilton* v. *Offutt* (64 App. D. C. 385, 78 Fed. (2d) 735).

§ 26–314 [5: 353]. Real estate which may be owned.

Any company operating under this chapter may lease, purchase, hold, and convey real property in which the offices of the company are located not to exceed in value the capital and surplus of the company, and such in addition as it may acquire in satisfaction of debts due the corporation under sales, decrees, judgments, and mortgages. But no such association shall hold the possession of any real estate under foreclosure of mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 726; Apr. 19, 1920, 41 Stat. 566, ch. 153.)

AMENDMENT

The 1920 act struck out § 726 of the 1901 act and inserted the above section in lieu thereof. The first sentence formerly provided that "Any company operating under this subchapter may lease, purchase, hold, and convey real estate, not exceeding in value five hundred thousand dollars, and such in addition as it may acquire in satisfaction of debts due the corporation under sales, decrees, judgments, and mortgages."

§ 26–315 [5: 354]. Duration of charter.

The charters for incorporations named in this chapter may be made perpetual, or may be limited in time by their provisions, subject to the approval of Congress. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 727.)

CROSS REFERENCES

Title insurance companies perpetual, § 26–302.
Trust companies perpetual, § 26–303.

§ 26–316 [5: 355]. Capital stock—Deposit with Comptroller required.

The capital stock of every such company shall be at least one million dollars, and at least fifty per centum thereof must have been paid in, in cash or by the transfer of assets as hereinafter provided in section 26–323 of this chapter, before any such company shall be entitled to transact business as a corporation, except with its own members, and before any company organized hereunder shall be entitled to transact the business of a trust com-

pany, or to become and act as an administrator, executor, guardian of the estate of a minor, or undertake any other kindred fiduciary duty, it shall deposit, either in money or in bonds, mortgages, deeds of trust, or other securities equal in actual value to one-fourth of the capital stock paid in, with the Comptroller of the Currency, to be kept by him upon the trust and for the purposes hereinafter provided; and the said comptroller may from time to time require an additional deposit from any such company, to be held upon and for the same trust and purposes, not exceeding, however, in value one-half the paid-in capital stock; and the said comptroller shall not issue to any corporation the certificate heretofore provided for until said deposit with him of securities required by this section. Within one year after the organization of any corporation under the provisions of this chapter, or after any corporation existing prior to January 1, 1902, shall have availed itself of the powers and rights given by this chapter in the manner herein provided for, its entire capital stock shall have been paid in. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 728.)

CROSS REFERENCE

Increase or decrease of capital stock, § 26–331.

§ 26–317 [5: 356]. Shares, par value—Calls—Sale of stock upon failure to pay call.

The capital stock of every such company shall be divided into shares of one hundred dollars each, or into shares of such less amount as may be provided in the certificate of incorporation or amendment thereof. It shall be lawful for such company to call for and demand from the stockholders, respectively, all sums of money by them subscribed, at such time and in such proportions as its board of directors shall deem proper, within the time specified in section 26–316, and it may enforce payment by all remedies provided by law; and if any stockholder shall refuse or neglect to pay any instalment, as required by a resolution of the board of directors, after thirty days' notice of the same, the said board of directors may sell at public auction to the highest bidder so many shares of said stock as shall pay said instalment, under such general regulations as may be adopted in the by-laws of said company, and the highest bidder shall be taken to be the person who offers to purchase the least number of shares for the assessment due. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 729; June 20, 1938, 52 Stat. 780, ch. 527.)

AMENDMENT

The 1938 act added to the first sentence the words "or into shares of such less amount as may be provided in the certificate of incorporation or amendment thereof."

§ 26–318 [5: 357]. Annual reports to Comptroller.

Every such company shall annually, within twenty days after the 1st of January of each year, make a report to the Comptroller of the Currency, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid, the amount of debts, and the gross earnings for the year ending December 31st then next previous, together with their expenses, which report shall be signed by the president and a majority of the directors or trustees, and shall be verified by the oath of the president, secretary, and at least three of the directors or trustees: *Provided, however,* That trust companies which are required to file and to publish reports under the provisions of section 5211 of the Revised Statutes, as amended, shall not be required to make or publish the annual report required under this section. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 730; July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5; Nov. 30, 1945, 59 Stat. 588, ch. 499.)

REFERENCES IN TEXT

Words "section 5211 of the Revised Statutes, as amended" referred to in the text, refer to section 161 of Title 12 of United States Code.

AMENDMENT

In view of the concluding sentence of paragraph 5 of § 6 of the 1902 act, the following words, contained in the original enactment after the present last word "trustees," were deleted: "and said company shall pay to the District of Columbia, in lieu of personal taxes for each next ensuing year, one and one-half per centum of its gross earnings for the preceding year, shown by said verified statement, which amount shall be payable to the collector of taxes at the times and in the manner that other taxes are payable."

The act of Nov. 30, 1945, cited to text, amended section by inserting proviso immediately preceding period.

CROSS REFERENCE

Other provisions concerning powers and duties of Comptroller, § 26–101 et seq.

CITED

American Security & Trust Co. v. *District of Columbia* (29 App. D. C. 265).

§ 26–319 [5: 358]. Liability of directors or trustees—Exception.

If any company fails to comply with the provisions of section 26–318, all the directors or trustees of such company shall be jointly and severally liable for the debts of the company then existing and for all that shall be contracted before such report shall be made: *Provided,* That in case of failure of the company in any year to comply with the provisions of section 26–318, and any of the directors shall, on or before January 15th of such year, file his written request for such compliance with the secretary of the company, the Comptroller of the Currency, and the recorder of deeds of the District of Columbia, such director shall be exempt from the liability prescribed in this section. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 731.)

§ 26–320 [5: 359]. False swearing — Misappropriation made larceny.

Any wilful false swearing in regard to any certificate or report or public notice required by the provisions of this chapter shall be perjury and shall be punished as such according to the laws of the District of Columbia. Any misappropriation of any of the money of any corporation or company formed under this chapter, or of any money, funds, or property intrusted to it, shall be held to be larceny, and shall be punished as such under the laws of said District. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 732.)

COMPILER'S NOTE

The word "chapter" refers to the 1901 act of which this section is a part and which was the 1901 Code. As this

is a criminal provision, it would probably be strictly construed to include only the sections of this title which, as they stand or as they have been amended, were contained in the said 1901 act (Code). These would be as follows: §§ 26–101, 26–102, 26–301 to 26–336, 26–401 to 26–415. The acts of Congress which are §§ 26–103 to 26–110 and 26–501 to 26–518 appear to be independent legislation, not purporting to amend the 1901 act (Code). Note also a similar provision in the act of March 4, 1909, 35 Stat. 1058, ch. 303 (§ 26–404) which purports to amend the 1901 act (Code).

§ 26–321 [5: 360]. Stock deemed personal estate of holder—Transfer—Face to show par value, amount paid.

The stock of such company shall be deemed personal estate, and shall be transferable only on the books of such company in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid. All certificates of the stock of any company organized under this title shall show upon their face the par value of each share and the amount paid thereon. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 733; July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5.)

AMENDMENT

As enacted, the first sentence of this section was continued as follows: "and the said stock shall not be taxable in the hands of individual owners, the tax on the gross earnings of the company hereinbefore provided being in lieu of other personal tax." This has been deleted as repealed in view of paragraph 5 of § 6 of the 1902 act. See also amendment note to § 26–318 for deletion of provision for tax on gross earnings as provided by 1901 act.

§ 26–322 [5: 361]. Liability of stockholders.

All stockholders of every company incorporated under this chapter, or availing itself of its provisions under section 26–313 shall be severally and individually liable to the creditors of such company to an amount equal to and in addition to the amount of stock held by them respectively for all debts and contracts made by such company. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 734.)

CROSS REFERENCES

Other provisions concerning liabilities of stockholders, §§ 26–104 to 26–106.
Suits, § 26–104.
Termination of liability, § 26–105.

NOTES TO DECISIONS

DETERMINATION OF LIABILITY

Liability of a stockholder is determined by the charter of incorporation and the laws of the State in which incorporation is had, and no liability will be read into statute where none exists. *Hamilton* v. *Offutt* (64 App. D. C. 385, 78 Fed. (2d) 735, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 121).

DOUBLE LIABILITY

Taking possession of District bank by Comptroller does not impose double liability on stockholders unless State does. *Hamilton* v. *Offutt* (64 App. D. C. 385, 78 Fed. (2d) 735, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 121).

Double liability is no more the asset of the corporation than the double liability created by the District statute with relation to trust companies. In either case it is an asset of creditors and not of the corporation. *Dunn* v. *O'Connor* (67 App. D. C. 76, 89 Fed. (2d) 820).

§ 26–323 [5: 362]. Stock to be paid up in money only—Exception—Companies doing business prior to January 1, 1902.

Nothing but money shall be considered as payment of any part of the capital stock, except that in the case of any company doing business on January 1, 1902, in the District of Columbia in any of the classes herein provided for, or under any act of Congress, or by virtue of the laws of any of the States, and which company had on that date actually received full payment in money of at least fifty per centum of the capital stock required by this chapter, and which company desires to obtain a charter under this chapter, all the assets or property may be received and considered as money at a value to be appraised and fixed by the Comptroller of the Currency: *Provided,* That all such assets and property are also transferred to and are thereafter owned by the company organized under this chapter. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 735.)

§ 26–324 [5: 363]. Number of directors or trustees—Election—Tenure.

The stock, property, and concerns of such company shall be managed by not less than nine nor more than thirty directors or trustees, who shall, respectively, be stockholders, and at least one-half residents and citizens of the District of Columbia, and shall, except the first year, be annually elected by the stockholders at such time and place and after such published notice as shall be determined by the by-laws of the company, and said directors or trustees shall hold until their successors are elected and qualified. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 736.)

§ 26–325 [5: 364]. Officers—Bond.

There shall be a president of the company, who shall be a director, also a secretary and a treasurer, all of whom shall be chosen by the directors or trustees: *Provided,* That only one of the above-named offices shall be held by the same person at the same time. Subordinate officers may be appointed by the directors or trustees, and all such officers may be required to give such security for the faithful performance of the duties of their offices as the directors or trustees may require. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 737.)

CROSS REFERENCE

Limitations on powers of notary public employed by trust company, § 26–110.

§ 26–326 [5: 365]. By-laws.

The directors or trustees shall have power to make such by-laws as they deem proper for the management or disposal of the stock and business affairs of such company, not inconsistent with the provisions of this title, and prescribing the duties of officers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 738.)

§ 26–327 [5: 366]. Directors or trustees liable for debts if dividends are declared whereby corporation is rendered insolvent or debt is created thereby.

If the directors or trustees of any company shall declare or pay any dividend the payment of which

would render it insolvent, or which would create a debt against such company, they shall be jointly and severally liable as guarantors for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall, respectively, remain in office. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 739.)

CROSS REFERENCE

Other provisions for restrictions upon payment of dividends, § 26–106.

§ 26–328 [5: 367]. Directors or trustees objecting to such dividends and filing certificate, exempt.

If any of the directors or trustees shall object to declaring such dividends or the payment of the same, and shall at any time before the time fixed for the payment thereof file a certificate of their objection in writing with the secretary of the company and with the recorder of deeds of the District, they shall be exempt from the liability prescribed in section 26–327. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 740.)

§ 26–329 [5: 368]. Directors or trustees personally liable when liabilities exceed assets.

If the liabilities of any company shall at any time exceed the amount of the fair cash value of the assets, the directors or trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of the company, after the additional liability of the stockholders has been enforced. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 741.)

§ 26–330 [5: 369]. Executors, administrators, guardians, or trustees not liable as stockholder—Estate liable.

No person holding stock in such company as executor, administrator, guardian, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or the person interested in such trust fund would have been if he had been living and competent to act and hold the stock in his own name. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 742.)

§ 26–331 [5: 370]. Increase or decrease of capital stock—Approval by Comptroller—Distribution of assets.

Any corporation which may be formed under this chapter may increase its capital stock by complying with the provisions of this chapter to any amount which may be deemed sufficient and proper for the purposes of the corporation.

Any company transacting the business of a trust company heretofore or after June 20, 1938, organized or operating under the provisions of this subchapter may by the vote of shareholders owning two-thirds of its capital stock reduce its capital to any sum not below the amount required by this chapter; but no such reduction shall be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and such reduction has been approved by said Comptroller of the Currency, and no shareholder shall be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any such corporation unless such distribution shall have been approved by the Comptroller of the Currency and by the affirmative vote of at least two-thirds of the shares of stock outstanding. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 743; June 20, 1938, 52 Stat. 780, ch. 527.)

AMENDMENT

The 1938 amendment added the second paragraph of this section.

CROSS REFERENCES

Capital stock, § 26–316.

Other provisions concerning trust companies, § 26–101 et seq.

§ 26–332 [5: 371]. Copy of certificate to be evidence.

A copy of any certificate of incorporation filed in pursuance of this title, certified by the recorder of deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 744.)

§ 26–333 [5: 372]. No bond to be required when company appointed fiduciary—Capital stock and property to be considered as security for performance of duties.

No bond or other collateral security, except as hereinafter stated, shall be required from any trust company incorporated under this title for and in respect to any trust, nor when appointed trustee, guardian, receiver, executor, or administrator with or without the will annexed, collector, committee of the estate of a lunatic or idiot, or other fiduciary appointment; but the capital stock subscribed for or taken, and all property owned by said company and the amount for which said stockholders shall be liable in excess of their stock, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever; and in case of the insolvency or dissolution of said company, the debts due from the said company as trustee, guardian, receiver, executor, administrator, collector, or committee of the estate of lunatics, idiots, or any other fiduciary appointment shall have a preference. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 745.)

§ 26–334 [5: 373]. Bond as fiduciary may be required—Examination for cause.

The District Court of the United States for the District of Columbia, or any justice thereof, shall have power to make orders respecting such company whenever it shall have been appointed trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic, idiot, or any other fiduciary, and require the said company to render all accounts which might lawfully be made or required by any court or any justice thereof if such trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic or idiot, or fiduciary were a natural person. And

said court, or any justice thereof, at any time, on application of any person interested, may appoint some suitable person to examine into the affairs and standing of such companies, who shall make a full report thereof to the court, and said court, or any justice thereof, may at any time, in its discretion, require of said company a bond with sureties or other security for the faithful performance of its obligations, and such sureties or other security shall be liable to the same extent and in the same manner as if given or pledged by a natural person. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 746.)

§ 26–335 [5: 374]. Compliance required of corporations organized under State laws—Penalty.

No corporation or company organized by virtue of the laws of any of the States of this Union shall carry on in the District of Columbia any of the kinds of business named in this chapter without strict compliance in all particulars with the provisions of this chapter for the government of such corporations formed under it, and each one of the officers of the corporation or company so offending shall be punished by a fine not exceeding $1,000 or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 747; Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 5.)

AMENDMENT

The 1933 amendment omitted the words "and having its principal place of business within the District of Columbia" following "States of this Union" in the first sentence.

CROSS REFERENCES

Semiannual publication of financial statement, § 29–105.
Suits, § 26–104.
See compiler's note to § 26–102.

§ 26–336 [5: 375]. Right to amend or repeal reserved to Congress.

Congress may at any time alter, amend, or repeal this chapter, but any such amendment or repeal shall not, nor shall the dissolution of any company formed under this chapter, take away or impair any remedy given against such corporation, its stockholders, or officers for any liability or penalty which shall have been previously incurred. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 748.)

Chapter 4.—BUILDING ASSOCIATIONS

Sec.
26–401. Organization—Certificate—Created body politic and corporate—Powers.
26–402. Powers as to stock.
26–403. Bonus to be paid by late subscribers.
26–404. Object—Powers of Comptroller of the Currency—Examination — Reports — Liquidation — Strict compliance required—Associations in business before March 4, 1909—Penalties—Misappropriation of funds made larceny.
26–405. Associations existing under laws of other States doing business in District of Columbia must comply—Provisions requisite—Penalty.
26–406. Advancements.
26–407. Security for advancement.
26–408. Profits.
26–409. Redemption of shares.
26–410. Withdrawal by shareholder.
26–411. Repayment of advances.
26–412. Forfeiture.
26–413. Foreclosure.
26–414. Investment of funds in real estate.
26–415. Purchase of Home Owners' Loan Corporation bonds authorized.
26–416. Exchange of real estate and debts and liens secured by real estate for Home Owners' Loan Corporation bonds authorized.

§ 26–401 [5: 41]. Organization — Certificate — Created body politic and corporate—Powers.

Any five or more persons who desire to form an incorporated building or homestead association, all being citizens of the United States, and a majority of them residents of the District of Columbia, may make, sign, seal, and acknowledge, before some officer authorized to take the acknowledgment of deeds, and file for record in the office of the recorder of deeds, a certificate, in writing, to the same effect as that required in sections 29–201 to 29–240 for the formation of the corporations therein mentioned.

When such certificate shall have been filed for record as aforesaid, the persons who have signed and acknowledged the same, and their successors, shall become and be a body politic and corporate, in fact and in law, by the name stated in the certificate, and by that name have succession and be capable of suing and being sued in the courts of the District, and of purchasing, holding, and conveying such real estate as may be necessary to the conduct of its business, and to make reasonable by-laws not inconsistent herewith. (Mar. 3, 1901, 31 Stat. 1298, 1299, ch. 854, §§ 687, 688.)

CROSS REFERENCES

Approval of Comptroller of the Currency required, § 26–103.
Conveyances of real estate, formal requisites, § 45–302.
Exempted from operation of Money Lenders Law, § 26–610.
Loans to minor veterans of World War II under Servicemen's Readjustment Act, see chapter 17 of Title 45.

§ 26–402 [5: 42]. Powers as to stock.

Such corporation shall have power, in its certificate of incorporation or in its by-laws, to provide that its shares of stock may be issued in series; to limit the number of shares which each stockholder may be allowed to hold; to prescribe the entrance fee to be paid by each stockholder at the time of subscribing, and to regulate the instalments to be paid on each share and the times at which they shall be payable. It shall also have power to enforce the payment of all instalments and other dues by such fines and forfeitures as its by-laws may from time to time provide. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 689.)

§ 26–403 [5: 43]. Bonus to be paid by late subscribers.

Any person applying for membership or stock after a month from the time of the incorporation may be required to pay on subscribing such bonus or assessment as may be fixed by said by-laws in order to place said new members or stockholders on a footing with the original members and others holding stock at the time of such application. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 690.)

§ 26–404 [5: 44]. Object—Powers of Comptroller of the Currency—Examination—Reports—Liquidation—Strict compliance required—Associations in business before March 4, 1909—Penalties—Misappropriation of funds made larceny.

The object of such corporation shall be the accumulation of a capital in money to be derived from the savings and accumulations by the members thereof, to be paid into said corporation in such sums and at such times as may be designated by the by-laws of said corporation, from which the members thereof may obtain advances upon their shares of stock: *Provided,* That the Comptroller of the Currency, in addition to the powers conferred upon him by law for the examination of national banks, is further authorized, whenever he may deem it useful, to cause examination to be made into the condition of any building association incorporated under the provisions of this title, as well as any other building or loan association located or doing business in the District of Columbia. The expenses necessarily incurred in making any such examination shall not exceed the sum of twenty-five dollars for the first five hundred thousand dollars or fractional part thereof of assets and the sum of ten dollars for each additional two hundred and fifty thousand dollars or fractional part thereof of assets, and be paid by such association to the Comptroller of the Currency at the time of the making of such examination: *And provided further,* That every building or loan association located and doing business in the District of Columbia shall make to the Comptroller of the Currency at least one report during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or secretary of such association and attested by the signature of at least three of the directors. The said comptroller shall also have power to take possession of any company or association whenever in his judgment it is insolvent or is knowingly violating the laws under which such company is incorporated, and to liquidate the same in the manner provided in the laws of the United States in respect to national banks: *Provided further,* That from and after the first day of July, 1909, no person, company, association, copartnership, or corporation shall conduct or carry on in the District of Columbia the kind of business named in this chapter, without strict compliance in all particulars with the provisions of this chapter: *Provided,* That building associations organized and in actual operation before March 4, 1909, need not be incorporated. Any person, officer, or agent of any company, firm, or corporation who shall wilfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall on conviction thereof be punished by a fine of not more than one thousand dollars or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court. That any wilful false swearing in regard to any certificate, or report, or public notice required by the provisions of this chapter shall be perjury, and shall be punished as such according to the laws of the District of Columbia. And any misappropriation of any of the money of any corporation or company, formed under or availing itself of the privileges of this chapter, or of any building or loan association located or doing business in the District of Columbia, or any money, funds, or property intrusted to any such corporation, company, or association, shall be held to be larceny and shall be punished as such under the laws of said District. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 691; Mar. 4, 1909, 35 Stat. 1058, ch. 303, § 1.)

COMPILER'S NOTE

The 1909 act amends § 691 of the 1901 act (Code) to read as above. It would seem, therefore, that the word "chapter" means the 1901 act (Code) and not merely §§ 26–404 and 26–405 (i. e., the sections of the 1901 act amended by the 1909 act) or that part of the 1901 act (Code) concerned with building associations (this chapter). However, similar provisions are found in § 732 of the 1901 act (Code) compiled herein as § 26–320.

AMENDMENT

Act of March 3, 1901, read as follows: "The object of such corporation shall be the accumulation of a capital in money, to be derived from the savings and accumulation by the members thereof, to be paid into said corporation in periodical instalments, in fixed and certain sums, and in such amount as shall be designated by the by-laws, until the value of all the shares of stock in said corporation, and every series thereof, shall be equal to the nominal or par value thereof or of some multiple thereof, at which time said corporation shall cease to exist, and in the meantime to enable the members thereof, by obtaining advances upon their shares of stock, to purchase or erect homes for themselves."

CROSS REFERENCES

Other powers and duties of comptroller concerning financial institutions, § 26–101 et seq.

Voluntary liquidation and dissolution of solvent financial corporations, § 26–103.

§ 26–405 [5: 45]. Associations existing under laws of other States doing business in District of Columbia must comply—Provisions requisite—Penalty.

No foreign association shall make loans of any kind or transact any building and loan business within the District of Columbia or maintain an office in the District of Columbia for the purpose of transacting such business until it procures from the Comptroller of the Currency a certificate of authority to do such business in said District, after complying with the following provisions:

(a) It shall deposit with the Treasurer of the United States $50,000 in cash or bonds of the United States or bonds which the United States guarantees the payment of both principal and interest. A foreign association may collect and use the interest on securities deposited with the Treasurer of the United States, as hereinabove provided, so long as it fulfills its obligations and complies with the laws of the District of Columbia. It may also exchange them for other securities of the United States or for cash. The deposit made by a foreign association with the Treasury of the United States shall be held as security for all claims of residents of the District of Columbia against such association, and be liable for all judgments or decrees thereon, and subjected to the payment thereof in the same manner as the property of other nonresidents. Should an association cease to do business in said District, the Treasurer of the United States, upon a certificate from the Comptroller of the Currency, may release

securities in his discretion, retaining sufficient to satisfy all outstanding liabilities;

(b) It shall file with the Comptroller of the Currency a certified copy of its charter, constitution, and bylaws, and other rules and regulations showing its manner of conducting business, together with a statement such as is required semiannually from all associations;

(c) It shall file with the Comptroller of the Currency a power of attorney appointing a citizen of the District of Columbia, resident within said District, the agent or attorney for such foreign association upon whom process of law can be served. There must also be filed a certified copy of the vote or resolution of the directors appointing such agent or attorney, which appointment shall continue until another agent or attorney is substituted, and said writing or power of attorney shall stipulate and agree on the part of such foreign association making the same that any lawful process against said association, which is served on such agent or attorney, shall be of the same legal force and validity as if served on such association within the District of Columbia; and, also, that in the case of the death or absence of the agent or attorney so appointed, service or process may be made upon the Comptroller of the Currency, and such power of attorney cannot be revoked or modified (except that a new one may be substituted) so long as any liability remains outstanding against such foreign association in the District of Columbia. The term "process," used above, shall be held and deemed to include any writ, summons, or order whereby any action, suit, or proceeding shall be commenced, or which shall be issued in or upon any action, suit, or proceeding by any court, officer, or magistrate.

(d) It shall pay to the collector of taxes the following fees:

For filing an application for admission to do business in the District of Columbia, $500;

For each certificate of authority and annual renewal thereof, $200.

(e) When a foreign association has complied with the provisions of paragraph (c) of this section, and the Comptroller of the Currency is satisfied that it is doing or will do its building and loan business in the District of Columbia in accordance with the laws of the District of Columbia, he may issue his certificate of authority to such foreign association to do a building and loan business in the District of Columbia. Annually thereafter, if the Comptroller of the Currency is satisfied as herein provided, he shall issue a renewal of such certificate.

(f) Should the Comptroller of the Currency find that such foreign association does not conduct its building and loan business in accordance with law, or that the affairs of such association are in unsafe condition, or if such foreign association refuses to permit examination to be made, the Comptroller of the Currency may revoke the certificate of authority granted, after ninety days' notice, to such foreign association to do a building and loan business in the District of Columbia; *Provided,* That upon revocation of such certificate of authority the Comptroller of the Currency shall mail a notice thereof to the home office of such foreign association and cause a similar notice to be published in at least one daily newspaper of general circulation in the District of Columbia. After so notifying said home office and after the publication of said notice, it shall be unlawful for any agent of such foreign association to receive any further payments from shareholders residing in the District of Columbia.

(g) Every foreign association doing a building and loan business in the District of Columbia shall be subject to the same examination as are domestic associations and such examination may include examination of all subsidiaries of such foreign associations and all business operations wherever apparent: *Provided,* That the Comptroller of the Currency may accept reports of examination by other supervisory agents in lieu of making such examinations and provided that all the actual and necessary expense of such examinations of such foreign associations shall be paid by the association examined if said examination is made beyond the limits of the District of Columbia, but if made within the limits of the District of Columbia, the cost of the examination to be at the same rate and upon the same terms as provided in section 26–404.

(h) Whenever any taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by the laws of any State upon building and loan associations organized or incorporated under the laws of the District of Columbia, and doing business in the said State, in excess of the taxes, fines, penalties, fees, licenses, or conditions precedent imposed by the laws of the District of Columbia upon foreign associations doing a building and loan business in the District of Columbia, the same taxes, fines, penalties, fees, licenses, or conditions precedent shall be imposed upon every association incorporated under the laws of such State doing, or applying to do, a building and loan business in the District of Columbia, so long as such excess taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by such State; and upon the failure of any association incorporated under the laws of such State to comply therewith the Comptroller of the Currency shall revoke the certificate of authority of such association to do a building and loan business in the District of Columbia or shall refuse to grant such certificate of authority in the first instance.

(i) A foreign association which does a building and loan business in the District of Columbia without first complying with the provisions of this chapter, or which willfully violates or fails to comply with the provisions of laws relating to foreign associations, shall forfeit and pay not less than $25 or more than $500, to be recovered by an action in the name of the United States and on collection paid into the Treasury of the United States. (Mar. 4, 1909, 35 Stat. 1059, ch. 303, § 2; July 18, 1939, 53 Stat. 1060; ch. 322, § 1.)

COMPILER'S NOTES

Section 2 of the act of July 18, 1939, provided: "All other acts or parts of acts inconsistent herewith are hereby repealed. This act shall take effect on the date of its enactment."

The 1909 act purports to amend the 1901 Code (act of Mar. 3, 1901, 31 Stat. 1298, ch. 854) and, historically, should be considered amendatory thereof.

AMENDMENTS

Prior to the 1939 amendment, this section provided as follows: "That any building association incorporated or unincorporated, organized and existing under the laws of any State or Territory, except the District of Columbia, to do or now doing, in the District of Columbia, a building association business or otherwise operating as a building association, shall be subject to all the provisions of the foregoing section of this act in respect of the powers of the Comptroller of the Currency hereunder, and, any such association or corporation shall at all times keep on deposit with the Comptroller of the Currency in money or stocks, bonds or mortgages or other securities to be approved by said officer not less than ten per centum of its capital and surplus as security for its depositors and creditors, and as a guarantee for the faithful performance of its contracts, and may also make such further deposit of its assets as above described with the Comptroller for such purpose as it may from time to time desire so to do."

CROSS REFERENCES

Other powers and duties of Comptroller concerning financial institutions, § 26–101 et seq.

Other provisions concerning admission of foreign associations, § 26–103.

Semiannual publication of financial statements, § 29–105.

NOTES TO DECISIONS

COMPLIANCE WITH STATUTORY REQUIREMENTS

The "Union Home Builders" and similar organizations must comply with statutory provisions as to examination and control by Comptroller of the Currency. (33 O. A. G. 418.)

§ 26–406 [5: 46]. Advancements.

The moneys accumulated from time to time shall be offered to such shareholder or shareholders as shall bid the highest premium for preference or priority of right to an advancement of the ultimate value of one or more of his or their respective shares. The said premium shall consist of a percentage on the amount of the advance and shall be deemed to be a consideration or bonus paid by the shareholder for the present and immediate use and possession of the future or ultimate value of the share so advanced, and shall not be deemed usurious. The said premium may either be deducted in advance from the amount to be advanced to the shareholder or be made payable in monthly installments, in addition to legal interest on the sum advanced, as the by-laws may provide. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 692.)

NOTES TO DECISIONS

STATUS OF CONTRACT AFTER INSOLVENCY

Where contract between borrowing member of a building association by the giving of a bond and a deed of trust to secure the bond, is that in consideration of sum advanced he will pay to the association monthly payments, the insolvency of the association and appointment of a receiver will not abrogate the contract between it and one of its members and the substitution for that contract of some other arrangement which a court may deem equitable. *Armstrong* v. *United States Bldg. & Loan Assn.* (15 App. D. C. 1).

SURRENDER OF STOCK

Where building association advanced money to one of its members and received therefor an assignment of stock held by him, and a deed of trust upon his real estate to secure his notes, a suit by a person who purchased the property was entitled to a release of the deed of trust upon payment of remaining notes, and the association could not enforce payment of accruing dues after the payment of the last note. *Eastern Bldg. & Loan Assn.* v. *Olmsted* (16 App. D. C. 387).

When borrower from building association surrenders his stock to the association upon mortgage loan being made to him, he becomes a creditor of the association and when accounting is made he is to be charged with amount actually received by him on account of loan, with interest, whether by way of premium, dues or interest. *Croissant* v. *Empire State Realty Co.* (29 App. D. C. 538).

USURIOUS PREMIUMS

A provision of building association mortgage that the borrower instead of paying the usual premium is to pay monthly during continuance of the mortgage, a specified sum called premium, in addition to legal rate of interest, is void as usurious payment. *Middle States Loan* v. *Baker* (19 App. D. C. 1).

The provision that premiums to be charged by building associations shall not be deemed usurious, is not retroactive, and it does not affect borrower's right to redeem mortgaged property from building association, when such right existed before the Code went into effect. *Washington Nat. Bldg. & Loan Assn.* v. *Fiske* (20 App. D. C. 514, cert. den. 188 U. S. 740, 47 L. Ed. 677, 23 Sup. Ct. 848).

Test to determine whether building association loan is usurious is usually whether the promise to pay the sum above legal interest depends upon a contingency, and not upon the happening of a certain event. The loan is not usurious if it depends upon a contingency. *Whelpley* v. *Ross* (25 App. D. C. 207).

§ 26–407 [5: 47]. Security for advancement.

For every advance made as aforesaid a bond in a penalty equal to the ultimate value of the shares advanced may be required, secured by a first mortgage or deed of trust on real estate, and a pledge of the shares advanced upon, as additional or collateral security, which bond shall be conditioned for the payment at the stated meetings of the corporation of the monthly dues on the share so advanced upon and the interest on the sum advanced, and the instalments of premium, if made so payable, and all fines chargeable upon arrears of payments, until said shares shall reach their ultimate value aforesaid, or said advance be otherwise canceled or discharged. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 693.)

§ 26–408 [5: 48]. Profits.

The shares advanced upon shall participate equally with the other shares in the profits and the amounts paid by the advanced shareholders, together with such proportion of the profits accrued or such rate of interest as said by-laws may determine, the same as allowed on shares withdrawn not advanced upon, less all fines and a proportionate part of losses and other charges incurred. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 694.)

§ 26–409 [5: 49]. Redemption of shares.

Where advances from the funds on hand can not be made on satisfactory terms, the shareholders failing to bid therefor, the by-laws may provide for the redemption of shares of stock, with the consent of the shareholders, and in case that can not be done, for the involuntary withdrawal and cancelation of shares, the said shares to be selected by lot, always from the oldest series, until exhausted, or the funds

to be applied ratably among the owners of shares of the same series. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 695.)

§ 26–410 [5: 50]. Withdrawal by shareholder.

A shareholder shall be entitled to withdraw at any time, by giving such notice as the by-laws may require, where no advance has been made on his shares, in which case he shall be entitled to receive the amount of dues paid in by him on each of his shares, together with such proportion of the profits accrued or such rate of interest as said by-laws may determine, less all fines due and a proportionate part of all losses and other charges incurred: *Provided,* That not more than one-half of the funds in the treasury at any time shall be applicable to the demands of the withdrawing shareholders without the consent of the board of trustees. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 696.)

§ 26–411 [5: 51]. Repayment of advances.

A shareholder who has been advanced may at any time repay his advance upon application to the corporation, whereupon, on settlement of his account, he shall be charged with the full amount of the advance and of the accrued instalments of the premium, if that has been added to the advancement and made payable in instalments, together with all monthly dues, interest, and fines accrued and charged, and shall receive credit for all monthly dues paid on his shares and the profits thereon the same as are allowed under the by-laws on shares withdrawn not advanced upon, and, if the premium has been deducted in advance, with such proportion of the premium as the by-laws may direct, and the balance remaining due, over and above such credits, shall be received by said corporation in satisfaction and discharge of said advance: *Provided,* That in case of the insolvency of the association, he shall not be entitled to credit for the full amount of dues paid by him, but shall only be entitled to a dividend upon said amount, in common with the nonadvanced shareholders. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 697.)

§ 26–412 [5: 52]. Forfeiture.

Any nonadvanced shareholder failing to pay the instalments due on his share and the fines due from him for such time as the by-laws shall determine, shall forfeit his stock, but may, on application, receive a return of the amount paid in on account of his stock, less the accrued fines. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 698.)

§ 26–413 [5: 53]. Foreclosure.

In case any advanced shareholder shall fail to pay all dues, interest, or premiums and shall be in arrears for any part of the same for the period of two months, the payment of the same and of the principal of the advance may be enforced by a foreclosure of the securities given for the same, and if upon a statement of account, as in case of a voluntary settlement of said advance, as hereinbefore authorized, there shall be any surplus of the proceeds of sale of the property given as security over the amount found due from such advanced shareholder, together with all costs incurred by the corporation, such surplus shall be paid to said defaulting shareholder, or his assigns, and his shares of stock so advanced upon shall be the property of the corporation. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 699.)

§ 26–414 [5: 54]. Investment of funds in real estate.

Such corporation shall not invest its fund in any real estate except what is necessary for the conduct of its business, but may purchase such property at sales made upon foreclosure of mortgages or in satisfaction of judgments or other liens held by it: *Provided,* That such property so purchased be sold within a reasonable time thereafter. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 700.)

CROSS REFERENCE

Conveyances of real estate, formal requisites, § 45–302.

§ 26–415 [5: 55]. Purchase of Home Owners' Loan Corporation bonds authorized.

The board of directors of any building association incorporated or unincorporated, organized and existing under the laws of the District of Columbia to do or now doing in the District of Columbia a building association business, in their discretion, may purchase the bonds of the Home Owners' Loan Corporation created pursuant to the authority of U. S. C., title 12, chapter 12 (and said association is hereby permitted to carry said bonds as an asset at the par value of said bonds) or may subscribe and pay for shares of any Federal corporation created or authorized by law to lend money to building and loan associations. (Mar. 3, 1901, ch. 854, § 55, as added Mar. 27, 1934, 48 Stat. 506, ch. 96.)

§ 26–416 [5: 56]. Exchange of real estate and debts and liens secured by real estate for Home Owners' Loan Corporation bonds authorized.

Any building association incorporated or unincorporated, organized and existing under the laws of the District of Columbia, to do or now doing, in the District of Columbia, a building association business, is authorized and empowered to exchange mortgages or deeds of trust or the notes or bonds secured thereby or other obligations and liens secured on real estate or any real estate which it may have or hold, for the bonds of the Home Owners' Loan Corporation created pursuant to the authority of U. S. C., title 12, chapter 12, and said association is hereby authorized to carry said bonds as an asset at the par value of said bonds. (Mar. 3, 1901, ch. 854, § 56, as added Mar. 27, 1934, 48 Stat. 506, ch. 96.)

Chapter 5.—CREDIT UNIONS

Sec.

26–501. Short title.
26–502. Definition.
26–503. Organization—Certificate—Contents.
26–504. Approval of certificate—Report by Comptroller.
26–505. Recording certificate—Body corporate—Powers.
26–506. Supervision by Comptroller of the Currency—License—Revocation.
26–507. Powers.
26–508. By-laws.
26–509. Membership.
26–510. Members' meetings—Voting—Proxy—Qualifications.

Sec.
26–511. Management in general—Officers—Directors—Credit committee—Supervisory committee—Powers and duties.
26–512. Reserves.
26–513. Dividends.
26–514. Expulsion and withdrawal of members.
26–515. Shares issued to minors or in trust.
26–516. Taxation.
26–517. Restriction on use of words "credit union"—Penalty.
26–518. Right of repeal reserved.

§ 26–501 [5: 381]. Short title.

This chapter may be cited as the "District of Columbia Credit Unions Act." (June 23, 1932, 47 Stat. 326, ch. 272, § 1.)

STATUTORY REFERENCE

Federal Credit Unions, see U. S. C., title 12, ch. 14.

§ 26–502 [5: 382]. Definition.

A credit union is hereby defined to be a cooperative society organized for the purpose of promoting thrift among its members and creating a source of credit for them for provident purposes. (June 23, 1932, 47 Stat. 326, ch. 272, § 2.)

§ 26–503 [5: 383]. Organization — Certificate — Contents.

Any seven or more persons, who are actual residents of, or do business or are employed within, the District of Columbia, and who desire to form a credit union, shall subscribe before some officer in the District competent to take the acknowledgment of deeds, an organization certificate which shall specifically state—

First. The name of the corporation, which shall include the words "credit union" and "District of Columbia."

Second. The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.

Third. The par value of the shares of the credit union, which shall not exceed $10 each.

Fourth. The proposed field of membership, specified in such detail as the Commissioners of the District of Columbia may require.

Fifth. The term of the credit union's existence, which may be perpetual. (June 23, 1932, 47 Stat. 326, ch. 272, § 3.)

§ 26–504 [5: 384]. Approval of certificate—Report by Comptroller.

The organization certificate shall be presented to the Commissioners of the District of Columbia, who may, in their discretion, approve the certificate. The said Commissioners are authorized to refer any such proposed certificate to the Comptroller of the Currency, who shall, within a reasonable time, submit a report to the said Commissioners with respect (1) to the conformity of the certificate to the provisions of this chapter, (2) the general character and fitness of the subscribers, and (3) the advisability of establishing a credit union in the proposed field of membership. (June 23, 1932, 47 Stat. 327, ch. 272, § 4.)

CROSS REFERENCE

Powers and duties of Comptroller, § 26–506.

§ 26–505 [5: 385]. Recording certificate—Body corporate—Powers.

The certificate, if approved by the Commissioners of the District of Columbia, shall be filed for record in the office of the recorder of deeds for the District of Columbia, and shall be recorded by him. At such time as the approved certificate is so filed, the subscribers and their successors shall thereupon become a body corporate and as such shall, subject to the limitations of section 26–503 (relating to approval of by-laws), be vested with all the powers and charged with all the liabilities conferred and imposed by this chapter upon corporations organized thereunder as credit unions: *Provided,* That the last paragraph of section 45–708 shall have no application to credit unions. (June 23, 1932, 47 Stat. 327, ch. 272, § 5.)

COMPILER'S NOTE

Section 45–708 relates to fees of recorder of deeds.

§ 26–506 [5: 386]. Supervision by Comptroller of the Currency—License—Revocation.

The provisions of sections 26–101, 26–102 as now or hereafter amended (relating to supervision by the Comptroller of the Currency of banking institutions in the District of Columbia), shall apply to credit unions, except that the Comptroller of the Currency may relieve credit unions from compliance with any such requirements to such extent and in such manner as he deems will not prejudice the proper conduct of the affairs of such credit unions: *Provided, however,* That the publication of reports named in section 26–101 shall not be required of credit unions having assets of less than $100,000 and fees incident to making the examinations specified in section 26–102 shall not exceed a basic fee of $5.03 per $1,000 of assets per annum: *Provided, however,* That it shall be unlawful for any such credit union to transact business in the District of Columbia without procuring a license from the District of Columbia; and all such credit unions shall pay a license tax of $15 per annum to the District of Columbia. No license shall be granted for a period longer than one year: *Provided, however,* That the Commissioners of the District of Columbia may suspend or revoke a license upon proof of the bankruptcy or insolvency of any such credit union or upon conviction of a violation of any provision of this chapter or of any law or regulation of the District of Columbia or of the United States. (June 23, 1932, 47 Stat. 327, ch. 272, § 6.)

CROSS REFERENCES

Approval of certification of incorporation, § 26–504.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Refund of fees when license refused, § 47–1018.

§ 26–507 [5: 387]. Powers.

A credit union shall have succession in its corporate name during its existence and shall have power—

First. To make contracts.

Second. To sue and be sued in its corporate name.

Third. To adopt and use a common seal and alter the same at pleasure.

Fourth. To purchase, hold, and dispose of property necessary to enable the corporation to carry on its operations.

Fifth. To make loans to its members for provident purposes upon such terms and conditions as the by-laws provide and as the credit committee may approve at rates of interest not exceeding 1 per centum per month on unpaid balances, inclusive of all charges incident to the making of the loan: *Provided*, That no loan to a director, officer, or member of a committee shall exceed the amount of his holdings in the company in shares nor shall any such director, officer, or member indorse for borrowers. A borrower may prior to maturity repay his loan in whole or in part on any business day.

Sixth. To receive of its members payment on shares.

Seventh. To invest in the paid-up shares of building and loan associations and of other credit unions to an extent not to exceed 25 per centum of its capital, and in any investment legal for savings banks or for trust funds in the District of Columbia.

Eighth. To make deposits in banks and trust companies in the District of Columbia under the supervision of the Comptroller of the Currency.

Ninth. To borrow in an aggregate outstanding amount not exceeding 40 per centum of its paid-in and unimpaired capital.

Tenth. To fine members for failure to meet promptly their obligations to such corporation.

Eleventh. To impress a lien upon the shares and dividends of any member to the extent of any loan made to him and any dues or fines payable to him. (June 23, 1932, 47 Stat. 328, ch. 272, § 7.)

COMPILER'S NOTE

The word "to" in the next-to-last line probably should read "by."

§ 26–508 [5: 388]. By-laws.

(a) The incorporators shall subscribe, acknowledge, and submit to the Commissioners of the District of Columbia proposed by-laws, and no credit union shall receive payments on account of shares or make any loans until such proposed by-laws have been approved by the commissioners as being in conformity with the provisions of this chapter.

(b) The by-laws shall prescribe the purposes for which the corporation is formed, the qualifications for membership, the date of the annual meeting, the manner of conducting meetings, the methods by which members shall be notified of meetings and the number of members which shall constitute a quorum, the number of directors and the compensation and duties of officers, the number of members of the credit committee, the fines, if any, to be charged for failure of members to meet promptly obligations to the corporation, the amount of the entrance fee, if any, to be paid, and such other regulations as are deemed necessary.

(c) Amendments of the by-laws may be adopted by a three-fourths vote of the members present at any members' meeting, but the amendments shall not take effect until approved by the Commissioners of the District of Columbia as being duly adopted and in conformity with the provisions of this chapter. The meeting shall be duly called for the purpose and the proposed amendments shall be set forth in the call. (June 23, 1932, 47 Stat. 328, ch. 272, § 8.)

§ 26–509 [5: 389]. Membership.

Credit-union membership shall consist of the incorporators and such other persons or organizations as may be elected to membership and subscribe to at least one share but not more than two hundred shares by any one individual, pay the initial installment thereon, and the entrance fee, if any; except that credit-union membership shall be limited to groups the members of which are actual residents of or do business or are employed within the District of Columbia, and either have a common bond of occupation of association or reside within a well-defined neighborhood or community. (June 23, 1932, 47 Stat. 329, ch. 272, § 9.)

§ 26–510 [5: 390]. Members' meetings — Voting — Proxy—Qualifications.

The fiscal year of all credit unions shall end December 31. The annual meeting of the corporation shall be held at such time during the month of January and at such place as the by-laws shall prescribe. Special meetings may be held in the manner indicated in the by-laws. No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent delegated for the purpose. No member shall, irrespective of the number of shares held by him, have more than one vote; and, after a credit union has been incorporated one year, no member thereof shall be entitled to vote until he has been a member for more than three months. All offices of a credit union shall be in the District of Columbia. (June 23, 1932, 47 Stat. 329, ch. 272, § 10.)

§ 26–511 [5: 390a]. Management in general—Officers—Directors—Credit committee — Supervisory committee—Powers and duties.

(a) *General.*—The business affairs of a credit union shall be managed by a board of not less than five directors, a credit committee of not less than three members, and a supervisory committee of three members, to be elected at the annual meeting, and to hold office for such terms, respectively, as the by-laws may provide and until successors qualify; except that prior to the first annual meeting all the business affairs of a credit union shall be managed by the subscribers to the certificate of incorporation. A record of the names and addresses of the members of the board and committees and the officers shall be filed with the Commissioners of the District of Columbia within ten days of their election. No member of the board or of either committee shall, as such, be compensated: *Provided*, That no person shall be elected to the board or to either committee unless he be duly elected to membership as provided in section 26–509.

(b) *Officers.*—At their first meeting after the annual meeting the directors shall elect from their own number a president, a vice-president, a clerk, and a treasurer, who shall be the executive officers of the corporation. The offices of clerk and treasurer may be held by the same person. The duties

of the officers shall be as determined in the by-laws, except that the treasurer shall be the general manager of the corporation.

(c) *Directors.*—The board of directors shall have the general direction of the affairs of the corporation. They shall act upon application for membership; fix the amount of the surety bond required of any officer having custody of funds; recommend declaration of dividends; determine interest rates on loans: *Provided, however,* That the interest rate on loans shall not be in excess of the maximum amount fixed by the provisions of this chapter; fill vacancies in the board and in the credit committee until successors to be elected at the next annual meeting have qualified; have charge of investments other than loans to members; determine the maximum loans other than loans to members; determine the maximum individual shareholdings and the maximum individual loan which can be made with and without security, except that no loan in excess of $300 shall be made without adequate security; and transmit to the members recommended amendments to the by-laws. For the purposes of this subdivision an assignment of shares or the indorsement of a note shall be deemed security.

(d) *Credit committee.*—The credit committee shall hold meetings, of which due notice shall be given to its members, to consider applications for loans to members of the corporation, and no loan shall be made unless all members of the committee who are present when the application is considered and a majority of all the committee approve the loan. Applications for loans shall be on forms prepared by such committee, which shall set forth the purpose for which the loan is desired, the security, if any, and such other data as may be required.

(e) *Supervisory committee.*—The supervisory committee shall make an examination of the affairs of the credit union at least quarterly, including an audit of its books; shall make an annual audit and report to be submitted at the annual meeting of the corporation; by a unanimous vote may suspend any officer of the corporation, or any member of the credit committee or of the board of directors until the next members' meeting, at which time the suspension shall be acted on by the members; and, by a majority vote, may call a meeting of the shareholders to consider any violation of this chapter or of the by-laws, or any practice of the corporation deemed by the committee to be unsafe or unauthorized. The said committee shall fill vacancies in its membership until successors to be elected at the next annual meeting have qualified: *Provided, however,* That before the treasurer shall enter upon his duties he shall give bond with good and sufficient security, in an amount to be determined by the board of directors, conditioned upon the faithful performance of his trust. (June 23, 1932, 47 Stat. 329, ch. 272, § 11; April 28, 1950, 64 Stat. 90, ch. 119.)

AMENDMENT

The 1950 act amended subsection (c) by changing "$50" to "$300".

§ 26–512 [5: 390b]. Reserves.

All entrance fees and fines provided by the by-laws and, before the declaration of any dividend therefrom, 20 per centum of the net earnings of each year, shall be set aside as a reserve fund against bad loans, which fund shall be kept liquid and intact and not distributed except in case of liquidation. (June 23, 1932, 47 Stat. 330, ch. 272, § 12.)

§ 26–513 [5: 390c]. Dividends.

At the annual meeting a dividend may be declared from net earnings on recommendation of the board, which dividend shall be paid on all paid-up shares outstanding at the end of the preceding fiscal year. Shares which become fully paid up during such year shall be entitled to a proportional part of said dividend calculated from the first day of the month following such payment in full. (June 23, 1932, 47 Stat. 330, ch. 272, § 13.)

§ 26–514 [5: 390d]. Expulsion and withdrawal of members.

A member may be expelled by a two-thirds vote of the members of the corporation present at a special meeting called for such purpose, but only after an opportunity has been given him to be heard. The credit union may require sixty days' notice of intention to withdraw shares. Expulsion or withdrawal shall not operate to relieve a member from any remaining liability to the credit union. All amounts paid in on shares or deposited by expelled or withdrawing members prior to their expulsion or withdrawal shall be paid to them in the order of their withdrawal or expulsion, but only as funds become available and after deducting any amounts due from such members to the credit union. (June 23, 1932, 47 Stat. 331, ch. 272, § 14.)

§ 26–515 [5: 390e]. Shares issued to minors or in trust.

Shares may be issued and deposits received in the name of a minor or in trust in such manner as the by-laws may provide. The name of the beneficiary shall be disclosed to the credit union. (June 23, 1932, 47 Stat. 331, ch. 272, § 15.)

§ 26–516 [5: 390f]. Taxation.

Credit unions, but not the members thereof, shall be exempt from Federal and District of Columbia taxation except taxes upon real property. (June 23, 1932, 47 Stat. 331, ch. 272, § 16.)

§ 26–517 [5: 390g]. Restriction on use of words "credit union"—Penalty.

It shall be unlawful for any individual, partnership, association, or corporation, except corporations organized in accordance with this chapter, to transact business in the District of Columbia under any name or title containing the words "credit union," or to transact business at any place in the United States under any name or title containing the words "credit union" and "District of Columbia" or other words indicating that the business is transacted pursuant to authority of any Act of Congress. Any individual, partnership, association, or corporation violating this section shall upon conviction thereof

be subject to a fine not in excess of $100 for each day during which the violation continues. (June 23, 1932, 47 Stat. 331, ch. 272, § 17.)

§ 26–518 [5: 390h]. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal this chapter or any part thereof, or any charter or certificate of incorporation issued pursuant to the provisions of this chapter. (June 23, 1932, 47 Stat. 331, ch. 272, § 18.)

Chapter 6.—MONEY LENDERS—LICENSES

Sec.

26–601. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.
26–602. Application for license filed with Commissioners—Contents of application—Date and expiration of license—Notice of application posted and published—Protests—Hearings—Rejection of application.
26–603. Bond to accompany application—Sureties—Actions on bond—Copy of bond to be furnished upon request—Renewal of bond.
26–604. Register to be kept—Contents—Inspection of register—Annual statements.
26–605. Rate of interest—Interest to cover all fees and expenses—Not to be deducted in advance—Statement to be furnished borrower—Amount of loans—Penalties.
26–606. Complaints—Hearings on complaints—Record of hearings—Revoking of, or refusal to grant license.
26–607. Penalties—Enforcement.
26–608. Attorneys' fees allowed on foreclosure.
26–609. Contracts for liquidated or other damages prohibited.
26–610. Persons, associations, and corporations exempt from operation of this chapter.
26–611. Commissioners to enforce—Rules and regulations.

§ 26–601 [17: 21]. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.

It shall be unlawful and illegal to engage in the District of Columbia in the business of loaning money upon which a rate of interest greater than six per centum per annum is charged on any security of any kind, direct or collateral, tangible or intangible, without procuring license; and all persons, firms, voluntary associations, joint-stock companies, incorporated societies, and corporations engaged in said business shall pay a license tax of five hundred dollars per annum to the District of Columbia. No license shall be granted to any person, firm, or voluntary association unless such person and the members of any such firm or voluntary association shall be bona fide residents of the District of Columbia, and no license shall be granted for a period longer than one year, and no license shall be granted to any joint-stock company, incorporated society, or corporation unless and until such company, society, or corporation shall, in writing and in due form, to be first approved by and filed with the commissioners of the District of Columbia, appoint an agent, resident in the District of Columbia, upon whom all judicial and other process or legal notice directed to such company, society, or corporation may be served. And in the case of death, removal from the District, or any legal disability or disqualification of any such agent, service of such process or notice may be made upon the Superintendent of Licenses of the District of Columbia. (Feb. 4, 1913, 37 Stat. 657, ch. 26, § 1; Mar. 3, 1917, 39 Stat. 1006, ch. 160.)

AMENDMENT

The 1917 act substituted "Superintendent of Licenses" for the "assessor."

CROSS REFERENCES

Businesses exempted from act, § 26–610.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Provisions concerning interest and usury generally do not apply to this chapter, § 28–2703.

Refund of fees when license refused, § 47–1018.

Rules and regulations governing money lenders, § 26–611.

Usury, § 28–2703.

NOTES TO DECISIONS

AMOUNT AS DETERMINING APPLICABILITY

This section making it unlawful to engage in business of loaning money upon which a rate of interest greater than six percent per annum is charged on any security of any kind without procuring a license has application to a loan larger than $200. *Hartman* v. *Lubar,* 1942 (133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

BURDEN OF PROOF

It is well established that one who alleges usury or any contractual illegality has the burden of proving it. It was incumbent on the District to adduce evidence establishing an excessive finance payment. The fact that the plaintiff bank did not prove the amount of insurance premium did not relieve the District of its burden of proof. *District of Columbia* v. *Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

CONSTRUCTION

This chapter, the usury law, § 28–2703 et seq., and § 47–1701 et seq., regarding financial institutions are to be read together and when so read constitute a comprehensive code for business of lending money in the District of Columbia. *Hartman* v. *Lubar,* 1942 (133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

DEFENSES

Defense that contract violates this chapter is available, not only against the nominal maker of the loan, but against the principal for whom he acts and against the holder of an instrument given to secure payment of loan, if the holder knew of its illegality. *Hartman* v. *Lubar,* 1942 (133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

EVIDENCE

Where lender of approximately $900 took from borrower note for $1,000 payable in $20 weekly installments and secured by chattel trust deed, in replevin suit by trustee of endorsee finance company to recover the chattel, evidence that lender was principal stockholder and president of endorsee company, that trustee was officer of and counsel for the company, that loan was actually made by the company and that the company was engaged in business of lending money in District of Columbia at an interest rate greater than six percent without having procured a license was admissible to show illegality of the transaction and the resulting absence of title in trustee. *Hartman* v. *Lubar,* 1942 (133 F. 2d 44, 319 U. S. 767, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

Evidence that lender had made five loans was not sufficient to warrant finding that lender was engaged in the "business of loaning money" within this chapter. *Knott* v. *Jackson* (D. C. 1943, 31 A. 2d 662).

Where borrowers contended that lender was engaged in business of loaning money within this chapter and that payee of note was but a straw party for the lender, trial court properly refused to admit in evidence against lender other notes payable to same payee, where witness testified that the payee lent money herself. *Knott* v. *Jackson* (D. C. 1943, 31 A. 2d 662).

Where there was evidence that indorsee finance company for which trustee brought replevin suit to recover chattels named in chattel trust deed securing a note was in the business of lending money rather than solely that of discounting notes in the sense of buying from a creditor an existing obligation at less than face value, proffered evidence consisting of court trials of five municipal court cases in which finance company sued to recover on notes assigned to it was material to defendant's defense that finance company was in business of lending money at rate of interest greater than 6 percent without required license and should have been admitted. *Hartman* v. *Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

ILLEGAL CONTRACTS

Every consideration of "public policy" suggests that a contract made in violation of this chapter should be unenforceable. *Hartman* v. *Lubar,* 1942 (133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

INFERENCES

Where defendant had subpoenas duces tecum served upon officers of indorsee finance company for which trustee was maintaining replevin suit to compel them to produce at trial all records regarding the company for purpose of showing that company was in business of lending money at rate of interest greater than 6 percent without required license, and officers failed to produce the records, jury could infer from failure to produce subpoenaed records that contents thereof would have been unfavorable to trustee's case. *Hartman* v. *Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

OCCASIONAL LOANS

A nonresident who makes occasional loans on real estate in the District, is not engaged "in the business" of loaning money within the meaning of the Loan Shark Law. *Zirkle* v. *Daly* (60 App. D. C. 344, 54 Fed. (2d) 455).

OFFICE OUTSIDE THE DISTRICT

A pawnbroker violates this law if he stores pledged goods in the city of Washington, and uses it as a collecting center, but applications for loans are made just over the line in Virginia, to which place free automobile service is maintained, and loans are there made at an excessive rate. *Horning* v. *District of Columbia* (254 U. S. 135, 65 L. Ed. 185, 41 Sup. Ct. 53).

SMALL LOANS

Loan Shark Law was intended to apply only to persons making small loans upon personal security and not to a case in which a debt of $177,500 was secured by a first trust upon real estate. *Von Rosen* v. *Dean* (59 App. D. C. 359, 41 Fed. (2d) 982).

This chapter is not a usury statute, but an act licensing, under limitations and restrictions, the lending of money in small sums on personal security, and was intended to apply only to persons making small loans on personal security. *Knott* v. *Jackson* (D. C. 1943, 31 A. 2d 662).

Loan of nearly $700 was not a "small loan" within this chapter, which provides, under § 26–605, that person violating the provisions of this chapter shall forfeit all interest, and in addition a sum equal to one-fourth of the principal sum. *Knott* v. *Jackson* (D. C. 1943, 31 A. 2d 662).

§ 26–602 [17: 22]. Application for license filed with Commissioners—Contents of application—Date and expiration of license—Notice of application posted and published—Protests—Hearings—Rejection of application.

Applications for license to conduct such business must be made in writing to the Commissioners of the District of Columbia, and shall contain the full names and addresses of applicants, if natural persons, and in the case of firms and voluntary associations, the full names and addresses of all the members thereof, and in the case of joint-stock companies, incorporated societies, and corporations, the full names and addresses of the officers and directors thereof and under what law or laws organized or incorporated, and the place where such business is to be conducted, and such other information as the said commissioners may require. Every license granted shall date from the first of the month in which it is issued and expire on the 31st day of the following October, and such license shall be kept conspicuously displayed in the place of business of the licensee. Every application shall be filed not less than thirty days prior to the granting of such license, and notice of the filing of such application shall be posted in the office of the Superintendent of Licenses of the said District and be published twice a week for three successive weeks in a daily newspaper published in the District of Columbia. Protest may be made by any person to the issuing of such license, and when such protests are filed with the said commissioners the latter shall give public notice of and hold a public hearing upon such protests before issuing such license. The said commissioners shall have the power to reject any application for license after a hearing upon such protest or for failure on the part of the applicant to observe this chapter, or when such applicant shall have violated its provisions. (Feb. 4, 1913, 37 Stat. 657, ch. 26, § 2; Mar. 3, 1917, 39 Stat. 1006, ch. 160.)

AMENDMENT

The 1917 act substituted "Superintendent of Licenses" for the "assessor."

§ 26–603 [17: 23]. Bond to accompany application—Sureties—Actions on bond—Copy of bond to be furnished upon request—Renewal of bond.

Each application shall be accompanied by a bond to the District of Columbia in the penal sum of five thousand dollars, with two or more sufficient sureties, and conditioned that the obligor will not violate any law relating to such business. The execution of any such bond by a fidelity or surety company authorized by the laws of the United States to transact business therein shall be equivalent to the execution thereof by two sureties, and such company, if excepted to, shall justify in the manner required by law of fidelity and surety companies. If any person shall be aggrieved by the misconduct of any such licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation, or by his, their, or its violation of any law relating to such business, and shall recover a judgment therefor, such person or his personal representative or heirs or distributees may, after a return unsatisfied either in whole or in part of any execution issued upon such judgment, maintain an action in his own name upon such bond herein required in any court having jurisdiction of the amount claimed. The commissioners of the District of Columbia shall furnish to anyone applying therefor a certified copy of any such bond filed with them, upon the payment of a fee of twenty-five cents, and such certified copy

shall be prima facie evidence in any court that such bond was duly executed and delivered by the person, firm, voluntary association, joint-stock company, incorporated society, or corporation whose names appear thereon. Said bond shall be renewed and refiled annually in October of each year, or the licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall within thirty days thereafter, cease doing business, and their license shall be revoked by the said commissioners, but said bond until renewed and refiled as aforesaid shall be and remain in full force and effect. (Feb. 4. 1913, 37 Stat. 658, ch. 26, § 3.)

§ 26–604 [17: 24]. Register to be kept—Contents—Inspection of register—Annual statements.

Every person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall keep a register, approved by said commissioners, showing in English, the amount of money loaned, the date when loaned and when due, the person to whom loaned, the property or thing named as security for the loan, where the same is located and in whose possession, the amount of interest, all fees, commissions, charges, and renewals charged, under whatever name. Such register shall be open for inspection to the said commissioners, their officers and agents, on every day, except Sundays and legal holidays, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall, on or before the 20th day of January of each year, make to the said commissioners an annual statement in the form of a trial balance of its books on the 31st day of December in each year, specifying the different kinds of its liabilities and the different kinds of its assets, stating the amount of each, together with such other information as may be called for. (Feb. 4, 1913, 37 Stat. 658, ch. 26, § 4.)

§ 26–605 [17: 25]. Rate of interest—Interest to cover all fees and expenses—Not to be deducted in advance—Statement to be furnished borrower—Amount of loans—Penalties.

No such person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall charge or receive a greater rate of interest upon any loan made by him or it than one per centum per month on the actual amount of the loan, and this charge shall cover all fees, expenses, demands, and services of every character, including notarial and recording fees and charges, except upon the foreclosure of the security. The foregoing interest shall not be deducted from the principal of loan when same is made. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall furnish the borrower a written, typewritten, or printed statement at the time the loan is made, showing, in English, in clear and distinct terms, the amount of the loan, the date when loaned and when due, the person to whom the loan is made, the name of the lender, the amount of interest charged, and the lender shall give the borrower a plain and complete receipt for all payments made on account of the loan at the time such payments are made. No such loan greater than two hundred dollars shall be made to any one person: *Provided,* That any person contracting, directly or indirectly, for, or receiving a greater rate of interest than that fixed in this chapter, shall forfeit all interest so contracted for or received; and in addition thereto shall forfeit to the borrower a sum of money, to be deducted from the amount due for principal, equal to one-fourth of the principal sum: *And provided further,* That any person in the employ of the Government who shall loan money in violation of the provisions of this chapter shall forfeit his office or position, and be removed from the same. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 5.)

NOTES TO DECISIONS

ADVANCE DEDUCTIONS

In replevin by trustee of indorsee finance company to recover chattels named in trust deed securing a note, evidence that loan was usurious, in that an amount in excess of legal rate was deducted in advance and that plaintiff knew the amount deducted in advance, was sufficient to make defense of illegality available to defendant. *Hartman* v. *Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

§ 26–606 [17: 26]. Complaints — Hearings on complaints—Record of hearings—Revoking of, or refusal to grant license.

Complaints against any licensee or applicant for a license shall be made in writing to the said commissioners, and notice thereof of not less than three days shall be given to said licensee or applicant by serving upon him a concise statement of the facts constituting the complaint, and a hearing shall be had before the said commissioners within ten days from the date of the filing of the complaint, and no adjournment shall be taken for longer than one week. A daily calendar shall be kept of all hearings by the said commissioners, which shall be posted in a conspicuous place in their public office for at least three days before the date of such hearings. The said commissioners shall render their decision within eight days from the time the matter is finally submitted to them. Said commissioners shall keep a record of all such complaints and hearings, and may refuse to issue and shall suspend or revoke any license for any good cause shown, within the meaning and purpose of this chapter; and when it is shown to their satisfaction, whether as a result of a written complaint as aforesaid or otherwise, that any licensee or applicant under this chapter either before or after conviction, is guilty of any conduct in violation of this or any law relating to such business it shall be the duty of the said commissioners to suspend or revoke the license of such licensee or reject the petition of the applicant, but notice of the written complaint or proposed action shall be presented to and reasonable opportunity shall be given said licensee or applicant to be heard in his defense. Whenever for any cause such license is revoked, said commissioners shall not issue another license to said licensee until the expiration of at least one year from the date of revocation of such license, and not at all if such licensee shall have been convicted of a violation of this chapter under the

provisions of section 26–607 thereof. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 6.)

CROSS REFERENCES

Refund of fees when license refused, § 47–1018.
Revocation or suspension of license for violation of the Uniform Narcotic Drug Act, § 33–418.

§ 26–607 [17: 27]. Penalties—Enforcement.

Any violation of this chapter shall be punished by a fine of not less than twenty-five dollars and not greater than two hundred dollars, or by imprisonment in the jail or the workhouse of the District of Columbia for not less than five nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court. The said commissioners shall cause the corporation counsel to institute criminal proceedings for the enforcement of this chapter before any court of competent jurisdiction. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 7.)

§ 26–608 [17: 28]. Attorneys' fees allowed on foreclosure.

In any foreclosure on any loan made under this chapter no charges for attorneys' or agents' fees shall be made or collected which will exceed ten per centum of the amount found due in such foreclosure proceedings. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 8.)

§ 26–609 [17: 29]. Contracts for liquidated or other damages prohibited.

In any contract made in pursuance of the provisions of this chapter it shall be unlawful to incorporate any provision for liquidated or other damages as a penalty for any default or forfeiture thereunder. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 9.)

§ 26–610 [17: 30]. Persons, associations, and corporations exempt from operation of this chapter.

Nothing contained in this chapter shall be held to apply to the legitimate business of national banks, licensed bankers, trust companies, savings banks, building and loan associations, or real estate brokers, as defined in sections 47–1701 to 47–1709. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 10.)

§ 26–611 [17: 31]. Commissioners to enforce—Rules and regulations.

The enforcement of this chapter shall be intrusted to the Commissioners of the District of Columbia, and they are hereby authorized and empowered to make all rules and regulations necessary in their judgment for the conduct of such business and the enforcement of this chapter in addition hereto and not inconsistent herewith. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 11.)

CROSS REFERENCE

Rules and regulations generally, § 1–226 et seq.

Chapter 7.—COMMON-TRUST FUNDS

Sec.
26–701. Establishment of common-trust funds.
26–702. Taxability of common-trust funds.
26–703. Court accountings.
26–704. Uniformity of interpretation.

§ 26–701. Establishment of common-trust funds.

Any bank or trust company qualified to act as fiduciary in the District of Columbia may, subject to such rules and regulations as may be promulgated from time to time by the Board of Governors of the Federal Reserve System under the provisions of section 11 (k) of the Federal Reserve Act, as amended (12 U. S. C. 248 (k)), pertaining to the collective investment of trust funds by national banks, establish common-trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common-trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the written consent of its cofiduciaries to such investment. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 1.)

SHORT TITLE

Sec. 5 of the act of Oct. 27, 1949, cited to text, provided: "This Act may be cited as the 'Uniform Common-Trust Fund Act'."

SEVERABILITY

Sec. 6 of the act of Oct. 27, 1949, cited to text, provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

REPEALS

Sec. 7 of the act of Oct. 27, 1949, cited to text, provided: "All Acts or parts of Acts which are inconsistent with the provisions of this Act are hereby repealed."

TIME OF TAKING EFFECT

Sec. 8 of the act of Oct. 27, 1949, cited to text, provided: "This Act shall take effect November 1, 1949, and shall apply to fiduciary relationships then in existence or thereafter established."

§ 26–702. Taxability of common-trust funds.

(a) A common trust fund, as herein defined, shall not be subject to any tax imposed by chapter 15 of title 47, as amended, and for the purpose of said chapter shall not be deemed to be a corporation.

(b) The net income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual. Each participant in a common trust fund shall include, in computing its net income its proportionate share of the net income of such fund, whether or not distributed to it, and the amount so included in the net income of a participant shall be taxable to such participant, or its beneficiaries, in the manner and to the extent provided in title IX of chapter 15 of title 47, as amended, as if any amount not distributed to the participant during its taxable year actually had been so distributed.

(c) No gain or loss shall be realized by a common trust fund upon the admission or withdrawal of a participant, or upon the admission or withdrawal of any interest of a participant. The withdrawal of any participating interest by a paricipant shall be treated as a sale or exchange of such interest by such participant.

(d) Every bank or trust company maintaining a common trust fund shall make a return under oath for the taxable year of such fund.

(e) If the taxable year of a common trust fund is different from that of a participant therein, the proportionate share of the net income of such fund to be included in computing the net income of such participant for its taxable year shall be based upon the net income of such fund for its taxable year ending within the taxable year of such participant. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 2.)

EFFECTIVE DATE

For effective date, see note to § 26–701.

§ 26–703. Court accountings.

Unless ordered by a court of competent jurisdiction the bank or trust company operating such common-trust funds is not required to render a court accounting with regard to such common-trust funds; but it may, by application to the United States District Court for the District of Columbia, secure approval of such accounting on such conditions as the court may establish. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 3.)

EFFECTIVE DATE

For effective date, see note to § 26–701.

§ 26–704. Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the District of Columbia with the law of those States which enact the Uniform Common-Trust Fund Act. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 4.)

EFFECTIVE DATE

For effective date, see note to § 26–701.

TITLE 27.—CEMETERIES AND CREMATORIES

Chap. Sec.

1. Cemetery associations—Regulatory provisions 27–101

Chapter 1.—CEMETERY ASSOCIATIONS—REGULATORY PROVISIONS

Sec.

27–101. Incorporation—Powers.
27–102. Powers to acquire and sell land.
27–103. Land to be platted and surveyed.
27–104. Inclosure and ornamentation of land—Purchase of equipment.
27–105. Duty to inclose and underdrain.
27–106. Application of proceeds of sales of lots.
27–107. Officers.
27–108. Election of officers.
27–109. Voters—Members of the corporation.
27–110. By-laws.
27–111. Exemption from taxation and sale on execution.
27–112. Dedication of land—Title vested in perpetuity.
27–113. Grants and bequests for care of lots.
27–114. Distance from city and from dwellings.
27–115. Lots to be conspicuously marked—Plat to be recorded—Size and depth of graves.
27–116. Register—Contents.
27–117. Superintendent to register at health department.
27–118. Repealed.
27–118a. Repealed.
27–119. Repealed.
27–119a. Disposal of dead bodies—Permits required—Violations.
27–120. Reports of death—Keeping of dead bodies—Exhibition of dead bodies.
27–121. Place of burial.
27–122. Mode of burial.
27–123. Reopening graves—Death from pestilential diseases.
27–124. Crematories—Consent of property owners—Permit.
27–125. Permit to cremate—Embalming.
27–126. Penalty.
27–127. Prosecutions.
27–128. Disinterment by order of court.
27–129. Public crematory—Cremation required in certain cases.
27–130. Establishment of crematory—Rules and regulations—Fees.
27–131. Act for promotion of anatomical science not affected by crematory law.

§ 27–101 [5: 71]. Incorporation—Powers.

When five or more persons shall associate themselves together for the purpose of forming a cemetery association in the District, such persons shall have the power to adopt a corporate name, and by that name shall be known as a body corporate, and by that name shall have perpetual succession and be invested with all powers, rights, privileges, liabilities, and immunities incident to corporations, and may have a common seal, and may alter or change the same at their pleasure. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 658.)

CROSS REFERENCES

Locations permitted, § 27–114.
Public crematory, §§ 27–129 to 27–131.

§ 27–102 [5: 72]. Powers to acquire and sell land.

Such persons so associated shall have power to acquire by gift, grant, or purchase any lot or lots of land not exceeding fifty acres, and lay out the same for a burial place for the dead, with convenient aisles, and to sell the same for such purpose and for no other purposes, reserving a sufficient portion thereof for the burial of the stranger and indigent. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 659.)

CROSS REFERENCE

Conveyances by corporations, formal requisites, § 45–302.

§ 27–103 [5: 73]. Land to be platted and surveyed.

They shall cause the land designed as a burial ground to be surveyed and platted, and a plat of the ground so surveyed shall be recorded in the office of the surveyor of the District. Each lot shall be duly numbered by the surveyor and such number shall be marked on the plat and recorded. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 660.)

CROSS REFERENCES

Commissioners to obtain right-of-way through burial grounds for streets, § 1–615.
Duties of surveyor concerning plats and recording thereof, § 1–605 et seq.

§ 27–104 [5: 74]. Inclosure and ornamentation of land—Purchase of equipment.

Such association shall have power to inclose and ornament their burial ground, to build and erect a hearse house, and keep the same in proper repair; to purchase a hearse or hearses, and to do all other necessary acts to the end that all the appliances, conveniences, and benefits of a public and private cemetery may be obtained. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 661.)

§ 27–105 [5: 75]. Duty to inclose and underdrain.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to inclose such cemetery or cemeteries with good and sufficient walls or fences to prevent entrance thereto or exit therefrom except by gates provided for that purpose. Such cemetery or cemeteries shall, if required by the commissioners of said District, be underdrained to such a depth as will prevent water remaining in any grave or vault therein. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 671.)

§ 27–106 [5: 76]. Application of proceeds of sales of lots.

The proceeds arising from the sale of lots, after deducting all expenses of purchasing and laying out the same, shall be applied, appropriated, and used in improving and ornamenting the burial ground, or for other purposes named in this chapter. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 662.)

§ 27–107 [5: 77]. Officers.

The officers of any such corporation shall be a president, a treasurer (who shall act as a secretary), and not less than three directors, who shall be severally chosen annually by ballot, and shall hold office until their successors are chosen. Any neglect to choose officers on the day fixed upon for that purpose shall not operate as a forfeiture of the act of incorporation, in accordance with the provisions of this chapter. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 663.)

§ 27–108 [5: 78]. Election of officers.

The first election of officers by the persons associating, according to and for the purpose specified in section 27–101, shall be at the time and place designated and agreed upon by a majority of the persons so associating themselves together, and no other than such persons shall vote at such election. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 664.)

§ 27–109 [5: 79]. Voters—Members of the corporation.

At each subsequent election of officers of any such corporation the owner of a lot in said burial ground shall be entitled to one vote in the election of officers of the corporation and no more, and shall, by virtue of such membership, be a member of the corporation. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 665.)

§ 27–110 [5: 80]. By-laws.

Each corporation shall have power to establish and change by-laws and prescribe rules and regulations for its government and the duties of its officers and the management of its property. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 666.)

§ 27–111 [5: 81]. Exemption from taxation and sale on execution.

The property of any such corporation, its grounds, lots, and appliances, shall be exempt from taxation and shall not be liable to sale on execution. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 667.)

§ 27–112 [5: 82]. Dedication of land—Title vested in perpetuity.

Any person desiring to dedicate any lot of land, not exceeding five acres, as a burial place for the interment of the dead for the use of any society, association, or neighborhood may, by deed duly executed and recorded, convey such land to the District of Columbia, by the corporate name of said District of Columbia, specifying in such deed the society, association, or neighborhood for the use of which the dedication is desired to be made, and thereby (provided such conveyance shall be accepted by the Commissioners of the District of Columbia) vest the title to such land in perpetuity, for the uses stated in the deed, and such land shall be thereafter exempt from taxes for all purposes whatever. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 668.)

§ 27–113 [5: 83]. Grants and bequests for care of lots.

It shall be lawful for such association to take and hold any grant, donation, or bequest upon trust to apply the income thereof, under the direction of the board of managers, for the embellishment, preservation, renewal, or repair of any tomb, monument, gravestone, or other structure, fence, railing, or other inclosure in or around any cemetery lot, or for the planting and cultivation of any trees, shrubs, flowers, or plants in or around any cemetery lot, according to the terms of such grant, donation, or bequest; and the District Court of the United States for the District of Columbia shall have full power and jurisdiction to compel the due performance of such trusts, or any of them, upon a bill filed by the proprietor of any lot in such cemetery for that purpose. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 669.)

NOTES TO DECISIONS

TRUSTS FOR PERPETUAL MAINTENANCE

This section permits trusts for the perpetual maintenance of cemetery lots and monuments or other structures erected thereon, and is not in conflict with the rule against perpetuities in 1901 Code, § 1023 (§ 45–102). Such a trust was held valid where it was to be carried out by a New York corporation in the State of New York. *Iglehart* v. *Iglehart* (204 U. S. 478, 51 L. Ed. 575, 27 Sup. Ct. 329, affg. 26 App. D. C. 209).

§ 27–114 [5: 84]. Distance from city and from dwellings.

No person or persons or cemetery association shall lay out any new cemetery, or part of any cemetery, within the city of Washington, in the District of Columbia, nor in said District, within one mile and a half from the boundaries of said city; no person or cemetery association shall, in said District, lay out any cemetery, or part of any cemetery, within less than two hundred yards of any dwelling-house, except with the written consent of the owner, lessee, and occupant of such house, nor without a permit to do so from the Commissioners of said District. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 670.)

§ 27–115 [5: 85]. Lots to be conspicuously marked—Plat to be recorded—Size and depth of graves.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to divide the area to be used for graves into lots of reasonable size, to be permanently designated by conspicuous marks, so that the position of each may be readily determined, each lot to be duly numbered. A plat of such cemetery showing the area so divided, the division into lots, and the number of each such lot shall be filed in the office of the surveyor of said District; the grave spaces hereafter laid out for the burial of persons above ten years of age to be at least eight feet by three feet, and those for the burial of children under ten years of age at least six feet by two feet, or, if preferred by said owner or owners, one-half the measurement of the adult grave space, namely, four feet by three feet. No coffin shall be buried in said District so that any part thereof is within less than four feet of the ordinary level of the ground, unless it contains the body of a child under twelve years of age, when it shall not be less than three feet below that level. (Mar. 3, 1901, 31 Stat. 1295, 1297, ch. 854, §§ 672, 681.)

CROSS REFERENCE

Powers and duties of surveyor concerning plats and recording thereof, § 1–605 et seq.

§ 27–116 [5: 86]. Register—Contents.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to cause to be kept in the office of the superintendent or person in charge of such cemetery or cemeteries a register showing the number of each lot, the name, age, cause of death, and date of burial of each person or persons buried in any such lot or grave space, and the number of the burial permit authorizing such burial. In cases of disinterment said register shall show the date of such disinterment and the number of the official permit therefor opposite the name of the person whose remains are disinterred. Such register shall be at all times open to inspection by duly authorized representatives of the health department and of the police department of said District. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 673.)

CROSS REFERENCE

Anatomical board for disposition of human bodies for scientific purposes, §§ 2–201 to 2–209.

§ 27–117 [5: 87]. Superintendent to register at health department.

It shall be the duty of the superintendent or person in charge of any cemetery or other place for the disposal of dead bodies of human beings in the District of Columbia to register his or her name at the office of the health department of said District, giving full name, residence, and place of business, and in case of removal from one place to another in said District to make change in such register accordingly. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 674.)

CROSS REFERENCE

Anatomical board for disposition of indigent dead, § 2–201 et seq.

§ 27–118 [5: 88]. Repealed, act Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1.

EFFECTIVE DATE OF REPEAL

Sec. 2 of the act of Sept. 22, 1950, provided: "This Act shall take effect sixty days after enactment."

NOTES PRIOR TO REPEAL

COMPILER'S NOTE

Provisions of this section inoperative in regard to White's Tabernacle Cemetery, see statutory references to § 27–121.

AMENDMENTS

The act of Dec. 16, 1944, cited to text, amended section generally.

CROSS REFERENCE

Unlawful traffic in dead bodies, grave robbery, penalties, §§ 2–206, 22–3103.

NOTES TO DECISIONS

POST-MORTEM EXAMINATIONS

In a prosecution for homicide, it is not error to admit testimony relative to the disinterment and post-mortem examination of the body of the deceased, notwithstanding the fact that the Government gave no notice of its intention to make such an examination; "nor is it material whether or not there was full compliance with the provisions of section 686 of the District of Columbia Code (§ 27–128)." *Laney* v. *United States* (54 App. D. C. 56, 294 Fed. 412).

§ 27–118a. Repealed, act of Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1.

EFFECTIVE DATE OF REPEAL

Sec. 2 of the act of Sept. 22, 1950, provided: "This Act shall take effect sixty days after enactment."

§ 27–119 [5: 89]. Repealed, act Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1.

EFFECTIVE DATE OF REPEAL

Sec. 2 of the act of Sept. 22, 1950, provided: "This Act shall take effect sixty days after enactment."

AMENDMENTS

The act of Dec. 16, 1944, cited to text, amended section by inserting "or any duly appointed deputy, or by the proper municipal, county, or State authorities at the place where the death or disinterment occurred" preceding proviso, and by omitting "municipal, county or State" preceding "authorities" and "of the place at which such person died" following "authorities" in the proviso.

§ 27–119a. Disposal of dead bodies—Permits required—Violations.

It shall be unlawful to remove, transport, inter, disinter, or otherwise dispose of the dead body, or any part thereof, of any human being, except upon a permit, duly issued by the Director of Public Health of the District of Columbia, or such other person or persons as the Commissioners of the District of Columbia shall designate, upon such terms and conditions as the Commissioners may specify. Any violation hereof shall be subject to the penalties contained in section 27–126. (Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1.)

COMPILER'S NOTE

The 1950 act substituted this section for §§ 27–118, 27–118a, and 27–119, which were thereby repealed. Sec. 2 of said act provided: "This Act shall take effect sixty days after enactment."

Act of Aug. 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia shall be known as the Director of Public Health.

§ 27–120 [5: 90]. Reports of death—Keeping of dead bodies—Exhibition of dead bodies.

It shall be the duty of any person or persons having custody or control of the dead body of any human being or any part of such body to report in writing or cause to be reported in writing, to the health officer of said District, within forty-eight hours after the death of the deceased, the name of said deceased and the location of the body or part thereof. No such body or part thereof shall be kept in said District in such manner as to give rise to any offensive odors to the annoyance of any person or persons in the neighborhood or to the public, nor so as to be exposed to the public view; nor shall any such body or part thereof be permitted by the person or persons having custody or control of it to remain unburied for a longer period than one week after death without permission of the health officer, unless it has been cremated or deposited in the vault of some cemetery; nor shall any person publicly exhibit in said District, for pay or otherwise, any dead body of any human being or any part of such body without a permit from the health officer of said District so to do, except such exhibition be in connection with some government museum or with some institution of learning permanently located in said District. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 677.)

NOTES TO DECISIONS

EVIDENCE, ADMISSIBILITY OF

This section forbidding exposure of dead bodies or their exhibition in public did not preclude admission in evi-

dence in murder prosecution of a section of skull of the deceased. *Hart* v. *U. S.*, 1942 (130 F. 2d 456, 76 U. S. App. D. C. 193).

§ 27–121 [5: 91]. Place of burial.

No person shall bury or cause to be buried within said District the body or part of the body of any deceased person, except in such grounds as were known and used as public or private burial grounds on January 1, 1902, or such as shall thereafter be designated by the commissioners of said district and authorized by them to be used as such. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 678.)

STATUTORY REFERENCES

Confederate veterans dying in District of Columbia—Burial in Arlington.—Hereafter persons dying in the District of Columbia or in the immediate vicinity thereof who have served in the Confederate Armies during the Civil War may be buried in the Confederate section of the Arlington National Cemetery without additional expense to the United States upon the certificate of Camp Numbered 171, United Confederate Veterans of the District of Columbia, that such persons are entitled to burial under the authority herein given: *Provided,* That all such interments shall be under the supervision and subject to the approval of the Secretary of War. (Aug. 24, 1912, 37 Stat. 417, ch. 355.)

White's Tabernacle Cemetery—Interments prohibited.—From and after the date of the passage of this act (December 16, 1921) it shall be unlawful to inter the body of any person in the cemetery known as the cemetery of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, in the District of Columbia and situate in the District of Columbia, to wit: Part of a tract called "Chappell's Vacancy," contained within the following metes and bounds, namely: Beginning for the same at the southeast corner of the land conveyed to Frederick Bangerter by deed recorded in Liber Numbered 785, folio 474, of the land records of the District of Columbia, and running thence north 15¾ degrees east, 20.44 perches; thence south 89 degrees east, 3.9 perches; thence south 15¾ degrees west, 20.44 perches; thence north 89 degrees west, 3.9 perches to the point of beginning; and any person or persons violating the provisions of this act, or aiding or abetting its violation, shall be subject to a fine of not less than $100, nor more than $500 for each offense, to be collected as other fines are collected in the District of Columbia. (Dec. 16, 1921, 42 Stat. 348, ch. 7, § 1.)

Removal of bodies and tombstones.—The board of officers of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, in the District of Columbia, are hereby authorized and empowered, under such regulations as the Commissioners of the District of Columbia may prescribe, to disinter and remove all the bodies now buried in said cemetery lot, and to transfer and reinter the same in some other suitable cemetery or cemeteries selected by the said board of officers of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, and at the cost and expense of said order: *Provided,* That each monument, tombstone, or marker marking any grave or graves in said described burial ground shall be transferred to mark the grave or graves in which such body or bodies are to be interred, and shall be there placed in position as soon as can be done without danger of settling. (Dec. 16, 1921, 42 Stat. 349, ch. 7, § 2.)

Restrictions on removal of bodies suspended.—Insofar as the same shall be inconsistent with the provisions of this act as to the cemetery lot herein described, sections 675 and 680 (§§ 27–118, 27–123) shall be, and the same are hereby, declared inoperative, otherwise said sections 675 and 680 (§§ 27–118, 27–123) to remain unqualified and in full force and effect. (Dec. 16, 1921, 42 Stat. 349, ch. 7, § 3.)

Permitting certain burials in Scottish Rite Temple.—"The Supreme Council (Mother Council of the World) of the Inspectors General Knights Commanders of the House of the Temple of Solomon of the Thirty-third Degree of the Ancient and Accepted Scottish Rite of Freemasonry of the Southern Jurisdiction of the United States of America, is hereby authorized to permit the burial of the remains of not to exceed two persons in vaults built for that purpose in its temple, situated on lot numbered 800, in square 192, at the southeast corner of S and Sixteenth Streets Northwest, in the District of Columbia, under such sanitary regulations as shall be prescribed for such burials by the Commissioners of the District of Columbia." (July 13, 1943, 57 Stat. 563, ch. 237.)

§ 27–122 [5: 92]. Mode of burial.

No body shall be buried in said District in any vault unless the coffin be separately entombed in properly cemented stone or brick work, so as to render such vault airtight; such vault, after having been sealed, shall not be opened within ten years; no body shall be temporarily deposited in any vault for a longer period than one month, unless such body is in an hermetically sealed metallic case, nor in any instance for a longer period than one year. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 679.)

§ 27–123 [5: 93]. Reopening graves—Death from pestilential diseases.

No grave in said District shall be reopened, except for the purpose of disinterment, within ten years after burial of a person above twelve years of age, or within eight years after the burial of a child under twelve years of age, unless the grave has been, in the first instance, of sufficient depth to permit subsequent interments, in which case a layer of earth of not less than one foot thick shall be left undisturbed over the previously buried coffin, unless such coffin has been separately entombed in properly cemented stone or brick work; but if on reopening any grave the soil be found to be offensive, such soil shall not be disturbed. In no case shall a grave be opened in which has been buried the body of any person who has died of Asiatic cholera, yellow fever, typhus fever, smallpox (including varioloid), leprosy, the plague, tetanus, diphtheria, or scarlet fever: *Provided,* That the health officer of the District of Columbia may, in his discretion, authorize the opening, under sanitary precautions, of any such grave, and the disinterment and reinterment in the same grave or other suitable burial ground, of the dead body of any person who has died of any of the contagious diseases enumerated above. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 680; Jan. 20, 1936, 49 Stat. 1095, ch. 12.)

COMPILER'S NOTE

Provisions of this section inoperative in regard to White's Tabernacle Cemetery, see statutory references to § 27–121.

AMENDMENT

The 1936 amendment added the proviso to this section.

CROSS REFERENCE

Unlawful traffic in dead bodies, grave robbery, penalties, §§ 2–206, 22–3103.

§ 27–124 [5: 94]. Crematories—Consent of property owners—Permit.

No person shall, in the District of Columbia, build or maintain a crematory or other device for destroy-

ing human bodies, except within the limits of some duly-established cemetery in said District, unless such person or persons has in writing the consent of the owners of more than one-half of the property within a radius of two hundred feet from the place where such crematory is to be erected and maintained and a permit from the commissioners of said District for the erection and maintenance of such crematory or other device; such permit to be for a term of years, not exceeding five, to be specified therein: *Provided,* That this section shall not apply to such crematories or other devices for destroying human bodies as may have been erected and were in operation on March 3, 1901. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 682.)

§ 27–125 [5: 95]. Permit to cremate—Embalming.

It shall be unlawful for any person or persons to cremate or otherwise to destroy the dead body, or part of the dead body, of any human being in said District before the issue of the burial permit by the health officer of said District, and then only when said permit is countersigned by the coroner of said District, authorizing such cremation or destruction. It shall be unlawful for any person or persons to embalm, inject, or by any similar method preserve the dead body, or part of the dead body, of any human being in said District within four hours after death or before the issue of the death certificate; and in case the death is believed to be due to other than natural causes, or the cause thereof is unknown, such embalming, injecting, or preserving shall at no time be done unless such death certificate has been signed or approved by the coroner of said District. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 683.)

§ 27–126 [5: 96]. Penalty.

Any person who shall violate or aid and abet in violating any of the provisions of this chapter shall, upon conviction thereof by competent judicial authority, be punished, for each offense, by a fine of not more than two hundred dollars, or by imprisonment for not more than ninety days, or both. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 684.)

CROSS REFERENCE

Unlawful traffic in dead bodies, grave robbery, penalty, §§ 2–206, 22–3103.

§ 27–127 [5: 97]. Prosecutions.

Prosecutions hereunder shall be in the police court of the District of Columbia, in the name of said District: *Provided,* That any person or persons so tried shall have the privilege, when demanded, of a trial by jury, as in other jury cases in said police court. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 685.)

§ 27–128 [5: 98]. Disinterment by order of court.

Nothing in this chapter shall be construed to interfere with or prevent the disinterment of any body when such disinterment is ordered by one of the justices of the District Court of the United States for the District of Columbia, or by the coroner of said district, after due notice to the Commissioners of the District of Columbia. The provisions hereof shall not be held to interfere with the disposal of the ashes of bodies which have been cremated. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 686; June 30, 1902, 32 Stat. 534, ch. 1329, § 686.)

AMENDMENT

The 1902 amendment struck out the words "for judicial purposes" and inserted in lieu thereof the words "after due notice to the Commissioners of the District of Columbia."

CROSS REFERENCE

See note to § 27–118.

NOTES TO DECISIONS

POST-MORTEM EXAMINATIONS

It was not error to admit testimony relative to the disinterment and post-mortem examination of the body of the deceased, and it was unnecessary that notice should be given the defendant of the intention on the part of the government to make the investigation. Nor is it material whether or not there was full compliance with this section. *Laney* v. *United States* (54 App. D. C. 56, 294 Fed. 412).

§ 27–129 [20: 1211]. Public crematory—Cremation required in certain cases.

Whenever the dead body of any person who has died from smallpox, Asiatic cholera, typhus fever, the plague, leprosy, glanders, scarlet fever, diphtheria, or epidemic cerebro-spinal meningitis comes into the custody of any officer, employee, or agent of the District of Columbia to be disposed of at public expense, the said officer, employee, or agent shall cause said body to be incinerated. (Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 1.)

§ 27–130 [20: 1212]. Establishment of crematory—Rules and regulations—Fees.

The Commissioners of the District of Columbia are authorized and directed to operate on reservation thirteen, commonly known as the Washington Asylum grounds, in the city of Washington, in said District, a crematorium of size sufficient for the incineration of all bodies that can not, except at public expense, be disposed of within a reasonable time after death, and for the incineration of such other bodies as may be presented for that purpose by the persons having custody thereof. Said Commissioners are hereby authorized to make and enforce all rules necessary for the proper maintenance and operation of said crematorium, and to prescribe and collect for the incineration of bodies not necessarily disposed of at public expense fees in such amounts as may be required to defray the cost of incineration: *Provided,* That in any case the Commissioners may, by special order, waive or reduce the usual charges whenever, in the opinion of said Commissioners, to enforce such charges would be burdensome or oppressive upon the person or persons responsible for the disposal of the remains. All fees collected under the provisions of this section shall be paid to the collector of taxes of the District of Columbia, and be deposited by him in the Treasury of the United States wholly to the credit of the District of Columbia. (Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 2; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

COMPILER'S NOTE

Relative to the collection and crediting of fees, acts 1922, 42 Stat. 668, 669, ch. 249, § 1, provided as follows: "Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress

may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States excepting such items of expense as Congress may direct shall be paid on another basis * * *. After June 30, 1922, where the United States is the owner of ground or the holder thereof in trust for the public, upon which improvements have been made at the joint expense of the United States and the District of Columbia, the revenues therefrom shall first be used to pay the United States 3 per centum of the full value of the ground as a ground rent, and the remainder shall be divided between them in the same proportion that each contributed to said improvements, and for such purposes the assessor for the District of Columbia shall fix the full value of the ground after he has first made oath that he will fairly and impartially appraise the same; and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

The appropriation act of June 7, 1924, 43 Stat. 539, ch. 302, § 1, made a lump-sum appropriation as follows: "Any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and in addition, $9,000,000 is appropriated out of any money in the Treasury not otherwise appropriated, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923, namely:"

Subsequent appropriation acts contained similar provisions, changing only the amount of the appropriation and the fiscal year (see act of June 12, 1940, 54 Stat. —, ch. 333, § 1). These appropriation acts did not, however, provide for the repeal of the provisions of the 1922 act above quoted. This was done by the act of May 16, 1938, 52 Stat. 375, § 8, which added title 10 to the District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690.

From the foregoing it would seem that there is no longer any apportionment of expenses or segregation of revenues unless specific provision is made therefor by Congress subsequent to the repeal provision.

§ 27–131 [20: 1213]. Act for promotion of anatomical science not affected by crematory law.

Nothing in sections 27–129 to 27–131 shall be construed as repealing or in any way modifying any of the provisions of sections 2–201 to 2–209. (Apr. 20, 1906, 34 Stat. 124, ch. 1641, § 3.)

TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

Chap.		Sec.
1.	Negotiable instruments—Form and interpretation	28–101
2.	Consideration	28–201
3.	Negotiation	28–301
4.	Rights of holder	28–401
5.	Liabilities of parties	28–501
6.	Presentment for payment	28–601
7.	Notice of dishonor	28–701
8.	Discharge of negotiable instruments	28–801
9.	Bills of exchange	28–901
10.	Promissory notes and checks	28–1001
11.	Uniform Sales Act—Formation of contract	28–1101
12.	Transfer of property as between seller and buyer	28–1201
13.	Performance of contract	28–1301
14.	Rights of unpaid seller against goods	28–1401
15.	Actions for breach of contract	28–1501
16.	Interpretation of uniform sales act	28–1601
17.	Bulk Sales Law	28–1701
18.	Warehouse receipts—Uniform law—Issuance of warehouse receipts	28–1801
19.	Obligations and rights of warehousemen upon their rights	28–1901
20.	Negotiation and transfer of receipts	28–2001
21.	Criminal offenses	28–2101
22.	Interpretation	28–2201
23.	Fiduciaries—Uniform act	28–2301
24.	Bonds and undertakings	28–2401
25.	Assignment of choses in action	28–2501
26.	Assignments for benefit of creditors	28–2601
27.	Interest and usury	28–2701
28.	Computation of time	28–2801
29.	Stock Transfers	28–2901

Chapter 1.—NEGOTIABLE INSTRUMENTS—FORM AND INTERPRETATION

Sec.
28–101. Definitions—Sundays and holidays—Application of the law merchant.
28–102. Negotiability—Requirements—Form.
28–103. Certainty as to sum—What constitutes.
28–104. When promise is unconditional.
28–105. Determinable future time—What constitutes.
28–106. Negotiability—Effect of additional provisions—Promise to do any act in addition to promise of payment.
28–107. Validity and negotiability—Effect of omissions—Seal—Particular money.
28–108. Instrument payable on demand.
28–109. Instrument payable to order.
28–110. Instrument payable to bearer.
28–111. Terms—Sufficiency.
28–112. Date—Presumption as to.
28–113. Antedated or postdated instrument—Validity—Effective date.
28–114. When date may be inserted.
28–115. Blanks—Authority to complete—Enforceability.
28–116. Undelivered incomplete instrument—Validity.
28–117. Delivery—When effectual—When presumed.
28–118. Construction where instrument is ambiguous.
28–119. Liability—Person not signing—Person signing in trade or assumed name.
28–120. Signature by agent—Authority.
28–121. Liability of agent.
28–122. Signature by procuration.
28–123. Indorsement by corporation or infant.
28–124. Signature forged or without authority.

§ 28–101 [22: 1]. Definitions—Sundays and holidays—Application of the law merchant.

In chapters 1–10 of this title unless the context otherwise requires—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counterclaim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.

In determining what is a "reasonable time" or an "unreasonable time" regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts of the particular case.

Where the day or the last day for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

In any case not provided for in chapters 1–10 of this title the rules of the law merchant shall govern. (Mar. 3, 1901, 31 Stat. 1395, ch. 854, § 1304.)

COMPILER'S NOTE

Chapters 1–10 of this title refer to the chapter of the 1901 act which is the Uniform Negotiable Instruments Law. The 1901 act did not contain §§ 28–410, 28–920, 28–1008 to 28–1011, and the cross reference should not be read to include these sections.

STATUTORY REFERENCES

Bills of lading, U. S. C., title 49, ch. 4.

Blue Sky Law or Sale of Securities Acts, U. S. C., title 15, ch. 2A.

§ 28–102 [22: 2]. Negotiability—Requirements—Form.

An instrument to be negotiable must conform to the following requirements:

First. It must be in writing and signed by the maker or drawer.

Second. It must contain an unconditional promise or order to pay a certain sum in money.

Third. It must be payable on demand or at a fixed or determinable future time.

Fourth. It must be payable to order or to bearer; and,

Fifth. Where the instrument is addressed to a drawee he must be named or otherwise indicated therein with reasonable certainty. (Mar. 3, 1901, 31 Stat. 1395, ch. 854, § 1305.)

NOTES TO DECISIONS

POSTAL MONEY ORDERS

Postal money orders are not negotiable instruments. *Jaselli* v. *Riggs Nat. Bank* (36 App. D. C. 159, 31 L. R. A. (N. S.) 763, Ann. Cas. 1912C, 119).

UNCONDITIONAL PROMISE TO PAY

An instrument, reading "I. O. U. 2165.55 for business expense" at certain address was not "negotiable promissory instrument" within § 28–201 providing that such an instrument is deemed prima facie to have been issued for valuable consideration, as instrument contained no unconditional promise or order to pay certain sum of money on demand or at fixed or determinable future time to order or bearer. *Bader* v. *Williams* (D. C. Mun. App. 1948, 61 A. 2d 637).

§ 28–103 [22: 3]. Certainty as to sum—What constitutes.

The sum payable is a sum certain within the meaning hereof, although it is to be paid—

First. With interest; or

Second. By stated instalments; or,

Third. By stated instalments, with a provision that upon default in payment of any instalment or of interest the whole shall become due; or

Fourth. With exchange, whether at a fixed rate or at the current rate; or,

Fifth. With costs of collection or an attorney's fee, in case payment shall not be made at maturity. (Mar. 3, 1901, 31 Stat. 1395, ch. 854, § 1306.)

§ 28–104 [22: 4]. When promise is unconditional.

An unqualified order or promise to pay is unconditional within the meaning hereof, though coupled with—

First. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or,

Second. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1307.)

NOTES TO DECISIONS

INDORSEMENTS

Following indorsements were not of such nature as to destroy negotiability by being notice that promise to pay was conditional.

"As collateral for Loan, $7,225.00.

"J. P. M.

"LOS ANGELES, CAL. — 192—.

"For value received ——— hereby grant and assign the within note together with all rights accrued or to accrue under deed of trust securing same, so far as same relates to this note, and waive presentment, demand, notice, protest, and notice of protest." *Seaside Nat. Bank* v. *Allen* (35 Ariz. 302, 277 Pac. 68).

UNCONDITIONAL PROMISE TO PAY

Unless changed by statute, the rule is that to be negotiable the instrument must be payable at all events and unconditionally. *United States* v. *Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797); *Rector* v. *Strauss* (134 Ark. 374, 203 S. W. 1024).

§ 28–105 [22: 5]. Determinable future time—What constitutes.

An instrument is payable at a determinable future time, within the meaning hereof, which is expressed to be payable—

First. At a fixed period after date or sight; or,

Second. On or before a fixed or determinable future time specified therein; or,

Third. On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1308.)

NOTES TO DECISIONS

EXTENSION OF MATURITY

Extension of maturity of notes is not invalid because extension slip was not signed by payee or payee's transferee who permitted the payee to retain possession of notes, as the maker and payee agreed to the extension and were bound. *Counselman* v. *Pitzer* (65 App. D. C. 71, 79 Fed. (2d) 707, cert. den. 296 U. S. 650, 80 L. Ed. 463, 56 Sup. Ct. 310).

§ 28–106 [22: 6]. Negotiability—Effect of additional provisions—Promise to do any act in addition to promise of payment.

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which—

First. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or,

Second. Authorizes a confession of judgment if the instrument be not paid at maturity; or,

Third. Waives the benefit of any law intended for the advantage or protection of the obligor; or,

Fourth. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1309.)

NOTES TO DECISIONS

SALE OF COLLATERAL SECURITIES

An agreement in a promissory note, the payment of which is secured by collateral securities, that on sale of the securities for default on the part of the maker, the holder of the note may become purchaser, is valid, and the holder's agent may purchase securities for his principal. *Metropolitan Loan & Trust Co.* v. *Schafer* (44 App. D. C. 356).

§ 28–107 [22: 7]. Validity and negotiability—Effect of omissions—Seal—Particular money.

The validity and negotiable character of an instrument are not affected by the fact that—

First. It is not dated; or,

Second. Does not specify the value given, or that any value has been given therefor; or,

Third. Does not specify the place where it is drawn or the place where it is payable; or,

Fourth. Bears a seal; or,

Fifth. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1310.)

NOTES TO DECISIONS

SEAL

A note containing the word "seal" printed to the right and directly in line with maker's signature is a sealed instrument notwithstanding the note contained no indication that the maker adopted printed seal, as regards question of limitation. *Wells* v. *Alropa Corp.* (65 App. D. C. 281, 82 Fed. (2d) 887).

§ 28–108 [22: 8]. Instrument payable on demand.

An instrument is payable on demand—

First. Where it is expressed to be payable on demand, or at sight, or on presentation; or,

Second. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1311.)

§ 28–109 [22: 9]. Instrument payable to order.

The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of—

First. A payee who is not maker, drawer, or drawee; or,

Second. The drawer or maker; or,

Third. The drawee; or,

Fourth. Two or more payees jointly; or,

Fifth. One or some of several payees; or,

Sixth. The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1312.)

§ 28–110 [22: 10]. Instrument payable to bearer.

The instrument is payable to bearer—

First. When it is expressed to be so payable; or,

Second. When it is payable to a person named therein or bearer; or,

Third. When it is payable to the order of a fictitious or nonexisting person and such fact was known to the person making it so payable; or,

Fourth. When the name of the payee does not purport to be the name of any person; or,

Fifth. When the only or last indorsement is an indorsement in blank. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1313.)

NOTES TO DECISIONS

INDORSEMENT IN BLANK

Sale of notes indorsed in blank—extension by maker without notice of sale—innocent purchaser acquires superior title. *Counselman* v. *Pitzer* (65 App. D. C. 71, 79 Fed. (2d) 707, cert. den. 296 U. S. 650, 80 L. Ed. 463, 56 Sup. Ct. 310).

When promissory notes were indorsed in blank by payee to a holder for value, it had the effect of making them bearer paper, and the negotiability of the notes was not destroyed by the execution of extension slips by the owner and holder of property which was covered by trust deed securing the notes, and the bank, who had possession of notes which were fraudulently delivered to them by holder's agent as security for his own debt, had title to notes superior to that of the holder. *Ragan* v. *Wardell* (67 App. D. C. 222, 91 Fed. (2d) 253).

NEGOTIABLE UPON DELIVERY

Notes payable to bearer are negotiable upon delivery. *Commercial Nat. Bank* v. *McCandlish* (57 App. D. C. 378, 23 Fed. (2d) 986).

§ 28–111 [22: 11]. Terms—Sufficiency.

The instrument need not follow the language herein employed, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1314.)

§ 28–112 [22: 12]. Date—Presumption as to.

Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement, as the case may be. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1315.)

NOTES TO DECISIONS

PAROL EVIDENCE

Permitting plaintiff to testify that two checks given as part payment on note were postdated did not violate parol evidence rule in suit between original parties to note. *Cooper* v. *Marosy* (D. C. Mun. App. 1945, 42 A. 2d 135).

§ 28–113 [22: 13]. Antedated or postdated instrument—Validity—Effective date.

The instrument is not invalid for the reason only that it is antedated or postdated: *Provided,* That this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1316.)

NOTES TO DECISIONS

POST-DATED CHECKS

Post-dated checks are considered as negotiable instruments similar to bills of exchange payable in the future and their purpose is to obtain extension of credit. *Daine* v. *Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

§ 28–114 [22: 14]. When date may be inserted.

Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him the date so inserted is to be regarded as the true date. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1317.)

§ 28–115 [22: 15]. Blanks—Authority to complete—Enforceability.

Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature, in order that the paper may be converted into a negotiable instrument, operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time; but if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in acordance with the authority given and within a reasonable time. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1318.)

NOTES TO DECISIONS

ERASURES AND SUBSTITUTIONS

Although one is given permission to fill blanks in a note, he cannot subsequently recover it and erase material words and substitute and interline others. *Ofenstein* v. *Bryan* (20 App. D. C. 1).

Authority to fill blank notes does not give additional authority to change the terms by erasure or interlineation. *National Capital Bank* v. *Bryan* (20 App. D. C. 26).

MATERIAL ALTERATION

Where the alteration is material, and such as reasonably to excite suspicion, it is incumbent upon the party offering it in support of his claim thereunder, to give some evidence tending to explain its condition. *Ofenstein* v. *Bryan* (20 App. D. C. 1).

§ 28–116 [22: 16]. Undelivered incomplete instrument—Validity.

Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder as against any person whose signature was placed thereon before delivery. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1319.)

§ 28–117 [22: 17]. Delivery — When effectual — When presumed.

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him, so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1320.)

NOTES TO DECISIONS

PRESUMPTION OF TRANSFER OF TITLE

Transfer of possession of a negotiable instrument is presumably a transfer of title, and especially is this true when the transfer is made to one who is not a debtor or is under no obligation to receive or pay it. *Lee* v. *Mitcham* (69 App. D. C. 17, 98 Fed. (2d) 298, 117 A. L. R. 1427).

§ 28–118 [22: 18]. Construction where instrument is ambiguous.

Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

First. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount.

Second. Where the instrument provides for the payment of interest without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

Third. Where the instrument is not dated it will be considered to be dated as of the time it was issued.

Fourth. Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail.

Fifth. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election.

Sixth. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

Seventh. Where an instrument containing the words, "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1321.)

NOTES TO DECISIONS

PAROL EVIDENCE

In absence of fraud, accident, or mistake, parol evidence of an oral agreement alleged to have been made at the time of drawing, making, or indorsing a bill or note cannot be permitted to vary, qualify, or contradict, or to add to or subtract from, the absolute terms of the written contract. *Hutchins* v. *Langley* (27 App. D. C. 234).

§ 28–119 [22: 19]. Liability—Person not signing—Person signing in trade or assumed name.

No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1322.)

NOTES TO DECISIONS

AGREEMENT TO PAY

Where defendant purchased encumbered property without assuming liability on note secured by deed of trust but, to obtain extension, agreed to pay note and thereafter sold property to one who did not assume indebtedness, the fact that holder of note granted extension to defend-

ant's vendee without defendant's knowledge or consent did not preclude enforcement of defendant's agreement since defendant's liability was not a "secondary liability". *Ober* v. *Riggs Nat. Bank of Washington, D. C.* (D. C. 1943, 31 A. 2d 877).

§ 28–120 [22: 20]. Signature by agent—Authority.

The signature of any party may be made by a duly-authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1323.)

§ 28–121 [22: 21]. Liability of agent.

Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized, but the mere addition of words describing him as an agent or as filling a representative character without disclosing his principal does not exempt him from personal liability. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1324.)

NOTES TO DECISIONS

PRESUMPTION OF AGENCY

Under the statute, the instrument creates a presumption of agency which may be rebutted by competent proof. *Eisinger* v. *E. J. Murphy Co.* (52 App. D. C. 197, 285 Fed. 931).

Signer is not liable if he was duly authorized, but mere addition of words describing him as agent does not exempt him from liability. There is a presumption that an acceptance of a draft on an individual described as agent, is the act of the agent, but it may be rebutted by competent proof. *Eisinger* v. *E. J. Murphy Co.* (52 App. D. C. 197, 285 Fed. 931).

§ 28–122 [22: 22]. Signature by procuration.

A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1325.)

§ 28–123 [22: 23]. Indorsement by corporation or infant.

The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1326.)

NOTES TO DECISIONS

ACCOMMODATION INDORSEMENT

Whether trading corporation had implied power to make indorsement of negotiable paper for accommodation solely, it is not necessary to consider, but assuming the want of power, the defense is unavailable where the party acting upon the faith of that indorsement had no notice of the fact, as its effect was, nevertheless, to pass the property therein. *Willard* v. *Crook* (21 App. D. C. 237).

OMISSION OF WORD

Omission of word "by" between title of corporation, and officer acting for it in the indorsement, is immaterial. *Clark* v. *Read* (12 App. D. C. 343).

SEAL OF CORPORATION

Impression of the seal of a corporation upon an instrument otherwise negotiable, especially when such impression is in connection with an indorsement of the note by such corporation, does not of itself suffice to restrain the negotiability of the paper or to convert it into a specialty. *Clark* v. *Read* (12 App. D. C. 343).

§ 28–124 [22: 24]. Signature forged or without authority.

Where a signature is forged or made without the authority of the person whose signature it purports to be it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1327.)

CROSS REFERENCE

Liability of bank or trust company on forged, altered, or raised check, §§ 28–1008 to 28–1010.

NOTES TO DECISIONS

GENERALLY

Where signature of payee of check is forged, it is inoperative and gives no right to enforce payment unless the party against whom writ is sought to enforce the right is precluded from setting up the forgery. *Washington Loan & Trust Co.* v. *U. S.*, 1943 (134 F. 2d 59, 77 U. S. App. D. C. 284, affirming 47 F. Supp. 25).

ACCEPTANCE OF FORGED PAPER

If one accepts forged paper purporting to be his own and pays it to a holder for value, the Supreme Court has said that it is undoubtedly true as a general rule of commercial law that he cannot recall the payment. What he has done amounts to an adoption of the paper as genuine. He is presumed to know his own signature. *United States* v. *Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797).

BILL PAID UPON PRESENTMENT

Principle applies as well to the case of a bill paid upon presentment as to one accepted and afterwards paid. *United States* v. *Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797).

FORGERY AGAINST UNITED STATES

United States cannot recover money paid on draft that has forged signature of one of its consuls, where the defendant has not been guilty of negligence so as to contribute to the fraud. *United States* v. *Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797).

HISTORICAL

The principle established by *Price* v. *Neale* (3 Burrows, 1354), decided in 1762, has been incorporated into uniform Negotiable Instruments Act, which has been adopted in the District of Columbia. That act provides that the acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance and admits "the existence of the drawer, the genuineness of his signature, his capacity and authority to draw the instrument." As payment is equivalent to acceptance, the United States under the act admitted the genuineness of the drawer's signature if the bill was negotiable. *United States* v. *Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797).

LIABILITY OF BANK

Liability of bank for payment of check on forged indorsement. *Central Nat. Bank* v. *National Met. Bank* (31 App. D. C. 391, 17 L. R. A. (N. S.) 520).

Bank accepting indorsed check without requiring identification of payee's signature, which was in fact forged, is liable to drawee bank on guaranty of prior indorsements. *District Nat. Bank* v. *Washington Loan & Trust Co.* (62 App. D. C. 198, 65 Fed. (2d) 831).

When one bank received money from a second bank on checks to husband and wife which it had acquired

through forged indorsements and which under the Negotiable Instruments Law were legally uncollectible, the conduct of the second bank in delivering the checks to the husband did not, in the circumstances, preclude it from setting up the forgery of the indorsement. *City Bank* v. *Hamilton Nat. Bank* (71 App. D. C. 225, 108 Fed. (2d) 588).

Price v. *Neale* goes upon the same theory as do those cases which hold that a bank is bound to know its customer's signature, and has no remedy where it has paid or certified a forged check to a bona fide holder for value. *United States* v. *Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797).

Where Government employee made up fraudulent payroll vouchers for fictitious employees of an imaginary C. C. C. camp and such employee forged endorsement on checks made payable to the fictitious employees but shortage was not discovered or suspected during four or five years during which the employee operated, the Government was entitled to recover from banks amount paid to them on their presentation of checks bearing the forged endorsements and neither negligence in issuance of checks nor late discovery of forgeries was defense which banks could interpose under "equitable estoppel" doctrine since the Government as drawer owed no duty to the banks with reference to the endorsements and the banks were under duty to determine the genuineness of the endorsements. *Washington Loan & Trust Co.* v. *U. S.*, 1943 (134 F. 2d 59, 77 U. S. App. D. C. 284, affirming 47 F. Supp. 25).

Where bank presenting checks for payment did not designate or identify itself as agent or trustee for collection, and did not represent itself as acting only for the account of its principal, but instead indorsed checks so as to imply to drawee that prior payments had been made to and acknowledged by identical persons named as payees, and where warranty, which was false, was relied on by the United States, as drawee, the presenting bank could not escape liability on ground that it acted only as agent for another. *National Metropolitan Bank* v. *U. S.*, 1944 (142 F. 2d 474, 79 U. S. App. D. C. 54, affirmed 65 S. Ct. 354, 323 U. S. 454, 89 L. Ed. 383).

Where checks were drawn by one governmental agency on another, were negligently issued on fraudulent vouchers, names of payees were forged by dishonest employee of government, government was negligent in not sooner discovering fraud, and checks were cashed or deposited in banks and sums of checks thereafter paid on demand by the government on faith of the banks' guarantee of all indorsements, the government was entitled to recover amount of the checks from bank presenting them for payment, since government as drawer and drawee owed no duty to banks with reference to indorsements, whereas it was obligation of banks, at their peril, to be sure the indorsements which they guaranteed were genuine. *National Metropolitan Bank* v. *U. S.*, 1944 (142 F. 2d 474, 79 U. S. App. D. C. 54, affirmed 65 S. Ct. 354, 323 U. S. 454, 89 L. Ed. 383).

Holder of checks was under statutory duty to determine genuineness of indorsement and when it presented checks for payment with a warranty, express or implied, that indorsements were in all respects regular, holder thereby made itself liable to drawer or drawee if it afterwards was shown that indorsements were forged. *National Metropolitan Bank* v. *U. S.*, 1944 (142 F. 2d 474, 79 U. S. App. D. C. 54, affirmed 65 S. Ct. 354, 323 U. S. 454, 89 L. Ed. 383).

Chapter 2.—CONSIDERATION

Sec.
28–201. Presumption of valuable consideration.
28–202. What is value.
28–203. Who is holder for value.
28–204. Holder of lien on instrument is holder for value.
28–205. Absence or failure of consideration is defense.
28–206. "Accommodation parties" defined—Liability.

§ 28–201 [22: 31]. Presumption of valuable consideration.

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1328.)

NOTES TO DECISIONS

ACKNOWLEDGMENT OF DEBT

Generally, instrument containing no unconditional promise or order to pay certain sum of money on demand or at fixed or determinable future time to order or bearer is not good negotiable instrument, but merely acknowledgment of debt, to which presumptions of this section, such as that of valuable consideration, are inapplicable. *Bader* v. *Williams* (D. C. Mun. App. 1948, 61 A. 2d 637).

BURDEN OF PROOF

When defendant alleged want of consideration for the note, this did not impose upon the plaintiff the burden of proof. *Towles* v. *Tanner* (21 App. D. C. 530).

If, upon proof of fraud or illegality in the inception of the negotiable paper, the indorsee or transferee thereof cannot avail himself of the presumption of bona fide ownership, certainly as between the original parties thereto, upon proof of want or failure of consideration, the burden is on the plaintiff to prove by a preponderance of the evidence, without the aid of the presumption of consideration, that he is a holder for value. *Holley* v. *Smalley* (50 App. D. C. 178, 269 Fed. 694).

In action upon note when defense is want of consideration or mistake, defendant has burden to present evidence to sustain such defense, which must be more than a mere suggestion of a defense. *Sheriger* v. *Gruner* (D. C. Mun. App. 1943, 34 A. 2d 35).

PRESUMPTION REBUTTABLE

When the plaintiff introduced the note and rested, he had made a prima facie case which, if unchallenged, would have been sufficient to sustain a verdict and judgment in his favor. This amounts, however, to a mere legal presumption, which disappears when confronted by facts setting up either absence or failure of consideration. *Holley* v. *Smalley* (50 App. D. C. 178, 269 Fed. 694).

Where the consideration for a note was the surrender of certain prior notes, which the payee failed to do, there was a complete failure of consideration for the note first mentioned. *Holley* v. *Smalley* (50 App. D. C. 178, 269 Fed. 694).

PRIMA FACIE EVIDENCE

As the consideration is presumed, evidence to establish a consideration is not required. *Towles* v. *Tanner* (21 App. D. C. 530).

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. *Towles* v. *Tanner* (21 App. D. C. 530).

Plaintiff made a prima facie case by the authentication and introduction of the note against the maker, see § 28–205 (31 Stat. 1399, ch. 854, § 1332). *Kiess* v. *Baldwin* (67 App. D. C. 147, 90 Fed. (2d) 392).

§ 28–202 [22: 32]. What is value.

Value is any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1329.)

NOTES TO DECISIONS

ASSUMPTION OF LIABILITY

Assumption of a liability at the request of the promisor is a valuable consideration, as, for example, a guaranty of the promissor's debt. *Commercial Nat. Bank* v. *McCandlish* (57 App. D. C. 378, 23 Fed. (2d) 986).

EXTENSION OF TIME

When note was given to indorser in exchange for six months' extension and a previous note to bank, for which the indorser gave his own note to bank, which turned

over to the indorser the makers' original note for collection, it was supported by consideration and the bank was estopped from making claim on original note. *McNeill* v. *Lilly* (65 App. D. C. 210, 82 Fed. (2d) 620).

§ 28–203 [22: 33]. Who is holder for value.

Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1330.)

NOTES TO DECISIONS

HOLDER FOR VALUE

A promissory note in the hands of a bona fide purchaser for value without notice is valid in District of Columbia even though it is made upon a gambling consideration. *Wirt* v. *Stubblefield* (17 App. D. C. 283).

"One who holds a negotiable note taken before maturity as collateral security for a preexisting debt, is a holder for value." *Thompson* v. *Franklin Nat. Bank* (45 App. D. C. 218, cert. den. 242 U. S. 637, 61 L. Ed. 540, 37 Sup. Ct. 21).

Evidence sustained finding that indorsee was bona fide holder for value of note even though payee breached agreement that he would complete his work. *Gross* v. *Delaney* (D. C. Mun. App. 1944, 34 A. 2d 629).

§ 28–204 [22: 34]. Holder of lien on instrument is holder for value.

Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1331.)

§ 28–205 [22: 35]. Absence or failure of consideration is defense.

Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1332.)

NOTES TO DECISIONS

DEFENSES

Threat to prosecute son is sufficient duress and is good defense on promissory note. *O'Toole* v. *Lamson* (41 App. D. C. 276).

No particular sanctity attaches to a promissory note and is subject, at the suit of the original payee, to any defense available against the enforcement of a written contract. *McReynolds* v. *National Woodworking Co.* (58 App. D. C. 197, 26 Fed. (2d) 975).

FAILURE OF CONSIDERATION

There was no evidence from which a jury could have concluded that there was an absence of consideration, as the record did not show evidence that wife did not give her note in exchange for the husband's or that it should be substituted for husband's note, or that she gave note only as security. *Kiess* v. *Baldwin* (67 App. D. C. 147, 90 Fed. (2d) 392).

Payee's promise to complete his work was a valid consideration for note, and whatever defense, if any, maker might thereafter have, would be failure, not lack, of consideration. *Gross* v. *Delaney* (D. C. Mun. App. 1944, 34 A. 2d 629).

One suing wife on spouses' I. O. U. for money advanced by plaintiff on purchase price of restaurant business to be conducted by spouses jointly could not recover on theory that detriment suffered by plaintiff as result of making further advances on account of such business in reliance on wife's signature of instrument constituted sufficient consideration therefor, in absence of evidence that plaintiff told wife that he would make no further advances unless she signed instrument. *Bader* v. *Williams* (D. C. Mun. App. 1948, 61 A. 2d 637).

Where corporation's president honestly believed that he had interest in land which president and defendant's wife agreed to buy and title to which was conveyed to wife who paid entire purchase price when president failed to pay his half of additional amount required for settlement of purchase contract, and defendant and wife recognized president's claim, note executed by defendant in partial consideration of president's relinquishment of claim was supported by valid consideration, notwithstanding that the consideration passed from president to wife, and that president designated corporation as payee of note. *Belfiore* v. *B. J. Crivella, Inc.* (D. C. Mun. App. 1948, 60 A. 2d 542).

FALSE AND FRAUDULENT REPRESENTATIONS

Although contract is in writing and its terms cannot be varied by parol evidence, it is admissible to show evidence of false and fraudulent representations made to induce the contract as to one of original parties or one substituted for the purpose of excluding the defense of fraud. *First Nat. Bank* v. *Fox* (40 App. D. C. 430).

PARTIAL FAILURE OF CONSIDERATION

A partial failure of consideration would be a defense pro tanto to the note which was given in place of prior notes which he had signed as an indorser, and when he was only liable on part of the prior notes. *Ryan* v. *Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366).

Partial failure of consideration is a defense pro tanto. *Ryan* v. *Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366).

SUBSTITUTION OF NOTES

Surrender of one note and the taking of another in substitution therefor is a valid consideration for the latter, and the fact that no consideration moves to the maker of the substituted note is immaterial. *Kiess* v. *Baldwin* (67 App. D. C. 147, 90 Fed. (2d) 392).

§ 28–206 [22: 36]. "Accommodation parties" defined—Liability.

An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1333.)

NOTES TO DECISIONS

MARRIED WOMAN

Married woman's liability on note dated and made payable in Washington, D. C., which maker signed in Pennsylvania, is determined by law of District of Columbia as to question of wife's capacity to sign note as accommodation maker for her husband. *Kiess* v. *Baldwin* (64 App. D. C. 66, 74 Fed. (2d) 470).

OBLIGATION OF ACCOMMODATION MAKER

Obligation of an accommodation maker, though made without value received by him, is none the less an obligation recognized in law to be supported by a valid consideration. *Chase* v. *Du Pont Nat. Bank* ((C. C. A. 3), 277 Fed. 235).

Chapter 3.—NEGOTIATION

Sec.

28–301. Definition—Bearer instrument—Order instrument.
28–302. Indorsement—How made—Sufficiency.
28–303. Indorsement must be of entire instrument.
28–304. Kinds of indorsement.
28–305. Special indorsement—Indorsement in blank.

Sec.
28–306. Blank indorsement may be converted into special indorsement.
28–307. Restrictive indorsement.
28–308. Effect of restrictive indorsement—Rights of indorsee.
28–309. Qualified indorsement.
28–310. Conditional indorsement.
28–311. Special indorsement—Instrument payable to bearer.
28–312. Indorsement by joint payees not partners.
28–313. Payable to cashier.
28–314. Payee's name misspelled.
28–315. Indorsement in representative capacity.
28–316. Presumption of negotiation before maturity.
28–317. Place of indorsement—Presumption.
28–318. Negotiable instrument continues as such.
28–319. Striking out indorsements.
28–320. Transfer without indorsing—Time of taking effect.
28–321. Transfer back to prior party—Rights of intervening party.

§ 28–301 [22: 41]. Definition—Bearer instrument—Order instrument.

An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder, completed by delivery. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1334.)

NOTES TO DECISIONS

INDORSEMENT AND DELIVERY

When party took title by delivery under the blank indorsement of the payee, its effect was to make the note payable to bearer, and pass by delivery. *Jerman* v. *Edwards* (29 App. D. C. 535).

It is essential for the negotiation of note payable to order that there be an indorsement and delivery. *McKee* v. *District Nat. Bank* (38 App. D. C. 465).

WRONGFUL DELIVERY

When bank had possession of note indorsed in blank which belonged to another, and wrongly transferred it to another's file, the executor of the latter is not holder in due course for the note was not negotiated. *Washington Loan & Trust Co.* v. *Cowgill* (66 App. D. C. 89, 85 Fed. (2d) 255).

§ 28–302 [22: 42]. Indorsement — How made — Sufficiency.

The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1335.)

§ 28–303 [22: 43]. Indorsement must be of entire instrument.

The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument; but where the instrument has been paid in part it may be indorsed as to the residue. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1336.)

§ 28–304 [22: 44]. Kinds of indorsement.

An indorsement may be either special or in blank; and it may also be either restrictive or qualified or conditional. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1337.)

§ 28–305 [22: 45]. Special indorsement—Indorsement in blank.

A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negotiated by delivery. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1338.)

NOTES TO DECISIONS

EFFECT

A check after having been endorsed in blank may be negotiated by its holder without further endorsement. *Milton* v. *United States* (71 App. D. C. 394, 110 Fed. (2d) 556).

GENERAL INDORSEMENT

A general indorsement by demanding bank is the equivalent of representation that bank has valid title to check and to proceeds in its own right and it must make restitution when its warranty is shown to be untrue. *National Metropolitan Bank* v. *U. S.*, 1944 (142 F. 2d 474, 79 U. S. App. D. C. 54, affirmed 65 S. Ct. 354, 323 U. S. 454, 89 L. Ed. 383).

NOTE

A note endorsed in blank may be negotiated by delivery. *Mazo* v. *Ed. L. Stock, Inc.* (D. C. 1943, 31 A. 2d 660).

§ 28–306 [22: 46]. Blank indorsement may be converted into special indorsement.

The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1339.)

§ 28–307 [22: 47]. Restrictive indorsement.

An indorsement is restrictive which either—

First. Prohibits the further negotiation of the instrument; or,

Second. Constitutes the indorsee the agent of the indorser; or,

Third. Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1340.)

NOTES TO DECISIONS

FAILURE TO RESTRICT

Where bank presenting checks for payment did not designate or identify itself as agent or trustee for collection, and did not represent itself as acting only for the account of its principal, but instead indorsed checks so as to imply to drawee that prior payments had been made to and acknowledged by identical persons named as payees, and where warranty, which was false, was relied on by the United States, as drawee, the presenting bank could not escape liability on ground that it acted only as agent for another. *National Metropolitan Bank* v. *U. S.*, 1944 (142 F. 2d 474, 79 U. S. App. D. C. 54, 324 U. S. 454, affirmed 65 S. Ct. 354, 323 U. S. 454, 89 L. Ed. 383).

An unconditional demand for payment of check was a representation of valid title in demanding bank and a certification that all prior indorsements were regular and valid and entitled the holder to receive the proceeds. *National Metropolitan Bank* v. *U. S.*, 1944 (142 F. 2d 474, 79 U. S. App. D. C. 54, 324 U. S. 454, affirmed 65 S. Ct. 354, 323 U. S. 454, 89 L. Ed. 383).

§ 28–308 [22: 48]. Effect of restrictive indorsement—Rights of indorsee.

A restrictive indorsement confers upon the indorsee the right—

First. To receive payment of the instrument.

Second. To bring any action thereon that the indorser could bring.

Third. To transfer his rights as such indorsee where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1341.)

NOTES TO DECISIONS

ADDITIONAL ENDORSEMENTS

Where note bore two endorsements, one for collection account of payee and other without recourse to payee, and it did not appear which endorsement was made first, the holder was entitled to maintain suit to collect unpaid balance of note. *Mazo* v. *Ed L. Stock, Inc.* (D. C. 1943, 31 A. 2d 660).

ENDORSEMENT FOR COLLECTION ACCOUNT

An endorsement for collection account constitutes a "restrictive endorsement" conferring on the endorsee right to bring any action endorser could bring. *Mazo* v. *Ed L. Stock, Inc.* (D. C. 1943, 31 A. 2d 660).

§ 28–309 [22: 49]. Qualified indorsement.

A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse," or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1342.)

§ 28–310 [22: 50]. Conditional indorsement.

Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1343.)

§ 28–311 [22: 51]. Special indorsement — Instrument payable to bearer.

Where an instrument payable to bearer is indorsed specially it may, nevertheless, be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1344.)

§ 28–312 [22: 52]. Indorsement by joint payees not partners.

Where an instrument is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, §1345.)

§ 28–313 [22: 53]. Payable to cashier.

Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1346.)

§ 28–314 [22: 54]. Payee's name misspelled.

Where the name of a payee or indorsee is wrongly designated or misspelled he may indorse the instrument as therein described, adding, if he think fit, his proper signature. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1347.)

§ 28–315 [22: 55]. Indorsement in representative capacity.

Where any person is under obligation to indorse in a representative capacity he may indorse in such terms as to negative personal liability. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1348.)

§ 28–316 [22: 56]. Presumption of negotiation before maturity.

Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1349.)

§ 28–317 [22: 57]. Place of indorsement—Presumption.

Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1350.)

§ 28–318 [22: 58]. Negotiable instrument continues as such.

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1351.)

§ 28–319 [22: 59]. Striking out indorsements.

The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out and all indorsers subsequent to him are thereby relieved from liability on the instrument. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1352.)

NOTES TO DECISIONS

IN GENERAL

This provision of the code is but declaratory of the law as it was recognized before the adoption of the Negotiable Instruments Act. *Jerman* v. *Edwards* (29 App. D. C. 535).

RESTRICTIVE SUBSEQUENT INDORSEMENT

One is entitled to strike out a subsequent indorsement when he does not claim title thereunder, and when there is no defense to the note as against anyone whose name appears on it, it is immaterial whether or not such subsequent indorsement is restrictive. *Jerman* v. *Edwards* (29 App. D. C. 535).

§ 28–320 [22: 60]. Transfer without indorsing—Time of taking effect.

Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires, in addition, the right to have the indorsement of the

transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1353.)

NOTES TO DECISIONS

EVIDENCE

Plaintiff, to maintain action on negotiable note as transferee without formal indorsement, was required to offer evidence of transfer to it by payee and that such transfer was for value, and production by plaintiff of note did not alone prima facie establish his title or ownership. *Bonuso* v. *Shroyer Loan & Finance Co.* (D. C. Mun. App. 1944, 37 A. 2d 760).

HOLDER IN DUE COURSE

A physical holder of an unindorsed note drawn to order is not a "holder in due course" and a transfer of the note without indorsement, although valid under §§ 28–320 to 28–402, destroys negotiability of the note. *Bonuso* v. *Shroyer Loan & Finance Co.* (D. C. Mun. App. 1944, 37 A. 2d 760).

RIGHT TO MAINTAIN ACTION

This section, by vesting title of transferor in transferee without formal indorsement, entitles transferee to maintain an action in his own name on a negotiable instrument. *Bonuso* v. *Shroyer Loan & Finance Co.* (D. C. Mun. App. 1944, 37 A. 2d 760).

§ 28–321 [22: 61]. Transfer back to prior party—Rights of intervening party.

Where an instrument is negotiated back to a prior party such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1354.)

Chapter 4.—RIGHTS OF HOLDER

Sec.

28–401. May sue in own name—Discharge of instrument by payment.
28–402. "Holder in due course" defined.
28–403. Holder in due course—Demand instrument.
28–404. Notice before full amount is paid.
28–405. Defective title—Definition.
28–406. Notice of infirmity—Sufficiency.
28–407. Rights of holder in due course.
28–408. Rights of holder other than holder in due course.
28–409. Presumption as to holding in due course—Burden of proof when transferor's title shown defective.
28–410. Lost or miscarried bill of exchange—Drawer to issue duplicate.

§ 28–401 [22: 71]. May sue in own name—Discharge of instrument by payment.

The holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1355.)

NOTES TO DECISIONS

CHECK GIVEN AS DEPOSIT

Where check given as deposit to be applied in part payment of purchase price was made payable to broker handling sale for vendor, broker was the proper party to bring an action on the check. *Schlosberg* v. *Shannon & Luchs Co.* (D. C. Mun. App. 1947, 53 A. 2d 722).

HOLDER BY PURCHASE AFTER MATURITY

Where a stranger acquires a note from a holder authorized to sell, the transaction, either upon proof of the stranger's intention to purchase or upon the presumption of fact that he intended a purchase, will be held to be a purchase rather than a discharge of the note. As purchaser he would succeed to all the rights in the pledged security; and this is true notwithstanding the notes had passed their maturity date. *Lee* v. *Mitcham* (69 App. D. C. 17, 98 Fed. (2d) 298, 117 A. L. R. 1427).

HOLDER BY PURCHASE BEFORE MATURITY

Plaintiff established a prima facie case of liability by maker of note, when he introduced note and testified that he purchased the note for value before maturity, that the note was due and unpaid, that he was not a party to the note and that it was purchased without knowledge of defenses. *Klingstein* v. *Thomas Circle Cafe* (68 App. D. C. 5, 92 Fed. (2d) 554).

Holder of note payable 60 days after date who purchased note for value and before maturity was entitled to recover on note from makers, notwithstanding their claim that they signed note under belief that it called for monthly payments of balance owing on contract and that payee breached the contract. *Fabrizio* v. *Anderson* (D. C. Mun. App. 1948, 62 A. 2d 314).

HOLDER UNDER INDORSEMENT IN TRUST

A legal holder under indorsement in trust may bring suit. *National City Bank* v. *Bankers Trust Co.* (37 App. D. C. 553).

While an indorsement of promissory note in trust restricts the free circulation of a note, and takes it out of the class known as commercial paper, the indorsee, having the legal title thereto, and having authority to receive payment thereof, may bring suit in his own name to enforce payment. *National City Bank* v. *Bankers Trust Co.* (37 App. D. C. 553).

Unless circumstances are such that reasonable men could draw only one inference from them, question of whether holder of note is holder in due course is for the jury. *Zier* v. *Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

HOLDER UNDER RESTRICTIVE INDORSEMENT

An indorsee under a restrictive indorsement has the right to bring any action thereon that the indorser could bring. *McKee* v. *District Nat. Bank* (38 App. D. C. 465).

TRANSFEREE WITHOUT INDORSEMENT

Plaintiff, to maintain action on negotiable note as transferee without formal indorsement, was required to offer evidence of transfer to it by payee and that such transfer was for value, and production by plaintiff of note did not alone prima facie establish his title or ownership. *Bonuso* v. *Shroyer Loan & Finance Co.* (D. C. Mun. App. 1944, 37 A. 2d 760).

§ 28–402 [22: 72]. "Holder in due course" defined.

A holder in due course is a holder who has taken the instrument under the following conditions:

First. That it is complete and regular upon its face.

Second. That he became the holder of it before it was over due, and without notice that it had been previously dishonored, if such was the fact.

Third. That he took it in good faith and for value.

Fourth. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1356.)

NOTES TO DECISIONS

Provisions under this section refer only to negotiable instruments. *Arnett* v. *Clack* (122 Ariz. 409, 198 Pac. 127).

COMPLETE AND REGULAR

Indorsee of an instrument containing a blank as to any material part is not a "holder in due course" because, under such circumstances, instrument when received is

not complete and regular on its face. *Zier* v. *Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

EVIDENCE, SUFFICIENCY

In suit for cancellation of note and deed of trust and return of usurious payments, evidence did not sustain finding that defendant was a holder in due course. *Hill* v. *Hawes,* 1944 (144 F. 2d 511, 79 U. S. App. D. C. 168).

EXAMINATION OF WITNESSES

Where note sued on was in blank when signed by maker, circumstances surrounding filling of blanks, and negotiation of note had a direct bearing upon whether indorsee was a holder in due course and sustaining of objection to maker's cross-examination of indorsee's credit manager as to who had figured finance charges as embodied in the note and shown by notice sent to maker was reversible error. *Zier* v. *Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

FINANCE COMPANY

Finance company engaged in business of discounting trade acceptances, when purchasing certificate of deposit after inquiry of issuing bank's cashier, is holder in due course. *International Finance Corp.* v. *Peoples Bank* ((D. C.-W. Va.), 27 Fed. (2d) 523).

NOTICE

Where plaintiff received payments on note until shortly before suit was filed no inference could be drawn that plaintiff was not a holder in due course from plaintiff's delay in notifying defendant that it was holder of note. *Eastern Acceptance Corp.* v. *Henry* (D. C. Mun. App. 1948, 62 A. 2d 309).

PLACE OF PAYMENT

In action by indorsee against maker on negotiable note, fact that note was made payable at indorsee's office did not preclude indorsee from subsequently acquiring note as a holder in due course, but was to be taken into account along with other circumstances to determine whether indorsee was such a holder. *Zier* v. *Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

PRESUMPTION

While knowledge of an infirmity in a negotiable instrument may be established by circumstantial evidence, endorsee's bad faith or fraud in acquiring a negotiable note can never be assumed but must be shown by clear and unequivocal testimony; mere suspicion being insufficient to upset proof offered by endorsee that it is a holder in due course. *Eastern Acceptance Corp.* v. *Henry* (D. C. Mun. App. 1948, 62 A. 2d 309).

QUESTION FOR JURY

Evidence whether plaintiff was an innocent holder for value, of promissory note sued on, was properly submitted to the jury. *Edwards* v. *Fox* (40 App. D. C. 439).

TRANSFEREE OF FRAUDULENT AGENT

When holder of notes executed extension slips, which were held under indorsements in blank, it did not give notice to subsequent transferee from fraudulent agent of the holder, who had transferred the notes to the bank as security for his own debt, and the transferee remained a good-faith holder. *Ragan* v. *Wardell* (67 App. D. C. 222, 91 Fed. (2d) 253).

UNINDORSED NOTE

A physical holder of an unindorsed note drawn to order is not a "holder in due course" and a transfer of the note without indorsement, although valid under §§ 28–320 to 28–402, destroys negotiability of the note. *Bonuso* v. *Shroyer Loan & Finance Co.* (D. C. Mun. App. 1944, 37 A. 2d 760).

WANT OF CONSIDERATION

Defendant, in addition to the fact that the discount was applied, must also allege that the money, at the time of the notice, remained in the bank to the credit of the discounter. If it has been paid to him or his order, the bank necessarily becomes a holder for value. *Richards* v. *Street* (31 App. D. C. 427).

WRONGFUL DELIVERY

When bank had possession of note indorsed in blank which belonged to another, and wrongly transferred it to another's file, the executor of the latter is not holder in due course for the note was not negotiated. *Washington Loan & Trust Co.* v. *Cowgill* (66 App. D. C. 89, 85 Fed. (2d) 255).

§ 28–403 [22: 73]. Holder in due course—Demand instrument.

Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1357.)

§ 28–404 [22: 74]. Notice before full amount is paid.

Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1358.)

§ 28–405 [22: 75]. Defective title—Definition.

The title of a person who negotiates an instrument is defective within the meaning hereof when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear or other unlawful means, or for any illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1359.)

NOTES TO DECISIONS

BURDEN OF PROOF

When it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. *Bowen* v. *Mount Vernon Sav. Bank* (70 App. D. C. 273, 105 Fed. (2d) 796).

KNOWLEDGE OF MAKER

Where finance company was named on face of note given for part of purchase price of automobile as dealer's agent to receive payment, it was reasonable to infer that the company was in possession of note and demanded payment in agency capacity, and if so, it was disabled from subsequently acquiring the note in good faith and without notice because of knowledge which it had acquired from maker, when demand for payment was made, that the dealer's title was defective. *Palmer* v. *Associates Discount Corporation,* 1941 (124 F. 2d 225, 74 App. D. C. 386).

PLEADING

In action on note given for part of purchase price of automobile, affidavit of defense alleging that automobile dealer represented the automobile to be in good condition, that the automobile was found to be in an unsafe and dangerous condition and with numerous and serious defects, that the dealer did not remedy the defect notwithstanding repeated demands and that automobile had been returned to dealer as worthless was sufficient to permit maker of note to establish defenses of failure of consideration, breach of warranty, and that he was induced to purchase the automobile and to sign the note by fraudulent misrepresentations. *Palmer* v. *Associates Discount Corporation,* 1941 (124 F. 2d 225, 74 App. D. C. 386).

USURY

The fact that competent businessmen do not purchase notes in substantial sums executed by unknown parties whose credit they have not investigated, together with claim of holder of usurious note, amply secured by trust

deed, that he bought note at 40 percent discount, made a prima facie showing of usury which must be explained before holder could be found a holder in due course. *Hill* v. *Hawes,* 1944 (144 F. 2d 511, 79 U. S. App. D. C. 168).

Pretended bona fide purchases of note at large discount, out of the normal course of business, must be viewed with suspicion to protect against usury. *Hill* v. *Hawes,* 1944 (144 F. 2d 511, 79 U. S. App. D. C. 168).

§ 28–406 [22: 76]. Notice of infirmity—Sufficiency.

To constitute notice of an infirmity in the instrument, or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect or knowledge of such facts that his action in taking the instrument amounted to bad faith. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1360.)

NOTES TO DECISIONS

ACTUAL NOTICE REQUIRED

Party who takes negotiable paper before due for a valuable consideration, without knowledge of any defect of title, in good faith, can hold it against all the world. A suspicion that there is a defect of title in the holder, or a knowledge of circumstances that might excite suspicion in the mind of a cautious person, or even gross negligence at the time, will not defeat the title of the purchaser. That result can be produced only by bad faith, which implies guilty knowledge or wilful ignorance; and the burden of proof lies on the assailant of the title. *Hutchins* v. *Langley* (27 App. D. C. 234).

Fact that deed of trust was released by trustees before maturity of promissory note secured by it will not be sufficient to charge the purchaser for value of subsequent note secured by a new deed of trust and upon which there was an indorsement of part payment, with constructive notice that the first note had not been paid, especially if he bought his note a year after release of first deed of trust and recording of its release, and at time when note it secured, if not paid was long overdue. *Martin* v. *Poole* (36 App. D. C. 281).

When promissory note was obtained from the maker by payee, by fraud and deception, nothing short of guilty knowledge of fraud and deception by subsequent indorsee for value will defeat his right to recover on it, as mere suspicion or even gross negligence is not sufficient. *Hazen* v. *Van Senden* (43 App. D. C. 161).

To constitute notice of an infirmity in the instrument, or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect; or knowledge of such facts that his action in taking the instrument amounted to bad faith. *Washington Loan & Trust Co.* v. *Cowgill* (66 App. D. C. 89, 85 Fed. (2d) 255).

Where notes have been negotiated before a breach occurs, knowledge of fact that notes were given for work to be performed is not notice of an infirmity in payee's title and does not put purchaser from payee on inquiry. *Gross* v. *Delaney* (D. C. Mun. App. 1944, 34 A. 2d 629).

BAD FAITH

The fact that holder of note payable 60 days after date and given for balance due contractor for remodeling work knew that balance was to be paid in monthly installments did not establish bad faith of holder in purchasing note so as to prevent holder from recovering as a holder in due course against makers. *Fabrizio* v. *Anderson* (D. C. Mun. App. 1948, 62 A. 2d 314).

INDORSEMENT IN BLANK

When indorsing note in blank and delivering it back to the maker, the payee makes the maker his agent and one who receives the note from the latter in good faith, for value, receives it in due course and may recover. *Howell* v. *Commercial Nat. Bank* (40 App. D. C. 370).

A note is not "negotiated" which is indorsed in blank and in possession of bank which purchased it for customer—and left in bank for safekeeping. *Washington Loan & Trust Co.* v. *Cowgill* (66 App. D. C. 89, 85 Fed. (2d) 255).

NEGLIGENCE IN OBTAINING NOTICE

To effect purchaser for value with constructive notice, it must appear that his failure to obtain actual notice was due to gross or culpable negligence. *Martin* v. *Poole,* (36 App. D. C. 281).

SUBSEQUENT PURCHASER WITHOUT NOTICE

When notes were due in 1931 and payable to bank's cashier and were indorsed by him in blank without recourse and sold to one who let bank retain possession of notes, and maker without knowledge of sale executed extension slip extending maturity of notes to 1934, a subsequent purchase of notes for value in 1932 by one without notice or knowledge of preceding sale and not noticing that part of extension slip to be signed by the holder, but had not been signed, invested title to notes in subsequent purchaser, superior to claim of first purchaser. *Counselman* v. *Pitzer* (65 App. D. C. 71, 79 Fed. (2d) 707).

§ 28–407 [22: 77]. Rights of holder in due course.

A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1361.)

NOTES TO DECISIONS

CONFLICT OF LAWS

British statutes of 16 Car. 2, ch. 8, and 9 Anne, ch. 14 (§§ 16–701 to 16–705) against gaming, so far as they might or would, if in force, affect the validity of the negotiable instruments which are within the provisions of the Negotiable Instruments Law, to the extent that they are so inconsistent or repugnant to the Negotiable Instruments Act, are no longer, as to negotiable instruments, in force in District of Columbia. *Wirt* v. *Stubblefield* (17 App. D. C. 283).

CONSIDERATION

To constitute one a "holder in due course" it is not necessary that full consideration be paid for a negotiable instrument. *Interstate Bankers Corporation* v. *Kennedy* (D. C. 1943, 33 A. 2d 165).

One purchasing a note, given in consideration of an executory agreement, before breach occurs, acquires an indefeasible title. *Gross* v. *Delaney* (D. C. Munn. App. 1944, 34 A. 2d 629).

CONSTRUCTION WITH OTHER LAWS

Under § 11–808 providing for conduct of trial so as to do "substantial justice" in small claims and conciliation branch of municipal court, where payee on note given for horseback riding instructions failed to perform, in action on notes judge of small claims court could not limit recovery by holders in due course to unpaid balance less discount charged by holders for purchase of notes, by ignoring substantive law rule that holder in due course of negotiable instrument was entitled to payment of full amount. *Interstate Bankers Corporation* v. *Kennedy* (D. C. 1943, 33 A. 2d 165).

DEFENSES

Promissory note although made upon a gambling consideration is good in the hands of a bona fide purchaser for value without notice. *Wirt* v. *Stubblefield* (17 App. D. C. 283).

Borrowers of money at usurious rates are not entitled to relief as against innocent holders for value. *Whipp* v. *Glueck* (61 App. D. C. 118, 58 Fed. (2d) 523).

When holder of notes executed extension slips, which were held under indorsements in blank, it did not give notice to subsequent transferee from fraudulent agent of the holder, who had transferred the notes to the bank as security for his own debt, and the transferee remained a good-faith holder. *Ragan* v. *Wardell* (67 App. D. C. 222, 91 Fed. (2d) 253).

The failure of an executory consideration is not a defense against a holder in due course of a negotiable instrument. *Interstate Bankers Corporation* v. *Kennedy* (D. C. 1943, 33 A. 2d 165).

Knowledge on part of purchaser of a note that it was given in consideration of an executory contract does not prevent purchaser from becoming a holder in due course, and a breach of the contract after purchase of note is no defense against such a holder. *Fabrizio* v. *Anderson* (D. C. Mun. App. 1948, 62 A. 2d 314).

In action by indorsee against maker on negotiable note, wherein maker defended on ground that indorsee was not a holder in due course, evidence of maker showing that title of contractor to whom note was originally given was defective, in that contractor negotiated note before completion of work when its contract provided that work was not to be paid for until completed, established prima facie defense. *Zier* v. *Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

In action on a note, evidence established that plaintiff was a holder in due course and hence took instrument free from defenses available by maker against payee. *Eastern Acceptance Corp.* v. *Henry* (D. C. Mun App. 1948, 62 A. 2d 309).

ESTOPPEL

Where literate and reasonably intelligent people sign a note, but fail to read it, they are negligent and are estopped from raising question of fraud against holder in due course, though they are not estopped from urging on other grounds that holder is not a holder in due course. *Zier* v. *Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

HOLDER WITHOUT NOTICE OF DEFECTS

A bona fide holder of a negotiable instrument, for a valuable consideration, without any notice of facts which impeach its validity, as between antecedent parties, if he takes it under an indorsement made before the same becomes due, holds the title unaffected by these facts, and may recover thereon, although, as between the antecedent parties, the transaction may be without any legal validity. *Thompson* v. *Franklin Nat. Bank* (45 App. D. C. 218, cert. den. 242 U. S. 637, 61 L. Ed. 540, 37 Sup. Ct. 21).

§ 28–408 [22: 78]. Rights of holder other than holder in due course.

In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1362.)

NOTES TO DECISIONS

FRAUD

Fraud in inception of note on account of which the consideration fails constitutes a good defense against indorsee after maturity. *Lincoln* v. *Grant* (47 App. D. C. 475).

HOLDER AFTER MATURITY

Indorsee of negotiable note after maturity takes it subject to defenses which affect the instrument and not to matters such as set-offs which arise out of independent transactions between maker and payee. *Lincoln* v. *Grant* (47 App. D. C. 475).

§ 28–409 [22: 79]. Presumption as to holding in due course—Burden of proof when transferor's title shown defective.

Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1363.)

NOTES TO DECISIONS

BAD FAITH

An averment "that I am credibly informed and believe, and expect to prove at the trial, that the plaintiff became holder of promissory note, if holder at all, in bad faith, and without any belief that it was valid obligation of mine, and that plaintiff did not receive my note in regular course of business," taken in connection with other averments tending to show close intimacy between plaintiff and original payee, as well as knowledge of payee's methods of transacting business, is sufficient to send the case to trial. *Hazen* v. *Van Senden* (43 App. D. C. 161).

Where makers gave negotiable notes payable in monthly installments over a period of a year for instructions in horseback riding and payee failed to perform, purchase of notes by holder in due course at discount of 15 percent was not unreasonable or evidence of bad faith justifying deduction of discount from amounts collectible on notes. *Interstate Bankers Corporation* v. *Kennedy,* (D. C. 1943, 33 A. 2d 165).

BURDEN OF PROOF

Every holder of a negotiable instrument is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. *Washington Loan & Trust Co.* v. *Cowgill* (66 App. D. C. 89, 85 Fed. (2d) 255).

Where the title of negotiator of note is defective the burden is on holder to prove that it acquired note as a holder in due course. *Palmer* v. *Associates Discount Corporation,* 1941 (124 F. 2d 225, 74 App. D. C. 386).

Where payee's title was defective and endorsement upon which holder relied was undated, as the date of the endorsement was a fact peculiarly within the holder's knowledge, the holder was required to establish it, especially where, whether it took with notice of defenses or without notice after default in payments would depend on that fact. *Palmer* v. *Associates Discount Corporation,* 1941 (124 F. 2d 225, 74 App. D. C. 386).

In action by indorsee against maker on negotiable note, burden was on indorsee to prove that he was a holder in due course. *Zier* v. *Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

DURESS

As note was obtained by duress, the burden was on the defendant "to prove that he or some person under whom he claims acquired the title as a holder in due course." *O'Toole* v. *Lamson* (41 App. D. C. 276).

PRESUMPTION OF CONSIDERATION AND INDORSEMENT

With the introduction of the notes in evidence, and the admission of the genuineness of the signatures, valuable consideration and indorsement before maturity are presumed. *Catholic University* v. *Waggaman* (32 App. D. C. 307).

§ 28–410 [22: 81]. Lost or miscarried bill of exchange—Drawer to issue duplicate.

In case any inland bill or bills of exchange shall happen to be lost or miscarried within the time limited for payment of the same, then the drawer of the said bill or bills is and shall be obliged to give another bill or bills of the same tenor with those first given, the person or persons to whom they are and shall be so delivered giving security, if demanded,

to the said drawer, to indemnify him against all persons whatsoever, in case the said bill or bills of exchange so alleged to be lost or miscarried, shall be found again. (9–10 Wm. 3, ch. 17, § 3; Kilty Rep., p. 244; Alex. Br. Stat., p. 634; Comp. Stat. D. C., p. 66, § 3.)

COMPILER'S NOTE

This section is obsolete and largely inoperative. See compiler's note to § 28–101.

Chapter 5.—LIABILITIES OF PARTIES

Sec.

28–501. Liability of maker.
28–502. Liability of drawer.
28–503. Liability of acceptor.
28–504. Liability of signer of instrument other than maker, drawer, or acceptor.
28–505. Liability of stranger who signs in blank.
28–506. Warranties of negotiator by delivery or qualified indorsement.
28–507. Warranties of indorser without qualification.
28–508. Liability of indorser of instrument negotiable by delivery.
28–509. Order in which indorsers are liable.
28–510. Liability of agent of undisclosed principal.

§ 28–501 [22: 80]. Liability of maker.

The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1364.)

§ 28–502 [22: 91]. Liability of drawer.

The drawer, by drawing the instrument, admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted and paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1365.)

§ 28–503 [22: 92]. Liability of acceptor.

The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance, and admits—

First. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

Second. The existence of the payee and his then capacity to indorse. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1366.)

§ 28–504 [22: 93]. Liability of signer of instrument other than maker, drawer, or acceptor.

A person placing his signature upon an instrument otherwise than as a maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1367.)

NOTES TO DECISIONS

CIRCUMSTANCES OF INDORSEMENT

"The mere fact that he wrote his name on the back of the notes does not show even prima facie that he was a technical indorser. It is important to know when and under what circumstances he wrote his name there. If it was before or near the time the notes were delivered, or after they were delivered, but for the purpose of strengthening the credit of the note, and before the payee had indorsed, he would be a maker, and not entitled to any of the rights or privileges of an indorser." *Ryan* v. *Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366), citing *Chandler & Taylor Co.* v. *Norwood* (14 App. D. C. 357), *Randle* v. *Davis Coal Co.* (15 App. D. C. 357).

INDORSEMENT IN BLANK

When a person indorses a negotiable note in blank, and sends the instrument forth into commercial channels, stamped with all the indicia of commercial paper, negotiable by indorsement or delivery, the mere genuineness of his signature is sufficient, prima facie, to establish liability. *Thompson* v. *Franklin Nat. Bank* (45 App. D. C. 218).

Party indorsing in blank for the accommodation of maker is liable as indorser, and not as a joint maker. *Bost* v. *Rexine Co.* (56 App. D. C. 34, 8 Fed. (2d) 795, 55 A. L. R. 670), overruling *Ryan* v. *Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366).

§ 28–505 [22: 94]. Liability of stranger who signs in blank.

Where a person not otherwise a party to an instrument places thereon his signature in blank before delivery he is liable as indorser in accordance with the following rules:

First. If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties.

Second. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

Third. If he signs for the accommodation of the payee he is liable to all parties subsequent to the payee. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1368.)

CROSS REFERENCE

See notes to § 28–504.

§ 28–506 [22: 95]. Warranties of negotiator by delivery or qualified indorsement.

Every person negotiating an instrument by delivery or by a qualified indorsement warrants—

First. That the instrument is genuine and in all respects what it purports to be.

Second. That he has a good title to it.

Third. That all prior parties had capacity to contract.

Fourth. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities other than bills and notes. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1369.)

§ 28–507 [22: 96]. Warranties of indorser without qualification.

Every indorser who indorses without qualification warrants to all subsequent holders in due course—

First. The matters and things mentioned in subdivisions one, two, and three of section 28–506; and

Second. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1370.)

NOTES TO DECISIONS

ADDITIONAL INDORSER

Holders subsequent to forged indorsement, treating the indorsement as genuine and valid, as they were entitled to do, had the right to rely upon the apparent liability of an additional indorser. *Milton* v. *United States* (71 App. D. C. 394, 110 Fed. (2d) 556).

OTHER CONTRACTS

A bank is not prohibited from entering into other contracts with a company, maker of note, for future loans, because of its ownership of indorsed notes. *Hannan* v. *Hardee* (63 App. D. C. 76, 79, 69 Fed. (2d) 394, 397).

WARRANTY OF PRESENT AND PRIOR INDORSERS

Individual indorser, subsequent to a corporation indorser, was a warranty of the genuineness of the paper of his own title thereto, and of the capacity of all the preceding parties to contract. *Willard* v. *Crook* (21 App. D. C. 237).

§ 28–508 [22: 97]. Liability of indorser of instrument negotiable by delivery.

Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1371.)

NOTES TO DECISIONS

FRAUD

In action against indorsers on note for amount due for gasoline and oil purchased from payee, when no evidence was introduced tending to prove that the payee knew of inaccuracy in the marking of its tank truck compartments nor evidence showing amount by which motor service had been overcharged as a result of inaccuracy in markings, and defendants failed to show that payee had any reasons to question the accuracy, it was insufficient for the jury as to question of fraud in obtaining signatures of indorsers. *Public Motor Service* v. *Standard Oil Co.* (69 App. D. C. 89, 99 Fed. (2d) 124).

§ 28–509 [22: 98]. Order in which indorsers are liable.

As respects one another indorsers are liable prima facie in the order in which they indorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1372.)

§ 28–510 [22: 99]. Liability of agent of undisclosed principal.

Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section 28–506, unless he discloses the name of his principal and the fact that he is acting only as agent. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1373.)

Chapter 6.—PRESENTMENT FOR PAYMENT

Sec.
28–601. Necessity for presentment for payment—Tender of payment.
28–602. Time for making.
28–603. Sufficiency.
28–604. Place of presentment.
28–605. Instrument must be exhibited—Delivery on payment.
28–606. Presentment where instrument payable at bank.
28–607. Presentment where principal debtor is dead.
28–608. Presentment to persons liable as partners.
28–609. Presentment to joint debtors.
28–610. When presentment not required to charge drawer.
28–611. When presentment not required to charge indorser.
28–612. When delay in making presentment is excused.
28–613. When presentment dispensed with.
28–614. When instrument is dishonored by nonpayment.
28–615. Right of action on nonpayment.
28–616. When negotiable instrument is payable—Holiday.
28–617. Determination of time for payment.
28–618. Instrument payable at bank is order on bank to pay.
28–619. What constitutes payment in due course.

§ 28–601 [22: 111]. Necessity for presentment for payment—Tender of payment.

Presentment for payment is not necessary in order to charge the person primarily liable on the instrument, but if the instrument is by its terms payable at a special place and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1374.)

§ 28–602 [22: 112]. Time for making.

Where the instrument is not payable on demand presentment must be made on the day it falls due. Where it is payable on demand presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1375.)

§ 28–603 [22: 113]. Sufficiency.

Presentment for payment to be sufficient must be made—

First. By the holder or by some person authorized to receive payment on his behalf.

Second. At a reasonable hour on a business day.

Third. At a proper place, as herein defined.

Fourth. To the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1376.)

CROSS REFERENCE

Presentment by notary public, §§ 1–508, 1–509.

§ 28–604 [22: 114]. Place of presentment.

Presentment for payment is made at the proper place—

First. Where a place of payment is specified in the instrument and it is there presented.

Second. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented.

Third. Where no place of payment is specified, and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.

Fourth. In any other case if presented to the person to make payment wherever he can be found or if presented at his last known place of business or residence. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1377.)

§ 28–605 [22: 115]. Instrument must be exhibited—Delivery on payment.

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1378.)

§ 28–606 [22: 116]. Presentment where instrument payable at bank.

Where the instrument is payable at a bank presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1379.)

§ 28–607 [22: 117]. Presentment where principal debtor is dead.

Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1380.)

§ 28–608 [22: 118]. Presentment to persons liable as partners.

Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1381.)

§ 28–609 [22: 119]. Presentment to joint debtors.

Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1382.)

§ 28–610 [22: 120]. When presentment not required to charge drawer.

Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1383.)

§ 28–611 [22: 121]. When presentment not required to charge indorser.

Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1384.)

§ 28–612 [22: 122]. When delay in making presentment is excused.

Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1385.)

§ 28–613 [22: 123]. When presentment dispensed with.

Presentment for payment is dispensed with—

First. Where, after the exercise of reasonable diligence, presentment as required hereby can not be made.

Second. Where the drawee is a fictitious person.

Third. By waiver of presentment, express or implied. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1386.)

§ 28–614 [22: 124]. When instrument is dishonored by nonpayment.

The instrument is dishonored by nonpayment when—

First. It is duly presented for payment and payment is refused or can not be obtained; or,

Second. Presentment is excused and the instrument is overdue and unpaid. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1387.)

§ 28–615 [22: 125]. Right of action on nonpayment.

Subject to the provisions hereof, when the instrument is dishonored by nonpayment an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1388.)

§ 28–616 [22: 126]. When negotiable instrument is payable—Holiday.

Every negotiable instrument is payable at the time fixed therein, without grace. When the day of maturity falls upon Sunday or a holiday the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. The following days in each year, namely, the first day of January, commonly called New Year's Day; the twenty-second day of February, known as Washington's Birthday; the Fourth of July; the thirtieth day of May, commonly called Decoration Day; the first Monday in September, known as Labor's Holiday; the twenty-fifth day of December, commonly called Christmas Day; every Saturday, after twelve o'clock noon; any day appointed or recommended by the President of the United States as a day of public feasting or thanksgiving, and the day of the inauguration of the President, in every fourth year, shall be holidays in the District for all purposes. When-

ever any day set apart as a legal holiday shall fall on Sunday, then and in such case the next succeeding day shall be a holiday; and in such cases and in all cases in which a Sunday and a holiday shall fall on successive days all commercial paper falling due on any of said days shall, for all purposes of presenting for payment or acceptance, be deemed to mature and be presentable for payment or acceptance on the next secular or business day succeeding: *Provided,* That every Saturday shall be a holiday in the District and not a business day for (1) every bank or banking institution having an office or banking house located within the District, (2) every Federal savings and loan association whose main office is in the District, and (3) every building association, building and loan association, or savings and loan association, incorporated or unincorporated, organized and operating under the laws of and having an office located within the District; and any act which would otherwise be required, authorized, or permitted to be performed on Saturday in the District at the office or banking house of, or by, any such bank or banking institution, Federal savings and loan association, building association, building and loan association, or savings and loan association, if Saturday were not a holiday, shall or may be so performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such delay. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1389; June 30, 1902, 32 Stat. 543, ch. 1329; July 13, 1946, 60 Stat. 534, ch. 576.)

AMENDMENTS

The 1902 amendment struck out the words "within the meaning of this section" in the middle of this paragraph and inserted in lieu thereof the words "for all purposes."

The act of July 13, 1946, cited to text, added the proviso.

NOTES TO DECISIONS

JUDICIAL NOTICE

Municipal Court of Appeals for the District of Columbia took judicial notice that Criminal Division of the Municipal Court was in session on Monday, July 5, 1943, for the arraignment and trial of persons held under arrest and unable to give collateral or bond, notwithstanding that that Monday was a legal holiday. *Burns* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

SATURDAY HALF-HOLIDAY

Saturday half-holiday not excluded in computing 30 days' notice required under § 1219, D. C. 1901 (§ 45–902). *Ocumpaugh* v. *Norton* (24 App. D. C. 296); *McCoy* v. *Duehay* (51 App. D. C. 363, 279 Fed. 1001), citing *Morse* v. *Brainerd* (42 App. D. C. 448). See also *Swenk* v. *Nicholls* (39 App. D. C. 350) (in connection with computing time for prosecution of appeals from municipal court).

§ 28–617 [22: 127]. Determination of time for payment.

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event the time of payment is determined by excluding the day from which the time is to begin to run and by including the date of payment. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1390.)

NOTES TO DECISIONS

IN GENERAL

This jurisdiction prefers the rule followed in New York and Pennsylvania, which excludes the day on which the cause of action accrues, as a point of time after which the limitation ensues. *Ambrose* v. *Brown* (42 App. D. C. 25).

§ 28–618 [22: 128]. Instrument payable at bank is order on bank to pay.

Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1391.)

§ 28–619 [22: 129]. What constitutes payment in due course.

Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1392.)

Chapter 7.—NOTICE OF DISHONOR

Sec.
28–701. Notice of dishonor must be given to drawer and indorsers—Effect of noncompliance.
28–702. Persons who may give notice.
28–703. Notice given by agent.
28–704. Effect of notice given on behalf of holder.
28–705. Effect of notice given by party entitled to give it.
28–706. Notice when instrument in hands of agent is dishonored.
28–707. Sufficiency of notice.
28–708. Form and service of notice.
28–709. Notice may be given to party or his agent.
28–710. Notice when party dead.
28–711. Notice to partners.
28–712. Notice to persons jointly liable.
28–713. Notice to bankrupt.
28–714. Time within which notice must be given.
28–714a. Dishonor of demand items by banks.
28–715. When notice to be given if parties reside in same place.
28–716. When notice to be given if parties reside in different places.
28–717. Mailing notice sufficient.
28–718. Depositing notice in post office—What constitutes.
28–719. Notice to subsequent parties by party notified by holder.
28–720. Where notice must be sent—Sufficiency of actual notice.
28–721. Waiver of notice.
28–722. Parties bound by waiver of notice.
28–723. Waiver of protest.
28–724. When notice dispensed with.
28–725. Excuse for delay in giving notice.
28–726. When notice to drawer is not required.
28–727. When notice to indorser is not required.
28–728. Notice of nonpayment—When not necessary.
28–729. Omission to give notice of nonacceptance.
28–730. Protest—Not required except on foreign bills of exchange—Original protest as evidence.

§ 28–701 [22: 141]. Notice of dishonor must be given to drawer and indorsers—Effect of noncompliance.

Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1393.)

NOTES TO DECISIONS

INDORSER

Diligence in notifying indorser of dishonor. *Bost* v. *Rexine Co.* (56 App. D. C. 34, 8 Fed. (2d) 795, 55 A. L. R. 670).

Failure of indorsee of a note to give notice of the nonpayment of the instalments results in discharging the indorser from liability as to those instalments, but has no other effect as to other instalments. *Roberts* v. *International Bank* (58 App. D. C. 87, 25 Fed. (2d) 214).

§ 28–702 [22: 142]. Persons who may give notice.

The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1394.)

CROSS REFERENCE

Notice by notary public, §§ 1–508, 1–509.

§ 28–703 [22: 143]. Notice given by agent.

Notice of dishonor may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1395.)

§ 28–704 [22: 144]. Effect of notice given on behalf of holder.

Where notice is given by or on behalf of the holder it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1396.)

§ 28–705 [22: 145]. Effect of notice given by party entitled to give it.

Where notice is given by or on behalf of a party entitled to give notice it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1397.)

§ 28–706 [22: 146]. Notice when instrument in hands of agent is dishonored.

Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he give notice to his principal he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1398.)

§ 28–707 [22: 147]. Sufficiency of notice.

A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1399.)

§ 28–708 [22: 148]. Form and service of notice.

The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1400.)

§ 28–709 [22: 149]. Notice may be given to party or his agent.

Notice of dishonor may be given either to the party himself or to his agent in that behalf. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1401.)

§ 28–710 [22: 150]. Notice when party dead.

When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if, with reasonable diligence, he can be found. If there be no personal representatives, notice may be sent to the last residence or last place of business of the deceased. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1402.)

§ 28–711 [22: 151]. Notice to partners.

Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1403.)

§ 28–712 [22: 152]. Notice to persons jointly liable.

Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1404.)

§ 28–713 [22: 153]. Notice to bankrupt.

Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1405.)

§ 28–714 [22: 154]. Time within which notice must be given.

Notice may be given as soon as the instrument is dishonored; and unless delay is excused, as hereinafter provided, must be given within the time fixed by chapters 1–10 of this title. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1406; June 30, 1902, 32 Stat. 543, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the word "Act" in the last line of this section and inserted in lieu thereof the word "chapter."

"Chapters 1–10 of this title" refer to said chapter which is the Uniform Negotiable Instruments Law. The 1901 act did not contain §§ 28–410, 28–920, 28–1008 to 28–1010, and the cross reference should not be read to include these sections.

§ 28–714a. Dishonor of demand items by banks.

(a) In any case in which a bank in the District of Columbia receives, other than for immediate payment over the counter, a demand item payable by, at, or through such bank and such bank gives credit for such demand item before midnight of the day of receipt of such item, such bank may have until midnight of its next business day after receipt of such item within which to dishonor or refuse payment of such item. Any credit so given, together with all related entries on the books of the receiving bank, may be revoked by such bank, by returning such item, or if such item is held for protest, or at the time is lost, or is not in the possession of such bank,

by giving written notice of dishonor, nonpayment, or revocation. Such credit and related entries shall be revoked by such bank only if such item or such written notice is dispatched in the mails or by other expeditious means not later than midnight of such bank's next business day after the item was received. For the purpose of determining when notice of dishonor must be given or protest must be made under the law relative to negotiable instruments, an item duly presented, credit for which is revoked as authorized by this section, shall be deemed dishonored on the day such item or such written notice is dispatched. A bank, revoking credit pursuant to the authority of this section, is entitled to refund of, or credit for, the amount of such item.

(b) For the purposes of this section—

(1) a demand item received by a bank on a day other than its business day, or received on a business day after its regular business hours, or during afternoon or evening periods when it has reopened or remained open for limited functions, shall be deemed to have been received at the opening of such bank's next business day;

(2) the term "credit" includes payment, remittance, advice of credit, or authorization to charge and, in cases where the item is received for deposit as well as for payment, such term also includes the making of appropriate entries to the receiving bank's general ledger without regard to whether such item is posted to individual customers' ledgers;

(3) each branch or office of a bank shall be deemed a separate bank; and

(4) the term "bank" includes any bank or trust company doing business in the District of Columbia.

(c) The effect of this section may be varied by written agreement. (Aug. 7, 1950, 64 Stat. 416, ch. 602, §§ 1–3.)

§ 28–715 [22: 155]. When notice to be given if parties reside in same place.

Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

First. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the following day.

Second. If given at his residence, it must be given before the usual hours of rest on the day following.

Third. If sent by mail, it must be deposited in the post office in time to reach him in the usual course on the day following. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1407.)

§ 28–716 [22: 156]. When notice to be given if parties reside in different places.

Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

First. If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or, if there be no mail at a convenient hour on that day, by the next mail thereafter.

Second. If given otherwise than through the post office, then within the time that notice would have been received in due course of mail if it had been deposited in the post office within the time specified in the last subdivision. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1408.)

§ 28–717 [22: 157]. Mailing notice sufficient.

Where notice of dishonor is duly addressed and deposited in the post office the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1409.)

§ 28–718 [22: 158]. Depositing notice in post office—What constitutes.

Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under the control of the Post Office Department. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1410.)

§ 28–719 [22: 159]. Notice to subsequent parties by party notified by holder.

Where a party receives notice of dishonor he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1411.)

§ 28–720 [22: 160]. Where notice must be sent—Sufficiency of actual notice.

Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

First. Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or,

Second. If he live in one place and have his place of business in another, notice may be sent to either place; or,

Third. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified by chapters 1–10 of this title it will be sufficient, though not sent in accordance with the requirements of this section. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1412; June 30, 1902, 32 Stat. 543, ch. 1329.)

AMENDMENT

The 1902 amendment changed the word "Act" in the last paragraph to "chapter."

"Chapters 1–10 of this title" refer to said chapter which is the Uniform Negotiable Instruments Law. The 1901 act did not contain §§ 28–410, 28–920, 28–1008 to 28–1010, and the cross reference should not be read to include these sections.

§ 28–721 [22: 161]. Waiver of notice.

Notice of dishonor may be waived either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be expressed or implied. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1413.)

NOTES TO DECISIONS

IN GENERAL

Evidence was admissible as to waiver of notice, and also admissible under the common counts. *Green* v. *Higgin Mfg. Co.* (44 App. D. C. 186).

§ 28–722 [22: 162]. Parties bound by waiver of notice.

Where the waiver is embodied in the instrument itself it is binding upon all parties, but where it is written above the signature of an indorser it binds him only. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1414.)

§ 28–723 [22: 163]. Waiver of protest.

A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1415.)

§ 28–724 [22: 164]. When notice dispensed with.

Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1416.)

NOTES TO DECISIONS

REASONABLE DILIGENCE

Diligence in effort to find indorser's proper address was not shown, by notary, by merely searching through city and telephone directory. *Bost* v. *Rexine Co.* (56 App. D. C. 34, 8 Fed. (2d) 795, 55 A. L. R. 670).

§ 28–725 [22: 165]. Excuse for delay in giving notice.

Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate notice must be given with reasonable diligence. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1417.)

§ 28–726 [22: 166]. When notice to drawer is not required.

Notice of dishonor is not required to be given to the drawer in either of the following cases:

First. Where the drawer and the drawee are the same person.

Second. Where the drawee is a fictitious person or a person not having capacity to contract.

Third. Where the drawer is the person to whom the instrument is presented for payment.

Fourth. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; or,

Fifth. Where the drawer has countermanded payment. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1418.)

§ 28–727 [22: 167]. When notice to indorser is not required.

Notice of dishonor is not required to be given to an indorser in either of the following cases:

First. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument.

Second. Where the indorser is the person to whom the instrument is presented for payment; or,

Third. Where the instrument was made or accepted for his accommodation. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1419.)

§ 28–728 [22: 168]. Notice of nonpayment—When not necessary.

Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1420.)

§ 28–729 [22: 169]. Omission to give notice of nonacceptance.

An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1421.)

§ 28–730 [22: 170]. Protest—Not required except on foreign bills of exchange—Original protest as evidence.

Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

The original protest of a notary public, under his hand and official seal, of any bill of exchange, check, or order for nonacceptance or nonpayment, or of any promissory note for nonpayment, stating the presentment by him of such bill of exchange, check, order, or promissory note for acceptance or payment and the nonacceptance or nonpayment thereof, and the service of notice thereof on any of the parties to such bill of exchange, promissory note, or check, and the mode of giving such notice, and the reputed place of business or residence of the party to whom the same was given shall be prima facie evidence of the facts therein contained. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1422; Apr. 19, 1920, 41 Stat. 569, ch. 153.)

AMENDMENT

The 1920 amendment struck out the words "in the District" which appeared after the words "notary public" in the first sentence of the second paragraph.

CROSS REFERENCES

Other provisions concerning protest by notary, § 1–508.
Protest generally, § 28–928 et seq.

Chapter 8.—DISCHARGE OF NEGOTIABLE INSTRUMENTS

Sec.

28–801. Means of discharge of negotiable instrument.
28–802. Discharge of person secondarily liable.
28–803. Payment by party secondarily liable not a discharge—Further negotiation.
28–804. Discharge by renunciation of rights against party—Except holder in due course.
28–805. Cancelation.
28–806. Alteration—Effect.
28–807. Material alteration—Definition.

§ 28–801 [22: 181]. Means of discharge of negotiable instrument.

A negotiable instrument is discharged—

First. By payment in due course by or on behalf of the principal debtor.

Second. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

Third. By the intentional cancelation thereof by the holder.

Fourth. By any other act which will discharge a simple contract for the payment of money.

Fifth. When the principal debtor becomes the holder of the instrument at or after maturity in his own right. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1423.)

NOTES TO DECISIONS

ACCEPTANCE FOR ANTECEDENT DEBT

Acceptance of a negotiable note for an antecedent debt will not extinguish such debt, unless it is expressly agreed that it is received as payment. *Ryan* v. *Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366).

PAYMENT TO PERSON NOT IN POSSESSION

Payment of a promissory note to a person not in possession of it is at the peril of the payor and imposes the duty of showing by satisfactory evidence that the person to whom payment was made was authorized to receive it. *Davis* v. *Casey* (70 App. D. C. 27, 103 Fed. (2d) 529).

Eastern Acceptance Corp. v. *Henry* (D. C. Mun. App. 1948, 62 A. 2d 309).

PLACE OF TENDER

When promissory note is payable at third person's office, it is the duty of the maker or indorsee, in the absence of directions from holder to the contrary, to tender payment there and if the note is in possession of a third person, he has the right to assume that such person has authority to receive the payment. *Fifth Congregational Church* v. *Bright* (28 App. D. C. 229, cert. den. 205 U. S. 541, 51 L. Ed. 921, 27 Sup. Ct. 788).

WAIVER OF DEFENSE OF USURY

When the debtor under a usurious obligation, which has come into the hands of an innocent purchaser for value, executes a new note to such third person, he will be deemed to have waived his right to set up usury, and the new note will be deemed to be upon a valid consideration. *McNeill* v. *Lilly* (65 App. D. C. 210, 82 Fed. (2d) 620).

§ 28–802 [22: 182]. Discharge of person secondarily liable.

A person secondarily liable on the instrument is discharged—

First. By an act which discharges the instrument.

Second. By the intentional cancelation of his signature by the holder.

Third. By the discharge of a prior party.

Fourth. By a valid tender of payment made by a prior party.

Fifth. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

Sixth. By an agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1424.)

NOTES TO DECISIONS

AGREEMENT TO PAY

Where defendant purchased encumbered property without assuming liability on note secured by a deed of trust but, to obtain extension, agreed to pay note and thereafter sold property to one who did not assume indebtedness, but who obtained extension without defendant's knowledge or consent, §§ 28–119, 28–302, 28–504 and this section regarding party liable on note where inapplicable in determining defendant's liability to holder of note since defendant was not a "party liable on note." *Ober* v. *Riggs Nat. Bank of Washington, D. C.* (D. C. 1943, 31 A. 2d 877).

CANCELATION

Sections 181, 182, and 185, D. C. 1929, title 22 (§§ 28–801, 28–802, 28–805), speak of cancelation but at no place in the statute is there a definition of the term. Hence, resort must be had to the rules of the law merchant for proper application of the term. *Washington Loan & Trust Co.* v. *Colby* (71 App. D. C. 236, 108 Fed. (2d) 743).

EXTENSION OF TIME WITHOUT KNOWLEDGE OF INDORSER

Party secondarily liable is discharged if an agreement is entered into between the makers of the note and the payee for an extension of the time of payment without the knowledge or consent of the indorser. It is immaterial whether the extension is made before or after maturity of the note. *Anderson* v. *Lee D. Butler, Inc.* (61 App. D. C. 380, 63 Fed. (2d) 271).

NEW AGREEMENT

A failure to pay the first note under the bill of sale substituted for the original note without knowledge of the indorser did not operate to revive the obligation of such indorser on the original note. *Anderson* v. *Lee D. Butler* (61 App. D. C. 380, 63 Fed. (2d) 271).

NOTE OF DEBTOR

Note of debtor himself, or of a third party, is never considered as a payment of a precedent debt, unless there be a special agreement to that effect. *Ryan* v. *Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366).

RELEASE OF SECURITY

Where a purchaser of an automobile, having given note with indorsement, executed instalment notes and bill of sale as security, released indorser without knowledge of such transaction. *Anderson* v. *Lee D. Butler, Inc.* (61 App. D. C. 380, 63 Fed. (2d) 271).

§ 28–803 [22: 183]. Payment by party secondarily liable not a discharge—Further negotiation.

Where the instrument is paid by a party secondarily liable thereon it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements and again negotiate the instrument, except—

First. Where it is payable to the order of a third person and has been paid by the drawer; and,

Second. Where it was made or accepted for accommodation and has been paid by the party accommodated. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1425.)

§ 28–804 [22: 184]. Discharge by renunciation of rights against party—Except holder in due course.

The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument; but a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1426.)

§ 28–805 [22: 185]. Cancelation.

A cancelation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancela-

tion was made unintentionally, or under a mistake, or without authority. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1427.)

NOTES TO DECISIONS

MARKING NOTE "CANCELED"

Marking a note "canceled," as was done in the instant case, is sufficient to discharge the note. *Washington Loan & Trust Co.* v. *Colby* (71 App. D. C. 236, 108 Fed. (2d) 743).

§ 28–806 [22: 186]. Alteration—Effect.

Where a negotiable instrument is materially altered without the assent of all parties liable thereon it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1428.)

NOTES TO DECISIONS

ACKNOWLEDGMENT OF ALTERED INSTRUMENT

While there is a conflict of authority on the point whether one can bind himself by the acknowledgment of an altered or forged instrument and a promise to pay the same without a new consideration, or some special ground of estoppel; however, he may do so provided the paper is in the hands of one who had no connection with the forgery, and the promise is not involved in an attempt to compound the felony. *Ofenstein* v. *Bryan* (20 App. D. C. 1); *National Capital Bank* v. *Bryan* (20 App. D. C. 26).

ALTERATION BEFORE INDORSEMENT

If the note in suit has not been materially altered at any time, or if it has been materially altered, but before indorsement thereof by the defendants, the plaintiff is entitled to recover notwithstanding such material alteration. *Towles* v. *Tanner* (21 App. D. C. 530).

BURDEN OF PROOF

If the defendants have shown such alteration, the burden of proof thereupon shifted to the plaintiff to show that such alteration was made before the indorsement of the note by the defendants; or that, if it was made after such indorsement, it was made with the knowledge or consent of the defendants, or was ratified by them with full knowledge thereof or with the means of knowledge in their possession, or that the note so altered was declared by them to be good and valid with a view to its negotiation. *Towles* v. *Tanner* (21 App. D. C. 530).

EXPLANATION OF ALTERATION

Where the alteration is material, and such as reasonably to excite suspicion, it is incumbent upon the party offering it, in support of his claim thereunder, to give some evidence tending to explain its condition. *Ofenstein* v. *Bryan* (20 App. D. C. 1); *National Capital Bank* v. *Bryan,* (20 App. D. C. 26).

If upon the face of the note it appears to have been materially altered, and the alteration is such as reasonably to excite suspicion, it is incumbent upon the plaintiff to explain its condition. But if alteration is not so apparent on the face of the paper as reasonably to excite suspicion, which is a question for the court in the first instance, then it is incumbent on the defendants, as matter of defense, to show the alteration. *Towles* v. *Tanner* (21 App. D. C. 530).

QUESTIONS FOR COURT

Question whether the alteration is material and so plainly suspicious as to warrant the requirement of some explanatory evidence as the condition of its admission, is for the determination of the court. *Ofenstein* v. *Bryan* (20 App. D. C. 1).

QUESTIONS FOR JURY

Question whether alteration was made before or after delivery, or with or without the knowledge or consent of the several signers and indorsers, is one that must be submitted to the jury. *Ofenstein* v. *Bryan* (20 App. D. C. 1).

§ 28–807 [22: 187]. Material alteration—Definition.

Any alteration which changes—

First. The date.

Second. The sum payable, either for principal or interest.

Third. The time or place of payment.

Fourth. The number or the relations of the parties.

Fifth. The medium or currency in which payment is to be made.

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect is a material alteration. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1429.)

Chapter 9.—BILLS OF EXCHANGE

Sec.

28–901. Definition.
28–902. Bill not an assignment of funds—Liability of drawee.
28–903. Drawee—Joint—Can not be alternative or successive.
28–904. Foreign and inland bills—Definitions.
28–905. When bill may be treated as promissory note.
28–906. Referee in case of need.

ACCEPTANCE

28–907. Acceptance—Form—Sufficiency.
28–908. Holder entitled to acceptance on face of bill.
28–909. Acceptance by separate instrument.
28–910. Acceptance before bill drawn.
28–911. Time allowed for accepting.
28–912. Liability of drawee retaining or destroying bill.
28–913. Acceptance of incomplete, overdue, or previously dishonored bill.
28–914. Kinds of acceptance.
28–915. General acceptance.
28–916. Qualified acceptance.
28–917. Holder not bound to take qualified acceptance—Effect of taking—Notice to drawer and indorser.

PRESENTMENT FOR ACCEPTANCE

28–918. When presentment for acceptance must be made.
28–919. When failure to present for acceptance releases drawer and indorser.
28–920. Acceptance in satisfaction of former debt—When deemed in complete payment.
28–921. Presentment for acceptance—How made—To whom.
28–922. On what days presentment for acceptance may be made.
28–923. Excuses for delay in presenting for acceptance.
28–924. Excuses for not presenting for acceptance—Bill treated as dishonored.
28–925. When bill dishonored by nonacceptance.
28–926. Dishonor by nonacceptance within prescribed time—Right of recourse.
28–927. Right of recourse when bill not accepted.

PROTEST

28–928. Protest—When necessary—Discharge of drawer and indorsers.
28–929. Protest—How made—Contents.
28–930. Protest—By whom made.
28–931. Protest—When to be made.
28–932. Protest—Where made.
28–933. Bill may be protested for both nonacceptance and nonpayment.
28–934. Protest before maturity if acceptor bankrupt or insolvent.

Sec.
28–935. When protest dispensed with.
28–936. Protest when bill lost, destroyed, or wrongfully detained.

ACCEPTANCE FOR HONOR

28–937. Acceptance for honor supra protest.
28–938. Acceptance for honor supra protest—How made.
28–939. Acceptance for honor of drawer.
28–940. Liability of acceptor for honor.
28–941. Agreement of acceptor for honor.
28–942. Maturity of bill payable after sight and accepted for honor.
28–943. Protest of bill accepted for honor supra protest or containing a reference in case of need.
28–944. Presentment for payment to acceptor for honor—How made.
28–945. When delay in making presentment is excused.
28–946. Dishonor of bill by acceptor for honor—Protest.

PAYMENT FOR HONOR

28–947. Payment for honor supra protest—Who may make.
28–948. Payment for honor supra protest—How made.
28–949. Declaration before payment for honor supra protest.
28–950. Preference of parties offering to pay for honor.
28–951. Effect on subsequent parties where bill is paid for honor.
28–952. Where holder refuses to receive payment supra protest.
28–953. Rights of payer for honor.

BILLS IN A SET

28–954. Bills in a set constitute one bill.
28–955. Right of holder where other parts negotiated to different holders.
28–956. Liability upon indorsement of two or more parts of set.
28–957. Acceptance of bills in a set—Liability of acceptor.
28–958. Payment by acceptor—Liability for outstanding accepted parts.
28–959. Effect of discharging one of a set.

§ 28–901 [22: 191]. Definition.

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1430.)

§ 28–902 [22: 192]. Bill not an assignment of funds—Liability of drawee.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1431.)

§ 28–903 [22: 193]. Drawee—Joint—Can not be alternative or successive.

A bill may be addressed to two or more drawees jointly, whether they are partners or not, but not to two or more drawees in the alternative or succession. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1432.)

§ 28–904 [22: 194]. Foreign and inland bills—Definitions.

An inland bill of exchange is a bill which is or on its face purports to be both drawn and payable within this District. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill the holder may treat it as an inland bill. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1433.)

§ 28–905 [22: 195]. When bill may be treated as promissory note.

Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1434.)

§ 28–906 [22: 196]. Referee in case of need.

The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1435.)

ACCEPTANCE

§ 28–907 [22: 201]. Acceptance—Form—Sufficiency.

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1436.)

§ 28–908 [22: 202]. Holder entitled to acceptance on face of bill.

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such a request is refused may treat the bill as dishonored. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1437.)

§ 28–909 [22: 203]. Acceptance by separate instrument.

Where an acceptance is written on a paper other than the bill itself it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1438.)

§ 28–910 [22: 204]. Acceptance before bill drawn.

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1439.)

§ 28–911 [22: 205]. Time allowed for accepting.

The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1440.)

§ 28–912 [22: 206]. Liability of drawee retaining or destroying bill.

Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within twen-

ty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder he will be deemed to have accepted the same. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1441.)

§ 28–913 [22: 207]. Acceptance of incomplete, overdue, or previously dishonored bill.

A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1442.)

§ 28–914 [22: 208]. Kinds of acceptance.

An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1443.)

§ 28–915 [22: 209]. General acceptance.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1444.)

§ 28–916 [22: 210]. Qualified acceptance.

An acceptance is qualified which is—

First. Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.

Second. Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

Third. Local; that is to say, an acceptance to pay only at a particular place.

Fourth. Qualified as to time.

Fifth. The acceptance of some one or more of the drawees, but not of all. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1445.)

§ 28–917 [22: 211]. Holder not bound to take qualified acceptance—Effect of taking—Notice to drawer and indorser.

The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder or he will be deemed to have assented thereto. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1446.)

PRESENTMENT FOR ACCEPTANCE

§ 28–918 [22: 221]. When presentment for acceptance must be made.

Presentment for acceptance must be made—

First. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or,

Second. Where the bill expressly stipulates that it shall be presented for acceptance; or,

Third. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1447.)

§ 28–919 [22: 222]. When failure to present for acceptance releases drawer and indorser.

Except as herein otherwise provided, the holder of a bill which is required by section 28–918 to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1448.)

§ 28–920 [22: 223]. Acceptance in satisfaction of former debt—When deemed in complete payment.

If any person doth accept any bill of exchange for and in satisfaction of any former debt, or sum of money formerly due unto him, the same shall be accounted and esteemed a full and complete payment of such debt, if such person, accepting of any such bill for his debt, doth not take his due course to obtain payment thereof, by endeavoring to get the same accepted and paid, and make his protest, either for nonacceptance, or nonpayment thereof: *Provided,* That nothing herein contained shall extend to discharge any remedy, that any person may have against the drawer, accepter or indorser of such bill. (3 & 4 Ann. ch. 9, §§ 7 & 8 (1704); Kilty's Rep. p. 245; Alex. Br. Stat., p. 653; Comp. Stat. D. C. Code, p. 68, §§ 9 and 10.)

COMPILER'S NOTE

This section is obsolete and largely inoperative. See compiler's note to §§ 28–101, 28–925.

§ 28–921 [22: 224]. Presentment for acceptance—How made—To whom.

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and,

First. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

Second. Where the drawee is dead, presentment may be made to his personal representative.

Third. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may

be made to him or to his trustee or assignee. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1449.)

CROSS REFERENCE

Presentment by notary public, §§ 1–508, 1–509.

§ 28–922 [22: 225]. On what days presentment for acceptance may be made.

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 28–603 and 28–616. When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12 o'clock noon on that day. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1450; June 30, 1902, 32 Stat. 543, ch. 1329.)

§ 28–923 [22: 226]. Excuses for delay in presenting for acceptance.

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1451.)

§ 28–924 [22: 227]. Excuses for not presenting for acceptance—Bill treated as dishonored.

Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance in either of the following cases:

First. When the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill.

Second. Where after the exercise of reasonable diligence presentment can not be made.

Third. Where, although presentment has been irregular, acceptance has been refused on some other ground. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1452.)

§ 28–925 [22: 228]. When bill dishonored by nonacceptance.

A bill is dishonored by nonacceptance—

First. When it is duly presented for acceptance and such an acceptance as is prescribed by chapters 1–10 of this title is refused or can not be obtained; or,

Second. When presentment for acceptance is excused and the bill is not accepted. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1453; June 30, 1902, 32 Stat. 543, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the word "Act" and inserting in lieu thereof the word "chapter." "Chapters 1–10 of this title" refers to said chapter which is the Uniform Negotiable Instruments Law. The 1901 act did not contain §§ 28–410, 28–920, and 28–1008 to 28–1011, and the cross reference should not be read to include these sections.

§ 28–926 [22: 229]. Dishonor by nonacceptance within prescribed time—Right of recourse.

Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1454.)

§ 28–927 [22: 230]. Right of recourse when bill not accepted.

When a bill is dishonored by nonacceptance an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1455.)

PROTEST

§ 28–928 [22: 241]. Protest—When necessary—Discharge of drawer and indorsers.

Where a foreign bill, appearing on its face to be such, is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment it must be duly protested for nonpayment. If it is not so protested the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1456.)

CROSS REFERENCES

Protest by notary public, § 1–508.
Protest required when, § 28–730.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Official protest of promissory note is not necessary in District of Columbia to hold indorsers. *Presbrey* v. *Thomas* (1 App. D. C. 171).

§ 28–929 [22: 242]. Protest—How made—Contents.

The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify—

First. The time and place of presentment.

Second. The fact that presentment was made, and the manner thereof.

Third. The cause or reason for protesting the bill.

Fourth. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1457.)

§ 28–930 [22: 243]. Protest—By whom made.

Protest can be made by—

First. A notary public; or,

Second. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1458.)

CROSS REFERENCE

Other provisions concerning protests by notaries, §§ 1–508, 1–509.

§ 28–931 [22: 244]. Protest—When to be made.

When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1459.)

§ 28–932 [22: 245]. Protest—Where made.

A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance it must be protested for nonpayment at the time when it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1460.)

§ 28–933 [22: 246]. Bill may be protested for both nonacceptance and nonpayment.

A bill which has been protested for nonacceptance may be subsequently protested for nonpayment. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1461.)

§ 28–934 [22: 247]. Protest before maturity if acceptor bankrupt or insolvent.

Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1462.)

§ 28–935 [22: 248]. When protest dispensed with.

Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1463.)

§ 28–936 [22: 249]. Protest when bill lost, destroyed, or wrongfully detained.

Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1464.)

ACCEPTANCE FOR HONOR

§ 28–937 [22: 261]. Acceptance for honor supra protest.

Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party there may be a further acceptance by a different person for the honor of another party. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1465.)

§ 28–938 [22: 262]. Acceptance for honor supra protest—How made.

An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1466.)

§ 28–939 [22: 263]. Acceptance for honor of drawer.

Where an acceptance for honor does not expressly state for whose honor it is made it is deemed to be an acceptance for the honor of the drawer. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1467.)

§ 28–940 [22: 264]. Liability of acceptor for honor.

The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1468.)

§ 28–941 [22: 265]. Agreement of acceptor for honor.

The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided, also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1469.)

§ 28–942 [22: 266]. Maturity of bill payable after sight and accepted for honor.

Where a bill payable after sight is accepted for honor its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1470.)

§ 28–943 [22: 267]. Protest of bill accepted for honor supra protest or containing a reference in case of need.

Where a dishonored bill has been accepted for honor supra protest, or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1471.)

§ 28–944 [22: 268]. Presentment for payment to acceptor for honor—How made.

Presentment for payment to the acceptor for honor must be made as follows:

First. If it is to be presented in the place where the protest for nonpayment was made it must be presented not later than the day following its maturity.

Second. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 28–716. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1472.)

§ 28–945 [22: 269]. When delay in making presentment is excused.

The provisions of section 28–612 apply where there is delay in making presentment to the acceptor for honor or referee in case of need. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1473.)

§ 28–946 [22: 270]. Dishonor of bill by acceptor for honor—Protest.

When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1474.)

PAYMENT FOR HONOR

§ 28–947 [22: 281]. Payment for honor supra protest—Who may make.

Where a bill has been protested for nonpayment any person may intervene and pay it supra protest for the honor of any person liable thereon, or for the honor of the person for whose account it was drawn. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1475.)

§ 28–948 [22: 282]. Payment for honor supra protest—How made.

The payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1476.)

§ 28–949 [22: 283]. Declaration before payment for honor supra protest.

The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1477.)

§ 28–950 [22: 284]. Preference of parties offering to pay for honor.

Where two or more persons offer to pay a bill for the honor of different parties the person whose payment will discharge most parties to the bill will be given the preference. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1478.)

§ 28–951 [22: 285]. Effect on subsequent parties where bill is paid for honor.

Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged; but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1479.)

§ 28–952 [22: 286]. Where holder refuses to receive payment supra protest.

Where the holder of a bill refuses to receive payment supra protest he loses his right of recourse against any party who would have been discharged by such payment. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1480.)

§ 28–953 [22: 287]. Rights of payer for honor.

The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1481.)

BILLS IN A SET

§ 28–954 [22: 291]. Bills in a set constitute one bill.

Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1482.)

§ 28–955 [22: 292]. Right of holder where other parts negotiated to different holders.

Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1483.)

§ 28–956 [22: 293]. Liability upon indorsement of two or more parts of set.

Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1484.)

§ 28–957 [22: 294]. Acceptance of bills in a set—Liability of acceptor.

The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1485.)

§ 28–958 [22: 295]. Payment by acceptor—Liability for outstanding accepted parts.

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1486.)

§ 28–959 [22: 296]. Effect of discharging one of a set.

Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1487.)

Chapter 10.—PROMISSORY NOTES AND CHECKS

Sec.

28–1001. "Promissory note" defined.
28–1002. "Check" defined—Application of sections applying to bill of exchange.
28–1003. When check must be presented for payment.
28–1004. Checks or other demand instruments to be presented within one year.
28–1005. Certifying check—Effect.
28–1006. Effect where holder of check procures certification.
28–1007. Check not an assignment of funds.
28–1008. Liability of bank or trust company on forged, altered, or raised check.
28–1009. Liability of bank or trust company for nonpayment of check through error.
28–1010. Liability of forwarding bank on failure of payor bank to account for proceeds of check.
28–1011. Revocations, countermands and stop-payment orders.

§ 28–1001 [22: 301]. "Promissory note" defined.

A negotiable promissory note, within the meaning hereof, is an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to order

or to bearer. Where a note is drawn to the maker's own order it is not complete until indorsed by him. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1488.)

§ 28–1002 [22: 3002]. "Check" defined—Application of sections applying to bill of exchange.

A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions hereof applicable to a bill of exchange payable on demand apply to a check. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1489.)

NOTES TO DECISIONS

POST-DATED CHECKS

Post-dated checks are considered as negotiable instruments similar to bills of exchange payable in the future and their purpose is to obtain extension of credit. *Daine* v. *Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

§ 28–1003 [22: 303]. When check must be presented for payment.

A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1490.)

§ 28–1004 [22: 303a]. Checks or other demand instruments to be presented within one year.

Where a check or other instrument payable on demand at any bank or trust company doing business in the District of Columbia is presented for payment more than one year from its date, such bank or trust company may, unless expressly instructed by the drawer or maker to pay the same, refuse payment thereof, and no liability shall thereby be incurred to the drawer or maker for dishonoring the instrument by nonpayment. (Apr. 5, 1939, 53 Stat. 566, ch. 37, § 1.)

COMPILER'S NOTE

This section is not a part of the Uniform Negotiable Instruments Law. See compiler's note to §§ 28–101, 28–925.

NOTES TO DECISIONS

LIABILITY GENERALLY

Under this section, where a check payable at any bank or trust company doing business in the District of Columbia is presented for payment more than one year from its date, such bank or trust company may, unless expressly instructed by the drawer or maker to pay the same, refuse payment thereof, and no liability is incurred to the drawer or maker for dishonoring the instrument by nonpayment. *Modern Engineering & Service Corp.* v. *McCrea* (D. C. Mun. App. 1946, 46 A. 2d 767).

§ 28–1005 [22: 304]. Certifying check—Effect.

Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1491.)

§ 28–1006 [22: 305]. Effect where holder of check procures certification.

Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1492.)

§ 28–1007 [22: 306]. Check not an assignment of funds.

A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1493.)

NOTES TO DECISIONS

EVIDENCE

In action against administratrix to impress a lien on a certain fund and to have it distributed pro rata to plaintiffs for whom decedent had collected rents, the District Court properly found under the evidence that decedent's delivery to plaintiffs of rental statements and checks drawn on special rent account shortly before his death was not accompanied by an understanding sufficient to constitute an equitable assignment pro tanto of the special fund to plaintiffs. *Brown* v. *Christman,* 1942 (120 F. 2d 625, 75 U. S. App. D. C. 203).

§ 28–1008 [22: 307]. Liability of bank or trust company on forged, altered, or raised check.

(a) No bank or trust company doing business in the District of Columbia, which has paid and charged to the account of a depositor any money on a forged, altered, or raised check issued in the name of said depositor shall be liable to said depositor for the amount paid thereon unless either (1) within one year after notice to said depositor that the vouchers representing payments charged to the account of said depositor for the period during which such payment was made are ready for delivery, or (2), in case no such notice has been given, within six months after the return to said depositor of the voucher representing such payment, said depositor shall notify the bank or trust company that the check so paid is forged, altered, or raised.

(b) The notice referred to in subsection (a) may be given by mail to said depositor at his last-known address with postage prepaid.

(c) This section shall not be construed to relieve a depositor from due diligence in the examination of returned vouchers or in otherwise discovering that a check has been forged, altered, or raised, or in notifying the bank or trust company of his actual discovery of a forgery or alteration.

(d) When used in this section the word "check" shall also include drafts, notes, acceptances, or other negotiable instruments payable at a bank or trust company, and the word "forged" shall also include an unauthorized signature by an agent or officer of a depositor.

(e) The provisions of this section shall not be held to apply to the forgery of an endorsement. (Apr. 5, 1939, 53 Stat. 566, ch. 37, § 3.)

COMPILER'S NOTE

This section is not a part of the Uniform Negotiable Instruments Law. See compiler's note to §§ 28–101, 28–925.

§ 28–1009 [22: 308]. Liability of bank or trust company for nonpayment of check through error.

No bank or trust company doing business in the District of Columbia shall be liable to a depositor because of the nonpayment through mistake or error and without malice of a check, draft, note, acceptance, or other negotiable instrument, payable at any bank or trust company, which should have been paid unless the depositor shall allege and prove actual damage by reason of such nonpayment and

in such event the liability shall not exceed the amount of damage so proved. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 6.)

COMPILER'S NOTE

This section is not a part of the Uniform Negotiable Instruments Law. See compiler's note to §§ 28–101, 28–925.

§ 28–1010 [22: 309]. Liability of forwarding bank on failure of payor bank to account for proceeds of check.

Any bank or trust company doing business in the District of Columbia receiving for collection or deposit any check, draft, note, acceptance, or other negotiable instrument drawn upon or payable at any other bank, located outside the District of Columbia, may forward such instrument for collection directly to the bank on which it is drawn or at which it is made payable, and such method of forwarding direct to the payer shall be deemed due diligence, and the failure of such payor bank, because of its insolvency or other default, to account for the proceeds thereof shall not render the forwarding bank liable therefor: *Provided, however,* That such forwarding bank shall have used due diligence in other respects in connection with the collection of such instrument. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 7.)

COMPILER'S NOTE

This section is not a part of the Uniform Negotiable Instruments Law. See compiler's note to §§ 28–101, 28–925.

§ 28–1011. Revocations, countermands and stop-payment orders.

(a) No revocation, countermand, or stop-payment order hereafter made relating to the payment of any check or draft against an account of a depositor in any bank or trust company doing business in the District of Columbia, or relating to the payment of a note or acceptance made payable at any such bank or trust company, shall be valid unless the same be in writing specifically describing the instrument to which it relates by stating the amount of the item upon which payment is to be stopped, the date thereof, and the name of the payee and be delivered to the bank or trust company at the particular office, or branch, if any, on which such instrument was drawn or at which it was made payable: *Provided, however,* That any stop-payment order transmitted by telephone to an officer of the bank upon which the instrument has been drawn shall be accepted by the bank upon such identification that will insure the order has been transmitted by its depositor as an effective notice for a period of twenty-four hours, after which time it shall no longer be valid unless followed by a written order as otherwise provided herein.

(b) The delivery to one office or branch of a bank or trust company of any such revocation, countermand, or stop-payment order shall not constitute notice, actual or constructive, to any other office or branch of the same bank or trust company and shall not impair the right of such bank or trust company, acting through any such other office or branch, to be a holder in due course of the instrument.

(c) No such written revocation, countermand, or stop-payment order shall remain in effect more than six months after delivery thereof to the bank or trust company, unless same be renewed. The first or any subsequent renewal thereof shall be in writing; shall specifically describe the instrument or the revocation, countermand, or stop-payment order to which it relates; shall be delivered to the bank or trust company at the particular office or branch, if any, on which such instrument was drawn or at which it was made payable; and shall be in effect for not more than six months from the date of delivery thereof. The bank or trust company to which such a revocation, countermand, or stop-payment order has been delivered may, at its option and without liability, stop the payment of such an instrument after the expiration date of the order or any renewal thereof.

(d) Any revocation, countermand, or stop-payment order existing on the date of enactment of this section in any bank or trust company doing business in the District of Columbia may be canceled by the bank or trust company after six months from such date, by giving notice of such cancellation to the depositor at his last known address by registered mail but such a notice shall not be effective until thirty days have elapsed from the time of the mailing of such notice.

(e) Any bank or trust company that pays a check or other instrument drawn by or against the account of a depositor, the payment of which has been ordered stopped, and the order is still in effect, as herein provided, shall be responsible to the depositor for the amount thereof. When restored to such a depositor, the bank shall be subrogated to any benefits receivable, or amounts recoverable, by the depositor but shall pursue its remedy at its own expense. (July 26, 1949, 63 Stat. 481, ch. 365, §§ 1–5.)

EFFECTIVE DATE

The date of enactment of the section, to which specific reference is made in paragraph (d), was July 26, 1949.

COMPILER'S NOTE

This section is not part of the Uniform Negotiable Instruments Law. See compiler's note to §§ 28–101, 28–925.

Chapter 11.—UNIFORM SALES ACT—FORMATION OF CONTRACT

Sec.

28–1101. Contract to sell—Sale—Definition—Absolute or conditional—Parties.
28–1102. Capacity of parties—Liabilities for necessaries—Definition.

FORMALITIES OF THE CONTRACT

28–1103. Form of contract of sale.
28–1104. Statute of frauds.

SUBJECT MATTER OF CONTRACT

28–1105. Existing and future goods.
28–1106. Undivided shares—Fungible goods.
28–1107. Destruction of goods sold—Option of buyer.
28–1108. Destruction of goods contracted to be sold—Option of buyer.

THE PRICE

28–1109. Price—Ascertainment—Interest in real property as price.
28–1110. Price and terms to be fixed by third person—Failure to do so—Remedies.

CONDITIONS AND WARRANTIES

Sec.
28–1111. Breach of conditions—Effect—Remedies.
28–1112. Express warranty—Definition.
28–1113. Implied warranties of title.
28–1114. Implied warranty in contract to sell or sale of goods by description—By sample.
28–1115. Implied warranties of quality or fitness—Effect of express warranty.

SALE BY SAMPLE

28–1116. Implied warranties in contract to sell or sale by sample.

§ 28–1101 [11: 61]. Contract to sell — Sale — Definition—Absolute or conditional—Parties.

(1) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the "price."

(2) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the "price."

(3) A contract to sell or a sale may be absolute or conditional.

(4) There may be a contract to sell or a sale between one part owner and another. (Mar. 17, 1937, 50 Stat. 29, ch. 43, § 1.)

COMPILER'S NOTE

The first sentence of the act of 1937 provided: "On and after July 1, 1937, all sales of goods in the District of Columbia shall be made under and in accordance with the following provisions of law:"

STATUTORY REFERENCES

Bills of lading, see U. S. C., title 49, ch. 4.
Sale of securities, U. S. C., title 15, ch. 2a.

NOTES TO DECISIONS

CONDITIONAL SALE

The effectiveness of a conditional sales contract must be considered in the light of status of the parties at time contract was made. *Daine* v. *Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

CONSIDERATION

In so-called "cash transactions" in which passage of title depends upon payment, a check is generally considered conditional payment only and payment is effected only when check itself is paid. *Daine* v. *Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

RETAINED TITLE

In this jurisdiction, the retained title is nothing more than a security interest invocable only upon default by the buyer. It is well settled that the happening of such default clothes the seller with immediate right of repossession and also with the right to subject the property to the satisfaction of the unpaid obligation. *District of Columbia* v. *Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

SALE VERSUS CONSIGNMENT

A contract constitutes a sale when the consignee agrees to pay a certain price for consigned goods as he sells them and there are no restrictions or limitations imposed upon his right to sell the goods or as to the price on a sale by him, even though the contract contains a clause giving the consignee the right to return unsold goods. *Martin Co.* v. *Sumpter* (D. C. Mun. App. 1949, 64 A. 2d 425).

If a contract under which personal property is delivered to another permits him to sell the same at retail at prices fixed by himself and to retain the proceeds, his only obligation being to pay for the property as and when sold at prices fixed by the contract, the contract is not one of consignment but one of sale. *Martin Co.* v. *Sumpter* (D. C. Mun. App. 1949, 64 A. 2d 425).

§ 28–1102 [11: 62]. Capacity of parties—Liabilities for necessaries—Definition.

Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessaries are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

"Necessaries" in this section means goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 2.)

NOTES TO DECISIONS

INFANTS

Where infant did not misrepresent his age in purchasing a motor scooter he could recover purchase price, for inability to return the consideration and restore the status quo may not deprive him of his rights to repudiate. Emancipation does not give an infant enlarged capacity to contract. *Dawson* v. *Fox* (D. C. Mun. App. 1949, 64 A. 2d 162).

FORMALITIES OF THE CONTRACT

§ 28–1103 [11: 63]. Form of contract of sale.

Subject to the provisions of chapters 11–16 of this title and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth or may be inferred from the conduct of the parties. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 3.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1104 [11: 64]. Statute of frauds.

(1) A contract to sell or a sale of any goods or choses in action of the value of $500 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

(3) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 4.)

COMPILER'S NOTE

It is considered that this section supersedes § 12–304.

NOTES TO DECISIONS

ACCEPTANCE

Evidence justified a finding that delivery of goods amounted to an "assent on the part of the buyer to take existing and identified goods as owner" so as to constitute acceptance within the meaning of the Uniform Sales Act, Code § 28–1104. *Stamates* v. *Andelman* (D. C. Mun. App. 1949, 68 A. 2d 903).

SUBJECT MATTER OF CONTRACT

§ 28–1105 [11: 65]. Existing and future goods.

(1) The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in chapters 11–16 of this title called future goods.

(2) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 5.)

§ 28–1106 [11: 66]. Undivided shares—Fungible goods.

(1) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight, or measure of the goods in the mass, and though the number, weight, or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight, or measure bought bears to the number, weight, or measure of the mass. If the mass contains less than the number, weight, or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 6.)

CROSS REFERENCE

Other provisions concerning sale of an undivided share, § 28–1201.

§ 28–1107 [11: 67]. Destruction of goods sold—Option of buyer.

(1) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

(2) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale—

(a) As avoided; or

(b) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible. (Mar. 17, 1937, 50 Stat. 31, ch. 43, § 7.)

§ 28–1108 [11: 68]. Destruction of goods contracted to be sold—Option of buyer.

(1) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby voided.

(2) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—

(a) As avoided; or

(b) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible. (Mar. 17, 1937, 50 Stat. 31, ch. 43, § 8.)

THE PRICE

§ 28–1109 [11: 69]. Price—Ascertainment—Interest in real property as price.

(1) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2) The price may be made payable in any personal property.

(3) Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, chapters 11–16 of this title shall not apply.

(4) Where the price is not determined in accordance with the foregoing provisions, the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. (Mar. 17, 1937, 50 Stat. 31, ch. 43, § 9.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1110 [11: 70]. Price and terms to be fixed by third person—Failure to do so—Remedies.

(1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person without fault of the seller or the buyer can not or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person is prevented from fixing the price or terms by fault of the seller or the

buyer, the party not in fault may have such remedies against the party in fault as are allowed by chapters 14 and 15 of this title. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 10.)

CONDITIONS AND WARRANTIES

§ 28–1111 [11: 71]. Breach of conditions—Effect—Remedies.

(1) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first-mentioned party may also treat the nonperformance of the condition as a breach of warranty.

(2) Where the property in the goods has not passed, the buyer may treat the fulfillment by the sell of his obligations to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 11.)

COMPILER'S NOTE

The word "sell" in line 3 of subsection (2) probably should read "seller."

§ 28–1112 [11: 72]. Express warranty—Definition.

Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 12.)

NOTES TO DECISIONS

ADOPTION OF WARRANTIES

The mere resale of an article to which the manufacturer has affixed his warranty is not sufficient in itself to constitute an adoption of the warranty by the seller. There must be in addition some affirmation of fact or promise by the seller himself which tends to induce the buyer to purchase the article. *Orrison* v. *Ferrante* (D. C. Mun. App. 1950, 72 A. 2d 771).

AUTHORITY OF AGENT

A customer who went to defendant's retail jewelry store and was there shown jewelry by a salesman could reasonably assume that salesman was defendant's agent, and not acting as an independent jeweler, in selling a watch to customer and making a warranty as to its quality, and defendant was liable for acts of salesman on theory of salesman's "apparent authority." *Livingston* v. *Fuhrman* (D. C. Mun. App. 1944, 37 A. 2d 747).

BURDEN OF PROOF

One suing for a breach of warranty has the burden of establishing the warranty and its breach. *Livingston* v. *Fuhrman* (D. C. Mun. App. 1944, 37 A. 2d 747).

Buyer's burden of proving a breach of warranty that a watch was "waterproof" was not sustained by proof that watch was rusty and beyond repair at end of six months, in the absence of proof as to conditions under which the watch was used and the treatment it received. *Livingston* v. *Fuhrman* (D. C. Mun. App. 1944, 37 A. 2d 747).

CIRCUMSTANCES INDICATING EXPRESS WARRANTY

Where plaintiff asked for a waterproof watch at defendant's jewelry store and was shown watches purporting to answer that description, and receipt for watch purchased recited payment for a waterproof watch, there was an "express warranty" that watch was waterproof. *Livingston* v. *Fuhrman* (D. C. Mun. App. 1944, 37 A. 2d 747).

PLEADING

In action on note given for part of purchase price of automobile, affidavit of defense alleging that automobile dealer represented the automobile to be in good condition, that the automobile was found to be in an unsafe and dangerous condition and with numerous and serious defects, that the dealer did not remedy the defect notwithstanding repeated demands, and that automobile had been returned to dealer as worthless was sufficient to permit maker of note to establish defenses of failure of consideration, breach of warranty, and that he was induced to purchase the automobile and to sign the note by fraudulent misrepresentations. *Palmer* v. *Associates Discount Corporation*, 1941 (124 F. 2d 225, 74 App. D. C. 386).

Where subject matter of the present suit was returned after suit was filed but prior to the filing of the answer, evidence warranted the invocation of the rule providing that when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised by the pleadings. *Orrison* v. *Ferrante* (D. C. Mun. App. 1950. 72 A. 2d 771).

PRESUMPTION

In the absence of evidence of the meaning of the word "waterproof" as applied to watches, the court could not assume that a warranty of a waterproof watch warrants the watch to be waterproof regardless of conditions and treatment. *Livingston* v. *Fuhrman* (D. C. Mun. App. 1944, 37 A. 2d 747).

STATEMENTS OF SALESMEN

Salesman's statement, in reply to buyer's inquiry, that carpet was of a very good grade and should give buyer satisfactory wear, and that it was made by well-known rug maker, did not constitute an express warranty. *Mars* v. *Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

§ 28–1113 [11: 73]. Implied warranties of title.

In a contract to sell or a sale, unless a contrary intention appears, there is—

(1) An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass;

(2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale;

(3) An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.

(4) This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law, goods in which a third person has a legal or equitable interest. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 13.)

NOTES TO DECISIONS

LIABILITY FOR BREACH

Where defendant by contract authorized wrecking company to demolish lumber sheds and retain as its property the salvaged lumber but defendant had previously by

lease with oil company transferred to oil company right to the salvaged material, defendant having failed through no fault of wrecking company to perform unqualified undertaking to deliver merchandise was liable for damages. *Stern* v. *Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

§ 28–1114 [11: 74]. Implied warranty in contract to sell or sale of goods by description—By sample.

Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 14.)

§ 28–1115 [11: 75]. Implied warranties of quality or fitness—Effect of express warranty.

Subject to the provisions of chapters 11–16 of this title and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be merchantable quality.

(3) If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

(4) In the case of a contract to sell or sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5) An implied warranty or condition as to the quality or fitness for a particular purpose may be annexed by the usage of trade.

(6) An express warranty or condition does not negative a warranty or condition implied under chapters 11–16 of this title unless inconsistent therewith. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 15.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

NOTES TO DECISIONS

BURDEN OF PROOF

Buyer suing for breach of warranty in sale of a carpet had burden of proving that in making purchase buyer relied on seller's skill or judgment and that carpet was not reasonably fit for its known purpose. *Mars* v. *Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

DESCRIPTION, SALE BY

Where seller's salesman suggested to buyer that buyer select a carpet at a store and obtain the number and identifying description from the tag, and that salesman would then procure such carpet from manufacturer, sale of carpet obtained from manufacturer was by description, as regards whether there was an implied warranty as to fitness of the carpet. *Mars* v. *Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

DIRECTION OF VERDICT

That buyer's nonexpert testimony that fur coat had several spots where fur was worn off after three months' wear was contradicted by seller's experts who testified that fur was not worn off but merely "matted down" and could be restored by heavy brushing did not require direction of verdict for seller in buyer's action for breach of implied warranty of fitness because buyer introduced no expert testimony, where coat involved was admitted in evidence for jury's inspection. *Woodward & Lothrop* v. *Heed* (D. C. Mun. App. 1945, 44 A. 2d 369).

EVIDENCE, ADMISSIBILITY

Where issue of fact is a condition of an article, such as a fur coat involved in action for breach of implied warranty of fitness, the introduction in evidence of such article to enable jury to observe its condition is competent and persuasive evidence. *Woodward & Lothrop* v. *Heed* (D. C. Mun. App. 1945, 44 A. 2d 369).

EVIDENCE, SUFFICIENCY

In action for breach of warranty in sale of carpet, evidence which merely showed the retail price of carpet at time of delivery, had its quality answered to the warranty was insufficient basis for jury's award of damages. *Mars* v. *Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

Evidence that carpet corresponding to number, pattern and color was delivered at buyer's apartment, and that after carpet had been used for 2½ years buyer noticed that carpet had faded and that one spot in living room was badly worn did not support a finding that carpet was not of "merchantable quality" within intent of implied warranty provision of this section. *Mars* v. *Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

Where defects allegedly developed in fur coat purchased by fur wearing out after only three months' wear, evidence of durability of a comparable object was not required to sustain buyer's action for breach of implied warranty of fitness. *Woodward & Lothrop* v. *Heed* (D. C. Mun. App. 1945, 44 A. 2d 369).

GENERAL USE, FITNESS FOR

Where carpet sold was for use in usual apartment occupied for residence purposes by a small family, fitness for a known purpose implied under implied warranty provision of this section was fitness for general use, so that there where no special conditions requiring a carpet of unusual specifications, or one of other than a quality reasonably fit for its purpose. *Mars* v. *Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

Since outer garments intended for domestic wear are not unlikely to come into momentary contact with lighted matches, tobacco or stoves, a robe, which when this contact occurs instantly bursts into flame and inflicts severe injury is unreasonably dangerous and unfit for use, and there is a breach of seller's implied warranty of fitness. *Deffebach* v. *Lansburgh & Bro.* (App. D. C. 1945, 150 F. 2d 591, 80 U. S. App. D. C. 185, 168 A. L. R. 1052).

The implied warranty of fitness of article sold prescribed by subsection (1) of this section must be reasonably construed in light of common knowledge in reference to nature of such article. *Woodward & Lothrop* v. *Heed* (D. C. Mun. App. 1945, 44 A. 2d 369).

INSTRUCTIONS

In buyer's action for breach of warranty in sale of carpet, instructions should take into consideration evidence concerning durability of carpet of period and comparable in price with that purchased, seller's warranty being that carpet is of not less than the fair minimum grade or quality of typical carpets of the price range at the time of the sale. *Mars* v. *Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

Where plaintiff who was not an expert in textiles purchased a robe from defendant for use as a lounging robe and her examination of the robe could not have revealed

the fact that it would burn up in an instant if it came in contact with flame, the court erred in failing to instruct jury, in action for breach of warranty, that if the robe caught fire and burned as plaintiff testified, there was a breach of defendant's implied warranty of fitness. *Deffebach* v. *Lansburgh & Bro.* (App. D. C. 1945, 150 F. 2d 591, 80 U. S. App. D. C. 185, 168 A. L. R. 1052).

INTENDED USE, KNOWLEDGE OF

Where contract provided for installation of boiler for heating purposes, and purpose for which boiler was to be used was made known to seller prior to contract, an "implied warranty" existed that the boiler was reasonably fit for that purpose. *Griffith-Consumers Co.* v. *Noonan* (App. D. C. 1943, 136 F. 2d 271).

LOSS OF WARRANTIES

Where the evidence was clear that the customer made the original repairs herself and the machine then worked, but that thereafter the machine stopped completely and "you could see the damage in the gear," such evidence does not indicate the need for a minor repair but rather for general overhauling and possible replacement of parts. Against such defective materials or workmanship there was no implied warranty by the dealer since it would have been inconsistent with the written express warranty of the manufacturer who agreed to replace such parts. *Orrison* v. *Ferrante* (D. C. Mun. App. 1950, 72 A. 2d 771).

PARTICULAR PURPOSE

This section providing that in case of sale of specified article under trade name there is no implied warranty as to its fitness for any "particular purpose" uses quoted phrase as meaning a usage other or different in kind or extent than the ordinary uses the article was made to meet. *Mars* v. *Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

QUESTIONS FOR JURY

In buyer's action for breach of implied warranty of fitness of fur coat purchased, buyer's nonexpert testimony that she purchased coat on assurance of defendant's salesman that it would wear well and that she relied on his skill and judgment, but that after three months' careful wear fur had worn off in several places, though contradicted by seller's experts, presented jury issue as to whether coat was reasonably fit for purpose for which sold. *Woodward & Lothrop* v. *Heed* (D. C. Mun. App. 1945, 44 A. 2d 369).

SALES OF FOOD

The language of the statute held sufficiently broad to cover sales of food. *Hanback* v. *Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).

SUCCESSOR IN INTEREST

Donee—consumer of food not successor in interest of the buyer. *Hanback* v. *Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).

SALE BY SAMPLE

§ 28–1116 [11: 76]. Implied warranties in contract to sell or sale by sample.

In the case of a contract to sell or a sale by sample—

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 28–1307.

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 16.)

Chapter 12.—TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

Sec.
28–1201. No property passes until goods are ascertained.
28–1202. Property in specific goods passes when parties so intend.
28–1203. Rules for ascertaining intention.
28–1204. Reservation by seller of right of possession or property to secure performance by buyer—Bill of lading.
28–1205. Sale by auction—Separate contracts—When sale complete—Seller's right to bid—Notice.
28–1206. Risk of loss.

TRANSFER OF TITLE

28–1207. Sale by a person not the owner.
28–1208. Sale by one having a voidable title.
28–1209. Sale by seller in possession of goods already sold.
28–1210. Creditors' rights against sold goods in seller's possession.
28–1211. Negotiable documents of title—Definition.
28–1212. Negotiation of negotiable documents by delivery.
28–1213. Negotiation of negotiable documents by endorsement.
28–1214. Negotiable documents of title marked "Not negotiable."
28–1215. Transfer of nonnegotiable documents.
28–1216. Who may negotiate a negotiable document.
28–1217. Title and rights of person to whom negotiable document has been negotiated.
28–1218. Rights of transferee of document—Nonnegotiable document—Notice to bailee—Remedy of creditors of transferor.
28–1219. Transfer of negotiable document without endorsement—Time of taking effect.
28–1220. Warranties on sale of document.
28–1221. Liability of endorser—Limitation.
28–1222. Negotiation to bona fide holder for value without notice not impaired by breach of duty, fraud, mistake, or duress.
28–1223. Attachment or levy upon goods for which a negotiable document has been issued.
28–1224. Creditors' remedies to reach negotiable documents.

§ 28–1201 [11: 77]. No property passes until goods are ascertained.

Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 28–1106. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 17.)

§ 28–1202 [11: 78]. Property in specific goods passes when parties so intend.

(1) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 18.)

NOTES TO DECISIONS

INTENT, DETERMINATION OF

In determining when title passes from seller to buyer under the Uniform Sales Act § 28–1101 et seq., actual intent of parties must be determined from the terms of the contract, the conduct of the parties and all the circumstances. *Secor* v. *Charles H. Tompkins Co.* (D. C. Mun. App. 1946, 45 A. 2d 117).

PASSAGE OF TITLE

Where nothing remains to be done but completion of payment, title was transferred as the parties to the contract intended and unless a contrary intention appears, in an unconditional contract to sell specific goods in a deliverable state, property passes to the buyer when the contract is made and it is immaterial whether time of payment or delivery be postponed. *Daine* v. *Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

§ 28–1203 [11: 79]. Rules for ascertaining intention.

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

Rule 1. Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

Rule 2. Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing is done.

Rule 3. (1) When goods are delivered to the buyer "on sale or return," or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revest the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer—

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 4. (1) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 28–1204. This presumption is applicable, although by the terms of the contract, the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalents.

Rule 5. If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 19.)

CROSS REFERENCE

Delivery to carrier on behalf of buyer, § 28–1306.

NOTES TO DECISIONS

DELIVERY AT DESTINATION

Where sale contract requires delivery at point of destination, title usually remains in the shipper, and the risks of transportation must be borne by him. *Secor* v. *Charles H. Tompkins Co.* (D. C. Mun. App. 1946, 45 A. 2d 117).

Under Uniform Sales Act § 28–1101 et seq., title to goods did not pass to buyer until physical delivery at the point of destination was accomplished, so as to make seller liable for loss by breakage in transit, where contract required seller to ship the goods by freight to point of destination by a carrier not specified by buyer, and seller was to pay the freight. *Secor* v. *Charles H. Tompkins Co.* (D. C. Mun. App. 1946, 45 A. 2d 117).

LOSS OR DAMAGE IN TRANSIT

In determining whether loss by breakage during transit falls on buyer or seller of goods, the general rule is that loss or damage to goods in transit usually follows title to the goods. *Secor* v. *Charles H. Tompkins Co.* (D. C. Mun. App. 1946, 45 A. 2d 117).

PASSAGE OF TITLE

Where nothing remains to be done but completion of payment, title was transferred as the parties to the contract intended and, unless a contrary intention appears in an unconditional contract to sell specific goods in a deliverable state, property passes to the buyer when the contract is made and it is immaterial whether time of payment or delivery be postponed. *Daine* v. *Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

PREPAYMENT OF FREIGHT

The prepayment of freight by seller and use of the term "f. o. b." in sales contract are only two of the facts to be given consideration in determining time and place at which parties intended to pass title, and the answer must be found in all facts showing actual intention of the parties. *Electric Storage Battery Co.* v. *District of Columbia* (App. D. C. 1946, 155 F. 2d 867).

Under written contract entered into by taxpayer, which was a New Jersey corporation maintaining a branch office but no warehouse or stock of merchandise in District of Columbia, with one to act as its wholesale distributor in District, the title to goods passed from taxpayer to distributor when delivery was made by taxpayer to carrier outside of the District, so that the sales made to distributor were not required to be reported as gross income from sources within the District, notwithstanding that taxpayer agreed to pay cost of transportation and reserved the right to select the carrier. *Electric Storage Battery Co.* v. *District of Columbia* (App. D. C. 1946, 155 F. 2d 867).

§ 28–1204 [11 : 80]. Reservation by seller of right of possession or property to secure performance by buyer—Bill of lading.

(1) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of

the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

(4) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is endorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading endorsed by the consignee named therein, or of the goods, without notice of the facts, making the transfer wrongful. (Mar. 17, 1937, 50 Stat. 34, ch. 43, § 20.)

§ 28–1205 [11: 81]. Sale by auction—Separate contracts—When sale complete—Seller's right to bid—Notice.

In the case of a sale by auction—

(1) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller.

(4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. (Mar. 17, 1937, 50 Stat. 35, ch. 43, § 21.)

§ 28–1206 [11: 82]. Risk of loss.

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a) Where delivery of the goods has been made to the buyer or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

(b) Where delivery has been delayed through the fault of either the buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. (Mar. 17, 1937, 50 Stat. 35, ch. 43, § 22.)

TRANSFER OF TITLE

§ 28–1207 [11: 83]. Sale by a person not the owner.

(1) Subject to the provisions of chapters 11–16 of this title, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in chapters 11–16 of this title, however, shall affect—

(a) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

(b) The validity of any contract to sell or sale under any special common-law or statutory power of sale or under the order of a court of competent jurisdiction. (Mar. 17, 1937, 50 Stat. 35, ch. 43, § 23.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

NOTES TO DECISIONS

ESTOPPEL

The general rule is that the seller of chattels can confer no better title than he himself has, but a recognized exception to the rule is based on estoppel. *General Credit* v. *Universal Credit Co.* (69 App. D. C. 80, 99 Fed. (2d) 115).

If the owner of automobiles stands by and permits a licensed dealer in automobiles to hold himself out as the owner, to treat the goods as his own and place them with similar goods in a public show room and to offer them for sale to the public, he will be estopped from asserting his ownership against a purchaser for value without notice. *General Credit* v. *Universal Credit Co.* (69 App. D. C. 80, 99 Fed. (2d) 115).

§ 28–1208 [11: 84]. Sale by one having a voidable title.

Where the seller of goods has a voidable title thereto, but his title has not been voided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 24.)

§ 28–1209 [11: 85]. Sale by seller in possession of goods already sold.

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 25.)

§ 28–1210 [11: 86]. Creditors' rights against sold goods in seller's possession.

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 26.)

§ 28–1211 [11: 87]. Negotiable documents of title—Definition.

A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title within the meaning of chapters 11–16 of this title. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 27.)

§ 28–1212 [11: 88]. Negotiation of negotiable documents by delivery.

A negotiable document of title may be negotiated by delivery—

(a) Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the bearer; or

(b) Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same, undertakes to deliver the goods to the order of a specified person, and such person or a subsequent endorsee of the document has endorsed it in blank or to the bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been endorsed in blank or to bearer, any holder may endorse the same to himself or to any specified person, and in such case the document shall thereafter be negotiated only by the endorsement of such endorsee. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 28.)

§ 28–1213 [11: 89]. Negotiation of negotiable documents by endorsement.

A negotiable document of title may be negotiated by the endorsement of the person to whose order the goods are by the terms of the document deliverable. Such endorsement may be in blank, to bearer, or to a specified person. If endorsed to a specified person, it may be again negotiated by the endorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiations may be made in like manner. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 29.)

§ 28–1214 [11: 90]. Negotiable documents of title marked "Not negotiable."

If a document of title which contains an undertaking by a carrier, warehouseman, or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "nonnegotiable," or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of chapters 11–16 of this title. But nothing in chapters 11–16 of this title contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title or placing thereon the words "not negotiable," "nonnegotiable," or the like. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 30.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1215 [11: 91]. Transfer of nonnegotiable documents.

A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable document cannot be negotiated and the endorsement of such a document gives the transferee no additional right. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 31.)

§ 28–1216 [11: 92]. Who may negotiate a negotiable document.

A negotiable document may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the document, the bailee issuing it undertakes to deliver the goods to the order of such person, or if at the time of negotiation the document is in such form that it may be negotiated by delivery. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 32.)

§ 28–1217 [11: 93]. Title and rights of person to whom negotiable document has been negotiated.

A person to whom a negotiable document of title has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value; and

(b) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 33.)

§ 28–1218 [11: 94]. Rights of transferee of document—Nonnegotiable document—Notice to bailee—Remedy of creditors of transferor.

A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is nonnegotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a nonnegotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 34.)

§ 28–1219 [11: 95]. Transfer of negotiable document without endorsement—Time of taking effect.

Where a negotiable document of title is transferred for value by delivery, and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to endorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the endorsement is actually made. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 35.)

§ 28–1220 [11: 96]. Warranties on sale of document.

A person who for value negotiates or transfers a document of title by endorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

(a) That the document is genuine;

(b) That he has a legal right to negotiate or transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the document; and

(d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 36.)

§ 28–1221 [11: 97]. Liability of endorser—Limitation.

The endorsement of a document of title shall not make the endorser liable for any failure on the part of the bailee who issued the document or previous endorsers thereof to fulfill their respective obligations. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 37.)

§ 28–1222 [11: 98]. Negotiation to bona fide holder for value without notice not impaired by breach of duty, fraud, mistake, or duress.

The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor in good faith without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress, or conversion. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 38.)

§ 28–1223 [11: 99]. Attachment or levy upon goods for which a negotiable document has been issued.

If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them, they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 39.)

§ 28–1224 [11: 100]. Creditors' remedies to reach negotiable documents.

A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 40.)

Chapter 13.—PERFORMANCE OF CONTRACT

Sec.

28–1301. Duty of seller to deliver and buyer to accept and pay for goods.
28–1302. Delivery and payment are concurrent conditions.
28–1303. Delivery — Time — Place — Manner—Demand—Expense.
28–1304. Delivery of wrong quantity or mixed with other goods.
28–1305. Delivery in installments.
28–1306. Delivery to a carrier on behalf of the buyer—Duty of seller to contract with carrier—Insurance.
28–1307. Right of buyer to examine the goods—Exception—Authorized delivery to carrier.
28–1308. Acceptance—Definition.
28–1309. Acceptance does not bar action for damages or breach of warranty—Notice required.
28–1310. Buyer is not bound to return goods not accepted—Notice to seller.
28–1311. Buyer's liability for failing to accept delivery—Rights of seller.

§ 28–1301 [11: 101]. Duty of seller to deliver and buyer to accept and pay for goods.

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 41.)

§ 28–1302 [11: 102]. Delivery and payment are concurrent conditions.

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 42.)

NOTES TO DECISIONS

CONCURRENT CONDITIONS

Where the contract contemplates a single act or exchange of acts, unless the circumstances show a contrary intention, the court will interpret a promise which does not in terms state the time of performance as intending performance in a reasonable time. *Martin Co.* v. *Sumpter* (D. C. Mun. App. 1949, 64 A. 2d 425).

Delivery of goods and payment of the price are ordinarily concurrent conditions, but the act recognizes that parties may make any terms they wish. Where in the alleged transaction, sales were made on credit with the only difference relating to the terms of such credit, the rule is that until the term of the credit has expired, the buyer is not obligated to pay. *Martin Co.* v. *Sumpter* (D. C. Mun. App. 1949, 64 A. 2d 425).

§ 28–1303 [11: 103]. Delivery—Time—Place—Manner—Demand—Expense.

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. (Mar. 17, 1937, 50 Stat. 39, ch. 43, § 43.)

§ 28–1304 [11: 104]. Delivery of wrong quantity or mixed with other goods.

(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties. (Mar. 17, 1937, 50 Stat. 39, ch. 43, § 44.)

NOTES TO DECISIONS

AGREEMENT ON QUANTITY

Subsection (2) of this section does not apply unless delivery is made under contract wherein quantity has been fixed by agreement. *Shpetner* v. *Hollywood Credit Clothing Co.* (D. C. Mun. App. 1945, 42 A. 2d 522).

EVIDENCE, SUFFICIENCY

Where buyer's order of two dozen ladies' hats was subject to confirmation by seller, and without further notice seller shipped four boxes each containing two dozen hats and first box was accepted by buyer, and other boxes later received were rejected, and copy of shipping receipt delivered to buyer bore notation, "No. Pieces 4", in seller's action to recover for the other six dozen hats evidence warranted judgment for buyer. *Shpetner* v. *Hollywood Credit Clothing Co.* (D. C. Mun. App. 1945, 42 A. 2d 522).

PURCHASER, RIGHTS OF

On receiving an order for merchandise may submit a counter offer by shipping different goods or greater quantity of goods ordered, and that is but a tender which purchaser may accept, thereby becoming bound for the whole, or reject without incurring liability, but, if he retains part and rejects part, no contract is created requiring him to pay for the whole unless delivery was expressly made subject to that condition or other circumstances exist from which it may be found that he assented to delivery not conforming to terms of his order. *Shpetner* v. *Hollywood Credit Clothing Co.* (D. C. Mun. App. 1945, 42 A. 2d 522).

§ 28–1305 [11: 105]. Delivery in installments.

(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

(2) Where there is a contract to sell goods to be delivery by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to make delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for

damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation but not to a right to treat the whole contract as broken. (Mar. 17, 1937, 50 Stat. 39, ch. 43, § 45.)

§ 28–1306 [11: 106]. Delivery to a carrier on behalf of the buyer—Duty of seller to contract with carrier—Insurance.

(1) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 28–1203, rule 5, or unless a contrary intent appears.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 46.)

§ 28–1307 [11: 107]. Right of buyer to examine the goods—Exception—Authorized delivery to carrier.

(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(3) Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 47.)

§ 28–1308 [11: 108]. Acceptance—Definition.

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 48.)

NOTES TO DECISIONS

ACCEPTANCE

Evidence justified a finding that goods delivered amounted to an "assent on the part of the buyer to take existing and identified goods as owner" and constituted acceptance within the meaning of the Code. *Stamates* v. *Andelman* (D. C. Mun. App. 1949, 68 A. 2d 903).

§ 28–1309 [11: 109]. Acceptance does not bar action for damages or breach of warranty—Notice required.

In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fails to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 49.)

§ 28–1310 [11: 110]. Buyer is not bound to return goods not accepted—Notice to seller.

Unless otherwise agreed, where goods are delivered to the buyer, and he refused to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 50.)

§ 28–1311 [11: 111]. Buyer's liability for failing to accept delivery—Rights of seller.

When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the right against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 51.)

Chapter 14.—RIGHTS OF UNPAID SELLER AGAINST GOODS

Sec.

28–1401. Unpaid seller—Definition.
28–1402. Remedies of an unpaid seller.

UNPAID SELLER'S LIEN

28–1403. When right of lien may be exercised.
28–1404. Lien after part delivery.
28–1405. When lien is lost.

STOPPAGE IN TRANSITU

28–1406. Seller may stop goods in transitu on buyer's insolvency.
28–1407. When goods are in transit.
28–1408. Ways of exercising the right of stoppage in transitu—Duty of carrier or bailee in possession.

RESALE BY THE SELLER

Sec.
28–1409. Unpaid seller's right to resell—Notice—Validity of sale.

RESCISSION BY THE SELLER

28–1410. Unpaid seller's right to rescind the transfer of title—Notice of intention to rescind.
28–1411. Effect of sale by buyer of goods subject to lien or stoppage in transitu—Bona fide purchaser of negotiable document of title.

§ 28–1401 [11: 112]. Unpaid seller—Definition.

(1) The seller of goods is deemed to be an unpaid seller within the meaning of chapters 11–16 of this title—

(a) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

(2) In this part of chapters 11–16 of this title the term "seller" includes an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price, or any other person who is in the position of a seller. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 52.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1402 [11: 113]. Remedies of an unpaid seller.

(1) Subject to the provisions of chapters 11–16 of this title, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such has—

(a) A lien on the goods or right to retain them for the price while he is in possession of them;

(b) In case of insolvency of the buyer, the right of stopping the goods in transitu after he has parted with the possession of them;

(c) A right of resale as limited by chapters 11–16 of this title; and

(d) A right to rescind the sale as limited by chapters 11–16 of this title.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 53.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

UNPAID SELLER'S LIEN

§ 28–1403 [11: 114]. When right of lien may be exercised.

(1) Subject to the provisions of chapters 11–16 of this title, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely—

(a) Where the goods have been sold without any stipulation as to credit;

(b) Where the goods have been sold on credit, but the term of credit has expired; and

(c) Where the buyer becomes insolvent

(2) The seller may exercise his right of lien, notwithstanding that he is in possession of the goods as agent or bailee for the buyer. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 54.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1404 [11: 115]. Lien after part delivery.

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 55.)

§ 28–1405 [11: 116]. When lien is lost.

(1) The unpaid seller of goods loses his lien thereon—

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

(b) When the buyer or his agent lawfully obtains possession of the goods; and

(c) By waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 56.)

NOTES TO DECISIONS

PASSAGE OF TITLE

Where nothing remains to be done but completion of payment, title was transferred as the parties to the contract intended. Unless a contrary intention appears in an unconditional contract to sell specific goods in a deliverable state, property passes to the buyer when the contract is made and it is immaterial whether time of payment or delivery be postponed. *Daine* v. *Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

TRANSFER OF POSSESSION

A seller's lien is predicated upon possession and is lost when the buyer lawfully obtains possession of the goods. *Daine* v. *Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

STOPPAGE IN TRANSITU

§ 28–1406 [11: 117]. Seller may stop goods in transitu on buyer's insolvency.

Subject to the provisions of chapters 11–16 of this title when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu; that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 57.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1407 [11: 118]. When goods are in transit.

(1) Goods are in transit within the meaning of section 28–1406—

(a) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee; and

(b) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

(2) Goods are no longer in transit within the meaning of section 28–1406—

(a) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer; and

(c) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

(3) If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(4) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 58.)

§ 28–1408 [11: 119]. Ways of exercising the right of stoppage in transitu—Duty of carrier or bailee in possession.

(1) The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(2) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancelation. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 59.)

RESALE BY THE SELLER

§ 28–1409 [11: 120]. Unpaid seller's right to resell—Notice—Validity of sale.

(1) Where the goods are of perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

(3) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

(4) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

(5) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. (Mar. 17, 1937, 50 Stat. 43, ch. 43, § 60.)

RESCISSION BY THE SELLER

§ 28–1410 [11: 121]. Unpaid seller's right to rescind the transfer of title—Notice of intention to rescind.

(1) An unpaid seller having the right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted. (Mar. 17, 1937, 50 Stat. 43, ch. 43, § 61.)

§ 28–1411 [11: 122]. Effect of sale by buyer of goods subject to lien or stoppage in transitu—Bona fide purchaser of negotiable document of title.

Subject to the provisions of chapters 11–16 of this title, the unpaid seller's right of lien or stoppage in

transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiations be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu. (Mar. 17, 1937, 50 Stat. 44, ch. 43, § 62.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

Chapter 15.—ACTIONS FOR BREACH OF CONTRACT

Sec.

28–1501. Action for the price.
28–1502. Action for damages for nonacceptance of the goods—Measure of damages.
28–1503. When seller may rescind contract to sell or sale—Notice to buyer.
28–1504. Action for converting or detaining goods.
28–1505. Action for damages for nondelivery—Measure of damages.
28–1506. Action for specific performance.
28–1507. Remedies for breach of warranty—Rescinding the contract—Measure of damages.
28–1508. Recovery of interest and special damages.

§ 28–1501 [11: 123]. Action for the price.

(1) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3) Although the property in the goods has not passed, if they can not readily be resold for a reasonable price, and if the provisions of section 28–1502 (4) are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price. (Mar. 17, 1937, 50 Stat. 44, ch. 43, § 63.)

§ 28–1502 [11: 124]. Action for damages for nonacceptance of the goods—Measure of damages.

(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for nonacceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

(4) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing toward carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages. (Mar. 17, 1937, 50 Stat. 44, ch. 43, § 64.)

§ 28–1503 [11: 125]. When seller may rescind contract to sell or sale—Notice to buyer.

Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 65.)

NOTES TO DECISIONS

MUTUAL MISUNDERSTANDING

Where defendant by contract authorized wrecking company to demolish lumber sheds and retain as its property the salvaged lumber, but defendant had previously by lease with oil company transferred to oil company right to the salvaged material, defendant was not entitled to rescission of contract with wrecking company on ground of mutual mistake. *Stern* v. *Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

§ 28–1504 [11: 126]. Action for converting or detaining goods.

Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 66.)

§ 28–1505 [11: 127]. Action for damages for nondelivery—Measure of damages.

(1) Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for nondelivery.

(2) The measure of damages is the loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered or if no time was fixed, then at the time of the refusal to deliver. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 67.)

NOTES TO DECISIONS

AMOUNT OF RECOVERY

Where seller breached obligation to deliver used lumber and buyer's witnesses made detailed count and measurement of lumber and based on such measurement and on actual sales of part of lumber, gave estimate of value, and trial judge found that strong preponderance of evidence as to value supported buyer's estimate but in entering finding for buyer reduced claim by about 20 percent, defendant could not complain. *Stern* v. *Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

IMPOSSIBILITY OF PERFORMANCE

Where defendant by contract authorized wrecking company to demolish lumber sheds and retain as its property the salvaged lumber but defendant had previously by lease with oil company transferred to oil company right to the salvaged material and wrecking company did not know of prior claim of oil company, defendant could not escape liability for damages on theory of impossibility of performance. *Stern* v. *Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

KNOWLEDGE OF INABILITY TO PERFORM

Neither defense of mistake nor impossibility of performance can prevail if the inability to perform was known to, or foreseeable by, or caused by the promisor, and unknown to the promisee. *Stern* v. *Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

SPECULATIVE DAMAGES

Where seller breached obligation to deliver used lumber and buyer's witnesses made detailed count and measurement of lumber and based on such measurement and on actual sales of part of lumber gave estimate of value, seller testified that though he had not measured or counted lumber, buyer's estimates were too high and seller gave lower figure as representing fair market value, recovery by buyer was not precluded on theory that damages claimed were speculative. *Stern* v. *Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

§ 28–1506 [11: 128]. Action for specific performance.

Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 68.)

§ 28–1507 [11: 129]. Remedies for breach of warranty—Rescinding the contract—Measure of damages.

(1) Where there is a breach of warranty by the seller, the buyer may, at his election—

(a) Accept or keep the goods and set up against the seller the breach of warranty by way of recoupment in diminution or extinction of the price;

(b) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty; and

(d) Rescind the contract to sell, or the sale, and refuse to receive the goods; or if the goods have already been received return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(2) When the buyer has claimed and has been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(3) Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(4) Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

(5) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 28–1402.

(6) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(7) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 69.)

NOTES TO DECISIONS

APPRAISEMENT OF DAMAGES

The jury's appraisement of damages for breach of warranty must be based upon evidence, not speculation. *Mars* v. *Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

CHILD NOT SUCCESSOR IN INTEREST

Child who ate food purchased by its mother held not "a successor in interest of the buyer." *Hanback* v. *Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).

ELECTION OF REMEDIES

One who has been induced to enter into a contract by false and fraudulent representations may rescind the contract; or he may affirm it, keeping what he has received under it, and maintain an action to recover damages as sustained by reason of the fraud; or he may set up damages as a complete or partial defense if sued on the contract by the other party. *Simmons* v. *Brook* (D. C. Mun. App. 1949, 66 A. 2d 517).

A final and decisive choice of the equitable remedy by way of rescission and cancellation operates as an election of remedies and bars a subsequent action at law for damages. *Simmons* v. *Brook* (D. C. Mun. App. 1949, 66 A. 2d 517).

EVIDENCE, SUFFICIENCY

In action for breach of warranty in sale of carpet, evidence which merely showed the retail price of carpet at time of delivery, had its quality answered to the warranty, was insufficient basis for jury's award of damages. *Mars* v. *Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

MEASURE OF DAMAGES

In the case of breach of warranty of quality, the loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. *Orrison* v. *Ferrante* (D. C. Mun. App. 1950, 72 A. 2d 771).

A buyer loses his right to rescind and recover the price paid by continuing to treat the property as his own. *Orrison* v. *Ferrante* (D. C. Mun. App. 1950, 72 A. 2d 771).

SALES OF FOOD

The language of the statute held sufficiently broad to cover sales of food. *Hanback* v. *Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).

§ 28–1508 [11: 130]. Recovery of interest and special damages.

Nothing in chapters 11–16 of this title shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 70.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

Chapter 16.—INTERPRETATION OF UNIFORM SALES ACT

Sec.

28–1601. Variation of implied obligations.
28–1602. Rights may be enforced by action.
28–1603. Rule for cases not provided for by this act.
28–1604. Interpretation shall give effect to purpose of uniformity.
28–1605. Provisions not applicable to mortgages.
28–1606. Definitions.
28–1607. Act does not apply to the existing sales or contracts to sell.
28–1608. Short title.

§ 28–1601 [11: 131]. Variation of implied obligations.

Where any right, duty, or liability would arise under a contract to sell or a sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 71.)

NOTES TO DECISIONS

SALES OF FOOD

The language of the act is sufficiently broad to cover sales of food. *Hanbach* v. *Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).

§ 28–1602 [11: 132]. Rights may be enforced by action.

Where any right, duty, or liability is declared by chapters 11–16 of this title, it may, unless otherwise by chapters 11–16 of this title provided, be enforced by action. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 72.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1603 [11: 133]. Rule for cases not provided for by this act.

In any case not provided for in chapters 11–16 of this title, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 73.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1604 [11: 134]. Interpretation shall give effect to purpose of uniformity.

Chapters 11–16 of this title shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those States which enact it. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 74.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1605 [11: 135]. Provisions not applicable to mortgages.

The provisions of chapters 11–16 of this title relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 75.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1606 [11: 136]. Definitions.

(1) In chapters 11–16 of this title, unless the context or subject matter otherwise requires—

"Action" includes counterclaim, set-off, and suit in equity.

"Buyer" means a person who buys or agrees to buy goods or any legal successor in interest of such person.

"Defendant" includes a plaintiff against whom a right of set-off or counterclaim is asserted.

"Delivery" means voluntary transfer of possession from one person to another.

"Divisible contract to sell or sale" means a contract to sell or a sale in which by its term the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

"Document of title to goods" includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by endorsement or by delivery, goods represented by such document.

"Fault" means wrongful act or default.

"Fungible goods" means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

"Future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale.

"Goods" include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

"Order" in sections of chapters 11–16 of this title relating to documents of title means an order by indorsement on the documents.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"Plaintiff" includes defendant asserting a right of set-off or counterclaim.

"Property" means the general property in goods, and not merely a special property.

"Purchaser" includes mortgagee and pledgee.

"Purchases" includes taking as a mortgagee or as a pledgee.

"Quality of goods" includes their state or condition.

"Sale" includes a bargain and sale as well as a sale and delivery.

"Seller" means a person who sells or agrees to sell goods, or any legal successor in the interest of such person.

"Specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

"Value" is any consideration sufficient to support a simple contract. An antecedent or preexisting claim, whether for money or not, constitutes value where goods or documents of titles are taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of chapters 11–16 of this title when it is in fact done honestly, whether it be done negligently or not.

(3) A person is insolvent within the meaning of chapters 11–16 of this title who either has ceased to pay his debts in the ordinary course of business or can not pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the Federal Bankruptcy Law or not.

(4) Goods are in a "deliverable state" within the meaning of chapters 11–16 of this title when they are in such a state that the buyer would, under the contract, be bound to take delivery of them. (Mar. 17, 1937, 50 Stat. 47, ch. 43, § 76.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1607 [11: 136a]. Act does not apply to the existing sales or contracts to sell.

None of the provisions of chapters 11–16 of this title shall apply to any sale, or to any contract to sell, made prior to the taking effect of chapters 11–16 of this title. (Mar. 17, 1937, 50 Stat. 48, ch. 43, § 76a.)

COMPILER'S NOTE

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

§ 28–1608 [11: 138]. Short title.

Chapters 11–16 of this title may be cited as the "Uniform Sales Act." (Mar. 17, 1937, 50 Stat. 48, ch. 43, § 79.)

COMPILER'S NOTES

Section 77 of the 1937 act provided as follows: "All acts or parts of acts inconsistent with this act are hereby repealed."

Section 78 of the act provided that it shall take effect on July 1, 1937. See compiler's note to § 28–1101.

"Chapters 11–16 of this title" set forth the Uniform Sales Act.

Chapter 17.—BULK SALES LAW

Sec.
28–1701. Sales in bulk—Written statement as to creditors.
28–1702. Sale presumed fraudulent and void unless notice is given by vendee to creditors of vendor.
28–1703. Sale in bulk—Definition.
28–1704. Sales by executors, administrators, receivers, or public officers excepted.
28–1705. Presumptions and rules of evidence not affected.

§ 28–1701 [11: 14]. Sales in bulk—Written statement as to creditors.

It shall be the duty of every person who shall bargain for or purchase any stock of goods, wares, or merchandise in bulk, for cash or credit, within the District of Columbia, to demand and receive from the vendor thereof, and if the vendor be a corporation then from a managing officer or agent thereof, at least five days before the consummation of such bargain or purchase and at least five days before paying or delivering to the vendor any part of the purchase price or consideration therefor, or any promissory note or other evidence of indebtedness therefor, a written statement, under oath, containing the names and addresses of all of the creditors of said vendor, together with the amount of indebtedness due or owing, or to become due or owing, by said vendor to each of such creditors, and if there be no such creditors, a written statement, under oath, to that effect; and it shall be the duty of such vendor to furnish such statement at least five days before any sale or transfer by him of any stock of goods, wares, or merchandise in bulk. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 1.)

CROSS REFERENCE

Application to sale of corporation assets in their entirety, § 29–240.

§ 28–1702 [11: 15]. Sale presumed fraudulent and void unless notice is given by vendee to creditors of vendor.

After having received from the vendor the written statement, under oath, mentioned in section 28–1701, the vendor shall, at least five days before the consummation of such bargain or purchase, and at least five days before paying or delivering to the vendor any part of the purchase price or consideration therefor, or any promissory note or other evidence of indebtedness for the same, in good faith notify or cause to be notified, personally or by wire or by registered letter, each of the creditors of the vendor named in said statement of the proposed purchase by him of such stock of goods, wares, or merchandise; and whenever any person shall purchase any stock of goods, wares, or merchandise in bulk, or shall pay the purchase price or any part thereof, or execute or deliver to the vendor thereof or to his order, or to any person for his use, any promissory note or other evidence of indebtedness for said stock, or any part thereof, without having first demanded and received from his vendor the statement, under oath, as provided in section 28–1701, and without also having notified or caused to be notified all of the creditors of the vendor named in such statement, as in this section prescribed, such purchase, sale, or transfer shall, as to any and all creditors of the vendor, be conclusively presumed fraudulent and void. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 2.)

COMPILER'S NOTE

The word "vendor" in line 3 probably should read "vendee."

§ 28–1703 [11: 16]. Sale in bulk—Definition.

Any sale or transfer of a stock of goods, wares, or merchandise out of the usual or ordinary course of the business or trade of the vendor, or whenever thereby substantially the entire business or trade theretofore conducted by the vendor shall be sold or conveyed, or attempted to be sold or conveyed, to one or more persons, shall be deemed a sale or transfer in bulk, in contemplation of sections 28–1701 to 28–1705. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 3.)

NOTES TO DECISIONS

BULK SALES

Where parties interested do not contest sale of undivided interest under the act, their court will not determine whether such interest is within the purview of said act *Second Natl. Bank* v. *Yankon* (55 App. D. C. 252, 4 Fed. (2d) 445).

§ 28–1704 [11: 17]. Sales by executors, administrators, receivers, or public officers excepted.

Nothing contained in sections 28–1701 to 28–1705 shall apply to sales made by executors, administrators, receivers, or any public officer conducting a sale in his official capacity. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 4.)

§ 28–1705 [11: 18]. Presumptions and rules of evidence not affected.

Except as expressly provided in sections 28–1701 to 28–1705, nothing therein contained, nor any act thereunder shall change or affect the rules of evidence or the presumptions of law. (Apr. 28, 1904, 33 Stat. 556, ch. 1809, § 5.)

Chapter 18.—WAREHOUSE RECEIPTS—UNIFORM LAW—ISSUANCE OF WAREHOUSE RECEIPTS

Sec.

28–1801. Persons who may issue receipts.
28–1802. Form of receipts—Essential terms—Liability for omissions.
28–1803. Form of receipts—What terms may be inserted.
28–1804. Nonnegotiable receipt—Definition.
28–1805. Negotiable receipt—Definition—"Nonnegotiable provision" void.
28–1806. Duplicate receipts must be so marked—Liability for failure to do so.
28–1807. Nonnegotiable receipt must be so marked—Effect of failure to do so.

§ 28–1801 [27: 11]. Persons who may issue receipts.

Warehouse receipts may be issued by any warehouseman. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 1.)

CROSS REFERENCE

Regulations for withdrawal of bonded liquors, § 25–115.

STATUTORY REFERENCES

Bills of lading, U. S. C., title 49, ch. 4.
Sales of securities, U. S. C., title 15, ch. 2A.

NOTES TO DECISIONS

CONSTRUCTION

This section et seq., and §§ 28–1901 et seq., 28–2001 et seq., 28–2101 et seq. and 28–2201 et seq. do not attempt to codify or regulate laws applicable to warehousemen, but are an act to make uniform the law of warehouse receipts. *Terminal Warehouse & Refrigeration Co.* v. *Cross Transp. Co.* (D. C. 1943, 33 A. 2d 617).

§ 28–1802 [27: 12]. Form of receipts—Essential terms—Liability for omissions.

Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

(a) The location of the warehouse where the goods are stored;

(b) The date of issue of the receipt;

(c) The consecutive number of the receipt;

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) The rate of storage charges;

(f) A description of the goods or of the packages containing them;

(g) The signature of the warehouseman, which may be made by his authorized agent;

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a state-

ment of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby for all damage caused by the omission from a negotiable receipt of any of the terms herein required. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 2.)

NOTES TO DECISIONS

LIABILITY FOR CONTENTS

Where locked chest obviously having contents was deposited for storage, it was within contemplation of parties that warehouseman should be responsible not only for chest itself but the contents as well. *Barrett* v. *Freed* (D. C. Mun. App. 1944, 35 A. 2d 180).

§ 28–1803 [27: 13]. Form of receipts—What terms may be inserted.

A warehouseman may insert in a receipt issued by him any other terms and conditions, provided that such terms and conditions shall not—

(a) Be contrary to the provisions of chapters 18–22 of this title;

(b) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 3.)

COMPILER'S NOTE

"Chapters 18–22 of this title" set forth the Warehouse Receipts Act.

NOTES TO DECISIONS

NEGLIGENCE OF WAREHOUSEMAN

In absence of any statute, neither a conditional vendee nor a mortgagor may by any contract with a warehouseman subordinate the interest of the conditional vendor or mortgagee to the warehouseman's lien. *Smiths Transfer & Storage Co.* v. *Reliable Stores Corp.* (61 App. D. C. 106, 58 Fed. (2d) 511).

The provision in a receipt that no transfer would be recognized unless entered on the books of the warehouse would not relieve the storage company for delivery of goods to transferor rather than to transferee, where the company had been notified of the transfer and failure to have it entered in the books was due to its negligence. *Fidelity Storage Co.* v. *Kingsbury* (64 App. D. C. 208, 76 Fed. (2d) 978, revd. on other grounds on reh. 65 App. D. C. 69, 79 Fed. (2d) 705).

§ 28–1804 [27: 14]. Nonnegotiable receipt—Definition.

A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 4.)

§ 28–1805 [27: 15]. Negotiable receipt — Definition — "Nonnegotiable provision" void.

A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is nonnegotiable. Such provision, if inserted, shall be void. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 5.)

§ 28–1806 [27: 16]. Duplicate receipts must be so marked—Liability for failure to do so.

When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to anyone who purchased the subsequent receipt for value, supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 6.)

§ 28–1807 [27: 17]. Nonnegotiable receipt must be so marked—Effect of failure to do so.

A nonnegotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "nonnegotiable" or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 7.)

CROSS REFERENCE

Effect of warehouseman's placing words "nonnegotiable" on negotiable document of title to personal property, § 28–1214.

Chapter 19.—OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RIGHTS

Sec.

28–1901. Obligation of warehouseman to deliver—Excuse for refusal.
28–1902. Persons to whom warehouseman may deliver with justification.
28–1903. Warehouseman's liability for misdelivery.
28–1904. Negotiable receipts must be canceled when goods delivered—Liability of warehouseman.
28–1905. Negotiable receipts must be canceled or marked when part of goods delivered—Liability of warehouseman.
28–1906. Altered receipts—Liability of warehouseman—Right of purchaser for value without notice.
28–1907. Delivery of goods where receipt lost or destroyed—Bond—Holder for value of receipt without notice.
28–1908. Duplicate receipts—Effect—Liability of warehouseman.
28–1909. Warehouseman cannot set up title in himself.
28–1910. Interpleader of adverse claimants.
28–1911. Warehouseman has reasonable time to determine validity of claims.
28–1912. Adverse title is no defense, except as above provided.
28–1913. Liability for nonexistence or misdescription of goods.
28–1914. Liability for care of goods.
28–1915. Goods must be kept separate.
28–1916. Fungible goods may be commingled, if warehouseman authorized.
28–1917. Liability of warehouseman to depositors of commingled goods.
28–1918. Judicial proceeding affecting title.
28–1919. Attachment or levy upon goods for which a negotiable receipt has been issued—Surrender of receipt.
28–1920. Creditors' remedies to reach negotiable receipts.
28–1921. Claims included in the warehouseman's lien.
28–1922. Against what property the lien may be enforced.
28–1923. How the lien may be lost.
28–1924. Negotiable receipt must state charges for which lien is claimed.

Sec.
28–1925. Warehouseman need not deliver until lien is satisfied.
28–1926. Warehouseman's lien does not preclude other remedies.
28–1927. Satisfaction of lien—Notice required—Sale by auction—Notice of sale—Proceeds—Right of claimant.
28–1928. Perishable and hazardous goods—Notice to owner—Sale—Disposition of proceeds.
28–1929. Other methods of enforcing liens.
28–1930. Effect of sale.

§ 28–1901 [27: 21]. Obligation of warehouseman to deliver—Excuse for refusal.

A warehouseman, in the absence of some lawful excuse provided by chapters 18–22 of this title, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a) An offer to satisfy the warehouseman's lien;

(b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 8.)

COMPILER'S NOTE

"Chapters 18–22 of this title" set forth the Warehouse Receipts Act.

NOTES TO DECISIONS

ABSENCE OF INSTRUCTIONS

Where one ships goods to a warehouseman without instructions, the warehouseman agrees to keep goods, subject to orders of shipper. *Terminal Warehouse & Refrigeration Co.* v. *Cross Transp. Co.* (D. C. 1943, 33 A. 2d 617).

§ 28–1902 [27: 22]. Persons to whom warehouseman may deliver with justification.

A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods or his agent;

(b) A person who is either himself entitled to delivery by the terms of a nonnegotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 9.)

§ 28–1903 [27: 23]. Warehouseman's liability for misdelivery.

Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of section 28–1902, and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either—

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery; or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 10.)

NOTES TO DECISIONS

CONVERSION

Failure of a warehouseman to account for goods to depositor is a "conversion" although delivery to or sale for an unauthorized person was not negligent. *Terminal Warehouse & Refrigeration Co.* v. *Cross Transp. Co.* (D. C. 1943, 33 A. 2d 617).

Where goods transported by carrier were delivered to warehouseman as consignee, a subsequent delivery of the goods to a third person by warehouseman, without authority from either shipper or carrier, was a "conversion" for which warehouseman was liable. *Terminal Warehouse & Refrigeration Co.* v. *Cross Transp. Co.* (D. C. 1943, 33 A. 2d 617).

DETERMINATION OF LIABILITY

The liability of a warehouseman to an owner or depositor who has not obtained a formal warehouse receipt for goods consigned to it is to be determined by reference to applicable rules of law of bailments, independently of any provisions of §§ 28–1801 et seq., 28–1901 et seq., 28–2001 et seq., 28–2101 et seq. and 28–2201 et seq. *Terminal Warehouse & Refrigeration Co.* v. *Cross Transp. Co.* (D. C. 1943, 33 A. 2d 617).

NEGLIGENCE OF CARRIER

Fact that carrier was negligent in failing to note on bills of lading that shipment to warehouseman, as consignee, was C. O. D., if established, did not prevent carrier under doctrine of "equitable estoppel" from recovering from warehouseman for a conversion of the goods, resulting from warehouseman's delivery of goods to a third party without authority from either shipper or carrier. *Terminal Warehouse & Refrigeration Co.* v. *Cross Transp. Co.* (D. C. 1943, 33 A. 2d 617).

§ 28–1904 [27: 24]. Negotiable receipts must be canceled when goods delivered—Liability of warehouseman.

Except as provided in section 28–1930, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 11.)

§ 28–1905 [27: 25]. Negotiable receipts must be canceled or marked when part of goods delivered—Liability of warehouseman.

Except as provided in section 28–1930, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt or to place plainly

upon it a statement of what goods or packages have been delivered he shall be liable, to anyone who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 12.)

§ 28–1906 [27: 26]. Altered receipts—Liability of warehouseman—Right of purchaser for value without notice.

The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was—

(a) Immaterial,

(b) Authorized, or

(c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 13.)

§ 28–1907 [27: 27]. Delivery of goods where receipt lost or destroyed—Bond—Holder for value of receipt without notice.

Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties, to be approved by the court, to protect the warehouseman from any liability or expense which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 14.)

§ 28–1908 [27: 28]. Duplicate receipts—Effect—Liability of warehouseman.

A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 15.)

§ 28–1909 [27: 29]. Warehouseman cannot set up title in himself.

No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 16.)

§ 28–1910 [27: 30]. Interpleader of adverse claimants.

If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 17.)

§ 28–1911 [27: 31]. Warehouseman has reasonable time to determine validity of claims.

If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 18.)

§ 28–1912 [27: 32]. Adverse title is no defense, except as above provided.

Except as provided in sections 28–1910, 28–1911 and in sections 28–1902 and 28–1930, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 19.)

§ 28–1913 [27: 33]. Liability for nonexistence or misdescription of goods.

A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate or of the kind they were said to be by the depositor. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 20.)

§ 28–1914 [27: 34]. Liability for care of goods.

A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 21.)

NOTES TO DECISIONS

UNAUTHORIZED REMOVAL

Where warehouseman breached bailment contract by removing goods without authority of owner from place specified in warehouse receipt, warehouseman was liable for loss by fire and his liability was not limited by provision in warehouse receipt limiting liability. *Barrett* v. *Freed* (D. C. Mun. App. 1944, 35 A. 2d 180).

Where warehouseman limited his liability to $50 for stored goods and goods were destroyed by fire after removal without owner's authority from specified place designated in contract causing owner to lose protection of his insurance, warehouseman could not rely on such limitation since removal was gross negligence. *Barrett* v. *Freed* (D. C. Mun. App. 1944, 35 A. 2d 180).

If bailee without authority deviates from contract as to place of storage of bailed property and loss occurs which would not have occurred had property been kept at agreed place, bailee is liable for such loss, even though he is not negligent. *Barrett* v. *Freed* (D. C. Mun. App. 1944, 35 A. 2d 180).

§ 28–1915 [27: 35]. Goods must be kept separate.

Except as provided in section 28–1916, a warehouseman shall keep the goods, so far separate from goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued as to permit at all times the identification and redelivery of the goods deposited. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 22.)

§ 28–1916 [27: 36]. Fungible goods may be commingled, if warehouseman authorized.

If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 23.)

§ 28–1917 [27: 37]. Liability of warehouseman to depositors of commingled goods.

The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 24.)

§ 28–1918 [27: 38]. Judicial proceeding affecting title.

Whenever the title or right of possession to any goods, wares, merchandise, or personal property on storage shall be put in issue by any judicial proceeding, the same shall be delivered upon the order of the court, after prepayment of the storage charges and cash advances then due by the person at whose instance such change of possession is so ordered, and who shall be entitled to recover such payment as part of the costs in such proceeding, or, if defeated therein, he shall be credited with such payment in taxation of costs against him. And unless the person, firm, association, or corporation so conducting a storage business shall claim some right, title, or interest in said stored property other than the lien herein above authorized, he, it, or they shall not be made a party to such judicial proceedings. (Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1621.)

COMPILER'S NOTE

This section is not part of the Uniform Warehouse Receipts Act.

§ 28–1919 [27: 39]. Attachment or levy upon goods for which a negotiable receipt has been issued—Surrender of receipt.

If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 25.)

§ 28–1920 [27: 40]. Creditors' remedies to reach negotiable receipts.

A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 26.)

§ 28–1921 [27: 41]. Claims included in the warehouseman's lien.

Subject to the provisions of section 28–1924, a warehouseman shall have a lien on goods deposited or on proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisement of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 27.)

NOTES TO DECISIONS

RIGHTS OF CONDITIONAL VENDOR OR MORTGAGEE

Neither a conditional vendee nor a mortgagor may by any contract with a warehouseman subordinate the interest of the conditional vendor or mortgagee to the warehouseman's lien. *Smiths Transfer & Storage Co.* v. *Reliable Stores Corp.* (61 App. D. C. 106, 58 Fed. (2d) 511).

When the conditional sale contract was neither acknowledged nor recorded, and there was actual delivery of the chattels to the purchaser, whose possession was such that a pledge of the goods by him to one

taking them in good faith for value would have been valid, the warehouseman's lien under the express terms of the Warehouse Receipts Act was superior to the claim of the furniture company. *Fidelity Storage Co.* v. *Reliable Stores Corp.* (63 App. D. C. 83, 69 Fed. (2d) 569).

§ 28–1922 [27: 42]. Against what property the lien may be enforced.

Subject to the provisions of section 28–1924, a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 28.)

NOTES TO DECISIONS

PRIOR LIENS

There is no provision of law making a warehouseman's lien superior to a prior lien of a conditional vendor or mortgagee. *Smiths Transfer & Storage Co.* v. *Reliable Stores Corp.* (61 App. D. C. 106, 58 Fed. (2d) 511).

RECORDED CONDITIONAL SALES

A recorded conditional sale contract is superior to the lien of a warehouseman where goods were stored after removing them from State without seller's consent. *Smiths Transfer & Storage Co.* v. *Reliable Stores Corp.* (61 App. D. C. 106, 58 Fed. (2d) 511).

UNRECORDED CONDITIONAL SALES

Warehouseman's lien for goods stored by one who claimed to be the owner was superior to lien of vendor under a conditional sales contract which was neither acknowledged nor recorded. *Fidelity Storage Co.* v. *Reliable Stores Corp.* (63 App. D. C. 83, 69 Fed. (2d) 569).

§ 28–1923 [27: 43]. How the lien may be lost.

A warehouseman loses his lien upon goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of chapters 18–22 of this title. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 29.)

COMPILER'S NOTE

"Chapters 18–22 of this title" set forth the Warehouse Receipts Act.

§ 28–1924 [27: 44]. Negotiable receipt must state charges for which lien is claimed.

If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 28–1921, although the amount of the charges so enumerated is not stated in the receipt. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 30.)

§ 28–1925 [27: 45]. Warehouseman need not deliver until lien is satisfied.

A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. (Apr. 15, 1910, 36 Stat. 306, ch. 167, § 31.)

§ 28–1926 [27: 46]. Warehouseman's lien does not preclude other remedies.

Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. (Apr. 15, 1910, 36 Stat. 306, ch. 167, § 32.)

§ 28–1927 [27: 47]. Satisfaction of lien—Notice required—Sale by auction—Notice of sale—Proceeds—Right of claimant.

A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last-known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed an advertisement of the sale, describing the goods to be sold and stating the name of the owner or person on whose account the goods are held and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable

charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of chapters 18–22 of this title, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit. (Apr. 15, 1910, 36 Stat. 306, ch. 167, § 33.)

COMPILER'S NOTE

"Chapters 18–22 of this title" set forth the Warehouse Receipts Act.

§ 28–1928 [27: 48]. Perishable and hazardous goods—Notice to owner—Sale—Disposition of proceeds.

If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of section 28–1927. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 34.)

§ 28–1929 [27: 49]. Other methods of enforcing liens.

The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 35.)

NOTES TO DECISIONS

REPLEVIN SUIT

A warehouseman who did not elect to proceed by bill in equity, and who has lost possession of the goods in a replevin suit, may not thereafter file a bill in equity to enforce his warehouseman's lien, as his rights will be fully protected in the replevin suit. *Sachs* v. *Kinyoun* (47 App. D. C. 561).

§ 28–1930 [27: 50]. Effect of sale.

After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 36.)

Chapter 20.—NEGOTIATION AND TRANSFER OF RECEIPTS

Sec.

28–2001. Negotiation of negotiable receipts by delivery.
28–2002. Negotiation of negotiable receipts by indorsement.
28–2003. Transfer of receipts.
28–2004. Who may negotiate a receipt.
28–2005. Rights of person to whom a receipt has been negotiated.
28–2006. Rights of transferee of receipt—Nonnegotiable receipt—Notice to warehouseman—Remedy of creditors of transferrer.
28–2007. Transfer of negotiable receipt without indorsement.
28–2008. Warranties on sale of receipt.
28–2009. Liability of indorser—Limitation.
28–2010. No warranty implied from accepting payment of a debt.
28–2011. Negotiation to purchaser for value without notice not impaired by breach of duty, fraud, mistake, or duress.
28–2012. Subsequent negotiation.
28–2013. Negotiation defeats unpaid seller's lien—A right of stoppage in transitu.

§ 28–2001 [27: 61]. Negotiation of negotiable receipts by delivery.

A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer; or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 37.)

§ 28–2002 [27: 62]. Negotiation of negotiable receipts by indorsement.

A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 38.)

§ 28–2003 [27: 63]. Transfer of receipts.

A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A nonnegotiable receipt can not be negotiated, and the indorsement of such a receipt gives the transferee no additional right. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 39.)

§ 28–2004 [27: 64]. Who may negotiate a receipt.

A negotiable receipt may be negotiated—

(a) By the owner thereof; or

(b) By any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been intrusted, or if at the time of such intrusting the receipt is in such form that it may be negotiated by delivery. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 40.)

§ 28–2005 [27: 65]. Rights of person to whom a receipt has been negotiated.

A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value; and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 41.)

§ 28–2006 [27: 66]. Rights of transferee of receipt—Nonnegotiable receipt—Notice to warehouseman—Remedy of creditors of transferrer.

A person to whom a receipt has been transferred but not negotiated acquires thereby, as against the transferrer, the title to the goods, subject to the terms of any agreement with the transferrer.

If the receipt is nonnegotiable, such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferrer or transferee of a nonnegotiable receipt, the title of the transferrer to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the warehouseman by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 42.)

NOTES TO DECISIONS

WRONGFUL DELIVERY, RECOVERY BY TRANSFEREE

Transferee of warehouse receipt, who notified the storage company of the transfer, was entitled to recover from the company the value of the goods, which were delivered to the transferor through mistake of officers of the storage company. *Fidelity Storage Co.* v. *Kingsbury* (64 App. D. C. 208, 76 Fed. (2d) 978, revd. on other grounds on reh. and modified 65 App. D. C. 69, 79 Fed. (2d) 705).

Transferee of a warehouse receipt may recover from the storage company for delivery of the goods to the wrong party only to the value placed upon the goods when they were stored, where there was no showing of fraud on the part of the storage company. *Fidelity Storage Co.* v. *Kingsbury* (64 App. D. C. 208, 76 Fed. (2d) 978, revd. on other grounds on reh. and modified 65 App. D. C. 69, 79 Fed. (2d) 705).

§ 28–2007 [27: 67]. Transfer of negotiable receipt without indorsement.

Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 43.)

§ 28–2008 [27: 68]. Warranties on sale of receipt.

A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

(a) That the receipt is genuine;

(b) That he has a legal right to negotiate or transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the receipt; and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 44.)

§ 28–2009 [27: 69]. Liability of indorser—Limitation.

The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 45.)

§ 28–2010 [27: 70]. No warranty implied from accepting payment of a debt.

A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 46.)

§ 28–2011 [27: 71]. Negotiation to purchaser for value without notice not impaired by breach of duty, fraud, mistake, or duress.

The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 47.)

§ 28–2012 [27: 72]. Subsequent negotiation.

Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 48.)

§ 28–2013 [27: 73]. Negotiation defeats unpaid seller's lien—A right of stoppage in transitu.

Where a negotiable receipt has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancelation. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 49.)

Chapter 21.—CRIMINAL OFFENSES

Sec.

28–2101. Issue of receipt for goods not received.
28–2102. Issue of receipt containing false statement.
28–2103. Issue of duplicate receipts not so marked.
28–2104. Issue for warehouseman's goods of receipts which do not state that fact.
28–2105. Delivery of goods without obtaining negotiable receipts.
28–2106. Negotiation of receipt for mortgaged goods.

§ 28–2101 [27: 81]. Issue of receipt for goods not received.

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 50.)

§ 28–2102 [27: 82]. Issue of receipt containing false statement.

A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 51.)

§ 28–2103 [27: 83]. Issue of duplicate receipts not so marked.

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 28–1907, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 52.)

§ 28–2104 [27: 84]. Issue for warehouseman's goods of receipts which do not state that fact.

Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 53.)

§ 28–2105 [27: 85]. Delivery of goods without obtaining negotiable receipts.

A warehouseman, or any officer, agent, or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 28–1907 and 28–1930, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 54.)

§ 28–2106 [27: 86]. Negotiation of receipt for mortgaged goods.

Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 55.)

Chapter 22.—INTERPRETATION

Sec.
28–2201. When rules of common law still applicable.
28–2202. Interpretation shall give effect to purpose of uniformity.
28–2203. Definitions.
28–2204. Receipts prior to April 15, 1910, exempt.
28–2205. Short title.

§ 28–2201 [27: 3]. When rules of common law still applicable.

In any case not provided for in chapters 18–22 of this title, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress, or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 56.)

COMPILER'S NOTE

"Chapters 18–22 of this title" set forth the Warehouse Receipts Act.

NOTES TO DECISIONS

GENERALLY

The liability of a warehouseman to an owner or depositor who has not obtained a formal warehouse receipt for goods consigned to it is to be determined by reference to applicable rules of law of bailments, independently of any provisions of §§ 28–1801 et seq., 28–1901 et seq., 28–2001 et seq., 28–2101 et seq., and this section et seq. *Terminal Warehouse & Refrigeration Co.* v. *Cross Transp. Co.* (D. C. 1943, 33 A. 2d 617).

§ 28–2202 [27: 4]. Interpretation shall give effect to purpose of uniformity.

Chapters 18–22 of this title shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 57.)

COMPILER'S NOTE

"Chapters 18–22 of this title" set forth the Warehouse Receipts Act.

§ 28–2203 [27: 1]. Definitions.

First. In chapters 18–22 of this title, unless the context or subject matter otherwise requires—

"Action" includes counterclaim, set-off, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or preexisting obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

Second. A thing is done "in good faith" within the meaning of chapters 18–22 of this title when it is in fact done honestly, whether it be done negligently or not. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 58.)

COMPILER'S NOTE

"Chapters 18–22 of this title" set forth the Warehouse Receipts Act.

§ 28–2204 [27: 2]. Receipts prior to April 15, 1910, exempt.

The provisions of chapters 18–22 of this title do not apply to receipts made and delivered prior to the taking effect of this act (Apr. 15, 1910). (Apr. 15, 1910, 36 Stat. 311, ch. 167, § 59.)

COMPILER'S NOTE

"Chapters 18–22 of this title" set forth the Warehouse Receipts Act.

§ 28–2205 [27: 87]. Short title.

Chapters 18–22 of this title may be cited as the Warehouse Receipts Act. (Apr. 15, 1910, 36 Stat. 311, ch. 167, § 62.)

COMPILER'S NOTE

"Chapters 18–22 of this title" set forth the Warehouse Receipts Act.

Chapter 23.—FIDUCIARIES—UNIFORM ACT

Sec.
28–2301. Definitions.
28–2302. Application of payment made to fiduciaries.
28–2303. Registration of transfer of securities held by fiduciaries.
28–2304. Transfer of negotiable instruments by fiduciary.
28–2305. Check drawn by fiduciary payable to third person.
28–2306. Check drawn by and payable to fiduciary.
28–2307. Deposit in name of fiduciary as such.
28–2308. Deposit in name of principal—Check drawn thereon by fiduciary—Check payable to drawee bank.
28–2309. Deposit in fiduciary's personal account.
28–2310. Deposit in names of two or more trustees.
28–2311. Law not retroactive.
28–2312. Cases not provided for in chapter.
28–2313. Uniformity of interpretation.
28–2314. Short title.

§ 28–2301 [11: 31]. Definitions.

The following provisions concerning liability for participation in breaches of fiduciary obligations, and

to make uniform the law with reference thereto, shall be in force in the District of Columbia, namely:

(1) In this chapter unless the context or subject matter otherwise requires:

"Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

"Fiduciary" includes a trustee under any trust, express, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

"Person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest.

"Principal" includes any person to whom a fiduciary as such owes an obligation.

(2) A thing is done "in good faith" within the meaning of this chapter, when it is in fact done honestly, whether it be done negligently or not. (May 14, 1928, 45 Stat. 509, ch. 545, § 1.)

NOTES TO DECISIONS

IN GENERAL

Considered in its entirety, it is manifest that the effect of the act (this chapter) is to enlarge the ability of fiduciaries to avoid the limitations imposed by the common law, although the liabilities of the fiduciaries as such are not affected, but only those of persons dealing with them. *Colby* v. *Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065.)

§ 28–2302 [11: 32]. Application of payment made to fiduciaries.

A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary. (May 14, 1928, 45 Stat. 510, ch. 545, § 2.)

CROSS REFERENCE

Trust or joint accounts, deposits, or safe-deposit boxes, § 26–201 et seq.

NOTES TO DECISIONS

"MISAPPROPRIATION" DEFINED

The word "misappropriation" means wrong appropriation, or the use of a fund for a different purpose than that for which it was created, but not necessarily a dishonest purpose. *Colby* v. *Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065).

§ 28–2303 [11: 33]. Registration of transfer of securities held by fiduciaries.

If a fiduciary in whose name are registered any shares of stock, bonds, or other securities of any corporation, public or private, or company or other association or of any trust, transfers the same, such corporation or company or other association, or any of the managers of the trust, or its or their transfer agent, is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or to see to the performance of the fiduciary obligation, and is liable for registering such transfer only where registration of the transfer is made with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or with knowledge of such facts that the action in registering the transfer amounts to bad faith. (May 14, 1928, 45 Stat. 510, ch. 545, § 3.)

§ 28–2304 [11: 34]. Transfer of negotiable instruments by fiduciary.

If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument. (May 14, 1928, 45 Stat. 510, ch. 545, § 4.)

§ 28–2305 [11: 35]. Check drawn by fiduciary payable to third person.

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument. (May 14, 1928, 45 Stat. 510, ch. 545, § 5.)

NOTES TO DECISIONS

KNOWLEDGE OF PAYEE

A third person who knowingly participates in the breach of a fiduciary's obligation can be required to make good

the resulting loss. *Anacostia Bank* v. *U. S. Fidelity & Guaranty Co.*, 1941 (119 F. 2d 455, 73 App. D. C. 388, 134 A. L. R. 995).

§ 28–2306 [11: 36]. Check drawn by and payable to fiduciary.

If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. (May 14, 1928, 45 Stat. 511, ch. 545, § 6.)

NOTES TO DECISIONS

TRUST DEPOSIT TRANSFERRED

Where trust deposit in the name of the individual trustees and trustee corporation was transferred by check to the account of the corporation, the result being to settle an overdraft of the corporation, the transaction was not covered by this section, but comes within the scope of § 28–2312 and must be decided under common-law principles. *Colby* v. *Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065).

§ 28–2307 [11: 37]. Deposit in name of fiduciary as such.

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (May 14, 1928, 45 Stat. 511, ch. 545, § 7.)

§ 28–2308 [11: 38]. Deposit in name of principal—Check drawn thereon by fiduciary—Check payable to drawee bank.

If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such checks without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (May 14, 1928, 45 Stat. 511, ch. 545, § 8.)

§ 28–2309 [11: 39]. Deposit in fiduciary's personal account.

If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith. (May 14, 1928, 45 Stat. 511, ch. 545, § 9.)

NOTES TO DECISIONS

TRUST DEPOSIT TRANSFERRED

Where trust deposit in the name of the individual trustees and the trustee corporation was transferred by check to the account of the corporation, the result being to settle an overdraft of the corporation, it was not the case of a transfer by the fiduciary in payment of a personal debt (§§ 28–2307 and 28–2308), but was a transfer by one set of fiduciaries to another, and the bank was not liable unless it had actual knowledge of misappropriation. *Colby* v. *Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065).

§ 28–2310 [11: 40]. Deposit in names of two or more trustees.

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith. (May 14, 1928, 45 Stat. 512, ch. 545, § 10.)

§ 28–2311 [11: 41]. Law not retroactive.

The provisions of this chapter shall not apply to transactions that took place prior to the time when it takes effect (May 14, 1928). (May 14, 1928, 45 Stat. 512, ch. 545. § 11.)

§ 28–2312 [11: 42]. Cases not provided for in chapter.

In any case not provided for in this chapter the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments, and banking, shall continue to apply. (May 14, 1928, 45 Stat. 512, ch. 545, § 12.)

§ 28–2313 [11: 43]. Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (May 14, 1928, 45 Stat. 512, ch. 545, § 13.)

NOTES TO DECISIONS

CONGRESSIONAL COMMITTEE REPORTS

In construing this chapter, recourse may be had to the reports of the committees of Congress and to the notes of the Commissioners. *Colby* v. *Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065).

UNIFORM AND DEFINITE RULES

The purpose of this chapter was to establish uniform and definite rules in place of the diverse and indefinite rules formerly prevailing as to constructive notice of breaches of fiduciary obligations. It is obvious that in the use of the words "actual knowledge" Congress meant to change the rule previously applied in many courts of constructive, implied or imputed knowledge. *Colby* v. *Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065).

§ 28–2314 [11: 44]. Short title.

This chapter may be cited as the Uniform Fiduciaries Act. (May 14, 1928, 45 Stat. 512, ch. 545, § 14.)

Chapter 24.—BONDS AND UNDERTAKINGS

Sec.

28–2401. Bond—Definition.
28–2402. Undertaking—Definition.
28–2403. Fiduciary's bond—Undertaking to be given in lieu thereof — Form — Judgments thereon — Jurisdiction of District Court—Actions, remedies, proceedings.
28–2404. Counsel fee may be allowed on bond or undertaking for restraining order or injunction.
28–2405. Actions on bonds in a penal sum containing an avoidance condition.
28–2406. Action upon bond to United States by fiduciary or public officer in which private person has an interest.
28–2407. Bonds of trustees or other fiduciaries—No discharge by fiduciary's payment to himself in another capacity of trust.

§ 28–2401 [3: 1]. Bond—Definition.

A bond, when required or referred to, in the provisions of this code, shall be understood to signify an obligation in a certain sum or penalty, subject to a condition, on breach of which it is to become absolute and to be enforceable by action. (Mar. 3, 1901, 31 Stat. 1264, ch. 854, § 478.)

COMPILER'S NOTE

The words "this code" refer to the 1901 code, i. e., the act of March 3, 1901, as shown in the history lines of the various sections of this compilation.

CROSS REFERENCES

Attachment and garnishment bond, § 16–301.
Replevin bond, § 16–1804.
Sureties generally, § 16–2001 et seq.

NOTES TO DECISIONS

BONDS AND UNDERTAKINGS DISTINGUISHED

Unlike the ordinary appeal bond, which is an obligation under seal, with a fixed penalty, and a definite condition, limited to become effective or otherwise by the determination of the appeal, an undertaking is without seal, or fixed penalty, and without condition; and is simply a promise or an assumption of liability, to perform a judgment, or to pay damages and costs. *Tenney* v. *Taylor* (1 App. D. C. 223).

§ 28–2402 [3: 2]. Undertaking—Definition.

An undertaking shall be understood to signify an agreement entered into by a party to a suit or proceeding, with or without sureties, upon which a judgment or decree may be rendered in the same suit or proceeding against said party and his sureties, if any, the said party and sureties submitting themselves to the jurisdiction of the court for that purpose. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 479.)

NOTES TO DECISIONS

PURPOSE AND EFFECT

While an undertaking differs in form from the bond, its essential purpose and effect are the same as those of the bond, to give the guaranty of an additional person as security for the costs that might be incurred and the damages that might result to an appellee by the prosecution of an appeal that prevents him from realizing his claim as speedily and as effectively as he might otherwise have done. *Tenney* v. *Taylor* (1 App. D. C. 223).

§ 28–2403 [3: 3]. Fiduciary's bond—Undertaking to be given in lieu thereof—Form—Judgments thereon—Jurisdiction of District Court—Actions, remedies, proceedings.

In all cases where, by the provisions of this code, a bond is required from an executor, administrator, administrator cum testamento annexo, administrator de bonis non, guardian, committee, collector, trustee, receiver, assignee for the benefit of creditors, or any other fiduciary appointed or confirmed by the District Court of the United States for the District of Columbia, or any member thereof, or where a bond is required from any party to a cause or proceeding pending in such court, such bond shall be in the form of an undertaking, under seal, in a maximum amount to be fixed by the court, conditioned as required by law, the surety or sureties therein submitting themselves to the jurisdiction of the court and undertaking for themselves and each of them, their and each of their heirs, executors, administrators, successors, and assigns to abide by and perform the judgment or decree of the court in the premises, and further agreeing that, upon default by the principal in any of the conditions thereof, the damages may be ascertained in such manner as the court shall direct; that the court may give judgment thereon in favor of any person thereby aggrieved against such principal and sureties for the damages suffered or sustained by such aggrieved party, and that such judgment may be rendered in said cause or proceeding against all or any of the parties whose names are thereto signed.

And the said District Court of the United States for the District of Columbia and its respective special terms, be, and they are hereby, vested with and given jurisdiction and authority to enter such judgments and decrees against the principal and surety or sureties, or any of them, upon such undertaking as law and justice shall require: *Provided,* That nothing herein contained shall deprive any party having a

claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

All provisions of this code relating to actions, remedies and proceedings upon bonds of such fiduciaries shall apply and be effective as to such undertakings to the same extent as if such undertaking had been expressly mentioned and referred to therein. (Apr. 19, 1920, 41 Stat. 564, ch. 153, § 479a.)

COMPILER'S NOTE

The words "this code" refer to the 1901 code, i. e., the act of March 3, 1901, as shown in the history lines of the various sections of this compilation.

NOTES TO DECISIONS

IN GENERAL

This section does not repeal 1901 code, § 445 (§ 16–301), relative to attachment bonds. *Tri-State Motor Corp.* v. *Standard Steel Car Co.* (51 App. D. C. 109, 276 Fed. 631).

§ 28–2404 [3: 4]. Counsel fee may be allowed on bond or undertaking for restraining order or injunction.

In any proceeding in the District Court of the United States for the District of Columbia or any special term thereof to recover damages upon a bond or undertaking given to obtain a restraining order or preliminary or pendente lite injunction the court, in assessing damages to be recovered thereunder, may include such reasonable counsel or attorney fees as the party aggrieved or damaged by such restraining order or injunction may have been put to or incurred in obtaining a dissolution thereof. (Apr. 19, 1920, 41 Stat. 565, ch. 153, § 479b.)

NOTES TO DECISIONS

ATTORNEY FEES ALLOWED

Attorney fees, incurred in procuring the dissolution of an injunction improperly issued, are recoverable as damages upon the injunction bond, whether the dissolution of the wrongful injunction be obtained by interlocutory or final decree. *Local Union No. 368* v. *Barker Painting Co.* (58 App. D. C. 51, 24 Fed. (2d) 879).

Counsel fees are not allowed in action on injunction bond after successfully defending action on contract and defeating injunction. *Stanfield* v. *Vollbehr* (61 App. D. C. 239, 60 Fed. (2d) 670).

Addition of $2,000 attorneys' fees as part of damages for wrongful injunction against sale of property under a trust deed was unauthorized under the circumstances. *Maiatico* v. *Mortgage Security Corp.* (61 App. D. C. 245, 60 Fed. (2d) 1081).

SURETIES

Interest in excess of maximum penalty of the undertaking may become due from surety but only because of surety's own default. *Cunningham* v. *Cunningham* (App. D. C. 1946, 157 F. 2d 859).

§ 28–2405 [3: 5]. Actions on bonds in a penal sum containing an avoidance condition.

A bond in a penal sum, containing a condition that it shall be void on the payment of a certain sum of money, or the performance of an act, or of certain duties, shall have the same effect for the purpose of maintaining an action upon it as if it contained a convenant to pay the money or perform the act or the duties specified in the condition. But the damages to be recovered for a breach, or successive breaches, of the condition, as against the sureties therein, shall not exceed the penalty of the bond. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 480.)

NOTES TO DECISIONS

CONSTRUCTION

In suit against sureties bond is to be strictly construed. *United States* v. *Maloney* (4 App. D. C. 505).

Recitals in bond, and all material traversable matter set forth in breaches assigned and which have not been traversed are to be taken as admitted and withdrawn from the province of the jury. *United States* v. *Maloney* (4 App. D. C. 505).

FORGERY

Surety can not plead forgery of principal's name to bond when surety executes it after its purported execution by the principal. *United States* v. *Boyd* (8 App. D. C. 440).

SURETIES

By the execution of a bond and its return to the principal or his agent for delivery to the obligee the surety becomes estopped to set up any condition not known to that obligee, upon which his signature has been obtained. *United States* v. *Boyd* (8 App. D. C. 440).

Discontinuance of a suit as to the principal will not, in the absence of explanation, be sufficient to release the sureties on his bond who were named as codefendants. *Starr* v. *United States* (8 App. D. C. 552, revd. on other grounds 164 U. S. 627, 41 L. Ed. 577, 17 Sup. Ct. 223).

A bond executed to the United States is valid, although there is no previous statutory authorization therefor. *United States* v. *Pumphrey* (11 App. D. C. 44).

§ 28–2406 [3: 6]. Action upon bond to United States by fiduciary or public officer in which private person has an interest.

Whenever a bond is executed to the United States by any fiduciary or public officer, conditioned for the performance of certain duties, in the performance of which private persons are interested, any such person, aggrieved by a breach of such condition, shall be entitled to maintain an action thereon in his own name against the obligor and his sureties to recover damages for the injury suffered by him in consequence of such breach; and it shall be the duty of the custodian of such bond to furnish a certified copy thereof to said party for the purpose aforesaid on payment of the legal fees therefor. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 481; June 30, 1902, 32 Stat. 530, ch. 1329, § 481.)

AMENDMENT

The 1902 amendment struck out the word "persons," before the word "aggrieved," and inserted in lieu thereof the word "person."

NOTES TO DECISIONS

ACTION ON OFFICIAL BOND

Action on an official bond running to the District of Columbia cannot be maintained by one not a party thereto, in the absence of the consent of the District or an express statute authorizing such action. *District of Columbia ex rel. Langellotti* v. *Fidelity & Deposit Co.* (50 App. D. C. 309, 271 Fed. 383).

DISBURSING OFFICER

Although bond required of a disbursing officer of the Government when first filed was not properly executed and it was returned to the principal who properly executed it, there is no presumption against its genuineness, in a suit by the Government against the surety, and in such transaction the relation between the Government and the disbursing officer is not that of principal and

agent. *Howgate* v. *United States* (3 App. D. C. 277, affd. 166 U. S. 571, 41 L. Ed. 1119, 17 Sup. Ct. 682).

In action by United States on the bond of an alleged delinquent disbursing officer, a duly authenticated transcript from the Treasury Department of the accounts of the disbursing officer offered in evidence by the United States under U. S. Rev. Stat, § 886, U. S. Comp. Stats. 1901, p. 670, is not admissible, for it does not include all transactions with the United States during term of service, but only those transactions connected with the appropriations for which such official is alleged to be in default need be shown by such transcript. *Goff* v. *United States* (22 App. D. C. 512).

PLUMBING INSPECTOR

Those injured by neglect of the inspector of plumbing in the performance of his official duties may maintain an action in the name of the District of Columbia to his use on the bond given by the inspector, under a plumbing regulation requiring the inspector to give a bond of $5,000, "conditioned for the faithful performance of the duties of his office." *District of Columbia* v. *Ball* (22 App. D. C. 543).

Plumbing regulations of District of Columbia requiring inspector of plumbing to give bond with sureties for benefit of persons aggrieved by his acts of neglect, is valid, although the act of Congress of April 23, 1892 (27 Stat. 21, ch. 53) authorizing appointment of inspector of plumbing does not require bond. *District of Columbia* v. *Ball* (22 App. D. C. 543).

One who purchases house in which plumbing is defective without knowledge of such facts existing, may maintain action on official bond of inspector of plumbing for failure to inspect plumbing when the house was in the course of construction. *District of Columbia* v. *Ball* (22 App. D. C. 543).

§ 28–2407 [3: 7]. Bonds of trustees or other fiduciaries—No discharge by fiduciary's payment to himself in another capacity of trust.

If any person appointed by order or decree of the court to the office of trustee or to any other fiduciary office shall give bond, with surety or sureties, for the due performance of his duties, he shall not be allowed to discharge said bond by receipts, releases, or acquittances from himself, as attorney for parties interested, to himself as such trustee or other fiduciary; but the funds or estate for the due application whereof he is responsible shall be considered as remaining in his hands, and said bond shall continue in force as against both principal and sureties until said funds or estate shall be fully accounted for and paid over or delivered to the parties interested therein, or their attorney, other than said trustee or other fiduciary duly authorized to receive the same. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 482.)

NOTES TO DECISIONS

SALE TRUSTEE

Bond of a trustee appointed by court in an equity cause to sell real estate which runs to the United States, can be put in suit by person injuriously affected and in such suit the United States is the nominal plaintiff only. *Morse* v. *United States ex rel. Hine* (29 App. D. C. 433).

When decree for sale of infant's real estate is void for want of jurisdiction, the bond of trustee appointed to make the sale is void also, and the surety may show such invalidity in a suit against him on the bond by the United States. *Morse* v. *United States ex rel. Hine* (29 App. D. C. 433).

This section does not apply where payment was by the sale trustee to himself as testamentary trustee. *United States Fidelity & Guar. Co.* v. *Klein* (60 App. D. C. 354, 54 Fed. (2d) 828, cert. den. 285 U. S. 544, 76 L. Ed. 936, 52 Sup. Ct. 394).

Chapter 25.—ASSIGNMENT OF CHOSES IN ACTION

Sec.
28–2501. Judgment.
28–2502. Bonds.
28–2503. Nonnegotiable contracts.
28–2504. General assignments.
28–2505. Contract for assignment of future salary or wages—Penalties for attempting to enforce such assignments.

§ 28–2501 [2: 1]. Judgment.

A judgment or money decree may be assigned in writing, and upon the assignment thereof being filed in the clerk's office the assignee may maintain an action or sue out a scire facias or execution on said judgment in his own name, as the original plaintiff might have done. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 431.)

COMPILER'S NOTE

The words "the clerk's office" should probably read "the office of the clerk of the court in which such judgment was rendered."

CROSS REFERENCE

Parties to actions generally, § 13–401 and notes.

RULES OF CIVIL PROCEDURE

Writs of scire facias have been abolished in the district courts, similar relief may be obtained by action or motion as prescribed by court rules, see Rule 81 (b).

NOTES TO DECISIONS

DECREE FOR ALIMONY

"A decree ordering the payment of a periodical allowance of alimony in the future is not assignable," although accrued alimony (under an order which it was beyond the power of the court in its discretion to modify or vacate) may be assigned. *Lynham* v. *Hufty* (44 App. D. C. 589).

JUDGMENT IMPROPERLY ENTERED

Where the rules require that judgment shall not be entered for four days after verdict, a judgment improperly entered by the clerk within that time is not absolutely void, and may be assigned. *Hutchinson* v. *Brown* (8 App. D. C. 157).

§ 28–2502 [2: 2]. Bonds.

Any bond or obligation under seal for the payment of money may be assigned under the name and seal of the obligee therein named, and the assignee may maintain an action thereon in his own name. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 432.)

CROSS REFERENCE

Parties to actions generally, § 13–401 et seq.

§ 28–2503 [2: 3]. Nonnegotiable contracts.

All nonnegotiable written agreements for the payment of money, including nonnegotiable bills of exchange and promissory notes, or for the delivery of personal property, all open accounts, debts, and demands of a liquidated character, except claims against the United States or the salaries of public officers, may be assigned in writing, so as to vest in the assignee a right to sue for the same in his own name. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 433.)

CROSS REFERENCES

Assignment of contract of apprenticeship, § 36–108.
Assignment of motor-vehicle lien, §§ 40–708, 40–709.
Parties to actions generally, § 13–401 et seq.
Teachers' retirement annuity may not be assigned, § 31–718.
See § 16–1904 as to set-off of nonnegotiable debts.

NOTES TO DECISIONS

ACTION BY ASSIGNOR AFTER ASSIGNMENT

Evidence tending to prove that action was brought, not in the name of the assignee, as permitted by the Code, or in the name of the assignor to the use of the assignee, as at common law, but by the assignor after his assignment, was properly excluded where such defense had not been pleaded. *Pierce* v. *Gillet & Co.* (64 App. D. C. 156, 75 Fed. (2d) 675.)

POSSESSORY ACTION

Owners' agent for management of realty, who was made assignee of leases from agent for former owners, had a right to bring a possessory action against tenant in his own name under the right of an assignee of a nonnegotiable instrument to sue in his own name. *Koehne* v. *Harvey* (D. C. Mun. App. 1946, 45 A. 2d 780).

PURPOSE

Obvious purpose of the section was to vest in the assignee the right to sue in his own name. Since the procedural right had not been previously available to him, as the real party in interest, he is able to sue in the name of his assignor. *District of Columbia* v. *Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

SINGLE CAUSE OF ACTION

Creditor has no right to split up a single cause of action, either by the institution in his own name of separate suits upon separate fractions thereof, or by the assignment of such several parts to several persons without knowledge and consent of the debtor, so as to require the latter to respond to different actions and to incur accumulation. *Sincell* v. *Davis* (24 App. D. C. 218).

A single cause of action may be assigned, and the assignee may sue upon it in his own name, usually subject to all the equities existing between the assignor and the debtor; but this does not authorize the distribution of a single cause of action into fractional parts, and their assignment to several persons without the consent of the debtor. *Sincell* v. *Davis* (24 App. D. C. 218).

STOCK CERTIFICATES

It is well settled that certificates of stock are not negotiable instruments. At the same time, they are so constantly used as collateral and passed from hand to hand, when the blank transfer and power of attorney on their backs has been formally executed by the party to whom they were issued, that the general custom in the city of Washington is to regard the holder as the owner for the purpose of selling or pledging them. *National Safe Deposit, Sav. & Trust Co.* v. *Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

While indorsed certificates of stock do not become negotiable instruments in a strictly legal sense, they nevertheless so approximate them that the ordinary rules of agency and estoppel which apply in the case of chattels are applied to them with great liberality in the behalf of an innocent purchaser. *National Safe Deposit, Sav. & Trust Co.* v. *Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

SUBSCRIPTIONS TO CAPITAL STOCK OF CORPORATION

Subscriptions to the capital stock of a corporation may be assigned by the corporation, so as to give the assignee a right to sue in his own name. *Crook* v. *International Trust Co.* (32 App. D. C. 490).

§ 28–2504 [2: 4]. General assignments.

In case of a general assignment which shall include choses in action, it shall not be necessary to execute a separate assignment of each chose in action, but the assignee shall be entitled, by virtue of the general assignment, to sue in his own name on the several choses in action included therein. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 434.)

CROSS REFERENCE

See notes to §§ 28–2501, 28–2503.

NOTES TO DECISIONS

ACTION BY ASSIGNOR AFTER ASSIGNMENT

As defenses must be pleaded the court did not err in excluding evidence even though it might have proved that the action was not in the name of the assignee, or in the name of the assignor to the use of the assignee, as the practice was at common law, but an action by an assignor after his assignment. *Pierce* v. *Gillet & Co.* (64 App. D. C. 156, 75 Fed. (2d) 675).

§ 28–2505. Contract for assignment of future salary or wages—Penalties for attempting to enforce such assignments.

(a) Every contract attempting or purporting to transfer or assign salary or wages to be earned by the debtor after the date of such contract, shall, if made in the District of Columbia, be invalid and contrary to public policy and unenforceable, and if made outside the District of Columbia, be unenforceable in any court within the District of Columbia.

(b) It shall be unlawful for any person in the District of Columbia to demand or receive from such debtor any assignment of salary or wages to be thereafter earned by such debtor, or to notify any employer that he holds an assignment of such salary or wages. Any person violating this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than $200 or by imprisonment for not more than sixty days. Prosecutions under this subsection shall be upon information filed in the Criminal Branch of the Municipal Court of the District of Columbia by the Corporation Counsel of the District of Columbia or one of his assistants. (Mar. 3, 1901, ch. 854, § 434–A, as added Dec. 20, 1944, 58 Stat. 819, ch. 610, § 3.)

Chapter 26.—ASSIGNMENTS FOR BENEFIT OF CREDITORS

Sec.
28–2601. Inventory of estate—List of creditors.
28–2602. Assignee—Assent in writing—Acknowledgment—Recordation of assignment.
28–2603. Bond of assignee.
28–2604. Failure of assignee to comply—Appointment of trustee by court—Death or removal of trustee or assignee.
28–2605. Duties of assignee.
28–2606. Preferences to be void.
28–2607. Proceedings by one or more of several creditors—Benefit of all—Costs.
28–2608. Assignments made to hinder, delay, or defraud.
28–2609. Notices to creditors.
28–2610. Exempt property not to be included.

§ 28–2601 [2: 21]. Inventory of estate—List of creditors.

In all cases of voluntary assignments made in the District of Columbia for the benefit of creditors, the debtor shall annex to such assignment an inventory, under oath or affirmation, of his estate, real and personal, according to the best of his knowledge, and also a list of his creditors, their respective residences and places of business, if known, and the amounts of their respective demands; but such inventory shall not be conclusive as to the amount of the debtor's estate, and such assignment shall vest

in the assignee the title to any other property, except what is legally exempt, belonging to the debtor at the time of making the assignment and comprehended within the general terms of the same. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 435.)

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

All parts of a deed of assignment for the benefit of creditors will be considered in arriving at the general intention of the instrument, and if consistent with the language two constructions can be given, that is to be adopted which will render it legal and operative rather than illegal and void. *Cissell* v. *Johnston* (4 App. D. C. 335).

An attempt to limit the benefit of the trust to such creditors only as shall release their demands if not paid in full is a preference within the meaning of the Act of Congress of February 24, 1893 (27 Stat. 474), and void, and all liabilities within the provisions of the assignment shall be paid pro rata from the assets thereof. *Cissell* v. *Johnston* (4 App. D. C. 335).

Assignment by debtor to a creditor of a fund due him under a contract with District of Columbia for erection of school buildings, with directions to the assignee after paying his own claim, to distribute the residue among certain other creditors, passes the legal title to the fund and creates a trust for creditors named although at the time some of them had no knowledge of the transaction and did not assent to it. *Smith* v. *Herrell* (11 App. D. C. 425).

Confession of judgment by an insolvent debtor in favor of a bona fide creditor is not such a preference as is prohibited by Act of Congress of February 24, 1893, § 2, declaring void preferences of one creditor over another. *Strasburger* v. *Dodge* (12 App. D. C. 37).

Under laws of Maryland the general words of an assignment for benefit of creditors are restricted by particular description of a schedule which is made part of it; and where such assignment executed in Washington, D. C., purports to convey a life estate of the assignor in lands in Maryland as expressed in schedule, the assignee will take only such life estate, although assignment purports to convey all of assignor's property. *Keane* v. *Chamberlain* (14 App. D. C. 84).

§ 28–2602 [2: 22]. Assignee—Assent in writing—Acknowledgment—Recordation of assignment.

The assignee in every such assignment shall be a resident of the District of Columbia, his assent shall appear in writing in, or at the end of, or indorsed on, the assignment, and the assignment shall be invalid unless duly acknowledged and recorded within five days after its execution in the land records of the said District. The trust created by such assignment shall be executed under the supervision and control of the District Court of the United States for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 436.)

CROSS REFERENCE

See notes to § 28–2601.

NOTES TO DECISIONS

RIGHT TO MAINTAIN ACTION

Assignment is admissible in evidence in a suit by the assignee to show his right to maintain the action. *Mazza* v. *Russell* (47 App. D. C. 87).

§ 28–2603 [2: 23]. Bond of assignee.

Immediately upon the filing of such assignment for record it shall be the duty of the assignee to execute and file in the clerk's office of the District Court of the United States for the District his bond to the United States, in an amount and with security to be approved by the justice holding the equity court, conditioned for the faithful performance of his duties according to law, and said court may from time to time require said assignee, or any trustee appointed in his place, to give additional security whenever the interests of the creditors demand the same. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 437.)

CROSS REFERENCE

See notes to § 28–2601.

§ 28–2604 [2: 24]. Failure of assignee to comply—Appointment of trustee by court—Death or removal of trustee or assignee.

If the assignee named in any such assignment shall fail or refuse to comply with any of the requirements aforesaid, the justice holding the equity court may, on the application of the assignor or any creditor interested in such assignment, remove said assignee and appoint a trustee in his place to execute the trusts created by said assignment, who shall give bond as the court may require. And said court shall have power to accept the resignation of any assignee or trustee, and in case of his resignation, death, or removal from the District to appoint a trustee in his place. The court shall also have power, for cause shown, on the application of any surety, creditor, or other person interested, to remove any assignee or trustee and appoint a trustee in his place, and to make and enforce all orders necessary to put the newly appointed trustee in possession of all property, moneys, books, papers, and other effects covered by the assignment. And in case of the death of any assignee or trustee the court may require his executor or administrator to settle the account of said assignee or trustee and to deliver over to his successor all property and other effects belonging to the trust, in default of which said successor may bring suit upon the bond of said deceased assignee or trustee or upon the bond of such executor or administrator, accordingly as such assignee or trustee, executor or administrator is the party in default. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 438; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

Act of 1901 was amended by adding at the end thereof the words "or upon the bond of such executor or administrator, accordingly as such assignee or trustee, executor or administrator is the party in default."

§ 28–2605 [2: 25]. Duties of assignee.

It shall be the duty of the assignee or trustee, after giving bond as aforesaid, to collect and take into his possession all the property and effects covered by the assignment, and to that end he may bring suit in his own name to recover debts due or property belonging to the assignor and embraced in the assignment. And the court may require the assignor to be examined under oath touching his said property, and may pass all orders necessary to prevent any fraudulent transfer of or change in the property of the assignor. The said assignee or trustee shall return inventories of the assets coming to his hands and, under the direction of the court, sell and dispose of the same, and his conveyance of any property of the assignor, real or personal, shall transfer the entire title of the

assignor therein to any purchaser. When the assets have been converted into money the said assignee or trustee shall settle his accounts and make distribution among the creditors, under the direction of the court, according to the usual course of proceeding in equity in creditor's suits. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 439.)

§ 28–2606 [2: 26]. Preferences to be void.

Every provision in any voluntary assignment made for the payment of one debt or liability in preference to another shall be void, and all debts and liabilities within the provisions of the assignment shall be paid pro rata from the assets: *Provided,* That nothing herein contained shall be held to affect the priority of liens and incumbrances created bona fide and existing before the execution of such assignment. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 440.)

§ 28–2607 [2: 27]. Proceedings by one or more of several creditors—Benefit of all—Costs.

Any proceeding instituted under this chapter by one or more creditors shall be deemed to be for the equal benefit of all creditors, but the court may make such allowance to the creditor or creditors instituting the same, out of the fund to be distributed, for expenses, including counsel fees, as may be just and equitable. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 441.)

§ 28–2608 [2: 28]. Assignments made to hinder, delay, or defraud.

Nothing contained in this chapter shall prevent any creditor otherwise entitled from attacking any assignment as made to hinder, delay, or defraud the creditors of the assignor, and whenever any such assignment shall appear to the court to have been made with such intent, the court may enjoin any proceeding thereunder, and upon finally decreeing the same to be void may appoint a trustee with power to take possession of all the effects of the debtor and may pass and enforce all orders necessary to put him in possession of the same, and said trustee shall qualify in the same manner and perform the same duties as the trustee provided for in sections 28–2601 to 28–2607. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 442.)

Cross References

Fraudulent conveyances, generally, § 12–401 et seq.
See notes to § 28–2601.

§ 28–2609 [2: 29]. Notices to creditors.

In all cases of assignment the court shall require the trustee or trustees, whether named in the assignment or appointed by the court, in pursuance of the sections aforesaid, to give notice as the court may think proper to all the creditors of the assignor to produce and prove their respective claims against the assignor before the auditor of the court, to the end that they may be fairly adjudicated and the said creditors may share equally the assets of the insolvent assignor, subject, however, to any legal priorities created by valid incumbrances antedating the assignment. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 443.)

§ 28–2610 [2: 30]. Exempt property not to be included.

No assignment for the benefit of creditors shall be construed to include or cover any property exempt from levy or sale on execution unless the exemption is expressly waived; and the court may direct the manner in which exempt property may be ascertained and set aside before any sale by the trustee or trustees. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 444.)

Cross Reference

Exemptions generally, § 15–401 et seq.

Chapter 27.—INTEREST AND USURY

Sec.
28–2701. Rate of interest in absence of agreement—Judgments against the District.
28–2702. Rate of interest—Express contracts.
28–2703. Usury—Definition.
28–2704. Action to recover usury paid—Limitation.
28–2705. Unlawful interest to be credited on principal debt—Bona fide indorsee of negotiable paper.
28–2706. Parties may be made to testify.
28–2707. Interest on judgments for liquidated debt.
28–2708. Interest on judgments for damages in actions in contract or tort.
28–2709. Interest on judgment in suits on contracts made elsewhere.

§ 28–2701 [17: 1]. Rate of interest in absence of agreement—Judgments against the District.

The rate of interest in the District upon the loan or forbearance of any money, goods, or things in action, and the rate to be allowed in judgments and decrees, in the absence of express contract as to such rate of interest, shall be six dollars upon one hundred dollars for one year, and at that rate for a greater or less sum or for a longer or shorter time: *Provided,* That interest, when authorized by law, on judgments against the District of Columbia, shall be at the rate of not exceeding 4 per centum per annum. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1178; July 1, 1902, 32 Stat. 610, ch. 1352.)

Amendment

The 1902 amendment added the proviso.

Cross Reference

Interest and charges permitted under Money Lenders Law, § 26–601 et seq.

NOTES TO DECISIONS

Decisions Under Prior Law

While Act of April 22, 1870, 16 Stat. 91, ch. 59, fixed the rate of interest on judgments it did not cause such judgments or decrees to bear interest which would not have borne interest previously thereto. *Washington & G. R. Co.* v. *Tobriner* (147 U. S. 571, 37 L. Ed. 284, 13 Sup. Ct. 557).

Judgments

If a judgment regularly rendered in the Supreme (District) Court of the District in a common-law action of tort cannot bear interest a fortiori it should not be permitted to run upon the judgment of the court of claims. *Gray* v. *District of Columbia* (1 App. D. C. 20).

Legal Rates

When debtor defaults, compensation equal to value of the money, which is legal interest upon it, will be permitted during time the party is in default, provided a claim is made in declaration for the interest. *District of Columbia* v. *Metropolitan R. Co.* (8 App. D. C. 322, affd. 195 U. S. 322, 49 L. Ed. 219, 25 Sup. Ct. 28).

All that plaintiff was entitled to recover was the principal sum, with interest at the legal rate after the ter-

mination of the contract rate, less the credits which she admitted. *Richards* v. *Bippus* (18 App. D. C. 293).

OCCASIONAL LOANS ON REAL ESTATE

A nonresident who makes occasional loans on real estate is not engaged "in the business" of loaning money within the meaning of the Loan Shark Law. *Zirkle* v. *Daly* (60 App. D. C. 344, 54 Fed. (2d) 455).

USURY

"When the promise to pay a sum above the legal interest depends upon a contingency, and not upon any happening of a certain event, the loan is not usurious." *Whelpley* v. *Ross* (25 App. D. C. 207).

Illegality of the transaction does not affect the obligation to pay a tax, and though the accruals represented legally uncollectible usury, there was at all times a reasonable expectation that they would be paid, and this fact is enough to constitute them income to the same extent as if the several amounts were actually paid. *Barker* v. *Magruder* (68 App. D. C. 211, 95 Fed. (2d) 122, affg. 26 Fed. Supp. 1004).

Usury law protects the maker in spite of knowledge. The same financial pressure which forced him to submit to usury in the first place may force him to renew. To permit a mere renewal or extension of the contract to purge the usury would defeat the purpose of the statute. *Bowen* v. *Mount Vernon Sav. Bank* (70 App. D. C. 273, 105 Fed. (2d) 796).

§ 28–2702 [17: 2]. Rate of interest—Express contracts.

The parties to a bond, bill, promissory note, or other instrument of writing for the payment of money at any future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding eight per centum per annum. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1179; Apr. 19, 1920, 41 Stat. 568, ch. 153.)

AMENDMENT

The 1920 act changed rate of interest from ten to eight per centum.

CROSS REFERENCES

Interest and charges permitted under Money Lenders Law, § 26–601 et seq.

See note to § 28–2701. *Whelpley* v. *Ross* (25 App. D. C. 207).

NOTES TO DECISIONS

ADDITIONAL LOAN AS USURY

Usury sustained based on additional loan payable to intermediary. *Quinn* v. *National Mtg. & Inv. Co.* (61 App. D. C. 44, 57 Fed. (2d) 410).

BONUS AS USURY

"Bonus" being a sum paid to the creditor for the continued use of the money, clearly counts as interest for the purpose of the usury law; and a bonus, which, when added to the nominal interest on a 2-year extension exceeded 8 percent, was usurious. *Bowen* v. *Mount Vernon Sav. Bank* (70 App. D. C. 273, 105 Fed. (2d) 796).

INCOMPLETE TRANSACTION

Where transaction contemplated, with usurious rates, never took place, claim of usury could not be sustained. *Rosslyn Steel & Cement Co.* v. *Etchison* (61 App. D. C. 43, 57 Fed. (2d) 409).

§ 28–2703 [17: 3]. Usury—Definition.

If any person or corporation shall contract in the District, verbally, to pay a greater rate of interest than six per centum per annum, or shall contract, in writing, to pay a greater rate than eight per centum per annum, the creditor shall forfeit the whole of the interest so contracted to be received: *Provided,* That nothing in this chapter contained shall be held to repeal or affect sections 26–601 to 26–611. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1180; June 30, 1902, 32 Stat. 542; ch. 1329; Apr. 19, 1920, 41 Stat. 568, ch. 153.)

COMPILER'S NOTE

Sections 26–601 to 26–611 is the Money Lenders Act.

AMENDMENTS

Act of 1901 provided for ten per centum rate rather than eight, and act of 1902 provided for no greater rate than six per centum.

The 1920 amendment changed the proviso to refer to the Money Lenders Act of 1913 rather than the act of Mar. 2, 1889, relating to pawnbrokers.

NOTES TO DECISIONS

BONUS AS USURY

Note or obligation is affected with usury if principal makes the loan, knowing that his agent has exacted a bonus or commission, though for his own sole benefit, which, with the interest payable to the principal, would amount to more than the rate permitted by law. *Richards* v. *Bippus* (18 App. D. C. 293).

BURDEN OF PROOF

Burden of proof is upon the borrower to show that the lender knew or was chargeable with the knowledge that his agent exacted a commission in obtaining loan for borrower in excess of the legal rate of interest. Such knowledge may be implied as well as actual. *Searl* v. *Earl* (D. C. Mun. App. 1948, 62 A. 2d 374).

CONSTRUCTION

The Loan Shark Law, § 26–601 et seq., the usury law, this section and § 28–2704 et seq., and the statute regarding financial institutions, § 47–1701 et seq. are to be read together and when so read constitute a comprehensive code for business of lending money in the District of Columbia. *Hartman* v. *Lubar,* 1942 (133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

DEDUCTING COMMISSIONS

This section may be violated by deducting a commission in advance as well as by any other means by which money in excess of the legal rate is exacted. *Hartman* v. *Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

DEFENSE

Where there is a single consideration for one or more promises and any part of the transaction is illegal, the promises are wholly unenforceable. *Searl* v. *Earl* (D. C. Mun. App. 1948, 62 A. 2d 374).

INTEREST PLUS COMMISSION

Where a lender's agent, with the lender's knowledge and approval, takes the borrower's separate promissory note payable to himself for his compensation for obtaining the loan for the borrower, the agent cannot recover on the note when the interest on the principal loan plus the agent's commission exceeds the legal rate. *Searl* v. *Earl* (D. C. Mun. App. 1948, 62 A. 2d 374).

KNOWLEDGE OF HOLDER

One who acquires promissory notes with knowledge of usury in their inception is not a bona fide holder for value. *Mollohan* v. *Masters* (45 App. D. C. 414, cert. den. 242 U. S. 652, 61 L. Ed. 546, 37 Sup. Ct. 245).

LAWS APPLICABLE TO CONTRACT

Usurious contract examined and held to be subject to laws of District of Columbia, although expressly declared to be made pursuant to laws of Virginia. *Washington Nat. Bldg. & Loan Assn.* v. *Pifer* (31 App. D. C. 434, 14 Ann. Cas. 734), citing *Croissant* v. *Empire State Realty Co.* (29 App. D. C. 538).

Where agreement made in Maryland between defendant and certain individuals provided that the individuals should organize a corporation to acquire land in District of Columbia, the corporation to erect buildings

thereon and execute to individuals a $19,000 mortgage thereon payable in one year, to be assigned to defendant upon payment of $15,000 to the corporation, and mortgage note was delivered in District of Columbia, where defendant paid the $15,000 and corporation paid the note in full one year later, as between the corporation and defendant the contract was made in District of Columbia, the laws of which permitted corporation to recover money usuriously exacted. *Plitt* v. *Seven Corners Realty* (App. D. C. 1945, 149 F. 2d 832).

OCCASIONAL LOANS ON REAL ESTATE

A nonresident who makes occasional loans on real estate is not engaged "in the business" of loaning money within the meaning of the Loan Shark Law. *Zirkle* v. *Daly* (60 App. D. C. 344, 54 Fed. (2d) 455).

PREPAYMENT CHARGE

Even if premium charged by lender for privilege of permitting borrower to prepay entire amount of outstanding balance on note secured by deed of trust on realty could be considered as interest, transaction was not usurious where total amount of interest paid plus the premium was less than lawful maximum interest computed to date the loan was paid. *Atlantic Life Ins. Co. of Richmond, Va.* v. *Wolf* (D. C. Mun. App. 1947, 54 A. 2d 641).

Where neither note nor deed of trust on realty securing the note contained any provision permitting repayment by borrower before specified date of maturity, or vested any right or option of acceleration in borrower, the charge of premium to permit borrower to prepay entire amount of outstanding balance on note could not be considered as "interest", as regards usury. *Atlantic Life Ins. Co. of Richmond, Va.* v. *Wolf* (D. C. Mun. App. 1947, 54 A. 2d 641).

PURCHASE AT DISCOUNT

A purchase of negotiable paper in market overt "at a heavy discount below the face value" does not show usury. *Metropolitan Loan & Trust Co.* v. *Schafer* (44 App. D. C. 356).

Where discounted notes were taken by creditor in payment of debt and not as security therefor, there was no mortgage so as to render the transaction usurious though the parties agreed that if proceeds realized exceeded amount of debt, debtors should be reimbursed accordingly and that in case of deficiency they would make it up. *Krevait* v. *Turover* (D. C. Mun. App. 1944, 39 A. 2d 207).

Where defendants owed plaintiffs money which they could not pay, it was not usury for defendant to give and plaintiff to receive in payment of the debt notes at a discount of 3 percent of their face value multiplied by the number of years required for the maturity of the notes. *Krevait* v. *Turover* (D. C. Mun. App. 1944, 39 A. 2d 207).

It is not usurious to purchase a note at a discount or to accept in payment of a debt a note at less than its face value. *Krevait* v. *Turover* (D. C. Mun. App. 1944, 39 A. 2d 207).

SET-OFF

Usurious interest cannot be set off against the principal debt. *Presbrey* v. *Thomas* (1 App. D. C. 171).

When usurious interest has been paid or taken, the sole and exclusive remedy for the borrower is by a suit within 12 months to recover the amount of the usury; and the usurious interest could not be made the subject of set-off or counterclaim, when after the lapse of 12 months suit is instituted for the recovery of the principal claim. *Lawrence* v. *Middle States Loan Bldg. & Constr. Co.* (7 App. D. C. 161).

"A defense of usury good against one obligation will not constitute a valid offset against a distinct and independent obligation, though between the same parties." *Metropolitan Loan & Trust Co.* v. *Schafer* (44 App. D. C. 356).

Under the Code, "if suit is brought on the principal debt after payment of usurious interest, such usury may be made a valid set-off against the principal debt. Usury upon obligations paid and canceled can not be used as a set-off against a subsequent obligation even between the same parties, either in law or in equity." *Metropolitan Loan & Trust Co.* v. *Schafer* (44 App. D. C. 356).

"USURY" DEFINED

Money exacted by the lender from the borrower for the use of money in excess of the legal rate allowed by statute is usury under whatever name or pretense the exaction, extension, or forbearance may be designated. *Von Rosen* v. *Dean* (59 App. D. C. 359, 41 Fed. (2d) 982).

§ 28–2704 [17: 4]. Action to recover usury paid—Limitation.

If any person or corporation in the District shall directly or indirectly take or receive any greater amount of interest than is herein declared to be lawful, whether in advance or not, the person or corporation paying the same shall be entitled to sue for and recover the amount of the unlawful interest so paid from the person or corporation receiving the same, provided said suit be begun within one year from the date of such payment. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1181.)

CROSS REFERENCE

See notes to § 28–2703.

NOTES TO DECISIONS

ADMISSIBILITY OF EVIDENCE

Where there was evidence that indorsee finance company for which trustee brought replevin suit to recover chattels named in chattel trust deed securing a note was in the business of lending money rather than solely that of discounting notes in the sense of buying from a creditor an existing obligation at less than face value, proffered evidence consisting of court trials of five municipal court cases in which finance company sued to recover on notes assigned to it was material to defendant's defense that finance company was in business of lending money at rate of interest greater than 6 percent, without required license and should have been admitted. *Hartman* v. *Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

CANCELLATION

A suit for cancellation of note and deed of trust on ground of usury, regarded as suit for declaratory judgment that complete defense existed to the obligation on the note, was not barred by this section or three-year general statute, § 12–201. *Hill* v. *Hawes*, 1944 (144 F. 2d 511, 79 U. S. App. D. C. 168).

This section applies to recovery of any payments made on usurious obligation in excess of amount necessary to extinguish the note, though cancellation of usurious obligation was not barred. *Hill* v. *Hawes*, 1944 (144 F. 2d 511, 79 U. S. App. D. C. 168).

COMMISSIONS DEDUCTED IN ADVANCE

Commissions deducted in advance by the lender constitute usury. *Von Rosen* v. *Dean* (59 App. D. C. 359, 41 Fed. (2d) 982).

DEFENSE, LIMITATION ON

There are no limitations on claim of usury as a defense in a suit based on usurious obligations. *Hill* v. *Hawes*, 1944 (144 F. 2d 511, 79 U. S. App. D. C. 168).

INFERENCES

Where defendant had subpoenas duces tecum served upon officers of indorsee finance company for which trustee was maintaining replevin suit to compel them to produce at trial all records regarding the company for purpose of showing that company was in business of lending money at rate of interest greater than 6 percent without required license, and officers failed to produce the records, jury could infer from failure to produce subpoenaed records that contents thereof would have been unfavorable to trustee's case. *Hartman* v. *Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

INTEREST FORFEITED

Whole of the interest contracted to be paid by the terms of the trust is forfeited as usury when the trust deed for amount in addition to the loan was payable to an intermediary who professed to sell the same to the

actual lender. *Quinn* v. *National Mtg. & Inv. Co.* (61 App. D. C. 44, 57 Fed. (2d) 410).

This section authorizing recovery of all "unlawful interest" paid on a loan, does not limit recovery to the amount above the lawful rate of interest, but authorizes recovery of the whole of the interest paid. *Cockrell* v. *First Federal Savings & Loan Ass'n* (D. C. 1943, 33 A. 2d 621).

JOINT ACTION

Action for recovery of usury brought by joint makers of note within one year after last payment on debt by one of the makers was not barred, even as to maker who had made no payment on debt for more than one year. *Knott* v. *Jackson* (D. C. 1943, 31 A. 2d 662).

Where makers related by marriage or blood executed a joint and several note secured by joint deed of trust on two properties, and proceeds of note were used by them under an apparent joint agreement, the three joint makers could maintain joint action and obtain joint judgment for usury admittedly paid, even though they could not show exactly what amount each had individually paid. *Knott* v. *Jackson* (D. C. 1943, 31 A. 2d 662).

LACHES

An action to cancel usurious obligation was not barred by laches, in view of this section allowing recovery of usurious payments made within one year before suit, regardless of date of the note, since refusal of cancellation would merely result in circuity of action. *Hill* v. *Hawes*, 1944 (144 F. 2d 511, 79 U. S. App. D. C. 168).

PLEADING

Where both the original and amended complaints were based on a claim for usury paid on account of a loan to plaintiff and it was apparent that defendants were not misled by an amendment setting up different dates and amounts, the amendment did not set up a "new cause of action" barred by limitations. *Cockrell* v. *First Federal Savings & Loan Ass'n* (D. C. 1943, 33 A. 2d 621).

QUESTIONS FOR JURY

In action by joint makers of note for recovery of usury, question whether $50 payment made by lender to his attorney on account of expenses and fees in connection with the loan was proper charge against the borrowers was properly submitted to jury. *Knott* v. *Jackson* (D. C. 1943, 31 A. 2d 662).

Where joint makers of note instituted joint action for recovery of usury but lender contended that one maker, upon making payment more than one year before institution of action, was released from all obligation under note and that as a consequence her claim was barred by one-year limitation of this section, question whether such maker was released from further personal liability at time she made the payment was properly submitted to jury. *Knott* v. *Jackson* (D. C. 1943, 31 A. 2d 662).

REPAYMENT OF LOAN

One-year limitation runs, not from the time that usurious interest may have been deducted, but from the time the last payment was made. "Until that time the full amount of the deduction had not been paid by her. There could be no usurious interest collected until the appellee had paid the full amount she received, together with legal interest." *Brown* v. *Slocum* (30 App. D. C. 576).

Section 28–2703 et seq. relating to usury do not destroy the obligation to repay the principal on account of the usury, but requires a forfeiture of all interest contracted for, if unpaid, or permits its recovery, if paid, by action begun within one year after payment. *Cockrell* v. *First Federal Savings & Loan Ass'n* (D. C. 1943, 33 A. 2d 621).

An action to recover usurious interest paid can only be maintained after last payment on debt has been made. *Knott* v. *Jackson* (D. C. 1943, 31 A. 2d 662).

A loan transaction which would be free from usury if loan were paid at agreed maturity date is not rendered usurious by borrower's voluntary repayment of loan before maturity, even though, by reason of such repayment, amount of interest received by lender exceeds lawful interest computed to day the loan is paid, provided that total interest received by lender does not exceed lawful interest computed to maturity date stipulated in loan contract. *Atlantic Life Ins. Co. of Richmond, Va.* v. *Wolf* (D. C. Mun. App. 1947, 54 A. 2d 641).

SUFFICIENCY OF EVIDENCE

In replevin by trustee of indorsee finance company to recover chattels named in trust deed securing a note, evidence that loan was usurious, in that an amount in excess of legal rate was deducted in advance and that plaintiff knew the amount deducted in advance, was sufficient to make defense of illegality available to defendant. *Hartman* v. *Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

§ 28–2705 [17: 5]. Unlawful interest to be credited on principal debt—Bona fide indorsee of negotiable paper.

In any action brought upon any contract for the payment of money with interest at a rate forbidden by law, as aforesaid, any payments of interest that may have been made on account of said contract shall be deemed and taken to be payments made on account of the principal debt, and judgment shall be rendered for no more than the balance found due after deducting and properly crediting the interest so paid; but no bona fide indorsee of negotiable paper purchased before due shall be affected by any usury exacted by any former holder of said paper unless he had notice of the usury before his purchase. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1182; June 30, 1902, 32 Stat. 542, ch. 1329.)

AMENDMENT

This act of 1902 amended the 1901 act by striking out the words "in excess of the lawful interest," following the words "said contract."

CROSS REFERENCE

See notes to § 28–2703.

NOTES TO DECISIONS

INNOCENT HOLDERS FOR VALUE

No relief to borrowers of money at usurious rates against innocent holders for value. *Whipp* v. *Glueck* (61 App. D. C. 118, 58 Fed. (2d) 523).

MAKER OF NEW NOTES

Quaere, whether maker of new notes to take the place of former usurious notes to which he was a party can take advantage of 1901 Code, § 1182 (this section) and plead usury as a defense to all except the principal sum due. *King* v. *Curtin* (31 App. D. C. 23).

§ 28–2706 [17: 6]. Parties may be made to testify.

Whenever in any action to recover a debt the defendant shall claim that payments of unlawful interest on said debt have been made to said plaintiff or those under whom he claims, which the defendant is entitled to have credited on the principal of the debt, the plaintiff or the party who received said unlawful interest may be examined as a witness to prove the payment of the same, and shall not be excused from testifying in relation thereto, nor shall a creditor who is made defendant to a bill in equity exhibited against him for discovery as to payments of unlawful interest made to him be excused from answering as to the same. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1183.)

§ 28–2707 [17: 7]. Interest on judgments for liquidated debt.

In an action in the District Court of the United States for the District of Columbia to recover a liq-

uidated debt on which interest is payable by contract or by law or usage the judgment for the plaintiff shall include interest on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any, until paid. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1184.)

NOTES TO DECISIONS

ASSESSMENT BY COURT

"We do not mean by this to rule that, in a case where no question is made by either the pleadings or evidence as to the payment of interest, the court would not be authorized, under the provisions of said section 1184 (this section), to direct the assessment of interest. In such a situation the finding of the jury would, under the statute, automatically carry interest." *Metzger* v. *Metzger* (35 App. D. C. 389).

COMPENSATION OF SPECIAL AUDITOR

It is the prevailing view that costs do not bear interest unless so provided by statute, and this section does not apply to special auditor upon decree of compensation. *Davis* v. *Fidelity & Deposit Co.* (63 App. D. C. 395, 73 Fed. (2d) 118).

INTEREST BEFORE JUDGMENT

In action to recover for board, including room, pretrial stipulation that sum of $50 per month for two people was a fair and reasonable sum did not turn the action for breach of contract into an action to recover "liquidated debt", and therefore plaintiff was not entitled to interest before judgment. *Shima* v. *Brown,* 1942 (133 F. 2d 48, 77 U. S. App. D. C. 115, certiorari denied 63 S. Ct. 982, 318 U. S. 787, 87 L. Ed. 1154).

In action to recover for board, including room, where court erred in adding interest to jury's verdict from time action was filed, case was remanded with directions to enter judgment for damages assessed by jury with interest from time of entry of judgment until paid. *Shima* v. *Brown,* 1942 (133 F. 2d 48, 77 U. S. App. D. C. 115, certiorari denied 63 S. Ct. 982, 318 U. S. 787, 87 L. Ed. 1154).

INTEREST NOT DEMANDED

This section and § 28–2708 do not charge a surety of government contractor with interest on claims of materialmen when there was no request or demand made. *London & Lancashire Indem. Co.* v. *Smoot* (52 App. D. C. 378, 287 Fed. 952).

REFORMING THE VERDICT

Where in a suit on a promissory note for $2,500 (with interest at 6 per centum) the defendant files a plea of the general issue and the statute of limitations, and the jury returns a verdict for the plaintiff "in the sum of $2,500 and costs," the court, on appeal (in the absence of a bill of exceptions containing the evidence introduced), will reverse the action of the trial justice in reforming the verdict so as to include interest. *Metzger* v. *Metzger* (35 App. D. C. 389).

TERMINATION OF CONTRACT

Under the statute regulating interest and punishing usury, and the rule that prescribes the running of the legal rate after maturity, all that the plaintiff was entitled to recover was the principal sum, with interest at the legal rate after the termination of the contract rate, less the credits which she had admitted. *Richards* v. *Bippus* (18 App. D. C. 293).

§ 28–2708 [17: 8]. Interest on judgments for damages in actions in contract or tort.

In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only; but nothing herein shall forbid the jury, or the court, if the trial be by the court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1185.)

CROSS REFERENCE

See notes to § 28–2707.

NOTES TO DECISIONS

INTEREST

Under the statutory provision in this jurisdiction, vesting as it does a broad measure of discretion in the jury or trial court, the court should not lightly disturb the finding of the trial judge in allowing interest as an element of damage in action for breach of contract. *Flanaghan* v. *Charles H. Thompkins Co.* (C. A. D. C. 1950, 182 F. 2d 92, 86 U. S. App. D. C. 307).

Neither an abuse of discretion by the trial court nor lack of compliance by it with the statutory standard govern the allowance of interest though uncertainties exist as to amounts due. The long delay of the special master in making his report is also an argument against awarding interest where these arguments are offset by other compensatory factors. *Dyker Bldg. Co.* v. *U. S.* (C. A. D. C. 1950, 182 F. 2d 85, 86 U. S. App. D. C. 297).

SPECIAL AUDITOR

Special auditor cannot recover interest upon decree of compensation, as this section provides an action to recover damages for breach of contract. *Davis* v. *Fidelity & Deposit Co.* (63 App. D. C. 395, 73 Fed. (2d) 118).

TRUSTEE

A trustee who purchases a second trust deed note at discount and thereafter purchases at his own foreclosure sale, attempting to enforce his personal lien, is nevertheless acting as trustee and beneficiary is entitled to an accounting of all profits on the sale as well as of interest and principal payments to trustee; trustee is entitled to reimbursement for reasonable and lawful expenses incurred and to interest on unpaid loan to trust. *Earll* v. *Picken* (91 App. D. C. 72, 113 Fed. (2d) 150).

§ 28–2709 [17: 9]. Interest on judgment in suits on contracts made elsewhere.

In an action on a contract for the payment of a higher rate of interest than is lawful in the District, made or to be performed in any State or Territory of the United States where such contract rate of interest is lawful, the judgment for the plaintiff shall include such contract interest to the date of the judgment and interest thereafter at the rate of six per centum per annum until paid. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1186.)

Chapter 28.—COMPUTATION OF TIME

Sec.
28–2801. Calendar established.
28–2802. Leap year.
28–2803. Leap year—Extra day and preceding day to be accounted one day.

§ 28–2801 [19: 111]. Calendar established.

The supputation, according to which the year of our Lord beginneth on the twenty-fifth day of March, shall not be made use of from and after the last day of December one thousand seven hundred and fifty-one; and the first day of January next following the said last day of December shall be reckoned, taken, deemed and accounted to be the first day of the year of our Lord one thousand seven hundred and fifty-two; and the first day of January, which shall happen next after the said first day of January one thousand seven hundred and fifty-two, shall be reckoned, deemed, taken and accounted to be the first

day of the year of our Lord one thousand seven hundred and fifty-three; and so on, from time to time, the first day of January in every year, which shall happen in time to come, shall be reckoned, taken, deemed and accounted to be the first day of the year; and that each new year shall accordingly commence, and begin to be reckoned, from the first day of every such month of January next preceding the twenty-fifth day of March, on which such year would, according to the Julian calendar, have begun or commenced: and that from and after the said first day of January one thousand seven hundred and fifty-two, the several days of each month shall go on, and be reckoned and numbered in the same order; and the feast of Easter, and other moveable feasts thereon depending, shall be ascertained according to the same method, as they were under the Julian calendar until the second day of September in the said year one thousand seven hundred and fifty-two inclusive; and that the natural day next immediately following the said second day of September, shall be called, reckoned and accounted to be the fourteenth day of September, omitting for that time only the eleven intermediate nominal days of the common calendar; and that the several natural days, which shall follow and succeed next after the said fourteenth day of September, shall be respectively called, reckoned and numbered forwards in numerical order from the said fourteenth day of September, according to the order and succession of days used in the Julian calendar; and that all acts, deeds, writings, notes and other instruments of what nature or kind soever, whether ecclesiastical or civil, public or private, which shall be made, executed or signed, upon or after the said first day of January one thousand seven hundred and fifty-two, shall bear date according to the said new method of supputation. (24 Geo. II, ch. 23, § 1, 1751; Kilty's Rep., p. 252; Alex. Brit. Stat., p. 768.)

COMPILER'S NOTE

This section sets forth a British statute continued in force by virtue of the act of March 3, 1901 (31 Stat. 1189, ch. 854, § 1). It was obviously impossible to modernize the language of this statute.

§ 28–2802 [19: 112]. Leap year.

For the continuing and preserving the calendar or method of reckoning, and computing the days of the year in the same regular course, as near as may be, in all times coming; the several years of our Lord, one thousand eight hundred, one thousand nine hundred, two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth years of our Lord, which shall happen in time to come, except only every fourth hundredth year of our Lord, whereof the year of our Lord two thousand shall be the first, shall not be esteemed or taken to be bissextile or leap years, but shall be taken to be common years, consisting of three hundred and sixty-five days, and no more; and that the years of our Lord two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundred year of our Lord, from the said year of our Lord two thousand inclusive, and also all other years of our Lord, which by the Julian calendar are esteemed to be bissextile or leap years, shall for the future, and in all times to come, be esteemed and taken to be bissextile or leap years, consisting of three hundred and sixty-six days, in the same sort and manner as was used under the Julian calendar. (24 Geo. II, ch. 23, § 2, 1751; Alex. Brit. Stat., p. 770.)

CROSS REFERENCE

See Compiler's Note to § 28–2801.

§ 28–2803 [19: 113]. Leap year—Extra day and preceding day to be accounted one day.

The day increasing in the leap-year shall be accounted for one year, so that because of that day none shall be prejudiced that is impleaded, but it shall be taken and reckoned of the same month wherein it groweth; and that day, and the day next going before, shall be accounted for one day. (21 Henry III, 1236; Kilty's Rep., p. 208; Alex. Brit. Stat., p. 36; Comp. Stat., D. C., p. 212, § 94.)

CROSS REFERENCE

See Compiler's Note to § 28–2801.

FEDERAL LAWS

Relating primarily to interstate commerce but applicable also to commerce in the District of Columbia

AGRICULTURAL MARKETING AGREEMENT ACT of June 3, 1937, U. S. C., Supp., title 6, § 610.

GRAIN FUTURES ACT of Sept. 21, 1922, U. S. C., title 7, §§ 1–17.

UNITED STATES COTTON STANDARDS ACT of Mar. 4, 1923, U. S. C., title 7, §§ 51–65.

GRAIN STANDARDS ACT of Aug. 11, 1916, U. S. C., title 7, §§ 71–87.

NAVAL STORES ACT of Mar. 3, 1923, U. S. C., title 7, §§ 91–99.

IMPORTATION OF ADULTERATED SEEDS ACT of Apr. 26, 1926, U. S. C., title 7, §§ 111–116.

INSECTICIDE ACT of Apr. 26, 1910, U. S. C., title 7, §§ 121–134.

INSECT PESTS, eradication, Act of 1905, U. S. C., title 7, §§ 141–147.

NURSERY STOCK, regulatory law of Aug. 20, 1912, U. S. C., title 7, §§ 151–167.

PACKERS AND STOCKYARDS ACT of Aug. 15, 1921, U. S. C., title 7, §§ 181–229.

FARM PRODUCE, antidumping, Act of Mar. 3, 1927, U. S. C., title 7, §§ 491–497.

PERISHABLE AGRICULTURAL COMMODITIES ACT of June 10, 1930, U. S. C., title 7, §§ 499a–499r.

TOBACCO INSPECTION ACT of Aug. 23, 1935, U. S. C., Supp., title 7, §§ 511–511q.

AGRICULTURAL ADJUSTMENT ACT of Feb. 13, 1938, U. S. C., Supp., title 7, § 1301.

FEDERAL SEED ACT of Aug. 9, 1939, U. S. C., Supp., title 7, §§ 1551–1610.

UNITED STATES ARBITRATION ACT of Feb. 12, 1925, U. S. C., title 9, §§ 1–15.

CLAYTON ANTITRUST ACT of Oct. 15, 1914, U. S. C., title 15, § 12 et seq.

FEDERAL TRADE COMMISSION ACT of Sept. 26, 1914, U. S. C., title 15, §§ 41–51.

EXPORT TRADE ACT of Apr. 10, 1918, U. S. C., title 15, §§ 61–66.

SECURITIES ACT of May 27, 1933, U. S. C., title 15, §§ 77b–77mm.

SECURITIES EXCHANGE ACT of 1934, U. S. C., title 15, §§ 78a–78ii.

INVESTMENT COMPANY ACT of 1940, U. S. C., title 15, § 80a–1 et seq.

STANDARD BARREL ACT of Mar. 4, 1915, U. S. C., title 15, §§ 234–236.

FEDERAL CAUSTIC POISON ACT of Mar. 4, 1927, U. S. C., title 15, §§ 402–411.

DISCRIMINATION AGAINST FARMERS' COOPERATIVES by Boards of Trade, U. S. C., title 15, §§ 431–433.

INVESTMENT ADVISERS ACT of 1940, U. S. C., title 15, § 806–1 et seq.

FEDERAL FIREARMS ACT of June 30, 1938, U. S. C., Supp., title 15, §§ 901–909.

WHITE SLAVE TRAFFIC ACT of June 25, 1910, U. S. C., title 18, §§ 397–404.

APPLE STANDARD ACT of Aug. 3, 1912, U. S. C., title 21, §§ 20–23.

FILLED MILK ACT of Mar. 4, 1923, U. S. C., title 21, §§ 61–63.

ANIMALS, sale of virus, serums and the like for the treatment, U. S. C., title 21, §§ 151–158.

FOOD, DRUG AND COSMETIC ACT of June 25, 1938, U. S. C., title 21, §§ 301–392.

FEDERAL ALCOHOL ADMINISTRATION ACT of Aug. 29, 1935, U. S. C., Supp., title 27, § 201 et seq.

NATIONAL LABOR RELATIONS ACT of July 5, 1938, U. S. C., Supp., title 29, §§ 151–166.

LOCOMOTIVE BOILER INSPECTION ACT of Feb. 17, 1911, U. S. C., title 45, §§ 22–34.

RAILWAY LABOR ACT of May 20, 1926, U. S. C., title 45, § 151 et seq.

INTERSTATE COMMERCE ACT, as amended, U. S. C., title 49, § 1 et seq.

BILLS OF LADING ACT of Aug. 29, 1916, U. S. C., title 49, §§ 81–124.

AIR COMMERCE ACT of May 20, 1926, U. S. C., title 49, § 171 et seq.

CIVIL AERONAUTICS ACT of June 23, 1938, U. S. C., Supp., title 49, § 401 et seq.

WATER CARRIERS ACT of Sept. 18, 1940, U. S. C., title 49, § 901 et seq.

Chapter 29.—STOCK TRANSFERS

Sec.

28–2901. How title to certificates and shares may be transferred.
28–2902. Powers of those lacking full legal capacity and of fiduciaries not enlarged.
28–2903. Corporation not forbidden to treat registered holder as owner.
28–2904. Title derived from certificate extinguishes title derived from a separate document.
28–2905. Who may deliver a certificate.
28–2906. Endorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity, or lack of consideration or authority.
28–2907. Rescission of transfer.
28–2908. Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.
28–2909. Delivery of unindorsed certificate imposes obligation to endorse.
28–2910. Ineffectual attempt to transfer amounts to a promise to transfer.
28–2911. Warranties on sale of certificate.
28–2912. No warranty implied from accepting payment of a debt.
28–2913. No attachment or levy upon shares unless certificates surrendered or transfer enjoined.
28–2914. Creditor's remedies to reach certificate.
28–2915. There shall be no lien or restriction unless indicated on certificate.
28–2916. Alteration of certificate does not divest title to shares.
28–2917. Lost or destroyed certificate.
28–2918. Rule for cases not provided for by this chapter.
28–2919. Interpretation shall give effect to purpose of uniformity.
28–2920. Definition of endorsement.
28–2921. Definition of person appearing to be the owner of certificate.
28–2922. Other definitions.
28–2923. Chapter does not apply to existing certificates.

§ 28–2901. How title to certificates and shares may be transferred.

Title to a certificate and to the shares represented thereby can be transferred only—

(a) by delivery of the certificate endorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) by delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specific person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or bylaws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent. (Dec. 23, 1944, 58 Stat. 927, ch. 729, § 1.)

EFFECTIVE DATE

Section 25 of the act of Dec. 23, 1944, cited to text, provided: "This Act [this chapter] shall take effect on the 1st day of January, 1945."

REPEALS

Section 24 of the act of Dec. 23, 1944, cited to text, provided: "All Acts or parts of Acts inconsistent with this Act [this chapter] are hereby repealed."

SHORT TITLE

Section 26 of the Act of Dec. 23, 1944, cited to text, provided: "This Act may be cited as the 'Uniform Stock Transfer Act'."

UNIFORM STOCK TRANSFER ACT

The Uniform Stock Transfer Act is identical with this chapter, see 6 Uniform Laws Annotated § 1 et seq.

§ 28–2902. Powers of those lacking full legal capacity and of fiduciaries not enlarged.

Nothing in this chapter shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor, or administrator, or other fiduciary, to make a valid endorsement, assignment, or power of attorney. (Dec. 23, 1944, 58 Stat. 928, ch. 729, § 2.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2903. Corporation not forbidden to treat registered holder as owner.

Nothing in this chapter shall be construed as forbidding a corporation—

(a) to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(b) to hold liable for calls and assessments a person registered on its books as the owner of shares. (Dec. 23, 1944, 58 Stat. 928, ch. 729, § 3.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2904. Title derived from certificate extinguishes title derived from a separate document.

The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming

under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the endorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document. (Dec. 23, 1944, 58 Stat. 928, ch. 729, § 4.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2905. Who may deliver a certificate.

The delivery of a certificate to transfer title in accordance with the provisions of section 28–2901 is effectual, except as provided in section 28–2907, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title. (Dec. 23, 1944, 58 Stat. 928, ch. 729, § 5.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2906. Endorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity, or lack of consideration or authority.

The endorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in section 28–2907, though the endorser or transferor—

(a) was induced by fraud, duress, or mistake, to make the endorsement or delivery; or

(b) has revoked the delivery of the certificate or the authority given by the endorsement or delivery of the certificate; or

(c) has died or become legally incapacitated after the endorsement, whether before or after the delivery of the certificate; or

(d) has received no consideration. (Dec. 23, 1944, 58 Stat. 928, ch. 729, § 6.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2907. Rescission of transfer.

If the endorsement or delivery of a certificate—

(a) was procured by fraud or duress; or

(b) was made under such mistake as to make the endorsement or delivery inequitable; or

If the delivery of a certificate was made—

(c) without authority from the owner; or

(d) after the owner's death or legal incapacity,

the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless—

(1) the certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful; or

(2) the injured person has elected to waive the injury or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it. (Dec. 23, 1944, 58 Stat. 929, ch. 729, § 7.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2908. Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.

Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby. (Dec. 23, 1944, 58 Stat. 929, ch. 729, § 8.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2909. Delivery of unindorsed certificate imposes obligation to endorse.

The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the endorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary endorsement. The transfer shall take effect as of the time when the endorsement is actually made. This obligation may be specifically enforced. (Dec. 23, 1944, 58 Stat. 929, ch. 729, § 9.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2910. Ineffectual attempt to transfer amounts to a promise to transfer.

An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts. (Dec. 23, 1944, 58 Stat. 929, ch. 729, § 10.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2911. Warranties on sale of certificate.

A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants—

(a) that the certificate is genuine;

(b) that he has a legal right to transfer it; and

(c) that he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon

such warranty shall not exceed the amount of the claim. (Dec. 23, 1944, 58 Stat. 929, ch. 729, § 11.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2912. No warranty implied from accepting payment of a debt.

A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 12.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2913. No attachment or levy upon shares unless certificates surrendered or transfer enjoined.

No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 13.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2914. Creditor's remedies to reach certificate.

A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 14.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2915. There shall be no lien or restriction unless indicated on certificate.

There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any bylaws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 15.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2916. Alteration of certificate does not divest title to shares.

The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 16.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2917. Lost or destroyed certificate.

Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the court as provided in this section shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 17.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2918. Rule for cases not provided for by this chapter.

In any case not provided for by this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators, and trustees, and to the effect of fraud, misrepresentation, duress, or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 18.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2919. Interpretation shall give effect to purpose of uniformity.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 19.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2920. Definition of endorsement.

A certificate is endorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is endorsed though it has not been delivered. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 20.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2921. Definition of person appearing to be the owner of certificate.

The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he endorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also endorses the certificate to another specified person. Subsequent special endorsements may be made with like effect. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 21.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2922. Other definitions.

(1) In this chapter, unless the context or subject matter otherwise requires—

"Certificate" means a certificate of stock in a corporation organized under the laws of the United States, or of the District of Columbia, or of another State whose laws are consistent with this chapter.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership of two or more persons having a joint or common interest.

"To purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" means a share or shares of stock in a corporation organized under the laws of the United States, or of the District of Columbia, or of another State whose laws are consistent with this chapter.

"State" includes State, Territory, district, and insular possession of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or preexisting obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this chapter, when it is in fact done honestly, whether it be done negligently or not. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 22.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

§ 28–2923. Chapter does not apply to existing certificates.

The provisions of this chapter apply only to certificates issued after January 1, 1945. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 23.)

EFFECTIVE DATE

For effective date see note under § 28–2901.

TITLE 29.—CORPORATIONS

Chap.		Sec.
1.	General provisions	29–101
2.	Business corporations	29–201
3.	Boards of trade	29–301
4.	Institutions of learning	29–401
5.	Religious societies	29–501
6.	Charitable, educational, and religious associations	29–601
7.	Dissolution	29–701
8.	Cooperative associations	29–801

Chapter 1.—GENERAL PROVISIONS

Sec.

29–101. Reorganization of corporations existing or doing business prior to January 1, 1902—Procedure.

29–102. Notice of application for, alteration to, or extension of charter or special privileges.

29–103. Change of name—Procedure—Effect—Notice—Recording.

29–104. Capital stock to be subscribed and 10 percent paid before certificate is recorded.

29–105. Semiannual publication of financial statement required from foreign insurance companies, building associations, and banking companies, doing business in District—Exemption—Fraternal orders.

§ 29–101 [5: 1]. Reorganization of corporations existing or doing business prior to January 1, 1902—Procedure.

Any corporation existing or doing business in the District of Columbia prior to January 1, 1902, may come under and avail itself of the provisions of this title by giving to its stockholders, members, or associates notice as prescribed in section 29–231 and pursuing the same procedure and complying with the same requirements as are prescribed in this title in respect to increase or diminution of capital stock; and upon filing its certificate of reorganization in such case, such company shall be entitled to the privileges and provisions and be subject to the liabilities of the class of corporations to which it belongs, as provided in and by this title. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 766.)

§ 29–102 [5: 2]. Notice of application for, alteration to, or extension of charter or special privileges.

Whoever, not being a Senator or Representative in Congress, intends to present to Congress a bill for an act of incorporation, or for an alteration or extension of the charter of a corporation in the District of Columbia, or of any special privileges in said District, shall give notice of such intention by publishing a copy of the bill at least once a week for four successive weeks, in a newspaper published in the District of Columbia, the last of said publications to be made at least fourteen days prior to the presentation of such bill. Such newspaper shall be designated by the person proposing the bill and approved by the commissioners of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 767.)

§ 29–103 [5: 3]. Change of name—Procedure—Effect—Notice—Recording.

Any corporation organized under the laws of the District of Columbia may change its name in the manner following:

The board of directors shall pass a resolution declaring that such change is advisable and calling a meeting of the stockholders to take action thereon. Such a meeting shall be called upon such notice as the by-laws provide, and in the absence of such provision upon ten days' notice given personally to each stockholder as his address is contained in the records of such corporation, a notice deposited in the United States mail, postage prepaid, at least ten days prior to such meeting to be considered sufficient notice under this section. If two-thirds in interest of each class of stockholders having voting powers and of other persons having like powers shall vote in favor of such a change, a certificate thereof shall be signed by the president and secretary, under the corporate seal, and acknowledged as in the case of deeds of real estate, and such certificate shall be filed in the office of the recorder of deeds of the District of Columbia, and upon the filing of the same the certificate of incorporation shall be deemed to be amended and the name changed accordingly; and the filing of said certificate in conformity with this section shall have the same force and effect as to all future proceedings as if said certificate of incorporation or organization had been originally drafted in conformity with the amendment so made.

A certified copy of such certificate shall be taken and accepted as evidence in all courts and places of all matters legally stated therein; and the recorder of deeds shall keep an index in his office showing the new name and the change from the old name, and the old name showing the change to the new name; and no fees shall be required by the recorder of deeds for filing and recording any such certificate, except that ordinarily required for deeds of real estate of like length.

A corporation under its new name shall have the same rights, powers, and privileges, and shall be subject to the same duties, obligations, and liabilities as before, and may sue and be sued by its new name, but no action brought against it or by it under its former name shall be abated on that account, and on motion of either party the new name may be substituted therefor in the action.

Upon the filing of said certificate for record a copy thereof shall be inserted, by the corporation whose name has been changed as hereinabove provided, once each week for four consecutive weeks,

in two daily papers published in the District of Columbia. (Mar. 1, 1921, 41 Stat. 1194, ch. 94.)

CROSS REFERENCE

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, §§ 29–238 to 29–240.

§ 29–104 [5: 4]. Capital stock to be subscribed and 10 percent paid before certificate is recorded.

The recorder of deeds shall not file or record any certificate of organization of any incorporation until it has been proved to his satisfaction that all the capital stock of said company has been subscribed for in good faith, and not less than ten per cent. of the par value of the stock has been actually paid in cash, and the money derived therefrom is then in the possession of the persons named as the first board of trustees. (Feb. 4, 1905, 33 Stat. 689, ch. 299.)

COMPILER'S NOTE

This section qualifies § 29–209, which section authorizes payment in money or in property at its actual value.

§ 29–105 [5: 5]. Semiannual publication of financial statement required from foreign insurance companies, building associations, and banking companies, doing business in District—Exemption—Fraternal orders.

Except as otherwise provided in sections 26–101, 29–213, and 35–103, any insurance company, building association or company, banking company, savings institution, or other company or association advertising for or receiving premiums, deposits, or dues for membership, incorporated under the laws of any other State, Territory, or foreign government, and transacting business within the District of Columbia, shall publish in at least two daily papers printed in the District of Columbia semiannually, during the months of March and September of each year, a full statement, under oath, showing their capital stock and the amount paid in on account of the same, assets, liabilities, debts, deposits, dividends and dues, as well as their current expenses during six months ending January and July preceding.

Any such company, association, or institution failing to publish statements as required by this section shall forfeit its right to do business in said District, and thereupon it shall be the duty of said Commissioners to revoke its license or permit to do business in said District: *Provided,* That fraternal beneficiary associations or societies doing business on the lodge plan and paying death benefits be exempted from the provisions of this section. (July 29, 1892, 27 Stat. 325, ch. 321, §§ 1, 2.)

Chapter 2.—BUSINESS CORPORATIONS

Sec.
29–201. Formation—Certificate — Exception — Dealing in real estate.
29–202. Contents of certificate.
29–203. Formation—Signers of certificate incorporated—Name—Powers—Mortgages or liens on property to be approved by stockholders.
29–204. Trustees—Qualifications—Election.
29–205. Election of trustees—Notice—Procedure.
29–206. Corporation not dissolved by failure to hold election of trustees at time designated in by-laws.
29–207. Officers—Bond.
29–208. By-laws.
29–209. Authority to do business—Calls—Forfeiture—Notice.
29–210. Stock to be personal property—Manner of transfer to be prescribed by by-laws—No transfer until previous call is paid.
29–211. Liability of stockholders.
29–212. Certificate of capital stock paid in—Recording.
29–213. Annual report of stock and debts—Verification—Publication.
29–214. Failure to publish annual report—Mandamus by creditor—Expenses of action.
29–215. Liability of officers for false report.
29–216. Purchase of stock of other companies unlawful.
29–217. Loans to stockholders—Liability of officers.
29–218. Dividends not to be declared if corporation is thereby rendered insolvent or capital decreased—Trustees personally liable for debts.
29–219. Trustees objecting to such dividends and filing certificate exempt from personal liability.
29–220. Executors, administrators, guardians, and trustees not personally liable.
29–221. Executor, administrator, guardian, or trustee shall represent and vote.
29–222. Pledges of stock—Pledgee not liable as stockholder—Right to vote.
29–223. Stock book to be kept by treasurer or secretary.
29–224. Stock books open for inspection.
29–225. Effect of stock book record—Company—Creditors—Subsequent purchasers.
29–226. Stock books presumptive evidence of facts stated therein
29–227. Failure to make entries in or to allow inspection of books—Misdemeanor—Penalty.
29–228. Liability to United States for neglect to keep books open.
29–229. Increase or diminution of stock—Extending of business.
29–230. Diminution of capital stock when debts exceed proposed capital.
29–231. Meeting of stockholders for purpose of increase or diminution of capital stock, or change of business—Notice to stockholders.
29–232. Representatives of two-thirds of stock to be present.
29–233. Certificate by chairman—Contents—Verification.
29–234. Certificate to be filed—Effect.
29–235. Two-thirds vote required.
29–236. Copy of certificate to be evidence.
29–237. Fire insurance companies formed prior to January 1, 1902, may become perpetual.
29–238. Amendment of charter—Procedure—Purposes.
29–239. Stock—Preferred stock authorized—Classes of common—"Charter" defined—Preferences, restrictions, qualifications—Statement thereof on stock.
29–240. Sale, lease, or exchange of property or assets as an entirety—Transfer of franchise—Agreement submitted to stockholders—Rights of dissenting stockholders—Procedure—Effect of performance of agreement—Recording.

§ 29–201 [5: 261]. Formation—Certificate—Exception—Dealing in real estate.

Any three or more persons who desire to form a company for the purpose of carrying on any enterprise or business which may be lawfully conducted by an individual, excepting banks of circulation or discount, railroads, and such other enterprise or business as may be otherwise specially provided for in this code, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the recorder of deeds, a certificate in writing: *Provided,* That nothing herein contained shall be held to authorize the organization of corporations to buy, sell, or deal in real estate, except corporations to transact the business ordinarily carried on by real-estate agents or

brokers. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 605; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the words "corporations to buy, sell, or deal with real property" following the words "banks of circulation or discount," and added the proviso.

CROSS REFERENCES

Banking corporations and financial institutions, see title 26.

Building and homestead associations to be incorporated under this chapter, § 26–401.

Insurance corporations, see title 35.

Merger of street railway; new company to be formed under this chapter, § 43–503.

Public utilities, see title 43.

Railroads and other carriers, see title 44.

NOTES TO DECISIONS

IN GENERAL

Insofar as the general incorporation statutes passed by Congress for the District are concerned, these provide for the incorporation of both business corporations and benevolent corporations. *White* v. *Central Dispensary & Emergency Hosp.* (69 App. D. C. 122, 99 Fed. (2d) 355, 119 A. L. R. 1002).

CAPACITY TO SUE AND BE SUED

Defendant corporation is in general capable of suing and being sued, regardless of whether part or all of its stock is owned by the United States. *Ingram Day Lbr. Co.* v. *United States Shipping Bd. Emergency Fleet Corp.* ((D. C.-Miss.), 267 Fed. 283).

EMERGENCY FLEET CORPORATION

In form the Emergency Fleet Corporation is a private corporation, but its services are of a public nature and it has never done any business, or conducted any operation, except on behalf of the United States. *United States Shipping Bd. Emergency Fleet Corp.* v. *Western Union Tel. Co.* (275 U. S. 415, 72 L. Ed. 345, 48 Sup. Ct. 198, revg. 56 App. D. C. 337, 13 Fed. (2d) 308).

Fleet Corporation was entitled to the Government rate, not because it was an instrumentality of the Government, but because it was a department of the United States within the meaning of the Post Roads Act. In respect to messages sent, on the Government's business, no distinction could properly be made between those of the Shipping Board and those of the Fleet Corporation. *United States Shipping Bd. Emergency Fleet Corp.* v. *Western Union Tel. Co.* (275 U. S. 415, 72 L. Ed. 345, 48 Sup. Ct. 198).

When shipbuilding company sued the United States Shipping Board Emergency Fleet Corporation upon an alleged contract for the building of ships, which, it was alleged, it was not allowed to build; it was a suit arising under the Constitution and laws of the United States and motion to remand should be denied. *Union Timber Products Co.* v. *United States Shipping Bd. Emergency Fleet Corp.* ((D. C. Wash.), 252 Fed. 320).

"The board (Shipping Board), if in its judgment such action is necessary to carry out the purposes of this act, may form under the laws of the District one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States." *Southern Bridge Co.* v. *United States Shipping Bd. Emergency Fleet Corp.* ((D. C.-Ala.), 266 Fed. 747).

Business of the Fleet Corporation was not peculiarly governmental in its nature, but was commercial and industrial, and its powers not essentially different from those possessed by private corporations. No provision can be found either in acts of Congress or in charter of the company giving to the corporation or its stockholders any rights, privileges, or obligations different from those possessed by any other corporation under laws of the District with respect to its business. *In re Eastern Shore Shipbuilding Corp.* ((C. C. A. 2), 274 Fed. 893).

Object and purpose of the corporation was to purchase, construct, equip, lease, maintain, and operate vessels in the commerce of the United States and for other lawful purposes. *Buffalo Union Furnace Co.* v. *United States Shipping Bd. Emergency Fleet Corp.* ((D. C.-N. Y.), 283 Fed. 673).

Fleet Corporation acted in two capacities. Notwithstanding the ownership of its stock by the United States, it was a private corporation. As such it was a distinct entity. It might make contracts and transact the business for which it was organized. It might sue and be sued, and then it was subject to the statute of limitations. *Harwood* v. *United States Shipping Bd. Emergency Fleet Corp.* ((D. C.-Conn.), 26 Fed. (2d) 116).

EXTENSION OF BUSINESS

The 1901 code, §§ 633 and 635 (§§ 29–229, 29–231), providing for the extension of the business of the corporation, cannot be so construed as to permit a combination of two radically different classes of business. *Dancy* v. *Clark* (24 App. D. C. 487).

NATURE OF BUSINESS

This section does not authorize or allow the combination of all classes of industrial business by one corporation. "On the contrary, the tenor of the enactment is decidedly adverse to any such theory." *Dancy* v. *Clark* (24 App. D. C. 487).

The statute allows formation of corporation for only "one business, one enterprise, and not a combination of all the classes of business provided for in the statute." *Dancy* v. *Clark* (24 App. D. C. 487).

"No domestic corporation is authorized to hold real estate except as an incident to its business. It clearly is not authorized to hold it for the purpose of selling or dealing in it." *Groo* v. *Norman* (42 App. D. C. 387).

A foreign corporation will not be accorded greater rights than are enjoyed by domestic corporations. Nevertheless "want of capacity in a domestic or foreign corporation to own and dispose of real estate can only be asserted by the State," and until so questioned good title may be conveyed. *Hight* v. *Richmond Park Imp. Co.* (47 App. D. C. 518), citing *Groo* v. *Norman* (42 App. D. C. 387).

The proviso "neither declares contracts made in violation of its terms void as against public policy nor does it expressly apply this restriction to foreign corporations doing business in this District." *Hight* v. *Richmond Park Imp. Co.* (47 App. D. C. 518).

§ 29–202 [5: 262]. Contents of certificate.

In such certificate shall be stated—

First. The corporate name of the company and the object for which it is formed.

Second. The term of its existence, which may be perpetual.

Third. The amount of the capital stock of the company and the number of shares of which said stock shall consist.

Fourth. The number of trustees who shall manage the concerns of the company for the first year and their names.

Fifth. The name of the place in the District in which the operations of the company are to be carried on. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 606.)

CROSS REFERENCES

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, §§ 29–238 to 29–240.

Extension of object of business, see note to § 29–201.

§ 29–203 [5: 263]. Formation—Signers of certificate incorporated—Name—Powers—Mortgages or liens on property to be approved by stockholders.

When the certificate shall have been filed, in accordance with the provisions of section 29–202, the persons who shall have signed and acknowledged the same and their successors shall be a body politic and corporate in fact and in name, by the names

stated in such certificate, and by that name have succession and be capable of suing and being sued in any court of law or equity in the District; and they and their successors may have a common seal and make and alter the same at pleasure, and they shall by their corporate name be capable in law of purchasing, holding, and conveying any real or personal estate whatever which may be necessary to enable the company to carry on its operations named in such certificates, but shall not mortgage such estate or give any lien thereon, except in pursuance of a vote of the stockholders of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 607.)

COMPILER'S NOTE

The 1901 act refers to the preceding section which is § 29–202. However, for necessity for filing the certificate, see § 29–201.

CROSS REFERENCES

Conveyances of real estate, formal requisites, § 45–302.

Fire insurance companies may become perpetual, § 29–237.

Increase or diminution of stock, extension of business, § 29–229 to 29–237.

Indorsement of negotiable instrument passes title though corporation or officers lacked capacity, § 28–123.

Quo warranto proceedings to question right to corporate rights and franchises, § 16–1601 et seq.

Restrained from doing business upon second conviction of operating a bucket-shop, § 22–1510.

NOTES TO DECISIONS

IN GENERAL

This section does not put District corporations upon a different footing from those formed under the laws of the States. *Sloan Shipyards Corp.* v. *United States Shipping Board* (258 U. S. 549, 66 L. Ed. 762, 42 Sup. Ct. 386).

EMERGENCY FLEET CORPORATION

The Emergency Fleet Corporation was in general capable of suing and being sued, regardless of whether part or all of its stock was owned by the United States. *Ingram Day Lbr. Co.* v. *United States Shipping Bd. Emergency Fleet Corp.* ((D. C.-Miss.), 267 Fed. 283).

Business of the Emergency Fleet Corporation was not peculiarly governmental in its nature, but was commercial and industrial, and its powers were not essentially different from those possessed by private corporations. *In re Eastern Shore Shipbuilding Corp.* ((C. C. A. 2), 274 Fed. 893).

§ 29–204 [5: 264]. Trustees—Qualifications—Election.

The stock, property, and concerns of such company shall be managed by not less than three nor more than fifteen trustees, who shall, respectively, be stockholders, and a majority citizens of the District, and shall, except for the first year, be annually elected by the stockholders, at such time and place as shall be determined by the by-laws of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 608.)

NOTES TO DECISIONS

CORPORATE ACTS—EVIDENCE OF INTENTION

A corporation can only act through its agents, directors, or trustees and its intention can only be learned by the language of its recorded acts. The plain terms of a resolution of the board of directors cannot be altered by an affidavit purporting to show its intention. *Fox* v. *Johnson* ((D. C.-D. C.), 31 Fed. Supp. 64).

EMERGENCY FLEET CORPORATION

Although most of the stock was owned by the United States, the business of the fleet corporation was not peculiarly governmental in its nature, but was commercial and industrial, and that its powers were not essentially different from those possessed by private corporations. *In re Eastern Shore Shipbuilding Corp.* ((C. C. A. 2), 274 Fed. 893).

EXCHANGE OF STOCK

When insurance company sold a building to realty company, for whose stock the insurance company's stockholders were allowed to exchange their stock, and as terms would not cause substantial loss to the stockholders, their stock was not illegal or void under this section which gives trustees power to manage the affairs of the corporation. *Tryson* v. *Southern Realty Corp.* (51 App. D. C. 55, 274 Fed. 135).

LIABILITY FOR DEBTS

Under the act of Congress (16 Stat. 98, ch. 80), under which certain corporations were organized in the District of Columbia, providing for personal liability of trustees for debts in excess of capital stock, an action at law could not be sustained by one creditor among many for the liability thus created, or for any part of it, but the remedy is in equity. Also, this excess constitutes a fund for the benefit of all the creditors, so far as the condition of the company renders a resort to it necessary for the payment of their debts. *Hornor* v. *Henning* (93 U. S. 228, 23 L. Ed. 879).

Under the act of May 5, 1870 (16 Stat. 98), providing for the organization of associations and the liability of trustees for indebtedness exceeding the capital stock, and the act of June 17, 1870 (16 Stat. 153), authorizing the establishment of savings banks under the former act, the excess of debts for which the trustees were liable constituted a trust fund for the benefit of all creditors, and an action at law could not be maintained by one creditor for any part of it, but the remedy was in equity. *Hornor* v. *Henning* (93 U. S. 228, 23 L. Ed. 879).

STOCKHOLDERS

"Plainly the requirement of this section is that the trustees shall at all times be stockholders, as well for the first year as for all subsequent years." *Dancy* v. *Clark* (24 App. D. C. 487).

§ 29–205 [5: 265]. Election of trustees—Notice—Procedure.

Public notice of the time and place of holding such election shall be published not less than thirty days previous thereto in some newspaper printed and published in the District, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All the elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 609.)

§ 29–206 [5: 266]. Corporation not dissolved by failure to hold election of trustees at time designated in by-laws.

In case it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided by the by-laws, and all acts of trustees shall be valid and binding as against said company until their successors shall be elected. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 610.)

§ 29–207 [5: 267]. Officers—Bond.

There shall be a president of the company, who shall be designated from the trustees; and also such subordinate officers as may be elected or appointed, and who may be required to give security for the faithful performance of the duties of their office, as the company by its by-laws may require. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 611.)

CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, § 16–1601 et seq.

§ 29–208 [5: 268]. By-laws.

The trustees shall have power to make such prudential by-laws as they deem proper for the management and disposal of the stock and business affairs of such company, not inconsistent with the laws of the District and the Constitution of the United States, and prescribing the duties of officers, artificers, and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 612.)

§ 29–209 [5: 269]. Authority to do business—Calls—Forfeiture—Notice.

No company incorporated under this chapter shall be authorized to transact any business until ten per centum of the capital stock shall have been actually paid in, either in money or in property at its actual value; and it shall be lawful for the trustees to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such instalments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or a notice requiring such payment shall have been published for six successive weeks in a newspaper in the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 613.)

COMPILER'S NOTE

The words "either in money or in property at its actual value" are qualified by § 29–104, requiring that the initial 10% be "actually paid in cash."

STATUTORY REFERENCE

Sale of securities, U. S. C., title 15, ch. 2a.

§ 29–210 [5: 270]. Stock to be personal property—Manner of transfer to be prescribed by by-laws—No transfer until previous call is paid.

The stock of such company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in or the shares shall have been declared forfeited for nonpayment. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 614.)

NOTES TO DECISIONS

SUIT FOR UNPAID SUBSCRIPTION

Subscribers to stock must be sued severally to recover unpaid subscriptions. *Peoples Nat. Bank* v. *Saville* (25 App. D. C. 139, app. dism. 201 U. S. 641, 50 L. Ed. 901, 26 Sup. Ct. 760).

§ 29–211 [5: 271]. Liability of stockholders.

All the stockholders of every company incorporated under this chapter shall be severally individually liable to the creditors of the company in which they are stockholders for the unpaid amount due upon the shares of stock held by them, respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded, as prescribed in the following section 29–212. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 615.)

CROSS REFERENCE

Recovery of unpaid subscriptions, see note to § 29–210. *Peoples Nat. Bank* v. *Saville* (25 App. D. C. 139, app. dism. 201 U. S. 641, 50 L. Ed. 901, 26 Sup. Ct. 760).

NOTES TO DECISIONS

IN GENERAL

Under this section, the stockholders are individually liable to the creditors for the unpaid amount due upon the shares of stock held by them respectively for the debts and contracts of the company until the amount of capital stock fixed by such company shall have been paid in. *Capitol Dress Mfg. Co.* v. *Moran* (65 App. D. C. 400, 84 Fed. (2d) 253).

CONTRACT OF SUBSCRIPTION

A contract of subscription may be shown without a formal subscription in writing. *National Exp. Co.* v. *Morris* (15 App. D. C. 262).

To recover on a subscription to the capital stock, the corporation plaintiff must establish, by legal and competent proof, the existence of a contract of subscription to the stock. *National Exp. Co.* v. *Morris* (15 App. D. C. 262).

SALE OF STOCK RESCINDED

Person who purchased stock from corporation under an option to rescind the agreement at the expiration of a year is not precluded from doing so because no power has been given to the corporation to purchase its own stock. *Royal Glue Co.* v. *Lange* (40 App. D. C. 9).

STATUTE OF LIMITATIONS

Statute of limitations begins to run from the time that call is made for payment of unpaid subscription. *Glenn* v. *Sothoron* (4 App. D. C. 125).

TRANSFER OF STOCK

The mere transfer of the stock into the name of the defendant is not sufficient to impose the liability of a stockholder, unless he consents thereto, or subsequently exercises the rights of a stockholder. *National Exp. Co.* v. *Morris* (15 App. D. C. 262).

TRUST FUND

Capital stock of a corporation is a trust fund for the benefit of the creditors, and which cannot be withdrawn without their consent, but the corporation may when solvent hold the property as an individual, free from the touch of a creditor who has acquired no lien, and may dispose of stock to bona fide purchasers for a valuable consideration. *Gilbert* v. *Washington Ben. Endowment Assn.* (10 App. D. C. 316, app. dism. 173 U. S. 701, 43 L. Ed. 1185, 19 Sup. Ct. 877).

§ 29–212 [5: 272]. Certificate of capital stock paid in—Recording.

The president and a majority of the trustees, within thirty days after the payment of the last instalment of the capital stock so fixed and limited, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the trustees; and they shall within the

said thirty days record the same in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 616.)

CROSS REFERENCE

Limitation on recorder to record certificate, § 29–104.

§ 29–213 [5: 273]. Annual report of stock and debts—Verification—Publication.

Every such company shall annually, except insurance companies, within twenty days from the first of January, make a report, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid and the amount of existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of the company, and filed in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 617.)

NOTES TO DECISIONS

CONSTRUCTION

Laws similar to this requiring insurance companies to publish annually a report of their assets and liabilities and making trustees liable for existing corporate debts for failure to fulfill requirements were construed as being penal in their nature and were to be strictly construed. *Jackson* v. *Clifford* (5 App. D. C. 312).

§ 29–214 [5: 274]. Failure to publish annual report—Mandamus by creditor—Expenses of action.

If any company fails to comply with the provisions of section 29–213, any creditor of the corporation or other person interested may by petition for mandamus against the corporation and its proper officers compel such publication to be made, and in such case the court shall require the corporation or the officers at fault to pay all the expenses of the proceeding, including counsel fees. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 618; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

Prior to the 1902 amendment this section read as follows: "If any company fails to comply with the provisions of the preceding section, all the trustees of such company shall be jointly and severally liable for the debts of the company then existing and for all that shall be contracted before such report shall be made."

§ 29–215 [5: 275]. Liability of officers for false report.

If any certificate or report made or public notice given by the officers of any company in pursuance of the provisions of this chapter shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all debts of the company contracted while they are stockholders or officers thereof. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 619.)

§ 29–216 [5: 276]. Purchase of stock of other companies unlawful.

It shall not be lawful for any company to use any of their funds in the purchase of any stock in any other corporation. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 620.)

CROSS REFERENCE

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, §§ 29–238 to 29–240.

NOTES TO DECISIONS

BANK STOCK ILLEGALLY HELD

This being statement of general policy applicable to all District corporations, claim against insolvent trust company for assessment on shares purchased from another bank was rejected. *Dunn* v. *O'Connor* (67 App. D. C. 76, 89 Fed. (2d) 820).

TRANSFER IN LIQUIDATION

As appellant had no corporate power to purchase stocks and bonds of the Charles Town Company, a contract to purchase, unless permissible under the Utilities Act, would have been unenforceable because ultra vires. *Washington Gas Light Co.* v. *Dann* (63 App. D. C. 142, 70 Fed. (2d) 746).

A bank receiving assets of another bank in liquidation is liable for taxes as a transferee notwithstanding this section. *Gould* v. *Com. Int. Rev.* (21 B. T. A. 824).

§ 29–217 [5: 277]. Loans to stockholders—Liability of officers.

No loan of money shall be made by any company upon the security, in whole or in part, of its own stock; and if any such loan shall be made, the trustee or officer authorizing the same shall be responsible to the corporation therefor: *Provided,* That nothing herein contained shall be held to release the borrower in such a case from liability to the corporation. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 621; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

Prior to the 1902 amendment, this section read as follows: "No loan of money shall be made by any company upon the security, in whole or in part, of its own stock; and if any such loan shall be made to a stockholder, the officers who shall make it or who shall assent thereto shall be jointly and severally liable, to the extent of such loan and interest, for all debts of the company contracted while they are stockholders or officers thereof."

§ 29–218 [5: 278]. Dividends not to be declared if corporation is thereby rendered insolvent or capital decreased—Trustees personally liable for debts.

If the trustees of any company shall declare and pay any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing and for all that shall be thereafter contracted while they shall respectively remain in office. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 622.)

§ 29–219 [5: 279]. Trustees objecting to such dividends and filing certificate exempt from personal liability.

If any of the trustees shall object to declaring such dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the secretary of the company and with the recorder of deeds of the District, they shall be exempt from the liability prescribed in the preceding section. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 623.)

§ 29–220 [5: 280]. Executors, administrators, guardians, and trustees not personally liable.

No person holding stock in such company as executor, administrator, guardian, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, or trustee

shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the stock in his own name. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 624.)

§ 29–221 [5: 281]. Executor, administrator, guardian, or trustee shall represent and vote.

Every such executor, administrator, guardian, or trustee shall represent the stock in his hands at all meetings of the company, and may vote accordingly as a stockholder. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 625.)

§ 29–222 [5: 282]. Pledges of stock—Pledgee not liable as stockholder—Right to vote.

No person holding stock in such company as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all meetings and vote as a stockholder. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 626.)

§ 29–223 [5: 283]. Stock book to be kept by treasurer or secretary.

It shall be the duty of the trustees of every corporation formed under this chapter to cause a book to be kept by the treasurer or secretary thereof, containing the names of all persons alphabetically arranged, who are or shall within six years have been stockholders of such company, and showing their place of residence, the number of shares of stock held by them respectively, the time when they became owners of such shares, and the amount of stock actually paid in. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 627.)

NOTES TO DECISIONS

In General

This section does not apply to corporations not formed under this chapter. *Morgan* v. *Howard* (54 App. D. C. 3, 293 Fed. 650).

§ 29–224 [5: 284]. Stock books open for inspection.

Such book shall, during the usual business hours of the day, on every business day, be open for inspection of stockholders and creditors of the company and their personal representatives, at the office or principal place of business of such company in the District where its business operations shall be located, and any stockholder, creditor, or representative shall have a right to make extracts from such books. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 628.)

NOTES TO DECISIONS

Purpose of Inspection

Under common law, stockholder can inspect books only when his interests are directly involved, and "it is apparent that in equity and good faith he should be permitted to inform himself as to how the affairs of the corporation are being conducted. * * * Where that right has not been enlarged by statute, it may be exercised only in good faith, and for some just, useful, or reasonable purpose." *Morgan* v. *Howard* (54 App. D. C. 3, 293 Fed. 650).

§ 29–225 [5: 285]. Effect of stock book record—Company—Creditors—Subsequent purchasers.

A person in whose name shares of stock stand on the books of a company shall be deemed the owner thereof as regards the company, but if any such person shall in good faith sell, pledge, or otherwise dispose of any of his shares of stock to another and deliver to him the certificate for such shares, with written authority for the transfer of the same on the books, the title of the former shall vest in the latter so far as may be necessary to effect the purpose of the sale, pledge, or other disposition, not only as between the parties themselves, but also as against the creditors of and subsequent purchasers from the former, subject to the provisions of section 29–210. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 629.)

NOTES TO DECISIONS

In General

The requirement of transfer on the corporate books is intended for the convenience and security of the corporation alone. *National Safe Deposit, Sav. & Trust Co.* v. *Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

Certificate Indorsed in Blank

Stock broker, holding certificate, indorsed in blank, for a limited purpose, may convey good title to innocent purchaser. *National Safe Deposit, Sav. & Trust Co.* v. *Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

While certificates of stock indorsed in blank "do not become negotiable instruments in a strictly legal sense, they nevertheless so approximate them as that the ordinary rules of agency and estoppel which apply in the case of chattels are applied to them with great liberality in the behalf of an innocent purchaser." *National Safe Deposit, Sav. & Trust Co.* v. *Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

Pledged Certificate

When stock certificate with written transfer and power of attorney in blank is signed by the person to whom certificate was issued, and is pledged by one in possession to secure preexisting debts, the pledgee is not chargeable with notice of equities which exist between original owner and pledgor. *National Safe Deposit, Sav. & Trust Co.* v. *Gray* (12 App. D. C. 276).

Title of Assignee

Although corporation may require that transfer of stock be registered on the corporate books, the assignee upon delivery with transfer and power of attorney to transfer on the books, duly executed, takes the entire equitable, if not the legal title thereto. *National Safe Deposit, Sav. & Trust Co.* v. *Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

§ 29–226 [5: 286]. Stock books presumptive evidence of facts stated therein.

Such books shall be presumptive evidence of the fact therein stated in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 630.)

§ 29–227 [5: 287]. Failure to make entries in or to allow inspection of books—Misdemeanor—Penalty.

Every officer or agent of any company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken

therefrom, as herein provided, shall be deemed guilty of a misdemeanor, and the company shall pay to the party injured a penalty of fifty dollars for any such neglect or refusal, and all damages resulting therefrom. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 631.)

§ 29–228 [5: 288]. Liability to United States for neglect to keep books open.

Every company that shall neglect to keep such book open for inspection, as provided in section 29–224, shall forfeit to the United States the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the District Court of the United States for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 632.)

§ 29–229 [5: 289]. Increase or diminution of stock—Extending of business.

Any company which may be formed under this chapter may increase or diminish its capital stock, by complying with the provisions of this chapter, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other business authorized hereby, subject to the provisions and liabilities of this chapter. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 633.)

CROSS REFERENCE

Sale of securities, U. S. C., title 15, ch. 2a.

§ 29–230 [5: 290]. Diminution of capital stock when debts exceed proposed capital.

Before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 634.)

§ 29–231 [5: 291]. Meeting of stockholders for purpose of increase or diminution of capital stock, or change of business—Notice to stockholders.

Whenever any company shall desire to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees or directors to publish a notice, signed by a majority of them, in a newspaper in the District, at least three successive weeks, and to deposit a notice thereof in the post office addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting and the time and place when and where such meeting shall be held. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 635.)

NOTES TO DECISIONS

CHANGE OF BUSINESS

"Provision is made for a change of business; but even if we assume that this change might be made to a radically different class of business, as for example, from that of mining to that of agriculture, yet the very word 'change' implies the abandonment of the one by the adoption of the other, not the combination of both." *Dancy* v. *Clark* (24 App. D. C. 487).

EXTENSION OF BUSINESS

"Extension of business is the taking in of something cognate." *Dancy* v. *Clark* (24 App. D. C. 487).

"A company organized for the making of cotton goods might well be extended to the manufacture of woolen goods, possibly even to the manufacture of iron or steel, for it is all manufacture." *Dancy* v. *Clark* (24 App. D. C. 487).

§ 29–232 [5: 292]. Representatives of two-thirds of stock to be present.

If, at any time and place specified in the notice provided for in section 29–231, stockholders shall appear by proxy or in person representing not less than two-thirds of all the shares of stock of the corporation, they shall organize and proceed to a vote of those present or by proxy. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 636.)

§ 29–233 [5: 293]. Certificate by chairman—Contents—Verification.

If, on canvassing the votes, it shall appear that a sufficient number of votes are in favor of increasing or diminishing the amount of capital, or extending or changing the business of the company, a certificate of the proceedings, showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital shall be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 637.)

§ 29–234 [5: 294]. Certificate to be filed—Effect.

Such certificate shall be acknowledged by the chairman, and filed as required by section 29–202, and when so filed the capital stock of such corporation shall be increased or diminished to the amount specified in the certificate, and the business extended or changed accordingly; and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this chapter. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 638.)

COMPILER'S NOTE

The 1901 act refers to § 606 thereof which is § 29–202 hereof. However, for necessity for filing certificate, see § 29–201.

§ 29–235 [5: 295]. Two-thirds vote required.

A vote of at least two-third of all the shares of the stock of a company shall be necessary to an increase or diminution of the amount of its capital stock or the extension or change of its business. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 639.)

§ 29–236 [5: 296]. Copy of certificate to be evidence.

A copy of any certificate of incorporation filed in pursuance of this chapter, certified by the recorder of deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 640.)

§ 29–237 [5: 297]. Fire insurance companies formed prior to January 1, 1902, may become perpetual.

Any company formed prior to January 1, 1902, agreeably by law, for the purpose of carrying on fire insurance, may become perpetual by filing, in the office of the recorder of deeds, a certificate to that effect, in like manner as is provided by law for the filing of the original certificate of incorporation. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 641.)

NOTES TO DECISIONS

POWERS AND DUTIES

Filing of the certificate under this section merely extended indefinitely the life of the company, without affecting the scope of its powers and duties. *Morgan* v. *Howard* (54 App. D. C. 3, 293 Fed. 650).

§ 29–238 [5: 301]. Amendment of charter—Procedure—Purposes.

Every corporation having capital stock and heretofore or hereafter organized or existing under this chapter, or which has availed or may hereafter avail itself of the provisions of this chapter pursuant to sections 29–101, 29–102, may, by pursuing the same procedure and complying with the same requirements as are prescribed in this chapter in respect to the increase or diminution of capital stock, amend its charter so as to accomplish any one or more of the following objects: The addition to or diminution of the corporate purposes and powers, or the substitution of other purposes and powers in whole or in part for those set forth in the charter; the changing of the corporate business; the changing of the location of the place in the District of Columbia in which the operations of the corporation are to be carried on; and the making of any other amendment or amendments, not otherwise provided for under this chapter, of the charter that may be desired, provided such amendment or amendments shall contain only such provisions as it would be lawful or proper to insert in an original certificate of incorporation made at the time of making such amendment or amendments. (Mar. 3, 1901, ch. 854, § 639b, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120.)

CROSS REFERENCE

Proceedings for increase or diminution of capital stock, §§ 29–229 to 29–236.

§ 29–239 [5: 302]. Stock—Preferred stock authorized—Classes of common—"Charter" defined—Preferences, restrictions, qualifications — Statement thereof on stock.

In addition to its common stock every corporation heretofore or hereafter organized or existing under this chapter, or which has availed or may hereafter avail itself of the provisions of this chapter pursuant to sections 29–101, 29–102, may create one or more classes of preferred stock, with such preferences, restrictions, and qualifications not inconsistent with law as shall be expressed in its charter. Such preferred stock shall have such voting powers as are provided in such charter, or it may have no voting power if such charter so provides. Each such corporation may have one or more classes of common stock, with or without voting powers, and with such rights, restrictions, and qualifications as shall be expressed in its charter. The term "charter" is hereby defined to include a charter granted by Special Act, certificate of incorporation, certificate of organization, or certificate of reorganization, either as originally passed or filed or as amended, unless such construction would be inconsistent with the context. Preferred stock of any class may be made subject to redemption at such times and prices as may be determined in such charter. In the case of stock which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount and terms of such preference shall be stated in the charter. All certificates for stock which has no voting powers or is restricted or limited as to its voting powers, or which is preferred or limited as to its dividends, or as to its share of the assets upon dissolution, shall have a statement of such restriction, limitation, or preference plainly stated thereon. (Mar. 3, 1901, ch. 854, § 639c, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120.)

STATUTORY REFERENCE

Sale of securities, U. S. C., title 15, ch. 2a.

§ 29–240 [5: 303]. Sale, lease, or exchange of property or assets as an entirety—Transfer of franchise—Agreement submitted to stockholders—Rights of dissenting stockholders—Procedure—Effect of performance of agreement—Recording.

Every corporation having capital stock and heretofore or hereafter organized or existing under this chapter, or which has availed or may hereafter avail itself of the provisions of this chapter pursuant to sections 29–101, 29–102, may, pursuant to a meeting of its stockholders, held upon notice given in accordance with the provisions of section 29–231, sell, lease, or exchange all of its property and assets as an entirety, including its good will, and franchises howsoever granted and/or acquired, to or with any other such corporation or any other corporation organized or existing under the laws of any state of the United States which is duly authorized by its charter or otherwise to acquire and hold such or similar property, or to or with any natural person. An agreement containing the terms and conditions of the proposed sale, lease, or exchange shall, after approval thereof by a majority of the trustees or directors of such vendor, lessor, or grantor corporation, be submitted to said stockholders at said meeting for their approval; and if approved by the affirmative vote of two-thirds of all the stock outstanding (or, if two or more classes of stock have been issued, of two-thirds of each class, including stock of any class to which the charter denies the right to vote), such agreement shall be executed and its terms and conditions performed. Any stockholder who, at such meeting, voted against the agreement submitted or who shall in writing file his protest at least five days before the holding of such meeting, may within twenty days after such meeting (but not afterwards) make upon such vendor, lessor, or grantor corporation a written demand for payment for his stock; and he shall thereupon be entitled to receive an amount equal to the fair value thereof, unaffected by such sale, lease, or exchange of said corporate property and assets. If such dissenting stockholder and said vendor, lessor, or grantor corporation of which

he is a stockholder shall fail to agree upon the fair value of said stock (or if, having agreed, such corporation shall fail to pay or tender the amount thereof), such stockholder shall be entitled to file, within thirty days after such written demand (but not afterwards), against said vendor, lessor, or grantor corporation, in the District Court of the United States for the District of Columbia, a petition for an accounting and for the ascertainment of the fair value of his shares without regard to any depreciation or appreciation thereof in consequence of such sale, lease, or exchange; and on the coming in of the answer to said petition, which shall be filed within such reasonable period as the court may fix, the court shall pass an order referring the matter to a commissioner or commissioners agreed upon by the parties, and if the parties do not so agree, then to the auditor of said court, for the purpose of ascertaining such fair value, and such order may prescribe the time and manner of producing evidence; and the award of said commissioner or commissioners (or that of a majority of them) or of said auditor, when confirmed by decree of said court, shall be final and conclusive on all parties, and said vendor, lessor, or grantor corporation shall pay such stockholder the fair value of his shares ascertained as aforesaid, and on receiving such payment or on a tender thereof, said stockholder shall transfer his stock to the said vendor, lessor, or grantor corporation for cancelation, and until said award is paid or tendered, said stockholder shall have a lien for the payment of such award on the proceeds of such sale, lease, or exchange, prior to any distribution by said vendor, lessor, or grantor corporation and said payment and lien may be collected and enforced in the same manner as other decrees and liens are by law enforceable in said District Court of the United States for the District of Columbia. If the amount awarded said stockholder exceeds the amount offered by the corporation prior to the filing of said suit, costs shall be awarded to said stockholder; otherwise, costs shall be awarded to the corporation. Each party shall have the right of appeal as in other cases in the District Court of the United States for the District of Columbia. The proceeding by a dissenting stockholder hereunder shall not prevent or delay the execution and performance of any agreement so approved by the affirmative vote of two-thirds of each class of stock: *Provided, however,* That the right granted to a dissenting stockholder hereunder to demand payment for his shares shall cease, if at any time prior to the entry of any decree herein provided for, the defendant corporation shall make it appear to said District Court of the United States for the District of Columbia that the agreement of sale, lease, or exchange has been rescinded by appropriate corporate action, so that the shares of such dissenting shareholder remain unaffected thereby. Upon the performance of any agreement of sale hereunder of all of the property and assets as an entirety of a corporation (including its good will and franchises), all property, assets, rights, privileges, franchises, and powers of said selling corporation shall be vested in the purchasing corporation or person and shall thereafter be as effectually the property of the purchasing corporation or person as they were of the selling corporation subject to the provisions of this section, and such purchasing corporation or person shall thereupon immediately file in the office of the recorder of deeds of the District of Columbia proper evidence of such sale, and thereupon said selling corporation shall be dissolved and cease, subject, however, to the provisions of sections 29–715 to 29–718. Nothing contained herein shall affect the provisions of sections 28–1701 to 28–1705, or any of the provisions of chapters 1–10 of title 43, or any amendment or supplement thereof, or of any other law regulating public-utility corporations in the District of Columbia. (Mar. 3, 1901, ch. 854, § 639d, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120.)

COMPILER'S NOTE

Sections 28–1701 to 28–1705 is the Bulk Sales Law. Chapters 1–10 of title 43 relate to public utilities.

Chapter 3.—BOARDS OF TRADE

Sec.
29–301. Incorporation.
29–302. Power to hold real or personal estate.
29–303. Officers.
29–304. Election of officers—Failure to hold.
29–305. Tenure of office.
29–306. By-laws.
29–307. Fines—Imposition—Collection.
29–308. What business to be carried on.

§ 29–301 [5: 21]. Incorporation.

Any number of persons, not less than twenty, residing in the District, may associate themselves together as a board of trade, and assemble at any time and place upon which a majority of the members so associating may agree, and elect a president and one or more vice-presidents, as they may see fit, and adopt a name, constitution, and by-laws, such as they may agree upon. Such persons shall thereupon become a body corporate and politic in fact and in name, by the name and style or title which they may have adopted, and by that name shall have succession, shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all the courts of law and equity; and they and their successors shall have a common seal, and may alter and change the same at their discretion. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, §§ 701, 702.)

CROSS REFERENCES

Powers, § 29–308.
Quo warranto proceedings to question right to corporate rights and franchises, § 16–1601 et seq.

§ 29–302 [5: 22]. Power to hold real or personal estate.

Such corporation, by the name and style which shall be adopted, shall be capable in law of purchasing, holding, and conveying any estate, real or personal, for the use of the corporation, not exceeding in quantity one city lot and building in the District. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 703.)

CROSS REFERENCE

Conveyances of real estate, formal requisites, § 45–302.

§ 29–303 [5: 23]. Officers.

The president, vice-president, secretary, and treasurer shall be ex officio members of the board of

directors, and, together with the directors elected, shall manage the business of the corporation. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 704.)

CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, § 16–1601 et seq.

§ 29–304 [5: 24]. Election of officers—Failure to hold.

All officers shall be elected by a plurality of votes given at any election, and a general election of officers shall be held at least once in each year; but in case of any accidental failure or neglect to hold such general election the corporation shall not thereby lapse or terminate, but shall continue and exist, and the old officers shall hold over until the next general election of officers provided for in the constitution adopted. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 705.)

§ 29–305 [5: 25]. Tenure of office.

The officers shall hold their offices for the time which shall be prescribed in the constitution adopted by the corporation and until others shall be elected and qualified as prescribed by such constitution. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 706.)

§ 29–306 [5: 26]. By-laws.

Such corporation shall have the right to admit as members such persons as they may see fit, and expel any members as they may see fit; and in all cases a majority of the members present at any stated meetings shall have the right to pass, and also the right to repeal, any by-law of the corporation; and in all cases the constitution and by-laws adopted by the corporation shall be binding upon and control the same until altered, changed, or abrogated in the manner that may be prescribed in such constitution. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 707.)

§ 29–307 [5: 27]. Fines—Imposition—Collection.

Such corporation may inflict fines upon any of its members, and collect the same, for breach of the provisions of the constitution or by-laws; but no fine shall in any case exceed twenty-five dollars. Such fines may be collected by action of debt, brought in the name of the corporation, before the municipal court, against the person upon whom the fine shall have been imposed. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 708.)

COMPILER'S NOTE

This section originally provided for collection of fines by action in debt before a justice of the peace. Act February 17, 1909, 35 Stat. 623, ch. 134, changed the name and jurisdiction of the justice of the peace court to the municipal court.

§ 29–308 [5: 28]. What business to be carried on.

Such corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management and conduct of boards of trade or chambers of commerce and is provided for in sections 29–301 to 29–307. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 709.)

Chapter 4.—INSTITUTIONS OF LEARNING

Sec.

29–401. Organization — Certificate — Contents — Recording.
29–402. Incorporation—Signers—Body politic and corporate—Powers.
29–403. Corporate powers.
29–404. Property to be held for purposes of education.
29–405. Application of funds.
29–406. Donations, devises, or bequests for particular purposes may be accepted.
29–407. Quantity of land which may be held.
29–408. Excess holdings of lands to revert on failure of corporation to dispose of same.
29–409. Officers.
29–410. Treasurer—Bond required.
29–411. Annual statement—Content.
29–412. Process against corporation.
29–413. Quo warranto.
29–414. Incorporation fee.
29–415. License to confer degrees—Issuance by Board of Education—Evidence required.
29–416. Application for license—Recordation—Use of public school personnel authorized.
29–417. Revocation of license—Hearing before Board of Education—Review by District court.
29–418. Title of institution not to imply official connection with government of United States or District of Columbia—Prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia—License not to be denied merely because of use of prohibited words.
29–419. Penalties.

§ 29–401 [5: 231]. Organization — Certificate — Contents—Recording.

Any five or more persons desirous of associating themselves for the purpose of establishing an institution of learning, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the recorder of deeds, a certificate in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated:

First. The name or title by which the institution shall be known in law;

Second. The number of trustees, directors, or managers, and their names;

Third. The particular branch of literature and science, or either of them, proposed to be taught; and,

Fourth. If the institution is to be of the rank of a college or university, the number and designation of the professorships to be established. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 574.)

CROSS REFERENCES

Columbia Institution for the Deaf, § 31–1001 et seq.
Medical and dental colleges, § 31–901 et seq.
Religious schools, § 29–512.

NOTES TO DECISIONS

DEFINITIONS

Institutions of learning within the meaning of this section are organizations of a permanent nature where instruction is given only in the higher branches of education, and which owe their origin to private or public munificence, and are established not for private gain but for the public good. *Chicago Business College* v. *Payne* (20 App. D. C. 606).

§ 29–402 [5: 232]. Incorporation—Signers—Body politic and corporate—Powers.

Upon filing such certificate, the persons signing and acknowledging the same and their successors and associates shall be a body politic and corporate, by the name and style stated in the certificate, and by that name and style shall have perpetual succession, with power to sue and be sued, plead and be impleaded; to acquire, hold, and convey property in all lawful ways; to have and use a common seal, and to alter and change the same at pleasure; to make and alter, from time to time, such by-laws not inconsistent with the Constitution of the United States or the laws in force in the District as they may deem necessary for the government of the institution, and to confer upon such persons as may be considered worthy such academical or honorary degrees as are usually conferred by similar institutions. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 575.)

CROSS REFERENCES

Abandonment or readjustment of streets and highways to provide land, § 7–113.

Conveyances of real estate, formal requisites, § 45–302.

Other provisions as to conferring of degrees, § 29–415.

Quo warranto proceedings questioning right to corporate rights and franchises, § 29–413.

§ 29–403 [5: 233]. Corporate powers.

Such corporation shall be competent in law and equity to take to themselves, in their corporate name, real, personal, or mixed property by gift, grant, bargain and sale, conveyance, will, devise, or bequest of any person whomsoever, and to grant, bargain, sell, convey, demise, let, place out at interest, or otherwise dispose of the same for the use of the institution, in such manner as shall seem most beneficial thereto. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 576.)

CROSS REFERENCE

See notes to § 29–402.

NOTES TO DECISIONS

POWER TO CONFER DEGREES

There is nothing in these sections which says that the corporation thus formed shall have the power to confer degrees, or admit its members to degrees, or to issue to its members a certificate pertaining to degrees. *National Assn. of Certified Public Accountants* v. *United States* (53 App. D. C. 391, 292 Fed. 668).

TAX EXEMPTION

A corporation organized under these sections is entitled to exemption from real and personal property tax under statute exempting property that is used for educational purposes. *District of Columbia* v. *Mt. Vernon Seminary* (69 App. D. C. 251, 100 Fed. (2d) 116).

§ 29–404 [5: 234]. Property to be held for purposes of education.

Such corporation shall hold the property of the institution solely for the purposes of education, and not for the individual benefit of themselves or of any contributor to the endowment thereof. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 577.)

NOTES TO DECISIONS

USE OF PROPERTY AND INCOME

All of the property of the plaintiff is used for educational purposes. The receipts show a net profit to the institution, but none of this has gone to the incorporators nor to any contributor to its endowment. *District of Columbia* v. *Mt. Vernon Seminary* (69 App. D. C. 251, 100 Fed. (2d) 116).

§ 29–405 [5: 235]. Application of funds.

The trustees, directors, or managers of any such corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the institution, according to their best judgment, in erecting or completing suitable buildings, supporting necessary officers, instructors, and servants, and procuring books, maps, charts, globes, and philosophical, chemical, and other apparatus necessary to the success of said institution. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 578.)

§ 29–406 [5: 236]. Donations, devises, or bequests for particular purposes may be accepted.

In case any donation, devise, or bequest shall be made for particular purposes, in accordance with the designs of the institution, and the corporation shall accept the same, such donation, devise, or bequest shall be applied in conformity with the express condition of the donor or devisor. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 579.)

§ 29–407 [5: 237]. Quantity of land which may be held.

No such corporation shall hold more land at any one time than necessary for the purposes of education, as set forth in its articles of association, unless it shall have received the same by gift, grant, or devise, and in such case the corporation shall be required to sell or dispose of the same within fifteen years from the time the title thereto is acquired. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 580.)

§ 29–408 [5: 238]. Excess holdings of lands to revert on failure of corporation to dispose of same.

On failure to so dispose of the land, so much of the same over and above the amount necessary to be used as provided in section 29–407 shall revert to the original donor, grantor, devisor, or their heirs. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 581.)

§ 29–409 [5: 239]. Officers.

Such corporation shall have the power to appoint a president or principal for the institution and such professors or servants as may be necessary, and to displace any of them, as the interests of the institution require; to fill vacancies which may happen by death, resignation, or otherwise among such officers or servants, and to prescribe and direct the course of studies to be pursued in the institution. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 582.)

CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, § 16–1601 et seq.

§ 29–410 [5: 240]. Treasurer—Bond required.

Such corporation may require the treasurer of the institution and all other agents thereof, before entering upon the duties of their appointment, to give bond for the security of the corporation in such sums and with such security as may be deemed sufficient by the corporation. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 583.)

§ 29–411 [5: 241]. Annual statement—Content.

It shall be the duty of the trustees of any institution, or a majority of them, to file, on or before the first Monday in January in each year, in the office of the recorder of deeds, who shall index the same, a statement of the trustees and officers of the institution, with an inventory of its property and liabilities and students, and such other information as will exhibit its condition or operation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 584.)

§ 29–412 [5: 242]. Process against corporation.

All process against any such corporation shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the president, secretary, or treasurer, or at the office of the corporation at least sixty days before the return day thereof. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 585.)

§ 29–413 [5: 243]. Quo warranto.

In case any such corporation shall at any time violate or fail to comply with any of the preceding provisions, upon complaint being made to the District Court of the United States for the District of Columbia, a writ of quo warranto shall issue, and the district attorney of the United States shall prosecute, in behalf of the people, for a forfeiture of all rights and privileges secured by this chapter to such corporation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 586.)

CROSS REFERENCE

Quo warranto proceedings generally, § 16–1601 et seq.

§ 29–414 [5: 244]. Incorporation fee.

The fee payable to the recorder of deeds for filing the certificate of incorporation under this chapter shall be $25. (Mar. 3, 1901, ch. 854, § 586a, as added Mar. 2, 1929, 45 Stat. 1503, ch. 523.)

§ 29–415 [5: 245]. License to confer degrees—Issuance by Board of Education—Evidence required.

No institution heretofore or hereafter incorporated under the provisions of this chapter shall have the power to confer any degree in the District of Columbia or elsewhere, nor shall any institution incorporated outside of the District of Columbia or any person or persons individually or as a partnership or association or otherwise, undertaking to confer any degree, operate in the District of Columbia, unless under and by virtue of a license from the Board of Education of the District of Columbia, which before granting any such license may require satisfactory evidence—

1. That in the case of an individual or any unincorporated group of individuals he, or a majority of them, or in the case of an incorporated institution, a majority of the trustees, directors, or managers of said institution are persons of good repute and qualified to conduct an institution of learning.

2. That any such degree shall be awarded only after such quantity and quality of work shall have been completed as are usually required by reputable institutions awarding the same degree: *Provided,* That if more than one-half the requirements for any degree are earned by correspondence, or extramural study, such fact shall be conspicuously noted upon the diploma conferred: *Provided further,* That no diploma shall be issued conferring a degree in medicine or any healing art, or in dentistry, for study pursued or work done by correspondence.

3. That applicants for said degree possess the usual high-school qualifications at the time of their candidacy therefor.

4. That considering the number and character of the courses offered, the faculty is of reasonable number and properly qualified, and that the institution is possessed of suitable classroom, laboratory, and library equipment. (Mar. 3, 1901, ch. 854, § 586b, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Medical and dental colleges, § 31–901 et seq.

§ 29–416 [5: 246]. Application for license—Recordation—Use of public school personnel authorized.

Application for the license referred to in section 29–415 shall be in writing upon forms prepared under the direction of the Board of Education, and shall be filed with the secretary of the said board, whose duty it shall be, in case the institution so licensed is incorporated under the laws of the District of Columbia, to forward a copy of said license to the recorder of deeds for the District of Columbia, who shall indorse upon the certificate of incorporation the fact that said license has been issued. The Board of Education is hereby authorized to employ the personnel of the public-school system of the District of Columbia, so far as the same may be necessary, for the proper performance of its duties under sections 29–414 to 29–419, and it shall be the duty of all public officers and bureaus of the federal government concerned with educational matters to render such advice and assistance to the Board of Education as it may from time to time consider necessary or desirable for the better performance of its duties under sections 29–414 to 29–419. (Mar. 3, 1901, ch. 854, § 586c, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523.)

§ 29–417 [5: 247]. Revocation of license—Hearing before Board of Education—Review by District Court.

A license once issued may be revoked by said Board of Education for noncompliance on the part of any individual or individuals, associations, or incorporated institution so licensed with the provisions of section 29–415. Upon the revocation of any such license it shall be the duty of the secretary of the Board of Education, in the case of an institution incorporated under the laws of the District of Columbia, to forward a copy of the revocation to the recorder of deeds for the District of Columbia, who shall cause a notation to be placed upon the certificate of incorporation to the effect that its authority to confer degrees has been revoked: *Provided, however,* That thirty days' notice shall first have been given to such individual or individuals, association, or to the trustees, directors, or managers of said

institutions, with full opportunity to be heard by said Board of Education at either a public or non-public session thereof, as may be desired by such individual or individuals, association, or the institution threatened with revocation of its license, and the evidence upon which said board shall act in the revocation of such license shall be committed to writing under the direction of the board, and upon application therefor a copy thereof furnished to such individual or individuals, association, or the institution whose license has been revoked: *And provided further,* That any party aggrieved by the action of said board in refusing to license or in revoking a license previously granted may have the action of the said Board of Education reviewed by the District Court of the United States for the District of Columbia at an equity term thereof. (Mar. 3, 1901, ch. 854, § 586d, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523.)

§ 29–418 [5: 248]. Title of institution not to imply official connection with Government of United States or District of Columbia—Prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia—License not to be denied merely because of use of prohibited words.

No institution incorporated under the provisions of this chapter shall use as its title, in whole or in part, the words United States, federal, American, national, or civil service, or any other words which might reasonably imply an official connection with the government of the United States, or any of its departments, bureaus, or agencies, or of the government of the District of Columbia, nor shall any such institutions advertise or claim the power to issue degrees under the authority of Congress or otherwise than under the authority of the license granted to them by the Board of Education as hereinbefore provided. The prohibition in this section contained shall be deemed to include and is hereby declared applicable to any individual or individuals, association, or incorporation outside of the District of Columbia which shall undertake to do business in the District of Columbia or to confer degrees or certificates therein, and any such individual or individuals, association, or incorporation violating the provisions of this section shall be subject to the penalty hereinafter in section 29–419: *Provided,* That no institution, incorporated prior to April 16, 1934, under the provisions of this chapter, and carrying on its work exclusively in any foreign country with the consent and approval of the government thereof, shall if otherwise entitled to be licensed by the Board of Education, be denied the same solely because of the inclusion in its name and as descriptive of its origin of any of the specific words the use of which is by this section forbidden to incorporations under the provisions of this chapter. (Mar. 3, 1901, ch. 854, § 586e, as added Mar. 2, 1929, 45 Stat. 1505, ch. 523; Apr. 16, 1934, 48 Stat. 592, ch. 143.)

AMENDMENT

The act of April 16, 1934, 48 Stat. 592, ch. 143, amended this section by adding the proviso. That act purported to amend § 29–415.

§ 29–419 [5: 249]. Penalties.

Any person or persons who shall, directly or indirectly, participate in, aid, or assist in the conferring of any degree by any unlicensed individual or individuals, association, or institution, or by any individual or individuals, association, or institution whose license has been revoked, or shall advertise or claim any authority to confer any such degree, except in pursuance of provisions of sections 29–414 to 29–419, or who shall violate the provisions of section 29–418 shall be deemed guilty of a misdemeanor, and upon conviction thereof in the District Court of the United States for the District of Columbia shall be punished by a fine of not more than $2,000, or imprisonment for not more than two years, or both. (Mar. 3, 1901, ch. 854, § 586f, as added Mar. 2, 1929, 45 Stat. 1505, ch. 523.)

Chapter 5.—RELIGIOUS SOCIETIES

Sec.
29–501. Land to be acquired.
29–502. Trustees.
29–503. Certificate—Verification—Recording.
29–504. Trustees or directors—Tenure of office—Vacancies—Rules and regulations—Removal.
29–505. Successors of trustees to file certificate.
29–506. Failure to elect trustees not to work dissolution.
29–507. Corporate powers.
29–508. Title vested in trustees or directors.
29–509. Conveyances of property—Powers of trustees or directors.
29–510. Mortgages.
29–511. Upon dissolution property to revert to donors.
29–512. Religious schools.
29–513. Conveyances to religious congregations—Not void for want of trustees.
29–514. Procedure for appointment of trustees to receive conveyances.
29–515. Suits by trustees.
29–516. Limitations on use of land.

§ 29–501 [5: 311]. Land to be acquired.

It shall be lawful for the members of any society or congregation in the District, formed for the purpose of religious worship, to receive by gift, devise, or purchase a quantity of land not exceeding an acre, and to erect thereon such houses and buildings and to make such other use of the land and such other improvements thereon as may be deemed necessary for the purposes named, and for the comfort and convenience of the society or congregation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 587.)

NOTES TO DECISIONS

PURPOSE ABANDONED

When for practically 20 years, there has been nothing in the nature of a religious society or collective body doing or sustaining the work which it may have been the purpose of the donor to organize, a purely voluntary association, unincorporated and unorganized, cannot be said to have an existence after definitely abandoning the purpose of its creation and ceasing to exercise its functions. *Rose Campbell Mission* v. *Richardson* (64 App. D. C. 21, 73 Fed. (2d) 661).

SECULAR CORPORATION

Appropriation for Providence Hospital, a secular corporation created by act of Congress, is not unconstitutional as a law respecting the establishment of religion, regardless of the religious opinion of the members of the

corporation. *Bradfield* v. *Roberts* (175 U. S. 291, 44 L. Ed. 168, 20 Sup. Ct. 121, affg. 12 App. D. C. 453).

§ 29–502 [5: 312]. Trustees.

Such society or congregation may assume a name, and any number of trustees, not exceeding ten, who shall be styled trustees of such society or congregation by the name so assumed, may be elected or appointed according to the rules or discipline governing the church or denomination to which said society or congregation may belong. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 588.)

COMPILER'S NOTE

The act of June 26, 1922, 42 Stat. 665, added the words "or directors," following the word "trustees" in the eight sections immediately following, but failed to add them in this section, which says that they "shall" be styled trustees.

CROSS REFERENCES

Quo warranto proceedings to question right to corporate rights and franchises, § 16–1601 et seq.

Religious schools, § 29–512.

NOTES TO DECISIONS

SOCIETY DISBANDED

When for 17 years the society was disbanded and all its activities at an end, the property reverts to the original donor or his heirs. *Rose Campbell Mission* v. *Richardson* (64 App. D. C. 21, 73 Fed. (2d) 661).

§ 29–503 [5: 313]. Certificate—Verification—Recording.

The persons elected or appointed as trustees or directors shall immediately thereafter make a certificate under their hands and seals, stating the date of their election or appointment, the name of the society or congregation, and length of time for which they were elected or appointed, which shall be verified by the affidavit of one of the persons making the same, and shall be filed and recorded in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 589; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

§ 29–504 [5: 314]. Trustees or directors—Tenure of office—Vacancies—Rules and regulations—Removal.

The trustees or directors shall hold office during the period stated in their certificates, and vacancies in the office of trustee may be filled by election or appointment as above provided, and rules and regulations may be adopted in relation to the management of the estate and the duties of trustees or directors, or for their removal from office, in accordance with the rules or discipline governing the church or denomination to which such society or congregation may belong, not inconsistent with the Constitution of the United States and the laws in force in the District. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 590; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees" wherever it appears.

CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, § 16–1601 et seq.

§ 29–505 [5: 315]. Successors of trustees to file certificate.

At the expiration of the term of service of any of the trustees or directors one or more successors may be elected or appointed, and a certificate of their appointment or election shall be made, verified, filed, and recorded as provided hereinbefore. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 591; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

§ 29–506 [5: 316]. Failure to elect trustees not to work dissolution.

A failure to elect or appoint trustees or directors at the proper time shall not work a dissolution of the society or congregation; but the trustees or directors last elected or appointed shall be considered as in office until another election or appointment shall take place. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 592; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees" wherever it appears.

§ 29–507 [5: 317]. Corporate powers.

Such trustees or directors and their successors shall have perpetual succession and existence, and shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law or equity whatsoever, in and by the name and style assumed as hereinbefore provided. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 593; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

§ 29–508 [5: 318]. Title vested in trustees or directors.

The title to land authorized to be purchased and to buildings and improvements thereon shall be vested in the trustees or directors by their assumed name and their successors forever, and the same shall be held for the uses and purposes named and no other. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 594; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

§ 29–509 [5: 319]. Conveyances of property—Powers of trustees or directors.

The trustees or directors shall have power, under the direction of the society or congregation, or the authority by whom they were elected or appointed, to sell and execute deeds and conveyances of the property authorized to be held by the society or congregation; and such deeds or conveyances shall have the same effect as like deeds or conveyances made by natural persons; but no deed or conveyance shall be made so as to defeat or destroy the interest or effect of any grant, donation, or bequest and all grants, donations, and bequests shall be appropriated and used as directed by the person making the

same. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 595; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

CROSS REFERENCE

Conveyances of real estate, formal requisites, § 45–302.

§ 29–510 [5: 320]. Mortgages.

The trustees or directors shall have power under the direction of the society or congregation, or the authority by whom they were elected or appointed, to execute mortgages, or deeds of trust in the nature of mortgages, upon the estate and property which any society or congregation are authorized to hold or to lease the same for a term not exceeding ten years; and such mortgages, deeds, and conveyances shall have the same effect and be enforced by the same remedies and proceedings as like mortgages, deeds, leases, and conveyances made by natural persons. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 596; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

§ 29–511 [5: 321]. Upon dissolution property to revert to donors.

Upon the dissolution of any society or congregation the estate and property of such society or congregation shall revert back to the persons, their heirs, and assigns who may have given or contributed to the purchase of or payment for the same, according to their respective rights. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 597.)

NOTES TO DECISIONS

APPLICATION OF SECTION

Whether the dissolution is the result of an agreement on the part of the former members or is accomplished by abandonment and nonuser, the statute applies and in either case the property reverts. *Rose Campbell Mission* v. *Richardson* (64 App. D. C. 21, 73 Fed. (2d) 661).

§ 29–512 [5: 322]. Religious schools.

The provisions of sections 29–501 to 29–511 are intended to extend to members of societies formed to establish and maintain private schools for religious purposes, but shall not be construed as conferring privileges or any benefits to such societies under the school laws of the District. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 598.)

§ 29–513 [5: 323]. Conveyances to religious congregations—Not void for want of trustees.

Where any conveyance or devise of real estate is made for the use and benefit of any religious congregation as a place of public worship, such conveyance or devise shall not be void or frustrated by reason of the want of trustees to take and hold the same in trust, but trustees may be appointed as provided in section 29–514. (R. S., D. C., § 453.)

§ 29–514 [5: 324]. Procedure for appointment of trustees to receive conveyances.

When such conveyance or devise is made whether by the intervention of trustees or not the District Court of the United States for the District of Columbia shall, on application of the United States attorney, on behalf of the authorities of any such congregation, have power to appoint trustees, originally, when there are none, or to substitute others, from time to time, in cases of death, refusal, or neglect to act, removal from the District, or other inability to execute the trust beneficially and conveniently; and the legal title shall thereupon become exclusively vested in the whole number of the trustees and their successors. (R. S., D. C., § 454.)

CROSS REFERENCE

Other provisions concerning rights and duties of surviving trustees, § 18–606.

§ 29–515 [5: 325]. Suits by trustees.

A majority of the acting trustees for any such congregation may sue and be sued in their own names, in relation to the title, possession, or enjoyment of such property, without abatement by the death of any of the trustees, or substitution of others; and the action or suit may be prosecuted to its final termination in the names of the trustees by or against whom the same was instituted, and all other proceedings had in relation thereto, in like manner as if such death or substitution had not occurred. (R. S., D. C., § 455.)

§ 29–516 [5: 326]. Limitations on use of land.

Land authorized to be conveyed and held subsequent to June 17, 1844, and prior to May 5, 1870, for the uses of any religious congregation, in quantity not exceeding fifty acres, if in the District outside of the cities of Washington and Georgetown, nor exceeding three acres, if in either of said cities, shall not be held by the trustees of such congregation for any other use than as a place of public worship, religious or other instruction, burial-ground, or residence of their minister. (R. S., D. C., § 456.)

Chapter 6.—CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS

Sec.

29–601. Formation—Certificate—Contents.
29–602. Formation—Signers incorporated—Powers—Taxation of property.
29–603. Trustees.
29–604. Reincorporation—Extension of time of corporate existence—Change of name.
29–605. Property—Power to lease, mortgage, sell—Proceeds.
29–606. Name of corporation.

§ 29–601 [5: 121]. Formation—Certificate—Contents.

Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the recorder of deeds, to be recorded by him, a certificate in writing, in which shall be stated—

First. The name or title by which such society shall be known in law.

Second. The term for which it is organized, which may be perpetual.

Third. The particular business and objects of the society.

Fourth. The number of its trustees, directors, or managers for the first year of its existence. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 599.)

CROSS REFERENCES

Columbia Institution for the Deaf, § 31–1001 et seq.

Eleemosynary, curative, correctional, and penal institutions, see title 32.

Medical and dental colleges, § 31–901 et seq.

Religious schools, § 29–512.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAWS

When a Federal right, as the right to incorporate a fraternal organization under act May 5, 1870 (16 Stat. 98, ch. 80), was held by a State court to have been lost by subsequent conduct, that of itself involves no Federal question, and the Supreme Court may not examine the decision unless the State court in substance is denying the right. *Creswill* v. *Grand Lodge K. of P.* (225 U. S. 246, 56 L. Ed. 1074, 32 Sup. Ct. 822).

Where a lodge or fraternal organization was organized in Georgia in 1864, and incorporated under the act of May 5, 1870 (16 Stat. 98, ch. 80), complying with the statute in all respects, membership in which was limited to white males, it was estopped by laches from contesting the incorporation in the District of Columbia of an organization similar in name, organized by Negroes in Mississippi in 1880, in Georgia in 1886, and application made in the District of Columbia in 1889. *Creswill* v. *Grand Lodge K. of P.* (225 U. S. 246, 56 L. Ed. 1074, 32 Sup. Ct. 822).

White fraternal order incorporated under State law was not entitled to injunction against Negro order, organized under this act, in view of laches and acquiescence. *Ancient Egyptian Arabic Order* v. *Michaux* (279 U. S. 737, 73 L. Ed. 931, 49 Sup. Ct. 485, revg. (Tex. Com. App.), 286 S. W. 176).

The South Carolina subordinate lodge of a grand lodge organized under act of Congress of May 1870 (16 Stat. 98, ch. 80), in the District of Columbia could not be held to account for a judgment against the Georgia division of the same lodge. *Washington* v. *King* (159 S. Car. 431, 157 S. E. 613).

ABANDONMENT OF PURPOSE

A purely voluntary religious association, unincorporated and unorganized, cannot be said to have an existence after definitely abandoning the purpose of its creation and ceasing to exercise its functions. *Rose Campbell Mission* v. *Richardson* (64 App. D. C. 21, 73 Fed. (2d) 661).

DE FACTO CORPORATIONS

To establish a corporation as de facto is all that is necessary to enable it to maintain an action against any one, other than the State, who has contracted with the corporation, or done it a wrong. *Baltimore & P. R. Co.* v. *Fifth Baptist Church* (137 U. S. 568, 34 L. Ed. 784, 11 Sup. Ct. 185).

HEALTH ASSOCIATION

Group health association is a "relief association, not conducted for profit." *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

Group health is in fact and in function a consumer cooperative. The functions of such an organization are not identical with those of insurance or indemnity companies. The latter are concerned primarily, if not exclusively, with risk and the consequences of its descent. *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

A group of individuals might incorporate themselves for their own mutual benefit and such corporation, not for profit but for the mutual benefit of its members, is not engaged in practice of medicine when they contracted with members of medical profession. *Group Health Assn.* v. *Moor* ((D. C.–D. C.), 24 Fed. Supp. 445).

HOSPITAL

Even if it be a fact that the appellee is incorporated as a charitable corporation and even if judicial notice could be taken that it is so incorporated, this would not conclude the question whether or not it is a charity. *White* v. *Central Dispensary & Emergency Hosp.* (69 App. D. C. 122, 99 Fed. (2d) 355, 119 A. L. R. 1002).

OBJECT OF ORGANIZATION

Object for which a corporation is organized is to be determined from what is stated in its certificate of incorporation and its constitution and bylaws. *Vanderbilt* v. *Com. Int. Rev.* ((C. C. A. 1), 93 Fed. (2d) 360).

A corporation cannot deny its purposes are those set forth in its charter. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1944, 34 A. 2d 614).

POWER TO CONFER DEGREES

Claiming the right to confer degrees a right in the articles of incorporation does not confer such power. "It might have taken less than the section gave but not more." *National Assn. of Certified Public Accountants* v. *United States* (53 App. D. C. 391, 292 Fed. 668).

Corporation organized under this section has no power to confer degrees. *National Assn. of Certified Public Accountants* v. *United States* (53 App. D. C. 391, 292 Fed. 668).

PROOF OF CORPORATE EXISTENCE

To prove the existence of a corporation under act May 5, 1870, ch. 80, § 2 (16 Stat. 99), a recorder's copy of the certificate of incorporation, acknowledgment, and affidavit was sufficient, together with a record of an action in which the corporation recovered judgment against the defendant in the instant case, without objection of capacity to sue. *Baltimore & P. R. Co.* v. *Fifth Baptist Church* (137 U. S. 568, 34 L. Ed. 784, 11 Sup. Ct. 185).

§ 29–602 [5: 122]. Formation—Signers incorporated—Powers—Taxation of property.

Upon filing their certificates the persons who shall have signed and acknowledged the same and their associates and successors shall be a body politic and corporate, by the name stated in such certificate; and by that name they and their successors may have and use a common seal, and may alter and change the same at pleasure, and may make by-laws and elect officers and agents, and may take, receive, hold, and convey real and personal estate necessary for the purposes of the society as stated in their certificate, and other real and personal property the income from which shall be applied to the purposes of such society: *Provided, however,* That this section shall not be construed to exempt any property from taxation in addition to that specifically exempted by law. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 600; Apr. 20, 1932, 47 Stat. 87, ch. 121.)

AMENDMENT

The act of 1932 amended this section by striking out the words "clear annual income from which shall not exceed in value $25,000," and inserting in lieu thereof the following: "income from which shall be applied to the purposes of such society."

CROSS REFERENCES

Abandonment or readjustment of streets and highways to provide lands, § 7–113.

Conveyances of real estate, formal requisites, § 45–302.

Quo warranto proceedings questioning rights to corporate rights and franchises, § 16–1601 et seq.

NOTES TO DECISIONS

EXEMPTION FROM SOCIAL SECURITY

In ascertaining whether a corporation organized under § 29–601 relating to benevolent, charitable, educational,

and similar corporations was exempt from District of Columbia Unemployment Compensation Act, § 46–301, said section must be considered but said section cannot be conclusive in face of specific objects selected by corporation for inclusion in its charter. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1944, 34 A. 2d 614).

A corporation, whose object in part, as indicated by its charter, was for the mutual welfare, protection, and improvement of business methods among merchants and for protecting the interests of certain classes of businesses to enable them to profitably conduct their business, was not exempt as organized exclusively for "educational or scientific purposes" from District of Columbia Unemployment Compensation Act, § 46–301, notwithstanding corporation's purposes were to be accomplished by educational methods. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1944, 34 A. 2d 614).

GROUP HEALTH ASSOCIATION

Appellee Group Health Association, organized as nonprofit corporation, was not an insurance company. *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

§ 29–603. Trustees.

Such incorporated society may elect its trustees, directors, or managers at such time and place and in such manner as may be specified in its bylaws, who shall have the control and management of the affairs and funds of the society, and a majority of whom shall be a quorum for the transaction of business, unless a less number be specified as a quorum in the bylaws; and whenever any vacancy shall happen in such board of trustees, directors, or managers the vacancies shall be filled in such manner as shall be provided by the bylaws of the society. The bylaws of a society incorporated under the provisions of this subchapter may provide that stockholders, if the same be a stock corporation, or members or delegates, if the same be not a stock corporation, may vote by proxy or by mail. The bylaws may restrict such method of voting to the election of trustees, directors, or managers, or to other matters specified in the bylaws, and may prescribe the form or forms of proxy or of mail ballot to be used and the procedure to be followed in the casting and recording of such votes. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 601; June 10, 1930, 46 Stat. 538, ch. 439; Nov. 30, 1945, 59 Stat. 588, ch. 497; Aug. 7, 1946, 60 Stat. 882, ch. 781.)

AMENDMENTS

The act of 1930 amended this section by adding the proviso.

The act of Nov. 30, 1945, cited to text, amended section by deleting proviso.

The act of Aug. 7, 1946, cited to text, added the last two sentences.

CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, § 16–1601 et seq.

§ 29–604 [5: 124]. Reincorporation—Extension of time of corporate existence—Change of name.

Any existing benevolent, charitable, educational, musical, literary, scientific, religious, or missionary corporation incorporated under the provisions of this chapter, including societies formed for mutual improvement, may reincorporate or may continue the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of continuance of corporate existence, or may change its name by the written consent of two-thirds of its trustees or directors or other governing board, which consent in the case of a stock corporation shall be accompanied by the written consent of the owners of two-thirds of the capital stock of the corporation. A certificate that such consent or consents have been duly given, containing the original name and the new name of the corporation, if the same has been changed, and the term of corporate existence as continued shall be subscribed and acknowledged by the president or vice-president and by the secretary or assistant secretary of such corporation, and shall be filed with such consent or consents in the office of the recorder of deeds, to be recorded by him. Upon the filing of such certificate all the rights, powers, property, and effects of such existing corporation subject to existing liabilities shall vest in and belong to the corporation so reincorporated, continued, or renamed. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 602; Mar. 3, 1905, 33 Stat. 1012, ch. 1445.)

AMENDMENT

Act of 1901 read as follows: "The trustees, directors, or stockholders of any existing benevolent, charitable, educational, musical, literary, scientific, religious, or missionary corporation, including societies formed for mutual improvement, may, by conforming to the requirements herein, reincorporate themselves, or continue their existing corporate powers under this subchapter, or may change their name, stating in their certificate the original name of such corporation as well as their new name assumed; and all the property and effects of such existing corporation shall vest in and belong to the corporation so reincorporated or continued."

NOTES TO DECISIONS

CONSOLIDATION WITH ANOTHER ORGANIZATION

Bill praying for appointment of receiver for church corporation was dismissed for lack of equity where the acts complained of, such as the sale of the church property, consolidation with another organization, and change of name, were done by the duly elected trustees of the corporation. *Schooley* v. *Dimmick* (56 App. D. C. 350, 13 Fed. (2d) 956).

§ 29–605 [5: 125]. Property—Power to lease, mortgage, sell—Proceeds.

Any property of the corporation may be leased, encumbered by mortgage or deed of trust in the nature of a mortgage, or sold and conveyed absolutely, when authorized by a vote of the majority of the shares of stock, if the same be a stock corporation, or by a vote of the majority of the directors, managers, or trustees, if the same be not a stock corporation, at a meeting called for the purpose, the proceedings of which meeting shall be duly entered in the records of the corporation, and the proceeds arising therefrom shall be applied or invested for the use and benefit of such corporation. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 603.)

CROSS REFERENCE

Conveyances of real estate, formal requisites, § 45–302.

§ 29–606 [5: 126]. Name of corporation.

The provisions of this chapter shall not extend or apply to any corporation, association, or individual who shall in the certificate filed with the recorder of deeds use or specify a name or style the same as that

of any other incorporated body in the District. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 604; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

The act of 1902 struck out the syllable "sub" before chapter, and inserted after the word "any," the word "corporation."

Chapter 7.—DISSOLUTION

Sec.

29–701. Dissolution—Voluntary—Application to District Court.
29–702. Contents of application.
29–703. Order to appear—Notice.
29–704. Reference to take testimony.
29–705. Decree of dissolution.
29–706. Receiver—Bond required.
29–707. Receiver to be vested with corporate property.
29–708. Receiver to collect assets—Notice of appointment of receiver—Presentation of claims.
29–709. Transactions and judgments confessed after petition filed—Void.
29–710. Receiver—Arbitration of controversies—Executory contracts—Insurance.
29–711. Surplus assets—Distribution to creditors.
29–712. Surplus assets—Dividends to stockholders.
29–713. Receiver—Under court's direction—Compensation.
29–714. Dissolution before capital stock paid in or investments made.
29–715. Trustees for creditors and stockholders.
29–716. Actions not to abate—Judgments.
29–717. Proceedings in corporate name for use of others.
29–718. Suits after dissolution—Process.
29–719. Involuntary dissolution—Suit of the United States—Petition—Order to show cause.
29–720. Answer of corporation—Verification.
29–721. Pleading.
29–722. Trial—Decree of forfeiture—Appointment of receiver.
29–723. Ex parte proceeding after default in pleading.
29–724. Final decree—Power to withhold pending remedy of grievance.
29–725. Injunction against assuming corporate franchise or transacting business not authorized by charter.
29–726. Involuntary dissolution at the suit of creditors.
29–727. Injunction against transferring assets—Receiver.
29–728. Parties defendant in creditor's suit.
29–729. Account and distribution.

§ 29–701 [5: 391]. Dissolution—Voluntary—Application to District Court.

When a majority of the trustees, directors, or other officers having the management of the concerns of any corporation in the District, or stockholders representing not less than one-third of the capital stock of any such corporation, discover that the property and effects of the corporation have been so far reduced, by losses or otherwise, that it will not be able to pay all just demands against it or offer a reasonable security to those who deal with it, or they shall deem it beneficial to the interests of the stockholders that the corporation be dissolved, or when such directors, trustees, or other officers are authorized by a majority of the stockholders to apply for a decree, as hereinafter provided, or when the objects of the corporation have wholly failed or are entirely abandoned or are impracticable, they may apply to the District Court of the United States for the District of Columbia by petition for the dissolution of said corporation. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 768.)

CROSS REFERENCES

Dissolution by sale of all assets, § 29–240.
Involuntary dissolution, § 29–719 et seq.

NOTES TO DECISIONS

CESSATION OF BUSINESS

"A corporation does not cease to exist through the discontinuance of its business, merely, though ceasing to maintain its active organization, or by becoming hopelessly insolvent." *Fields* v. *United States* (27 App. D. C. 433, dism. 205 U. S. 292, 51 L. Ed. 807, 27 Sup. Ct. 543), citing *Brown* v. *Delafield & Baxter Cement Co.* (1 App. D. C. 232).

§ 29–702 [5: 392]. Contents of application.

Such application shall contain a statement of the reasons upon which it is founded, and there shall be annexed thereto—

First. A full, just, and true inventory of all the estate, real and personal, of the corporation, and of all the books, vouchers, and securities relating thereto.

Second. A full, just, and true account of the capital stock of the corporation, specifying the names of the stockholders, their residences, when known, the number of shares belonging to each, the amounts paid in upon said shares, respectively, and the amounts still due thereon.

Third. A statement of all the incumbrances on the property of the corporation and of all the engagements entered into by it which have not been fully satisfied or canceled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, the sum owing to each creditor and the nature and consideration of the indebtedness, and such application shall be verified by affidavit. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 769.)

NOTES TO DECISIONS

VOLUNTARY LIQUIDATION

A voluntary liquidation and dissolution of a solvent company together with appointment of receivers and reference to the auditor as provided by law was not ultra vires, illegal or void. *Tryson* v. *Southern Realty Corp.* (51 App. D. C. 55, 274 Fed. 135).

§ 29–703 [5: 393]. Order to appear—Notice.

On the filing of such application, accounts, inventories, and affidavit, an order shall be passed requiring all persons interested in said corporation to appear in said court and show cause by a day named, if any they have, why it should not be dissolved, and a notice of said order shall be published in some newspaper of general circulation weekly for three successive weeks, the first insertion to be not less than one month before the day fixed for showing cause as aforesaid. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 770.)

§ 29–704 [5: 394]. Reference to take testimony.

Whether answer be made or not, the cause shall be referred to the auditor, who shall take testimony in relation to the allegations of the petition, and report to the court, with all convenient speed, with a statement of the property and effects, debts, credits, and engagements of the corporation and all other matters relative to the issues in said cause. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 771.)

§ 29–705 [5: 395]. Decree of dissolution.

If it appear to the court that the corporation is insolvent, or that a dissolution thereof would be beneficial to the stockholders and not injurious to the public interests, or that the objects of the corporation have wholly failed or been abandoned or are impracticable, a decree shall be entered dissolving the corporation and appointing one or more receivers of its estate and effects; and the corporation shall thereupon be dissolved and cease to exist. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 772.)

§ 29–706 [5: 396]. Receiver—Bond required.

A director, trustee, or other officer of the corporation, or any of its stockholders, may be appointed a receiver, and any receiver so appointed shall give bond in such penalty, and with such surety or sureties, as may be approved by the court, conditioned for the due discharge of his duties as receiver. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 773.)

§ 29–707 [5: 397]. Receiver to be vested with corporate property.

Upon his giving surety as aforesaid the receiver shall be vested with all the estate, real or personal, of the corporation, for the benefit of its creditors and stockholders. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 774.)

NOTES TO DECISIONS

STOCKHOLDERS UNITE WITH RECEIVER

As insurance company was solvent, and no stockholder, as far as the record shows, personally united with the receivers in their attack upon the sale, the court refused to set it aside. *Tryson* v. *Southern Realty Corp.* (51 App. D. C. 55, 274 Fed. 135).

§ 29–708 [5: 398]. Receiver to collect assets—Notice of appointment of receiver—Presentation of claims.

The said receiver shall proceed to collect and take into his possession all the assets and effects of the corporation, including any sums due and unpaid upon the subscriptions to the capital stock of the corporation, and shall have authority to institute all needful actions for that object. He shall give public notice of his appointment and require all creditors of the corporation to present their claims to him. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 775.)

§ 29–709 [5: 399]. Transactions and judgments confessed after petition filed—Void.

All sales, assignments, transfers, mortgages, and conveyances of any part of the estate, real or personal, of said corporation, including choses in action of every description, made after the filing of the petition for dissolution, in payment of or as security for any existing or prior debt, or for any other consideration, and all judgments confessed by said corporation after that time, shall be void as against the receiver appointed on said petition and as against the creditors of the corporation. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 776.)

§ 29–710 [5: 400]. Receiver—Arbitration of controversies—Executory contracts—Insurance.

The receiver may settle controversies that arise between him and the debtors or creditors of the corporation by arbitration. If there be any open and subsisting engagements or contracts of the corporation in the nature of insurance, or contingent engagements of any kind, the receiver may, with the consent of the party holding such engagements, cancel and discharge the same by refunding to such party the premium or consideration paid thereon to the corporation, or so much thereof as shall be in the same proportion to the time which remains of any risk assumed by such engagements as the whole premium bears to the whole term of such risk; and upon such amount being paid by the receiver to the person holding such engagement it shall be deemed canceled and discharged as against the receiver. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 777.)

§ 29–711 [5: 401]. Surplus assets—Distribution to creditors.

The receiver may retain out of the money in his hands the amounts necessary for the purpose of canceling and discharging any open and subsisting engagements and of satisfying any demands for which a suit may be pending against the corporation and the costs of the proceeding, and distribute the residue among the creditors of the corporation, giving preference to debts which are liens on the property of the corporation, and shall make dividends from time to time among the creditors until their debts are paid in full. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 778.)

§ 29–712 [5: 402]. Surplus assets—Dividends to stockholders.

No dividends shall be paid to stockholders until after the final dividend to the creditors, and if, after such final dividend is made, there remain any surplus in the receiver's hands, he shall distribute the same among the stockholders in proportion to the respective amounts paid in by them severally on their shares of stock. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 779.)

§ 29–713 [5: 403]. Receiver—Under court's direction—Compensation.

The receiver shall be subject to the direction of the court as to making dividends and rendering his accounts and shall receive such commission as the court shall allow, not exceeding the rate allowed to executors and administrators, and reasonable counsel fees for services rendered to him. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 780.)

§ 29–714 [5: 404]. Dissolution before capital stock paid in or investments made.

When a majority of the directors, trustees, or other officers of a corporation become satisfied that the objects of the corporation can not be accomplished, and no instalment of the capital stock has been paid, and no investments have been made and no debts incurred which are unpaid, they may call a meeting of the stockholders, by a notice published in some newspaper of general circulation, and if a majority, in amount, of the stockholders present at such meeting, in person or by proxy, shall decide that the objects of the corporation can not be accomplished, the corporation shall thereupon be dissolved and cease. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 781.)

§ 29–715 [5: 405]. Trustees for creditors and stockholders.

Upon the dissolution of a corporation by the expiration of its charter, or otherwise, unless other persons be appointed by the stockholders, directors, or trustees of the corporation, or by a decree of the District Court of the United States for the District of Columbia, the directors or trustees acting last before the dissolution, and their survivors, shall be the trustees for the creditors and stockholders of the dissolved corporation, and shall have full power to settle the affairs of the same, to collect its assets and pay its outstanding debts, and divide among its stockholders the money or other property remaining, in proportion to the stock of each stockholder paid up; and in case of the refusal of said trustees or directors, or a majority of them, to act, the said court may, upon the application of any person interested, appoint trustees in their place. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 782.)

§ 29–716 [5: 406]. Actions not to abate—Judgments.

No action pending in favor of or against any corporation shall be discontinued or abate by the dissolution of the corporation, whether such dissolution occur by the expiration of its charter or otherwise, but all such actions may be prosecuted to final judgment in its corporate name; and on all judgments so obtained, whether before or after its dissolution, execution may be had and satisfaction enforced in such corporate name. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 783.)

CROSS REFERENCE

Abatement and revivor in general, § 12–101 et seq.

NOTES TO DECISIONS

SUITS AGAINST DISSOLVED CORPORATIONS

A foreign corporation doing business in the District which had been dissolved by its chartering state, could not be sued in the District after dissolution since local statutes preserve litigation only as to local corporations and the chartering state did not preserve such litigation. *Sedgwick* v. *Beasley* (C. A. D. C. 1949, 173 F. 2d 918, 84 U. S. App. D. C. 325).

§ 29–717 [5: 407]. Proceedings in corporate name for use of others.

A corporation may, after its dissolution, prosecute any action in and by its corporate name, for the use of the person or persons entitled to receive the proceeds of such action, upon any cause of action accrued, or which, but for such dissolution, would have accrued in favor of the corporation, in the same manner and with the like effect as if it had not been dissolved. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 784.)

§ 29–718 [5: 408]. Suits after dissolution—Process.

Any such dissolved corporation may be sued by its corporate name for or upon any cause of action accrued or which, but for such dissolution, would have accrued against it in the same manner and with the like effect as if it were not dissolved; and process in such action may be served upon any one of the assignees, trustees, or receivers having the management of the assets of the corporation. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 785.)

CROSS REFERENCE

Abatement and revivor in general, § 12–101 et seq.

NOTES TO DECISIONS

SERVICE OF SUMMONS

Question is whether summons was served upon an officer, agent, or employee of the corporation. This may be raised by a motion to quash the service of summons in the case. *Bloedorn* v. *Washington Times Co.* (67 App. D. C. 91, 89 Fed. (2d) 835).

SUIT IN CORPORATE NAME

Action was properly brought against company in its corporate name even though it had been lawfully dissolved. *Lyman* v. *Knickerbocker Theatre Co.* (55 App. D. C. 323, 5 Fed. (2d) 538).

SUITS AGAINTS DISSOLVED CORPORATIONS

A foreign corporation doing business in the District which had been dissolved by its chartering state, could not be sued in the District after dissolution since local statutes preserve litigation only as to local corporations and the chartering state did not preserve such litigation. *Sedgwick* v. *Beasley* (C. A. D. C. 1949, 173 F. 2d 918, 84 U. S. App. D. C. 325).

§ 29–719 [5: 409]. Involuntary dissolution—Suit of the United States—Petition—Order to show cause.

Whenever the district attorney of the United States for the District of Columbia shall become satisfied that any corporation organized under the laws of said District has been guilty of such misuse, abuse, or nonuser of its corporate powers and franchises, or such violation of law as would authorize and make proper the forfeiture of its charter, corporate powers, and franchises, the said district attorney shall file in the District Court of the United States for the District of Columbia a petition in the name of the United States setting forth, fully and in detail, the alleged abuse, misuse, or nonuser by reason whereof such forfeiture is sought, which petition shall be supported by affidavits of credible persons; and upon the filing of such petition the said court shall lay a rule requiring such defendant corporation to show cause, within such time as the court may deem proper, why a decree should not issue as prayed in said petition, a copy of which rule and petition shall be served on said corporation by a day therein limited. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 786.)

CROSS REFERENCES

Dissolution upon second conviction of operating a bucket-shop, § 22–1510.

Voluntary dissolution, §§ 29–701 to 29–718.

NOTES TO DECISIONS

FAILURE TO PAY LICENSE TAX

"A charter of incorporation is not ipso facto abrogated or annulled by failure to pay a license tax, notwithstanding that the statute may provide that such failure shall work a forfeiture." *Ohio Bank* v. *Central Constr. Co.* (17 App. D. C. 524).

§ 29–720 [5: 410]. Answer of corporation—Verification.

The said corporation, by the day named in said order, unless further time be granted by the court, shall file an answer to said petition, fully setting forth all the defenses upon which it intends to rely in resisting the application, which shall be verified by affidavit of some officer of the corporation. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 787.)

§ 29–721 [5: 411]. Pleading.

The petitioners may thereupon plead to or traverse all or any of the material averments set forth in the answer, and the defendant shall join issue with or demur to said plea or traverse within five days thereafter. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 788.)

§ 29–722 [5: 412]. Trial — Decree of forfeiture — Appointment of receiver.

If issue or issues be joined on such proceedings, the same shall stand for trial at such time as the court shall direct and shall be tried by a jury if either party desire it; otherwise, they shall be heard and determined by the court. If, from the findings of the jury or upon consideration and determination of the case by the court, the court shall be of opinion that legal cause of forfeiture has been shown and the public interests require that said forfeiture shall be declared, a decree of forfeiture shall be entered and the charter of said corporation shall thereby be annulled and vacated and its corporate franchises and powers shall cease and be void; and the court shall thereupon appoint a receiver or receivers of the assets and estate of said corporation, who shall proceed to wind up the affairs of said corporation, for the benefit of its creditors and stockholders, under the direction of the court. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 789.)

§ 29–723 [5: 413]. Ex parte proceeding after default in pleading.

If any corporation upon which a petition and rule to show cause shall have been served as aforesaid, shall neglect to file an answer thereto at the time appointed by the court, the court shall proceed to hear the application ex parte within five days thereafter, and if it shall be of opinion that good cause of forfeiture is shown it shall proceed to decree as provided in section 29–722. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 790.)

§ 29–724 [5: 414]. Final decree—Power to withhold pending remedy of grievance.

If the court, either upon a hearing ex parte or after answer, shall be of opinion that no cause of forfeiture is shown or that the public interests do not demand that such forfeiture be decreed, though legal cause therefor has been shown, it shall dismiss the petition. And if the court shall determine that legal cause of forfeiture has been shown, it may, in its discretion, before passing a final decree of forfeiture, pass orders requiring the said corporation, within a time to be therein fixed, to remedy the grievance complained of, and may suspend the passage of the final decree of forfeiture until the time so fixed, and may afterwards refuse to pass such decree if the grievance shall have been remedied by the time so fixed. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 791.)

§ 29–725 [5: 415]. Injunction against assuming corporate franchise or transacting business not authorized by charter.

The district attorney may file a bill in the name of the United States in said District Court of the United States for the District of Columbia for the purpose of restraining by injunction any corporation organized under the laws of the District from assuming or exercising any franchise, liberty, or privilege or transacting any business not allowed by its charter or certificate of incorporation or not by law allowed to be assumed or exercised by said corporation, and said district attorney may file a bill to enjoin any foreign corporation from transacting in the District of Columbia any business not allowed by its charter or certificate of incorporation, or from transacting any business in said District when it has not complied with any provision of this code relating to foreign corporations; and in the same manner may file a bill to restrain any individuals from exercising any corporate rights, privileges, or franchises not granted to them by law; and on the filing of any such bill the said District Court of the United States for the District of Columbia shall have power to issue an injunction as prayed and to exercise all the powers of a court of equity over the subject-matter of such bill. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 793; June 30, 1902, 32 Stat. 534, ch. 1329.)

COMPILER'S NOTE

The words "this code" refer to the 1901 code, i. e., the act of Mar. 3, 1901, as shown in the history lines of the various sections of this compilation.

AMENDMENT

The act of 1902 inserted after the word "corporation" the second time it appears the words "and said district attorney may file a bill to enjoin any foreign corporation from transacting in the District of Columbia any business not allowed by its charter or certificate of incorporation, or from transacting any business in said District when it has not complied with any provision of this code relating to foreign corporations."

CROSS REFERENCES

Quo warranto proceedings questioning rights to corporate rights as franchises, § 16–1601 et seq.

Restrained from doing business upon second conviction of operating a bucket-shop, § 22–1510.

NOTES TO DECISIONS

UNAUTHORIZED DEGREES

This section declares that the district attorney may file a bill in the name of the United States in the Supreme Court of the District and it applies to corporations giving degrees when not authorized. *National Assn. of C. P. A.* v. *United States* (53 App. D. C. 391, 292 Fed. 668).

§ 29–726 [5: 416]. Involuntary dissolution at the suit of creditors.

When any corporation in the District has remained insolvent for a year, or has neglected or refused for that period to pay and discharge its notes or other evidences of debt, or has, for that period, suspended its ordinary and lawful business, a bill may be filed by the district attorney, as aforesaid, for the dissolution of said corporation, or, if he shall decline to do so, on the application of any judgment creditor of said corporation, the said judgment creditor, if an execution upon his judgment shall be returned unsatisfied, in whole or in part, may file such bill. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 794.)

NOTES TO DECISIONS

SUFFICIENCY OF BILL

A bill for a receivership of an insurance company, asking for a dissolution, may be sufficient to invoke the court's general equity jurisdiction, though not for a statu-

tory dissolution. *National Ben. Life Ins. Co.* v. *Shaw-Walker Co.* (71 App. D. C. 276, 111 Fed. (2d) 497).

§ 29–727 [5: 417]. Injunction against transferring assets—Receiver.

Upon prima facie proof of the facts necessary to sustain such suit the court may issue an injunction restraining the corporation, its trustees, directors, and officers from collecting or receiving any debt or demand and from paying out or transferring or delivering to any person any of its property or effects and from exercising any of its corporate rights and franchises during the pendency of the suit, unless by permission of the court. And at any stage of the proceeding the court may appoint a receiver to collect and preserve the property of the corporation and dispose of and manage the same, under the direction of the court, until final decree in the cause. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 795.)

NOTES TO DECISIONS

COLLATERAL ATTACK

Where a receiver for a life insurance company had been appointed, and a representative of policyholders subsequently instituted a second proceeding for a dissolution, and asking another receiver, on the ground that the court had exceeded its jurisdiction in appointing the first receiver, the second proceeding was an arbitrary exercise of discretion, as the assets had been liquidated, and only distribution remained to be made, and an unwarranted collateral attack. *National Ben. Life Ins. Co.* v. *Shaw-Walker Co.* (71 App. D. C. 276, 111 Fed. (2d) 497).

DISCRETION OF COURT IN APPOINTING RECEIVER

The provision for the appointment of a receiver in dissolution proceedings is not mandatory, and the appointment is at the court's discretion. *National Ben. Life Ins. Co.* v. *Shaw-Walker Co.* (71 App. D. C. 276, 111 Fed. (2d) 497).

§ 29–728 [5: 418]. Parties defendant in creditor's suit.

Where the action is brought by a creditor, the stockholders, directors, trustees, or other officers, or any of them who may be made liable by law for the payment of the complainant's debt, may be made parties defendant by the original or a supplemental bill, and their liability may be declared and enforced by the decree; but nothing herein shall prevent any creditor from enforcing such liability in a separate suit against such parties. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 796.)

§ 29–729 [5: 419]. Account and distribution.

In such suit, if the court shall be of opinion that the complainant is entitled to the relief prayed, and that such corporation ought to be dissolved, the court shall cause an account to be taken of the assets and debts of the corporation and shall decree an equal distribution of the assets among the creditors, subject to existing liens; but if said corporation has no property to satisfy its creditors, or to the extent to which its property is insufficient therefor, the court may require the stockholders, who are parties defendant to the suit, to pay into court the amounts due and unpaid on the shares of stock held by them, and shall ascertain the amounts properly chargeable, in favor of creditors, to said stockholders and the trustees, directors, or other officers who are parties to the suit, and in the final decree for the dissolution shall adjudge and decree that said amounts shall be paid into court by the parties respectively liable therefor, to be applied to the payment of the debts of the corporation. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 797.)

Chapter 8.—COOPERATIVE ASSOCIATIONS

Sec.

29–801. Definitions.
29–802. Who may incorporate.
29–803. Purposes for which incorporated.
29–804. Powers of association.
29–805. Articles of incorporation—Contents.
29–806. Filing and recordation of articles—Fees—Effect of certificate.
29–807. Amendments of articles—Fee.
29–808. By-laws—Adoption, amendment, or repeal.
29–809. Contents of by-laws.
29–810. Meetings—Regular and special.
29–811. Notice of meetings.
29–812. Meetings by units of the membership.
29–813. Voting—One member, one vote.
29–814. Proxy voting prohibited.
29–815. Voting by mail.
29–816. Application of voting provisions to voting by mail.
29–817. Application of voting provisions to voting by delegates.
29–818. Directors.
29–819. Officers.
29–820. Removal of directors and officers.
29–821. Referendum on acts of directors.
29–822. Shares and membership—Limitations upon the return on capital.
29–823. Eligibility and admission to membership.
29–824. Subscribers.
29–825. Share and membership certificates—Issuance and contents.
29–826. Transfer of shares and membership—Withdrawal.
29–827. Share and membership certificates—Recall.
29–828. Share and membership certificates—Attachment.
29–829. Liability of members.
29–830. Expulsion of members—Procedure—Purchase of holdings.
29–831. Allocation and distribution of net savings.
29–832. Bonding of officers and employees.
29–833. Books—Auditing.
29–834. Annual report of association.
29–835. Notice of delinquent reports—Mandamus.
29–836. Dissolution—Methods—Procedure.
29–837. Penalties—Unauthorized use of name "cooperative"—Existing cooperatives.
29–838. Promotion expenses—Limitations—Penalty.
29–839. Spreading false reports—Penalty.
29–840. Existing cooperative groups—Acceptance of act.
29–841. Foreign corporations and associations—Admission to do business.
29–842. Legality declared—Not in restraint of trade.
29–843. Laws not applicable.
29–844. Taxation—Annual license fee.
29–845. Separability—Constitutionality.
29–846. Reservation of right to amend or repeal.
29–847. Short title.

§ 29–801. Definitions.

In this chapter unless the subject-matter requires otherwise—

(1) "Association" means a group enterprise legally incorporated under this chapter, and shall be deemed to be a nonprofit corporation.

(2) "Member" means not only a member in a nonshare association but also a member in a share association.

(3) "Net savings" means the total income of an association minus the costs of operation.

(4) "Savings returns" means the amount returned to the patrons in proportion to their patronage or otherwise in accordance with the provisions of section 29–831 herein.

(5) "Cooperative basis" as applied to any incorporated or unincorporated group referred to in sections 29–804 (7), 29–813, 29–823, 29–837, 29–840, and 29–841 herein means—

(a) that each member has one vote and only one vote, except as may be altered in the articles or by-laws by provision for voting by member organizations;

(b) that the maximum rate at which any return is paid on share or membership capital is limited to not more than 8 per centum per annum;

(c) that the net savings after payment, if any, of said limited return on capital and after making provision for such separate funds as may be required or specifically permitted by statute, articles, or by-laws, or allocated or distributed to member patrons, or to all patrons, in proportion to their patronage; or retained by the enterprise, for the actual or potential expansion of its services or the reduction of its charges to the patrons, or for other purposes not inconsistent with its nonprofit character. (June 19, 1940, 54 Stat. 480, ch. 397, § 1.)

§ 29–802. Who may incorporate.

Any five or more natural persons or two or more associations may incorporate in the District of Columbia under this chapter. (June 19, 1940, 54 Stat. 481, ch. 397, § 2.)

§ 29–803. Purposes for which incorporated.

An association may be incorporated under this chapter to engage in any one or more lawful mode or modes of acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type or types of property, commodities, goods, or services for the primary and mutual benefit of the patrons of the association (or their patrons, if any) as ultimate consumers. (June 19, 1940, 54 Stat. 481, ch. 397, § 3.)

§ 29–804. Powers of association.

An association shall have the capacity to act possessed by natural persons and the authority to do anything required or permitted by this chapter and also—

(1) To continue as a corporation for the time specified in its articles;

(2) To have a corporate seal and to alter the same at pleasure;

(3) To sue and be sued in its corporate name;

(4) To make by-laws for the government and regulation of its affairs;

(5) To acquire, own, hold, sell, lease, pledge, mortgage, or otherwise dispose of any property incident to its purposes and activities;

(6) To own and hold membership in and share capital of other associations and any other corporations, and any types of bonds or other obligations; and while the owner thereof to exercise all the rights of ownership;

(7) To borrow money, contract debts, and make contracts, including agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

(8) To conduct its affairs within or without the District of Columbia;

(9) To exercise in addition any power granted to ordinary business corporations, save those powers inconsistent with this chapter;

(10) To exercise all powers not inconsistent with this chapter which may be necessary, convenient, or expedient for the accomplishment of its purposes, and, to that end, the foregoing enumeration of powers shall not be deemed exclusive. (June 19, 1940, 54 Stat. 481, ch. 397, § 4.)

NOTES TO DECISIONS

COLLATERAL ATTACK

A collateral attack upon the creation and existence of a cooperative, and alleged want of capacity to own and dispose of real estate can only be asserted by the state and not by parties to a private dispute. *Glennon* v. *Butler* (D. C. Mun. App. 1949, 66 A. 2d 519).

POWERS

Cooperative associations are specifically authorized to acquire, own, hold, sell, lease, pledge, mortgage or otherwise dispose of any properties incident to their purposes and activities. *Glennon* v. *Butler* (D. C. Mun. App. 1949, 66 A. 2d 519).

§ 29–805. Articles of incorporation—Contents.

Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them if natural persons, and by the presidents and secretaries, if associations, before an officer authorized to take acknowledgments.

Within the limitations of this chapter the articles shall contain—

(1) A statement as to the purpose or purposes for which the association is formed;

(2) The name of the association which shall include the word "cooperative";

(3) The term of existence of the association which may be perpetual;

(4) The location and address of the principal office of the association;

(5) The names and addresses of the incorporators of the association;

(6) The names and addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;

(7) A statement of whether the association is organized with or without shares, and the number of shares or memberships subscribed for;

(8) If organized with shares, a statement of the amount of authorized capital, the number and types of shares and the par value thereof which may be placed at any figure, and the rights, preferences, and restrictions of each type of share;

(9) The minimum number or value of shares which must be owned in order to qualify for membership; if organized without shares, a statement of whether the property rights of members shall be equal or unequal, and if unequal, the rule by which their rights shall be determined;

(10) The maximum amount or percentage of capital which may be owned or controlled by any member; including a statement of whether or not each member shall be limited to a single share, and whether such single shares shall be of various par values;

(11) The method by which any surplus, upon dissolution of the association, shall be distributed, in conformity with the requirements of section 29–836 herein for division of such surplus.

The articles may also contain any other provisions not inconsistent with law or with this chapter, for the conduct of the association's affairs. (June 19, 1940, 54 Stat. 481, ch. 397, § 5.)

§ 29–806. Filing and recordation of articles—Fees—Effect of certificate.

The articles shall be delivered to the recorder of deeds. If he finds that the articles conform to law, he shall file the same upon the payment of a fee of $5, and he shall record the same, upon payment of a fee of $1. Said fees shall be in lieu of any other fees or payments provided in section 45–708, or in any other section of the Code of Laws of the District of Columbia, to be paid for at the time of said filing; and the last paragraph of section 45–708 shall have no application to associations organized under this chapter. After such filing and recording, he shall issue a certificate of incorporation, whereupon the corporate existence shall begin. Such certificate shall be conclusive evidence of the fact that the corporation has been duly incorporated. This shall not preclude the institution of quo warranto proceedings under sections 16–601 to 16–611. The filing or recording of the articles or of amendments thereto, or of any other papers pursuant to this chapter is required for the purpose of affording all persons the opportunity of acquiring knowledge of the contents thereof, but no person or incorporated or unincorporated group dealing with the association shall be charged with constructive notice of the contents of any such articles or papers by reason of such filing or recording. (June 19, 1940, 54 Stat. 482, ch. 397, § 6.)

COMPILER'S NOTE

Reference to "Code of Laws of the District of Columbia" found in this section was to the Code of 1901.

§ 29–807. Amendments of articles—Fee.

Amendments to the articles may be proposed by a two-thirds vote of the board of directors, or by petition of 10 per centum of the association's members. Notice of the meeting to consider such amendment shall be sent by the Secretary at least thirty days in advance thereof to each member at his last-known address, accompanied by the full text of the proposal and by that part of the articles to be amended. Two-thirds of the members voting may adopt said amendment and when verified by the president and secretary, it shall be filed and recorded with the recorder of deeds within thirty days of its adoption, and a fee of $1 shall be paid.

If the amendment is to alter the preferences of outstanding shares of any type, or to authorize the issuance of shares having preferences superior to outstanding shares of any type, the vote of two-thirds of the members owning such outstanding shares affected by the change shall also be required for the adoption of the amendment; if the amendment is to alter the rule by which members' property rights in a nonshare association are determined, a vote of two-thirds of the entire membership shall be required.

The amount of capital and the number and par value of shares may be diminished or increased by amendment of the articles, but the capital shall not be diminished below the amount of paid-up capital existing at the time of amendment. (June 19, 1940, 54 Stat. 483, ch. 397, § 7.)

§ 29–808. By-laws—Adoption, amendment, or repeal.

By-laws shall be adopted, amended, or repealed by at least a majority vote of the members voting. (June 19, 1940, 54 Stat. 483, ch. 397, § 8.)

§ 29–809. Contents of by-laws.

The by-laws may, within the limitations of this chapter provide for—

(1) The method and terms of admission to membership and the disposal of members' interests on cessation of membership for any reason;

(2) The time, place, and manner of calling and conducting meetings;

(3) The number or percentage of the members constituting a quorum;

(4) The number, qualifications, powers, duties, term of office, and manner, time, and vote for election, of directors and officers; and the division or classification, if any, of directors to provide for rotating or overlapping terms;

(5) The compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

(6) The method of distributing the net savings;

(7) The various discretionary provisions of this chapter as well as other provisions incident to the purposes and activities of the association. (June 19, 1940, 54 Stat. 483, ch. 397, § 9.)

§ 29–810. Meetings—Regular and special.

Regular meetings of members shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership, in which case it shall be the duty of the secretary to call such meeting to take place within thirty days after such demand. Regular or special meetings, including meetings by units as hereinafter provided, may be held within or without the District of Columbia as the articles may prescribe. (June 19, 1940, 54 Stat. 483, ch. 397, § 10.)

§ 29–811. Notice of meetings.

The secretary shall give notice of the time and place of meetings by sending a notice thereof to each member at his last-known address not less than the number of days in advance of the meeting specified in the by-laws. In case of a special meeting, the notice shall specify the purpose for which such meeting is called. (June 19, 1940, 54 Stat. 483, ch. 397, § 11.)

§ 29–812. Meetings by units of the membership.

The articles or by-laws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes there cast to the central meeting, or for a method of representation by the election of delegates to the central meeting, or for a combination of both such methods. (June 19, 1940, 54 Stat. 484, ch. 397, § 12.)

§ 29–813. Voting—One member, one vote.

Each member of an association shall have one and only one vote, except that where an association includes among its members any number of other associations or groups organized on a cooperative basis the voting rights of such member associations or groups may be as prescribed in the articles or by-laws.

No voting agreement or other device to evade the one-member-one-vote rule shall be enforceable at law or in equity. (June 19, 1940, 54 Stat. 484, ch. 397, § 13.)

§ 29–814. Proxy voting prohibited.

No member shall be permitted to vote by proxy. (June 19, 1940, 54 Stat. 484, ch. 397, § 14.)

§ 29–815. Voting by mail.

The articles or by-laws may provide for either or both of the following types of voting by mail:

(1) That the secretary shall send to the members a copy of any proposal scheduled to be offered at a meeting, together with the notice of said meeting, and that the mail votes cast by the members shall be counted together with those cast at the meeting if such mail votes are returned to the association within a specified number of days;

(2) That the secretary shall send to any member absent from a meeting an exact copy of the proposal acted upon at the meeting, and that the mail vote of the member upon such proposal, if returned within a specified number of days, shall be counted together with the votes cast at said meeting.

The articles or by-laws may also determine whether and to what extent mail votes shall be counted in computing a quorum. (June 19, 1940, 54 Stat. 484, ch. 397, § 15.)

§ 29–816. Application of voting provisions to voting by mail.

If an association has provided for voting by mail, any provision of this chapter referring to votes cast by the members shall be construed to include the votes cast by mail. (June 19, 1940; 54 Stat. 484, ch. 397, § 16.)

§ 29–817. Application of voting provisions to voting by delegates.

If an association has provided for voting by delegates any provision of this chapter referring to votes cast by the members shall apply to votes cast by delegates; but this shall not permit delegates to vote by mail. (June 19, 1940, 54 Stat. 484, ch. 397, § 17.)

§ 29–818. Directors.

An association shall be managed by a board of not less than five directors, who shall be elected for a term fixed in the by-laws not to exceed three years, by and from the members of the association and shall hold office until their successors are elected, or until removed. Vacancies in the board of directors, otherwise than by removal or expiration of term, shall be filled in such manner as the by-laws may provide.

The by-laws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

An executive committee of the board of directors may be elected in such manner and with such powers and duties as the articles or by-laws may prescribe.

Meetings of directors and of the executive committee may be held within or without the District of Columbia. (June 19, 1940, 54 Stat. 484, ch. 397, § 18.)

§ 29–819. Officers.

The officers of an association shall include a president, one or more vice-presidents, a secretary and a treasurer, or a secretary-treasurer. The officers shall be elected annually by the directors unless the by-laws otherwise provide. The president and at least one vice-president must be directors, but no other officer need be a director. (June 19, 1940, 54 Stat. 485, ch. 397, § 19.)

§ 29–820. Removal of directors and officers.

A director or officer may be removed with or without cause, by a vote of two-thirds of the members voting at a regular or special meeting. The director or officer involved shall have an opportunity to be heard at said meeting. A vacancy caused by any such removal shall be filled by the vote provided in the by-laws for election of directors. (June 19, 1940, 54 Stat. 485, ch. 397, § 20.)

§ 29–821. Referendum on acts of directors.

The articles or by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10 per centum of all the members or by vote of at least a majority of the directors: *Provided, however,* That the rights of third parties which have vested between the time of such action, and such referendum shall not be impaired thereby. (June 19, 1940, 54 Stat. 485, ch. 397, § 21.)

§ 29–822. Shares and membership—Limitations upon the return on capital.

The return upon capital shall not exceed 6 per centum per annum upon the paid-up capital and shall be noncumulative.

Total return upon capital distributed for any single period shall not exceed 50 per centum of the net savings for that period. (June 19, 1940, 54 Stat. 485, ch. 397, § 22.)

§ 29–823. Eligibility and admission to membership.

Any natural person, association, incorporated, or unincorporated group organized on a cooperative basis, or any nonprofit group, shall be eligible for

membership in an association if it has met the qualifications for eligibility, if any, stated in the articles or by-laws and shall be deemed a member upon payment in full for the par value of the minimum amount of share or membership capital stated in the articles as necessary to qualify for membership. (June 19, 1940, 54 Stat. 485, ch. 397, § 23.)

§ 29–824. Subscribers.

Any natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether, and the conditions under which, any voting rights or other rights of membership shall be granted to subscribers. (June 19, 1940, 54 Stat. 485; ch. 397, § 24.)

§ 29–825. Share and membership certificates—Issuance and contents.

No certificate for share or membership capital shall be issued until the par value thereof has been paid for in full. There shall be printed upon each certificate issued by an association a full or condensed statement of the requirements of sections 29–813, 29–814, and 29–826 herein. (June 19, 1940, 54 Stat. 485, ch. 397, § 25.)

§ 29–826. Transfer of shares and membership—Withdrawal.

If a member desires to withdraw from the association or dispose of any or all of his holdings therein, the directors shall have the power to purchase such holdings by paying him the par value of any or all of the holdings offered. The directors shall then reissue or cancel the same. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

If the association fails, within sixty days of the original offer, to purchase all or any part of the holdings offered, the member may dispose of the unpurchased interest elsewhere, subject to the approval of the transferee by a majority vote of the directors. Any would-be transferee not approved by the directors may appeal to the members at their first regular or special meeting thereafter, and the action of the meeting shall be final. If such transferee is not approved, the directors shall exercise their power to purchase, if and when such purchase can be made without jeopardizing the solvency of the association. (June 19, 1940, 54 Stat. 485, ch. 397, § 26.)

§ 29–827. Share and membership certificates—Recall.

The by-laws may give the directors the power to use the reserve funds to recall, at par value, the holdings of any member in excess of the amount requisite for membership; and may also provide that if any member has failed to patronize the association during a period of time specified in the by-laws, the directors may use the reserve funds to recall all his holdings and thereupon he shall cease to be a member of the association. When so recalled, such certificates of share or membership capital shall be either reissued or canceled. (June 19, 1940, 54 Stat. 485, ch. 397, § 27.)

§ 29–828. Share and membership certificates—Attachment.

The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed $50, shall be exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to such liability, the directors of the association may either admit the purchaser thereof to membership, or may purchase from him such holdings at par value. (June 19, 1940, 54 Stat. 485, ch. 397, § 28.)

§ 29–829. Liability of members.

Members shall not be jointly or severally liable for any debts of the association, nor shall a subscriber be so liable except to the extent of the unpaid amount on the shares or membership certificate subscribed by him. No subscriber shall be released from such liability by reason of any assignment of his interest in the shares or membership certificate, but shall remain jointly and severally liable with the assignee until the shares or certificates are fully paid up. (June 19, 1940, 54 Stat. 486, ch. 397, § 29.)

§ 29–830. Expulsion of members—Procedure—Purchase of holdings.

A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed thereof in writing at least ten days in advance of the meeting, and shall have an opportunity to be heard in person or by counsel at said meeting. On decision of the association to expel a member, the board of directors shall purchase the member's holdings at par value, if and when there are sufficient reserve funds. (June 19, 1940, 54 Stat. 486, ch. 397, § 30.)

§ 29–831. Allocation and distribution of net savings.

At least once a year the members and/or the directors, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) Not less than 10 per centum shall be placed in a reserve fund until such time as the fund shall equal at least 50 per centum of the paid-up capital; and such fund may be used in the general conduct of the business. The amounts apportioned to the reserve fund shall be allocated on the books of the association on a patronage basis, or in lieu thereof, the books and records of the association shall afford a means for doing so, in order that upon dissolution or earlier, if deemed advisable, such reserves may be returned to the patrons who have contributed the same, subject to the limitations of section 29–836 herein;

(2) A return upon capital, within the limitations of section 29–822, may be paid upon share capital, or, if the by-laws so provide, upon the membership capital certificates of a nonshare association; but such return upon capital may be paid only out of the

surplus of the aggregate of the assets over the aggregate of the liabilities (including in the latter the amount of the capital stock) after deducting from such aggregate of the assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets;

(3) A portion of the remainder, as determined by the articles or by-laws, shall be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

(4) The remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage: *Provided,* That—

(a) in the case of a member patron, his proportionate amount of savings returns shall be distributed to him unless he agrees that the association should credit the amount to his account toward the purchase of an additional share or shares, or additional membership capital;

(b) in the case of a subscriber patron, his proportionate amount of savings returns may, as the articles or by-laws provide, be distributed to him, or credited to his account until the amount of capital subscribed for has been fully paid;

(c) in the case of a nonmember patron, his proportionate amount of savings returns shall be set aside in a general fund for such patrons and shall be allocated to individual nonmember patrons only upon request and presentation of evidence of the amount of their patronage. Any savings return so allocated shall be credited to such patron toward payment of the minimum amount of share or membership capital necessary for membership. When a sum equal to this amount has accumulated at any time within a period of time specified in the by-laws, such patron shall be deemed and become a member of the association if he so agrees or requests, and complies with any provisions in the by-laws for admission to membership. The certificates of shares or membership to which he is entitled shall then be issued to him.

(d) if within any periods of time specified in the articles or by-laws, (1) any subscriber has not accumulated and paid in the amount of capital subscribed for; or (2) any nonmember patron has not accumulated in his individual account the sum necessary for membership; or (3) any nonmember patron has accumulated the sum necessary for membership but neither requests nor agrees to become a member, or fails to comply with the provisions of the by-laws, if any, for admission to membership, then the amounts so accumulated or paid in and any part of the general fund for nonmember patrons which has not been allocated to individual nonmember patrons shall go to the educational fund and thereafter no member or other patron shall have any rights in said paid-in capital or accumulated savings returns as such: *Provided further,* That nothing in this section shall prevent an association under this chapter which is engaged in rendering services from disposing of the net savings from the rendering of such services in such manner as to lower the fees charged for services or otherwise to further the common benefit of the members: *And provided further,* That nothing in this section shall prevent an association from adopting a system whereby the payment of savings returns which would otherwise be distributed, shall be deferred for a fixed period of months or years; nor from adopting a system, whereby the savings returns distributed shall be partly in cash, partly in shares, such shares to be retired at a fixed future date, in the order of their serial number or date of issue. (June 19, 1940, 54 Stat. 486, ch. 397, § 31.)

§ 29–832. Bonding of officers and employees.

Every individual acting as officer or employee of an association and handling funds or securities amounting to $1,000 or more, in any one year, shall be covered by an adequate bond as determined by the board of directors, and at the expense of the association; and the by-laws may also provide for the bonding of other employees or officers. (June 19, 1940, 54 Stat. 486, ch. 397, § 32.)

§ 29–833. Books—Auditing.

To record its business operation, every association shall keep a set of books, which shall be audited at the end of each fiscal year by an experienced bookkeeper or accountant, who shall not be an officer or director. Where the annual business amounts to less than $10,000, the audit may be performed by an auditing committee of three, who shall not be directors, officers, or employees. A written report of the audit, including a statement of the amount of business transacted with members, and the amount transacted with nonmembers, the balance sheet, and the income and expenses, shall be submitted to the annual meeting of the association. (June 19, 1940, 54 Stat. 488, ch. 397, § 33.)

§ 29–834. Annual report of association.

Every association shall annually, within sixty days of the close of its operations for that year, make a report of its condition, sworn to by the president and secretary, which report shall be filed with the recorder of deeds. The report shall state—

(a) The name and principal address of the association.

(b) The names, addresses, occupations, and date of expiration of the terms, of the officers and directors, and their compensation, if any.

(c) The amount and nature of its authorized, subscribed, and paid-in capital, the number of its shareholders, and the number admitted and withdrawn during the year, the par value of its shares and the rate at which any return upon capital has been paid. For nonshare associations the annual report shall state the total number of members, the number admitted or withdrawn during the year, and the amount of membership fees received.

(d) The receipts, expenditures, assets, and liabilities of the association.

A copy of this report shall be kept on file at the principal office of the association.

Any person who shall subscribe or make oath to such report containing a materially false statement,

known to such person to be false, shall upon conviction of such offense be punished by a fine of not less than $25 nor more than $200, or by imprisonment of not less than thirty days nor more than one year, or both such fine and imprisonment. (June 19, 1940, 54 Stat. 488, ch. 397, § 34.)

§ 29–835. Notice of delinquent reports—Mandamus.

If an association fails to make such report within the required period of sixty days, the recorder of deeds shall within sixty days from the expiration of said period send such association a registered letter directed to its principal office, stating the delinquency and its consequences. If the association fails to file the report within sixty days from the mailing of such notice, any member of the association or the United States attorney for the District of Columbia may by petition for mandamus against the association and its proper officers compel such filing to be made, and in such case the court shall require the association or the officers at fault to pay all the expenses of the proceeding including counsel fees. (June 19, 1940, 54 Stat. 488, ch. 397, § 35.)

§ 29–836. Dissolution—Methods—Procedure.

An association may, at any regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. By a vote of a majority of the members voting three of their number shall be designated as trustees, who shall, on behalf of the association and within a time fixed in their designation or within any extension thereof, liquidate its assets, and shall distribute them in the manner set forth in this section. A suit for involuntary dissolution of an association organized under this chapter may be instituted for the causes and prosecuted in the manner set forth in sections 29–719 to 29–724, 29–726 to 29–729: *Provided,* That any distribution of assets shall be in the manner set forth in this section. In case of any dissolution of an association, its assets shall be distributed in the following manner and order: (1) By paying its debts and expenses; (2) by returning to the members the par value of their shares or of their membership certificates, returning to the subscribers the amounts paid on their subscriptions, and returning to the patrons the amount of savings returns credited to their accounts toward the purchase of shares or membership certificates; and (3) by distributing any surplus in either or both of the following ways as the articles may provide—

(a) Among those patrons who have been members or subscribers at any time during the past six years, on the basis of their patronage during that period;

(b) As a gift to any consumers' cooperative association or other nonprofit enterprise which may be designated in the Articles. (June 19, 1940, 54 Stat. 489, ch. 397, § 36.)

§ 29–837. Penalties—Unauthorized use of name "cooperative"—Existing cooperatives.

Only (1) associations organized under this chapter, (2) groups organized on a cooperative basis under any other law of the District of Columbia, and (3) foreign corporations operating on a cooperative basis and authorized to do business in the District of Columbia under this or any other law of the District of Columbia shall be entitled to use the term "cooperative," or any abbreviation or derivation thereof, as part of their business name, or to represent themselves, in their advertising or otherwise, as conducting business on a cooperative basis.

Any person, firm, or corporation violating the above provision shall upon conviction of such offense be punished by a fine of not less than $25 nor more than $200, with an additional fine of not more than $200 for each month during which a violation occurs after the first month, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. The district attorney of the United States for the District of Columbia, or any individual, or association, or group organized on a cooperative basis, may sue to enjoin an alleged violation of this section.

Should a court of competent jurisdiction decide that any person, firm, or corporation using the name "cooperative" prior to this chapter, and not organized on a cooperative basis, is entitled to continue in such use, any such business shall always place immediately after its name the words "does not comply with the cooperative association law of the District of Columbia" in the same kind of type, and in letters not less than two-thirds as large, as those used in the term "cooperative." (June 19, 1940, 54 Stat. 489, ch. 397, § 37.)

§ 29–838. Promotion expenses—Limitations—Penalty.

An association shall not, directly or indirectly, use any of its funds, nor issue shares nor incur any indebtedness, for the payment of any compensation for the organization of the association except necessary legal fees; nor for the payment of any promotion expenses in excess of 5 per centum of the amount paid in for the shares or membership certificates involved in the promotion transaction. Any association's officer, director, or agent who gives, or any person, firm, corporation or association which receives such promotion commission in violation of this section shall, upon conviction of such offense, be punished by a fine of not less than $25, nor more than $200, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. (June 19, 1940, 54 Stat. 489, ch. 397, § 38.)

§ 29–839. Spreading false reports—Penalty.

Any person, firm, corporation, or association which maliciously and knowingly spreads false reports about the management or finances of any association shall, upon conviction of such offense, be punished by a fine of not less than $25 and not more than $200, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. (June 19, 1940, 54 Stat. 490, ch. 397, § 39.)

§ 29–840. Existing cooperative groups—Acceptance of act.

Any group incorporated under another law of the District of Columbia and operating on a cooperative

basis or any unincorporated group operating on such a basis in the District of Columbia may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by this chapter, and shall thereupon amend such of its articles and by-laws as are not in conformity with this chapter. A certified copy of the amended articles shall be filed and recorded with the recorder of deeds and a fee of $5 shall be paid. (June 19, 1940, 54 Stat. 490, ch. 397, § 40.)

§ 29–841. Foreign corporations and associations—Admission to do business.

A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state wherein it is organized shall be entitled to do business in the District of Columbia as a foreign cooperative corporation or association. (June 19, 1940, 54 Stat. 490, ch. 397, § 41.)

§ 29–842. Legality declared—Not in restraint of trade.

No association, or method or act thereof which complies with this chapter, shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily. (June 19, 1940, 54 Stat. 490, ch. 397, § 42.)

§ 29–843. Laws not applicable.

No law of the District of Columbia conflicting or inconsistent with any part of this chapter shall, to the extent of the conflict or inconsistency, be construed as applicable to associations formed hereunder; nor shall any law of the District of Columbia inappropriate to the purposes of such associations be so construed; nor shall any of the provisions of sections 574 through 797, both inclusive, of the Act entitled "An Act to establish a Code of Law for the District of Columbia," approved March 3, 1901, be construed as applicable to associations formed hereunder, except as expressly stated in this chapter. (June 19, 1940, 54 Stat. 490, ch. 397, § 43.)

COMPILER'S NOTES

The above reference to the Code of Law for the District is to the 1901 Code, and covers the entire subject of corporations as printed in that Code, including Banks, Cemeteries, Insurance, and other specific purpose corporations.

The sections of the 1901 Code above referred to appear in this Code under the following section numbers:

26–101, 26–102, 26–301 to 26–336, 26–401 to 26–414 (Banking and Other Financial Institutions);

27–101 to 27–128 (Cemeteries and Crematories);

29–101 to 29–103, 29–201 to 29–237, 29–301 to 29–308, 29–401 to 29–419, 29–501 to 29–512, 29–601 to 29–606, 29–701 to 29–729 (Corporations);

35–101 to 35–108, 35–202 to 35–205, 35–901 to 35–917, 35–1001 to 35–1005, 35–1133, 35–1201, 35–1202 (Insurance);

44–101 to 44–103, 44–210 to 44–212 (Railroads and Other Carriers).

§ 29–844. Taxation—Annual license fee.

Associations formed hereunder, and foreign corporations and associations admitted under section 29–841 to do business in the District of Columbia and entitled to the benefits of section 29–837, shall pay an annual license fee of $10. (June 19, 1940, 54 Stat. 490, ch. 397, § 44.)

§ 29–845. Separability—Constitutionality.

If any provision of this chapter or the application thereof to any person or circumstance shall be held unconstitutional or otherwise invalid for any reason, the validity of the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby. (June 19, 1940, 54 Stat. 490, ch. 397, § 45.)

§ 29–846. Reservation of right to amend or repeal.

The Congress reserves the right to alter, amend, or repeal this chapter, or any charter or certificate of incorporation made thereunder. (June 19, 1940, 54 Stat. 491, ch. 397, § 46.)

§ 29–847. Short title.

This chapter may be cited as the "District of Columbia Cooperative Association Act." (June 19, 1940, 54 Stat. 491, ch. 397, § 47.)

TITLE 30.—DOMESTIC RELATIONS

Chap.		Sec.
1.	Marriage	30–101
2.	Property rights	30–201

Chapter 1.—MARRIAGE

Sec.
30–101. Prohibitions—Marriages void ab initio.
30–102. Marriage may be decreed to be void.
30–103. Marriages void from date of decree—Age of consent.
30–104. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.
30–105. Marriage out of District of domiciled persons.
30–106. Persons authorized to perform marriage ceremony.
30–107. Marriage performed by unauthorized person—Penalty.
30–108. Celebration of marriage without license—Penalty.
30–109. Issuance of license.
30–110. Duty of clerk before issuing license—Perjury.
30–111. Consent of parent or guardian.
30–112. Form of license—Return—Coupon.
30–113. Failure to make return—Penalty.
30–114. Record of clerk—Contents.
30–115. Marriage records transferred from health department.
30–116. Slave marriages.
30–117. Issue of marriage of colored persons—Legitimacy—Property rights.

§ 30–101 [14: 1]. Prohibitions—Marriages void ab initio.

The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely:

First. The marriage of a man with his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter.

Second. The marriage of a woman with her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's son, husband's daughter's son, brother's son, sister's son.

Third. The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1283.)

CROSS REFERENCES

Proceedings to annul a marriage, §§ 16–402, 16–407 to 16–411.

Divorce and separation, § 16–401 et seq.

NOTES TO DECISIONS

COMMON-LAW MARRIAGE

Proof of common-law marriage was not sufficient to sustain a contract in consideration of marriage. *Evans* v. *Neumann* (51 App. D. C. 300, 278 Fed. 1013).

Common-law marriage not invalid. Surviving widow may recover compensation. *Hoage* v. *Murch Bros. Constr. Co.* (60 App. D. C. 218, 50 Fed. (2d) 983).

The removal of an impediment while parties continue to live together as husband and wife gives rise to a common-law marriage. *Thoma* v. *Murphy* (71 App. D. C. 69, 107 Fed. (2d) 268).

The rule which finds a common-law marriage upon the removal of the impediment, has sometimes been applied though one or both of the parties knew of the impediment, and this result seems socially sound. *Thomas* v. *Murphy* (71 App. D. C. 69, 107 Fed. (2d) 268).

The removal of an impediment to marriage while the parties continued to live together as husband and wife in the District of Columbia, gives rise to a "common law marriage." *McVicker* v. *McVicker* (App. D. C. 1942, 130 F. 2d 837).

DELINQUENT OR DEPENDENT CHILDREN

Marriage of a female child, in itself, does not automatically terminate the control of delinquent or dependent children. *Richardson* v. *Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

DIVORCED PERSONS

This section does not apply to the prohibited remarriage of a divorced person. *Loughran* v. *Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684); *Thomas* v. *Murphy* (71 App. D. C. 69, 107 Fed. (2d) 268).

DIVORCE OBTAINED BY FRAUD

Although District residents, seeking divorce in Virginia, are in pari delicto, a divorce fraudulently obtained will render a subsequent marriage by one absolutely void. *Simmons* v. *Simmons* (57 App. D. C. 216, 19 Fed. (2d) 690, 54 A. L. R. 75).

Status of parties obtaining divorce by falsehood and subterfuge; decree void; subsequent marriage void. Decree not required if marriage void ab initio. *Frey* v. *Frey* (61 App. D. C. 232, 59 Fed. (2d) 1046).

LACHES AND ESTOPPEL

Plaintiff who caused divorce action to be instituted in Virginia by defendant, and thereafter married defendant and lived with her for more than 10 years, is barred by the principles of laches or estoppel from challenging the Virginia decree of divorce. *Goodloe* v. *Hawk* (72 App. D. C. 287, 113 Fed. (2d) 753).

Since this chapter, read as a whole, is not clear regarding intention of Congress as to whether doctrines of laches and estoppel can be applied in both independent annulment suits and in an attack upon marriage in divorce action on ground of invalidity of prior divorce decree of one of the parties, it must be construed and a reasonable intent must be attributed to Congress. *Ruppert* v. *Ruppert*, 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

In wife's divorce suit, where at time of hearing of motion for new trial on ground of newly discovered evidence that wife's foreign divorce decree from another was invalid because of fraud perpetrated on court regarding wife's residence, law in District of Columbia had been declared to be that in annulment proceedings doctrines of laches and estoppel were inapplicable but thereafter it

was held that the general public policy no longer prevented application in annulment actions of laches and estoppel doctrines in determining the effect to be given an irregular foreign divorce decree, wife was entitled to a determination of the case on the basis of the law as declared in the later decision. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

Under marriage and divorce statutes of District of Columbia, in determining the effect to be given irregular foreign divorce decree, the doctrines of "laches" and "estoppel" may be applied not only in annulment actions but also in divorce action where attack upon marriage by a party thereto is made by way of defense. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of wife's prior foreign divorce decree, trial court dismissed complaint on ground that wife's previous marriage had not been terminated but made no finding of fact and stated no conclusions of law upon issues of laches and estoppel of husband to set up invalidity of foreign divorce decree of wife, judgment was reversed and cause remanded for further findings of fact and conclusions of law on such issue. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497. 77 U. S. App. D. C. 65).

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of marriage because of invalidity of wife's prior foreign divorce decree from another, court ordered wife's complaint dismissed on theory that prior marriage had not been terminated and wife's motion to vacate judgment and for new trial was not timely made, overruling of wife's motion could not be considered a determination against the wife of issues of laches and estoppel presented by her motion since it was assumed that the trial court properly overruled the motion on the ground that the motion was too late and did not pass on the merits of the motion. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

REMARRIAGE DURING PERIOD FOR APPEAL

Where marriage was annulled, remarriage of wife after final decree of annulment but before expiration of period for appeal was valid. *Tillinghast* v. *Tillinghast* (58 App. D. C. 107, 25 Fed. (2d) 531).

STATE LAWS

Marriages not polygamous or incestuous, or otherwise declared void by statute, will, if valid by the law of the state where entered into, be recognized as valid in every other jurisdiction. *Loughran* v. *Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684).

Mere statutory prohibition by the state of the domicile either generally of the remarriage of a divorced person, or of remarriage within a prescribed period after the entry of the decree, is given only territorial effect. Such a statute does not invalidate a marriage solemnized in another state in conformity with the laws thereof. *Loughran* v. *Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684).

Language of the Illinois statute does not go so far as the language of the District regarding prohibited marriages which "shall be absolutely void ab initio. without being so decreed, and their nullity may be shown in any collateral proceedings." *Abramson* v. *Abramson* (60 App. D. C. 119, 49 Fed. (2d) 501).

A marriage which is void under the laws of the state where it was celebrated is void in the District of Columbia. *Rhodes* v. *Rhodes* (68 App. D. C. 313, 96 Fed. (2d) 715).

Particular public-policy may require annulment of marriage without regard to guilt or innocence of parties affected, but the general public policy in this jurisdiction, as judicially interpreted, no longer prevents application in annulment actions of the laches and estoppel doctrines in determining the effect to be given foreign divorce decrees. *Goodloe* v. *Hawk* (72 App. D. C. 287, 113 Fed. (2d) 753).

Divorce decree of Virginia court granted person acquiring domicil to obtain divorce but with intention of remaining for an indefinite period is valid under Virginia law and will be recognized in the District of Columbia. *Goodloe* v. *Hawk* (72 App. D. C. 287, 113 Fed. (2d) 753).

§ 30–102 [14: 2]. Marriage may be decreed to be void.

Any of such marriages may also be declared to have been null and void by judicial decree. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1284.)

CROSS REFERENCE

Proceedings to annul marriage, §§ 16–402, 16–407 to 16–411.

NOTES TO DECISIONS

MARRIAGE VOID UNDER STATUTE

Where it appears to the court that a marriage is an absolute nullity, the duty under the law is to decree such a marriage void and prevent any further criminal union of the parties. *Simmons* v. *Simmons* (57 App. D. C. 216, 19 Fed. (2d) 690, 54 A. L. R. 75).

§ 30–103 [14: 3]. Marriages void from date of decree—Age of consent.

The following marriages in said District shall be illegal, and shall be void from the time when their nullity shall be declared by decree, namely:

First. The marriage of an idiot or of a person adjudged to be a lunatic.

Second. Any marriage the consent to which of either party has been procured by force or fraud.

Third. Any marriage either of the parties to which shall be incapable, from physical causes, of entering into the married state.

Fourth. When either of the parties is under the age of consent, which is hereby declared to be eighteen years of age for males and sixteen years of age for females. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1285; June 30, 1902, 32 Stat. 543, ch. 1329; Aug. 12, 1937, 50 Stat. 626, ch. 596, § 1.)

AMENDMENTS

Act of 1901 was amended by act of 1902 by adding, "Fourth, when either of the parties is under the age of consent, which is hereby declared to be sixteen years of age for males and fourteen for females."

Act of 1937 changed the ages in the "Fourth" section.

CROSS REFERENCE

Proceedings for divorce or to annul marriage § 16–402 et seq.

NOTES TO DECISIONS

ANNULMENT BECAUSE OF LUNACY

"Full force and effect will be given to section 1285 (§ 30–103), if the adjudication of lunacy referred to therein is construed to mean adjudication of lunacy in the suit instituted for the annulment of the marriage, although such adjudication per se might not authorize the appointment of a committee, as under section 115b of the code (§ 21–301), which requires a direct proceeding for the purpose." *Mackey* v. *Peters* (22 App. D. C. 341). distinguishing *Groff* v. *Miller* (20 App. D. C. 353).

Suit for annulment of marriage because of lunacy may be filed by a next friend, notwithstanding the fact that a committee has been appointed. *Mackey* v. *Peters* (22 App. D. C. 341).

DISEASE

"Public policy" does not require that an innocent woman must live in marital relationship with a syphilitic husband where marriage is procured by fraud of husband in concealing the disease. *Stone* v. *Stone,* 1943 (136 F. 2d 761, 78 U. S. App. D. C. 5).

Where wife suing for annulment of marriage, contracted in Virginia, because of husband's alleged fraudulent concealment of fact that he was suffering with a venereal disease, produced evidence indicating that husband concealed his condition and that wife on being advised that husband had disease immediately separated and speedily instituted annulment suit, suit was improperly dismissed notwithstanding wife failed to produce

Virginia examining physician. *Stone* v. *Stone,* 1943 (136 F. 2d 761, 78 U. S. App. D. C. 5).

Where wife sought annulment of marriage, contracted in Virginia, on ground of husband's fraudulent concealment of fact that he was suffering with a venereal disease, and wife acted promptly, as soon as she ascertained truth, and refused thereafter to continue marital status, the wife who failed to produce Virginia examining physician, counsel having been appointed by court to represent husband, did not come under rule that a party who has it peculiarly within his power to produce a witness, by failing to do so, creates an inference that if the testimony were produced it would be unfavorable. *Stone* v. *Stone,* 1943 (136 F. 2d 761, 78 U. S. App. D. C. 5).

GROUNDS FOR ANNULMENT

Concealment of pregnancy as fraud. *Lenoir* v. *Lenoir* (24 App. D. C. 160).

Mere barrenness is not a ground for the annulment of a marriage, though the prime object of marriage is thus defeated. *Burroughs* v. *Burroughs* (55 App. D. C. 271, 4 Fed. (2d) 938).

LAW GOVERNING

There being no "public policy" in the District of Columbia which declares marriages contracted by females over 16 but under 18 or males over 18 but under 21 without consent of their parents to be void, the determinant of the right to annulment of a marriage contracted under such circumstances was the law as it prevailed in state where marriage occurred. *Hitchens* v. *Hitchens* (D. C., D. C. 1942, 47 F. Supp. 73).

PURPOSE

It is the purpose of this section that marriages procured by fraud may be set aside at instance of innocent party. *Stone* v. *Stone,* 1943 (136 F. 2d 761, 78 U. S. App. D. C. 5).

REMARRIAGE WITHIN PERIOD FOR APPEAL

A marriage of the unsuccessful party is not void which was performed before the twenty-day period allowed for appeal from an annulment decree, such provision being for the protection of the unsuccessful party. *Tillinghast* v. *Tillinghast* (58 App. D. C. 107, 25 Fed. (2d) 531).

§ 30–104 [14: 4]. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.

A proceeding to declare the nullity of a marriage may be instituted in the case of an infant under the age of consent by such infant, through a next friend, or by the parent or guardian of such infant; and in the case of an idiot or lunatic by next friend. But no such proceedings shall be allowed to be instituted by any person who, being fully capable of contracting a marriage, has knowingly and wilfully contracted any marriage declared illegal by the foregoing sections. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1286; June 30, 1902, 32 Stat. 543, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the word "contraeted" and inserting in lieu thereof the word "contracted."

CROSS REFERENCES

Proceedings to annul marriage, § 16–402 et seq.

See note to § 30–103. *Mackey* v. *Peters* (22 App. D. C. 341).

NOTES TO DECISIONS

LACHES AND ESTOPPEL

Under marriage and divorce statutes of District of Columbia, in determining the effect to be given irregular foreign divorce decree, the doctrines of "laches" and "estoppel" may be applied not only in annulment actions but also in divorce action where attack upon marriage by a party thereto is made by way of defense. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

Since this chapter, read as a whole, is not clear regarding intention of Congress as to whether doctrines of laches and estoppel can be applied in both independent annulment suits and in an attack upon marriage in divorce action on ground of invalidity of prior divorce decree of one of the parties, it must be construed and a reasonable intent must be attributed to Congress. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of wife's prior foreign divorce decree, trial court dismissed complaint on ground that wife's previous marriage had not been terminated but made no finding of fact and stated no conclusions of law upon issues of laches and estoppel of husband to set up invalidity of foreign divorce decree of wife, judgment was reversed and cause remanded for further findings of fact and conclusions of law on such issue. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of marriage because of invalidity of wife's prior foreign divorce decree from another, court ordered wife's complaint dismissed on theory that prior marriage had not been terminated and wife's motion to vacate judgment and for new trial was not timely made, overruling of wife's motion could not be considered a determination against the wife of issues of laches and estoppel presented by her motion since it was assumed that the trial court property overruled the motion on the ground that the motion was too late and did not pass on the merits of the motion. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

VOID AND VOIDABLE

Statute classifies some marriages as void and others as voidable, and in the latter case prohibits, under some circumstances, the bringing of actions to declare them void. *Rhodes* v. *Rhodes* (68 App. D. C. 313, 96 Fed. (2d) 715).

§ 30–105 [14: 5]. Marriage out of District of domiciled persons.

If any marriage declared illegal by the aforegoing sections shall be entered into in another jurisdiction by persons having and retaining their domicile in the District of Columbia, such marriage shall be deemed illegal, and may be decreed to be void in said District in the same manner as if it had been celebrated therein. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1287.)

NOTES TO DECISIONS

PROHIBITED REMARRIAGE OF DIVORCED PERSONS

This section has no application to marriages in violation of a statute which prohibits remarriage of party divorced for adultery. *Loughran* v. *Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684).

§ 30–106 [14: 6]. Persons authorized to perform marriage ceremony.

For the purpose of preserving the evidence of marriages in the District, every minister of the gospel appointed or ordained according to the rites and ceremonies of his church, whether his residence be in the District or elsewhere in the United States or the Territories, may be authorized by any justice of the District Court of the United States for the District of Columbia to celebrate marriages in the District. And marriages may be celebrated in the District by any judge or justice of any court of record: *Provided, however,* That marriages of members of any church or religious society which does not by its custom require the intervention of a minister for the celebration of marriages may be solemnized in the manner prescribed and practiced in any such society, the license in such case to be issued to, and

returns to be made by, a person appointed by such church or religious society for that purpose. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1288; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 1.)

AMENDMENT

The act of 1904 added the proviso.

§ 30–107 [14: 7]. Marriage performed by unauthorized person—Penalty.

If any one except a minister or other person authorized by the foregoing section shall hereafter celebrate the rites of marriage in said District, he shall be subject to the penalty prescribed in the following section. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1289.)

§ 30–108 [14: 8]. Celebration of marriage without license—Penalty.

No person authorized hereby to celebrate the rites of marriage shall do so in any case without first having delivered to him a license therefor addressed to him issued from the clerk's office of said District Court of the United States for the District of Columbia, under a penalty of not more than five hundred dollars, in the discretion of the court, to be recovered upon information in the police court of the District. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1290; June 30, 1902, 32 Stat. 543, ch. 1329.)

AMENDMENT

The act of 1902 inserted after the word "therefor," the words "addressed to him."

§ 30–109 [14: 8a]. Issuance of license.

A license to marry shall not be issued until three days have elapsed from date of application for issuance of said license. (Aug. 12, 1937, 50 Stat. 626, ch. 596, § 2.)

§ 30–110 [14: 9]. Duty of clerk before issuing license—Perjury.

It shall be the duty of the clerk of the District Court of the United States for the District of Columbia before issuing any license to solemnize a marriage to examine any applicant for said license under oath and to ascertain the names, ages, and color of the parties desiring to marry, and if they are under age the names of their parents or guardians, whether they were previously married, whether they are related or not, and if so, in what degree, which facts shall appear on the face of the application, of which the clerk shall provide a printed form, and any false swearing in regard to such matters shall be deemed perjury. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1291.)

§ 30–111 [14: 10]. Consent of parent or guardian.

If any male person intending to marry and seeking a license therefor shall be under twenty-one years of age, or any female so intending shall be under eighteen years of age, and shall not have been previously married, the said clerk shall not issue such license unless the father of such person, or, if there be no father, the mother, or, if there be neither father nor mother, the guardian, if there be such, shall consent to such proposed marriage, either personally to the clerk, or by an instrument in writing attested by a witness and proved to the satisfaction of the clerk. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1292.)

NOTES TO DECISIONS

LAW GOVERNING

There being no "public policy" in the District of Columbia which declares marriages contracted by females over 16 but under 18 or males over 18 but under 21 without consent of their parents to be void, the determinant of the right to annulment of a marriage contracted under such circumstances was the law as it prevailed in state where marriage occurred. *Hitchens* v. *Hitchens* (D. C., D. C. 1942, 47 F. Supp. 73).

MAJORITY OF FEMALE

There is no statute in force which clearly provides that female infants shall as a general rule attain their majority at the age of 18 years. Exceptions to the common-law rule have been provided by statute; these, however, recognize the continued existence of the general rule of the common law. *Jones* v. *Jones* (63 App. D. C. 373, 72 Fed. (2d) 829, 95 A. L. R. 352).

§ 30–112 [14: 11]. Form of license—Return—Coupon.

Licenses to perform the marriage ceremony shall be addressed to some particular minister, magistrate, or other person authorized by section 30–106 to perform or witness the marriage ceremony and shall be in the following form:

Number ———.

To ——— ———, authorized to celebrate (or witness) marriages in the District of Columbia, greeting:

You are hereby authorized to celebrate (or witness) the rites of marriage between ——— ———, of ———, and ——— ———, of ———, and having done so, you are commanded to make return of the same to the clerk's office of the District Court of the United States for the District of Columbia within ten days under a penalty of fifty dollars for default therein.

Witness my hand and seal of said court this ——— day of ———, anno Domini ———.

——— ——— *Clerk.*

By ——— ——— *Assistant Clerk.*

Said return shall be made in person or by mail on a coupon issued with said license and bearing a corresponding number therewith within ten days from the time of said marriage, and shall be in the following form:

Number ———.

I, ——— ———, who have been duly authorized to celebrate (or witness) the rites of marriage in the District of Columbia, do hereby certify that, by authority of a license of corresponding number herewith, I solemnized (or witnessed) the marriage of ——— ——— and ——— ———, named therein, on the ——— day of ———, at ———, in said District.

A second coupon, of corresponding number with the license, shall be attached to and issued with said license, to be given to the contracting parties by the minister or other person to whom such license was addressed, and shall be in the following form:

Number ———.

I hereby certify that on this ——— day of ———, at ———, ——— ——— and ——— ——— were by

(or before) me united in marriage in accordance with the license issued by the clerk of the District Court of the United States for the District of Columbia.

Name ——— ———,

Residence ———.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1293; June 30, 1902, 32 Stat. 543, ch. 1329; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 2.)

AMENDMENTS

The 1902 amendment added the provision that the licenses should be addressed to a particular person authorized to perform marriages in the District.

The 1914 amendment made various changes in the form of the licenses and certificates.

CROSS REFERENCE

See notes under § 30–106.

§ 30–113 [14: 12]. Failure to make return—Penalty.

Any minister or other person, having solemnized or witnessed the rites of marriage under the authority of a license issued as aforesaid, who shall fail to make return as therein required, shall be liable to a penalty of fifty dollars upon conviction of said failure upon information in the police court of said district. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1294; Apr. 23, 1904, 33 Stat. 298, ch. 1490, § 3.)

AMENDMENT

The act of 1904 inserted after the word "solemnized," the words "or witnessed."

§ 30–114 [14: 13]. Record of clerk—Contents.

The clerk of the said court shall provide a record book in his office, consisting of applications and licenses in blank, to be filled up by him with the names and residences of the parties for whose marriage any license may have been issued, said applications and licenses to be numbered consecutively from one upward; and also a record book in which shall be recorded, in the order of their numbers, the certificates of the minister or other persons authorized, upon their return to said office, corresponding to said record book of licenses issued, and a copy of any license and certificate of marriage so kept and recorded, certified by the clerk under his hand and seal, shall be competent evidence of the marriage. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1295.)

CROSS REFERENCES

Duty of health officer to enforce regulations to secure full and correct records of vital statistics, § 6–102.

Fees for copies of record, § 6–103.

Penalty for making false or fictitious transcript of any record of marriage, §§ 6–302, 6–304.

Proof of marriage in prosecutions for nonsupport of wife or minor children, § 22–904.

§ 30–115 [14: 14]. Marriage records transferred from health department.

The clerk of the District Court of the United States for the District of Columbia shall have the same control and custody of the marriage records transferred from the health department as he has of the other marriage records in his office. (Feb. 25, 1929, 45 Stat. 1285, ch. 314.)

CROSS REFERENCE

See notes to § 30–114.

§ 30–116 [14: 15]. Slave marriages.

All colored persons in the District who, previous to their actual emancipation, had undertaken and agreed to occupy the relation to each other of husband and wife, and were cohabiting together as such or in any way recognizing the relation as existing on the 25th day of July, 1866, whether the rites of marriage have been celebrated between them or not, are deemed husband and wife, and are entitled to all the rights and privileges and subject to the duties and obligations of that relation in like manner as if they had been duly married according to law. All the children of such persons shall be deemed legitimate, whether born before or after the date mentioned. When such parties have ceased to cohabit before such date, in consequence of the death of the woman or from any other cause, all the children of the woman recognized by the man to be his shall be deemed legitimate. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1296.)

§ 30–117 [14: 16]. Issue of marriage of colored persons—Legitimacy—Property rights.

The issue of any marriage of colored persons contracted and entered into according to any custom prevailing at the time in any of the States wherein the same occurred shall, for all purposes of descent and inheritance and the transmission of both real and personal property within the District of Columbia, be deemed and held to be legitimate and capable of inheriting and transmitting inheritance, and taking as next of kin and distributees according to law, from and to their parents or either of them, and from and to those from whom such parents or either of them may inherit or transmit inheritance, anything in the laws of such State to the contrary notwithstanding: *Provided,* That nothing herein shall be construed as implying that any such marriage is not valid or such issue legitimate for all other purposes. (Mar. 3, 1901, 31 Stat. 1394, ch. 854, § 1297.)

Chapter 2.—PROPERTY RIGHTS

Sec.

30–201. Married women—Power to dispose of separate property—Under 21 years of age.
30–202. Married women may make covenant running with the land.
30–203. Disabilities of infant feme covert—Guardian.
30–204. Trustee for separate estate of married woman—Not necessary—Appointment.
30–205. Husband may convey directly to wife—Rights of creditors—Such conveyance not deemed notice of existence of creditors of husband.
30–206. Equitable separate estate.
30–207. Wife's separate property not liable for husband's debts.
30–208. Power of married women separately to trade, to contract and to sue and be sued—Husband not liable for wife's separate contract or tort.
30–209. Contracts of married woman deemed made in reference to her separate estate.
30–210. Liability of husband for debts of wife before marriage.
30–211. Husband liable for wife's acts in certain cases.
30–212. Insurance of husband's life—By wife—By husband—Proceeds taken free from claims.
30–213. Insurance for benefit of wife, children, dependent relative, or creditor not liable for husband's debts.

Sec.
30–214. Insurance payable on death of wife to children, descendants, or her representatives.
30–215. Receipt of married woman for payment of money deposited by her—Deposits made to defraud creditors.
30–216. Release of dower.

§ 30–201 [14: 21]. Married women—Power to dispose of separate property—Under 21 years of age.

Married women shall hold all their property, of every description, for their separate use as fully as if they were unmarried, and shall have power to dispose of the same by deed, mortgage, lease, will, gift, or otherwise, as fully as if they were unmarried: *Provided,* That no disposition of her real or personal property, or any portion thereof, by deed, mortgage, bill of sale, or other conveyance, shall be valid if made by a married woman under twenty-one years of age. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1154.)

CROSS REFERENCE

Release of dower, § 30–216.

NOTES TO DECISIONS

COMMON LAW

At common law, the husband was entitled during coverture, to the full control and benefits of property held by entirety, and this right was not derived from the nature of the estate but from the general principle of common law vesting of the wife's property in the husband, and the husband's right to rents and profits was subject to execution, and husband could convey the property so as to divest the wife of possession during his life and, in the case he survived her, to vest in the grantee an absolute estate. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

INDORSEMENT OF STOCK CERTIFICATES

The indorsement, by a wife, of stock certificates, delivered to her husband to be used by him as security for a loan, does not violate this section, the wife having no part in the transaction. *Columbia Nat. Bank* v. *Shacklett* (57 App. D. C. 130, 18 Fed. (2d) 172).

MAJORITY OF FEMALE

There is no statute in force in the District of Columbia which clearly provides that female infants shall as a general rule attain their majority at the age of 18 years. Exceptions to the common-law rule have been provided by statute; these, however, recognize the continued existence of the general rule of the common law. *Jones* v. *Jones* (63 App. D. C. 373, 72 Fed. (2d) 829, 95 A. L. R. 352).

TENANCY BY ENTIRETY

"Tenancy by entirety" epitomized the common-law unity of husband and wife by uniting the conceptions of marital entity and joint tenancy and the spouses were neither joint tenants nor tenants in common, for, husband and wife being considered as one person, they could not hold the estate by moities as joint tenants, per tout et per my, but both were seised of the entirety, per tout et non per my, and the consequence of this was a union of husband and wife in the estate so that neither could dispose of any part without the assent of the other and the whole remained to the survivor. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

"Tenancy by entirety" is available only to husband and wife and is a convenient mode of protecting a surviving spouse from inconvenient administration of the decedent's estate and from the other's improvident debts, each has the right to receive the property at the death of the other clear of the latter's attempt to encumber it or subjection to payment of his obligations, and the accretion to sole ownership is subject to taxation. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

Under this chapter each spouse is entitled to the enjoyment and benefits of the whole property held by entirety and neither has a separate estate therein which may be subjected to a conveyance or execution. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

WILLS

Where will executed in 1928 stated that testatrix's husband had been excluded from benefits thereunder because all the real estate in which testatrix was interested was held in joint tenancy with husband and all of testatrix's earnings for 25 years had gone into such real estate, and the residuary clause devised all the residue, real, personal, and mixed, to testatrix's brother, and testatrix's husband thereafter died before testatrix whose will was not thereafter republished, the residuary clause was valid, as respects real estate theretofore owned by testatrix in joint tenancy with her husband who had predeceased testatrix. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

§ 30–202 [14: 22]. Married women may make covenant running with the land.

In all deeds made after January 1, 1902, to married women of real estate or chattels real it shall be competent for the grantee or lessee to bind herself and her assigns by any covenant running with or relating to said real estate or chattels real the same as if she were a feme sole. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1170.)

§ 30–203 [14: 23]. Disabilities of infant feme covert—Guardian.

In case any married woman entitled to a separate estate as aforesaid shall be an infant under twenty-one years of age, she shall be under the same disabilities in regard thereto as other infants, except as herein elsewhere provided, and a guardian of said estate shall be appointed. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1157.)

CROSS REFERENCE

Adult at age 18 or marriage where will provides a bequest payable at majority, § 18–722.

§ 30–204 [14: 24]. Trustee for separate estate of married woman—Not necessary—Appointment.

It shall not be necessary for a married woman to have a trustee to secure to her the sole and separate use of her property; but if she desires it she may make a trustee by deed, or she may apply to a court of equity and have a trustee appointed, in which appointment the uses and trusts for which the trustee holds the property shall be declared. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1153.)

§ 30–205 [14: 25]. Husband may convey directly to wife—Rights of creditors—Such conveyance not deemed notice of existence of creditors of husband.

Whenever any interest or estate of any kind in any property, real, personal, or mixed, situate, lying, or being within this District, has been or shall hereafter be sold, conveyed, assigned, mortgaged, leased, transferred, or delivered by any husband directly or indirectly to his wife, and has been or shall hereafter be subsequently sold, conveyed, assigned, mortgaged, leased, transferred, or delivered by such wife and husband during their coverture, or after January 1, 1902, by such wife solely or by such wife after such

coverture has terminated, or shall after January 1, 1902, be devised or bequeathed by such wife during such coverture or after such coverture has terminated, the fact of such previous sale, conveyance, assignment, mortgage, lease, or delivery by such husband, directly or indirectly, to his wife shall not after January 1, 1902, be deemed or taken, at law or in equity, to have given, preserved, or reserved, nor to give, preserve, or reserve, to any subsisting creditor of such husband, by reason of any debt or obligation, claim, or demand whatsoever, any other or greater right, lien, or cause of action against such interest or estate, or against any third person, his heirs, executors, administrators, or assigns, than such creditors would have had in case such interest or estate had been sold, conveyed, assigned, mortgaged, leased, transferred or delivered, or devised, or bequeathed by such husband directly to such third person. And the fact of such previous sale, conveyance, assignment, mortgage, lease, or delivery by such husband directly or indirectly to his wife, or the recital thereof in any instrument of writing whatever, shall not after January 1, 1902, be deemed or taken, at law or in equity, to give or impart nor to have given or imparted notice to any third person, his heirs, executors, administrators, or assigns of the existence or of the possibility or probability of the existence of any subsisting creditor or creditors of such husband. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1152.)

§ 30–206 [14: 26]. Equitable separate estate.

Nothing contained in this chapter shall be construed to prevent the creation of equitable separate estates. Said estates shall be held according to the provisions of the respective settlements thereof and shall be subject to and governed by the rules and principles of equity applicable to such estates. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1171.)

§ 30–207 [14: 27]. Wife's separate property not liable for husband's debts.

All the property, real, personal, and mixed, belonging to a woman at the time of her marriage, and all such property which she may acquire or receive after her marriage from any person whomsoever, by purchase, gift, grant, devise, bequest, descent, in the course of distribution, by her own skill, labor, or personal exertions, or as proceeds of a judgment at law or decree in equity, or in any other manner, shall be her own property as absolutely as if she were unmarried, and shall be protected from the debts of the husband and shall not in any way be liable for the payment thereof: *Provided*, That no acquisition of property passing to the wife from the husband after coverture shall be valid if the same has been made or granted to her in prejudice of the rights of his subsisting creditors. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1151.)

CROSS REFERENCE

Fraudulent conveyances, § 12–401 et seq.

NOTES TO DECISIONS

ACTIONS IN REPLEVIN

Either spouse may prosecute replevin against the other, in the courts of the District. *Notes* v. *Snyder* (55 App. D. C. 233, 4 Fed. (2d) 426, 41 A. L. R. 1052).

BURDEN OF PROOF

In action against decedent's administrator and widow to recover money judgment against administrator under agreement whereby decedent promised to pay plaintiff certain sums for her child's support during minority in consideration of a release and to set aside as fraudulent a transfer to widow, administrator and widow had burden of proving that agreement, which was valid on its face, was invalid and that transfer was valid. *Brady* v. *Games*, 1942 (128 F. 2d 754, 76 U. S. App. D. C. 47).

FRAUDULENT TRANSFERS

In action against decedent's administrator and widow to recover money judgment against administrator under a certain agreement and to set aside as fraudulent decedent's transfer of property to widow, evidence including fact that transfer was made while action on agreement was pending justified jury in finding that transfer was made with intent to hinder, delay, or defraud plaintiff. *Brady* v. *Games*, 1942 (128 F. 2d 754, 76 U. S. App. D. C. 47).

GIFTS BETWEEN HUSBAND AND WIFE

Gifts between husband and wife, followed quickly thereafter by insolvency on the part of the donor, are justly regarded by the courts with suspicion. *Harding* v. *Aaronson* (63 App. D. C. 107, 69 Fed. (2d) 845).

GUARANTY OF HUSBAND'S INDEBTEDNESS

Subject to the requirement of the Constitution that full faith and credit shall be given by States to the judicial decrees of other States, a judgment of another State on a guaranty by a married woman of her husband's indebtedness will be enforced, notwithstanding the provisions of above section. *Hieston* v. *National City Bank* (51 App. D. C. 394, 280 Fed. 525, 24 A. L. R. 1434).

JUDGMENT SUBJECT TO COLLATERAL ATTACK

A judgment against a married woman is not subject to collateral attack upon an averment that it is founded on the consideration of an accommodation note. *Carroll* v. *Elkins* (58 App. D. C. 265, 29 Fed. (2d) 638).

NOTE AND DEED OF TRUST

A note and deed of trust signed by a married woman, as surety for her husband, is void. *Bradbury* v. *Howard*, (58 App. D. C. 383, 31 Fed. (2d) 222); *Steele* v. *Harrison* (59 App. D. C. 69, 32 Fed. (2d) 965).

SURETY FOR HUSBAND

A married woman's note is void when she signed as surety of her husband and it is likewise void in hands of payee's assignee. *Schwartz* v. *Sacks* (55 App. D. C. 87, 2 Fed. (2d) 188).

Married woman's liability on note dated and made payable in Washington, D. C., which maker signed in Pennsylvania is determined by law of District of Columbia as to question of wife's capacity to sign note as accommodation maker for husband. *Kress* v. *Baldwin* (64 App. D. C. 66, 74 Fed. (2d) 470).

§ 30–208 [14: 43]. Power of married women separately to trade, to contract, and to sue and be sued—Husband not liable for wife's separate contract or tort.

Married women shall have power to engage in any business, and to contract, whether engaged in business or not, and to sue separately upon their contracts, and also to sue separately for the recovery, security, or protection of their property, and for torts committed against them, as fully and freely as if they were unmarried; contracts may also be made with them, and they may also be sued separately upon their contracts, whether made before or during marriage, and for wrongs independent of contract committed by them before or during their marriage, as fully as if they were unmarried, and upon judgments recovered against them execution may be issued as if they were unmarried; nor shall any hus-

band be liable upon any contract made by his wife in her own name and upon her own responsibility, nor for any tort committed separately by her out of his presence without his participation or sanction. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1155; May 28, 1926, 44 Stat. 676, ch. 419.)

AMENDMENT

The act of 1926 struck out the provision "that no married woman shall have power to make any contract as surety or guarantor or as accommodation drawer, acceptor, maker, or indorser."

CROSS REFERENCE

Actions do not abate because of marriage, § 12–112.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

A married woman who purchases real estate and gives as part payment the promissory notes of herself and husband secured by deed of trust upon the property, a separate suit is maintainable against her as the notes relate to her sole and separate estate. *Sonnemann* v. *Loeb* (11 App. D. C. 143).

A married woman trading as feme sole may have action for libel concerning her business without joining her husband. *Wills* v. *Jones* (13 App. D. C. 482).

Under act of Congress June 1, 1896 (29 Stat. 193), known as "Married Woman's Act," a married woman may sue without joinder of husband to recover damages for personal injuries. *Capital Trac. Co.* v. *Rockwell* (17 App. D. C. 369).

When defendant contracted with plaintiff to borrow the money as her separate property, and his note promised to pay her and not her husband, he could not deny her capacity to sue thereon for his default. *Richards* v. *Bippus* (18 App. D. C. 293).

Statutes removing disabilities of married women should not be construed so broadly as to permit a partnership between husband and wife. *Norwood* v. *Francis* (25 App. D. C. 463).

ACCOMMODATION INDORSERS

Married women may make contracts as accommodation indorsers. *Jett* v. *Montague Mfg. Co.* (61 App. D. C. 277, 61 Fed. (2d) 918).

ACTION FOR DAMAGES FROM CONSPIRACY

Wife may maintain an action against persons who formed a conspiracy with her husband to falsely charge her with adultery which was to be brought against her in divorce action. *Ewald* v. *Lane,* (70 App. D. C. 89, 104 Fed. (2d) 222).

ACTION IN REPLEVIN

Either spouse may bring replevin against the other, in order to recover possession of personal property if wrongfully detained. *Notes* v. *Snyder* (55 App. D. C. 233, 4 Fed. (2d) 426, 41 A. L. R. 1052).

ACTIONS TO RECOVER RENT

Under the District Rent Law, a married woman, who is the owner of "rental property," may exercise all the remedies which are secured to owners as such under the act. *Barbagollo* v. *Fishbien* (52 App. D. C. 318, 286 Fed. 780).

Section 201 et seq. of this title have changed the common-law principles of marital unity so that the husband cannot now assert an exclusive right to the rents and profits or divest the wife of her share directly by conveyance or indirectly by execution. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

INDORSEMENT OF STOCK CERTIFICATES TO HUSBAND

This section is not violated when wife indorsed and delivered stock to her husband as she was not a party to the transactions whereby the several banks made the loans to her husband and received the collateral stock from him. *Columbia Nat. Bank* v. *Shacklett* (57 App. D. C. 130, 18 Fed. (2d) 172).

PERSONAL INJURY ACTIONS

A husband is not a "necessary party" to suit by wife to recover damages to herself for injuries negligently inflicted on her person *Lansburgh & Bro.* v. *Clark,* 1942 (127 F. 2d 331, 75 U. S. App. D. C. 339, affirming 38 F. Supp. 729).

Under this section, wife has right to recover damages to herself for injuries negligently inflicted on her person. *Lansburgh & Bro.* v. *Clark,* 1942 (127 F. 2d 331, 75 U. S. App. D. C. 339, affirming 38 F. Supp. 729).

REPEAL OF FORMER STATUTE

This section repeals § 1155, 1901 code, which prohibited married women from being sureties. *Steele* v. *Harrison* (59 App. D. C. 69, 32 Fed. (2d) 965).

In view of the foregoing judicial history of this section, taken together with the proviso, it was plainly the legislative intent that the repeal of the proviso should remove the restrictions imposed by it upon the rights of married women to make contracts as sureties or guarantors, or as accommodation drawers, acceptors, makers, or indorsers, thereby empowering them to enter into such contracts as if unmarried. *Jett* v. *Montague Mfg. Co.* (61 App. D. C. 277, 61 Fed. (2d) 918).

SURETY FOR HUSBAND

A married woman cannot sign note as surety for husband. *Schwartz* v. *Sacks* (55 App. D. C. 87, 2 Fed. (2d) 188).

TORT ACTION AGAINST HUSBAND

A wife may not maintain an action for tort committed by her husband upon her person before coverture, where the action is begun, but not brought to justice before marriage. *Spector* v. *Weisman* (59 App. D. C. 280, 40 Fed. (2d) 792).

Action against former husband for assault committed after decree of absolute divorce had been entered, but before expiration of six months period when decree would become effective, could be maintained as against contention that a married woman may not sue for assault committed on her by her husband during coverture. *Steele* v. *Steele* (D. C., D. C. 1946, 65 F. Supp. 329).

TORT LIABILITY

Neither husband nor wife is liable for the tortious acts of one against the other. This is the common law rule and it prevails today in the District, unaffected by Code § 30–208. *Yellow Cab Co.* v. *Dreslin* (C. A. D. C. 1950, 181 F. 2d 926, 86 U. S. App. D. C. 327).

§ 30–209 [14: 44]. Contracts of married woman deemed made in reference to her separate estate.

Every contract made by a married woman which she has the power to make shall be deemed to be made with reference to her estate which is made her separate estate by this chapter, and also her equitable separate estate, if any she has, as a source of credit to the extent of her power over the same, unless the contrary intent is expressed in the contract. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1156.)

NOTES TO DECISIONS

IN GENERAL

A contract clearly within the power of a married woman to make, "must be deemed to have been made with reference to her separate estate, there being no contrary intent expressed. She is therefore liable to be sued separately thereon." *Dobbins* v. *Thomas* (26 App. D. C. 157). See also *Dobbins* v. *Thomas* (30 App. D. C. 511).

§ 30–210 [14: 45]. Liability of husband for debts of wife before marriage.

No husband shall be liable in any manner for any debts of his wife contracted or for any claims or demands of any kind against her arising prior to marriage, but she and her property shall remain liable

therefor in the same manner as if the marriage had not taken place. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1166.)

CROSS REFERENCE

Actions do not abate because of marriage, § 12–112.

§ 30–211 [14: 46]. Husband liable for wife's acts in certain cases.

Nothing in this chapter shall be construed to relieve the husband from liability for the debts, contracts, or engagements which the wife may incur or enter into upon the credit of her husband, or as his agent, or for necessaries for herself or for his or their children; but as to all such cases his liability shall be or continue as at common law. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1177.)

CROSS REFERENCES

Criminal liability for failure to support wife, § 22–903.
Joint deposits, accounts, or safety-deposit boxes, § 26–201 et seq.

NOTES TO DECISIONS

FUNERAL EXPENSES

Under the common law and under this section the husband is primarily liable for "necessaries" furnished his wife which include funeral expenses and such obligation is not affected by this chapter. *In re Tunison's Estate* (D. C., D. C. 1948, 75 F. Supp. 573).

Where testatrix' will failed to make provision for her funeral expenses, her husband was primarily liable for funeral expenses incurred in and out of the District of Columbia, and such expenses were properly chargeable against husband's distributive share of estate, and, if distributive share payable to husband was not sufficient to defray such funeral expenses, excess thereof was payable out of personalty of estate. *In re Tunison's Estate* (D. C., D. C. 1948, 75 F. Supp. 573).

LIABILITY FOR NECESSARIES

This section "does not undertake to provide that she shall not render herself liable for necessaries when contracted for independently of her husband and with reference to her separate estate, but merely that, in such cases, the husband shall not be relieved of any liability therefor that he may be under by virtue of the common law. It does not substitute the common-law liability of the husband for that of the wife, but retains it as an additional security for the benefit of the other contracting party." *Dobbins* v. *Thomas* (26 App. D. C. 157).

PURCHASES ON CREDIT

A wife, who has been furnished with ample means with which to pay cash for articles of clothing may not purchase the same on her husband's credit. *Saks* v. *Huddleston* (59 App. D. C. 133, 36 Fed. (2d) 537).

§ 30–212 [14: 47]. Insurance of husband's life—By wife—By husband—Proceeds taken free from claims.

Any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee, may insure or cause to be insured for her sole use, the life of her husband for any definite period or for the term of his natural life; and any husband may cause his own life to be insured for the sole use of his wife, and may also assign any policy of insurance upon his own life to his wife for her sole use; and in case of the wife surviving her husband the sum or net amount of such insurance becoming due and payable by the terms of the insurance shall be payable to her for her own use, free from the claims of the representatives of her husband or any of his creditors. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1161.)

§ 30–213 [14: 48]. Insurance for benefit of wife, children, dependent relative, or creditor not liable for husband's debts.

All policies of life insurance upon the life of any person maturing on or after January 1, 1902, and which have been or shall be taken out for the benefit of or bona fide assigned to the wife or children of or any relative dependent upon such person, or any creditor, shall be vested in such wife or children or other relative or creditor, free and clear from all claims of the creditors of such insured person. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1162.)

§ 30–214 [14: 49]. Insurance payable on death of wife to children, descendants, or her representatives.

If the wife shall die before her husband, the amount of such insurance may be payable after her death to the children or descendants for their use, and to their guardian if under age; and if there be no children or descendants of the wife living at the time of her death, to her legal representatives. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1163.)

§ 30–215 [14: 50]. Receipt of married woman for payment of money deposited by her—Deposits made to defraud creditors.

The receipt of any married woman for the payment of money deposited by her before or after marriage shall be a valid discharge to any individual or corporation making such payment: *Provided,* That nothing contained in this section shall prevent any creditor of the husband from attaching the same or restraining the payment by injunction if the deposit was made in fraud of his creditors. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1164.)

§ 30–216 [14: 51]. Release of dower.

If the wife of the party executing a deed, being not less than eighteen years of age, shall desire to release her dower in the property conveyed, she may do so either by joining in the same deed or by a separate deed, wherever executed, signed, sealed, and acknowledged by her in the same manner as provided in section 45–402, and her acknowledgment shall be certified in like manner. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 494; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

Act of 1901 read as follows: "If the wife of the party executing said deed, being not less than eighteen years of age, shall desire to release her right of dower in the property conveyed, she shall unite in the deed with her husband and sign, seal, and acknowledge the same in the same manner as her husband, and the officer taking her acknowledgment shall add to the above form of certificate a further certificate to the following effect, namely:

"And at the same time personally appeared before me, in said District, E F, the wife of said C D, personally well known to me (or proved by the oath of credible witnesses) to be such, and acknowledged the same to be her act and deed.

"Such wife, however, may release her right of dower by her separate deed, when the release claims or derives title from, by, through or under her husband."

CROSS REFERENCES

Conveyance of real estate acquired after insanity or absence for seven years of wife, § 18–204.

Release of dower of a person non compos mentis, § 21–301.

NOTES TO DECISIONS

DEED BY HUSBAND AND WIFE

By a deed, voluntarily executed and duly acknowledged by husband and wife, the entire title of both may be conveyed. *Hitz* v. *Jenks* (123 U. S. 297, 31 L. Ed. 156, 8 Sup. Ct. 143).

"The relinquishment of an inchoate right of dower which a married woman makes by joining in a deed with her husband, can operate against her only by way of estoppel." *Follansbee* v. *Follansbee* (1 App. D. C. 326).

If the conveyance or instrument in which the wife joins is void, or ceases for any reason to operate, and no title has passed, or none remained, the release does not, after that, operate against the wife. *Follansbee* v. *Follansbee* (1 App. D. C. 326).

MORTGAGES

When a wife joins in a mortgage, she retains her dower in the property, subject to the mortgage. *Follansbee* v. *Follansbee* (1 App. D. C. 326).

TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

Chap.		Sec.
1.	Board of Education	31–101
2.	Compulsory school attendance and work permits	31–201
3.	Tuition of nonresidents	31–301
4.	Free textbooks	31–401
5.	Vocational rehabilitation of residents of the District of Columbia	31–501
6.	Teachers, school officers, and other employees in general	31–601
7.	Retirement of public school teachers	31–701
8.	Use of school buildings	31–801
9.	Medical and dental colleges	31–901
10.	The Columbia Institution for the Deaf	31–1001
11.	Miscellaneous	31–1101
12.	Aviation Education in High Schools	31–1201
13.	Educational Agency for Surplus Property	31–1301

Chapter 1.—BOARD OF EDUCATION

Sec.

31–101. Qualifications and appointment—Compensation—Secretary—Meetings—Members exempt from personal liability—Costs and supersedeas bond.

31–102. Appointment—Promotion—Transfer or dismissal of directors, teachers, upon recommendation of superintendent.

31–103. Determination of general policies—Expenditures of funds—Appointment of teachers and employees.

31–104. Annual estimates.

31–105. Superintendent—Appointment—Term of office—Duties.

31–106. Superintendent authorized to act between meetings of the board.

31–107. Acting superintendent authorized to act in absence of superintendent.

31–108. Removal of superintendent.

31–109. Repealed.

31–110. Director of intermediate instruction for white schools—Appointment—Duties.

31–111. Supervisor of manual training—Appointment—Duties.

31–112. Classification of academic and scientific subjects in certain high schools.

31–113. "Head of the department" and "head teacher" defined—Duties—Limitation as to number of students in classes.

31–114. Teachers and officials—Examination—Qualifications—Appointments.

31–115. Principals of schools—Duties.

31–116. Teachers on trial or under investigation to have counsel.

31–117. Masculine pronoun to include both male and female.

31–118. Teachers' college—Expansion of normal schools.

31–119. Board to designate number of classrooms in elementary school buildings.

31–120. Accrediting junior colleges—Effect.

§ 31–101 [7: 1]. Qualifications and appointment—Compensation — Secretary — Meetings — Members exempt from personal liability—Costs and supersedeas bond.

The control of the public schools of the District of Columbia is hereby vested in a Board of Education to consist of nine members all of whom shall have been for five years immediately preceding their appointment bona fide residents of the District of Columbia and three of whom shall be women. The members of the Board of Education shall be appointed by the District court judges of the District of Columbia for terms of three years each, and members shall be eligible for reappointment. The members shall serve without compensation. Vacancies for unexpired terms, caused by death, resignation, or otherwise, shall be filled by the judges of the District Court of the United States for the District of Columbia. The board shall appoint a secretary, who shall not be a member of the board, and they shall hold stated meetings at least once a month during the school year and such additional meetings as they may from time to time provide for. All meetings whatsoever of the board shall be open to the public, except committee meetings dealing with the appointment of teachers. The members of the Board of Education of the District of Columbia shall not be personally liable in damages for any official action of the said board performed in good faith in which the said members participate, nor shall any member of said board be liable for any costs that may be taxed against them or the board on account of any such official action by them as members of the said board; but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits brought against the municipality; nor shall the said board or any of its members be required to give any supersedeas bond or security for costs or damages on any appeal whatever. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; Jan. 26, 1929, 45 Stat. 1139, ch. 105.)

AMENDMENT

Act of June 20, 1906 was amended so as to relieve individual members of the Board of Education of personal liability for acts of the board.

CROSS REFERENCES

Accrediting junior colleges, § 31–120.

Child labor and work permits generally, powers and duties of the Board of Education, title 36, ch. 2.

Compulsory school attendance, exemptions, work permits, powers and duties of board, § 31–201 et seq.

Department of school attendance and work permits, § 31–211 et seq.

Duty to educate colored children, § 31–1110.

Duty to furnish schoolrooms and teachers for colored persons, § 31–1113.

Free textbooks and school supplies, § 31–401 et seq.

Funds for education of children of men who lost their lives in the World War, § 31–1114.

Jurisdiction and control over school buildings, § 31–801 et seq.

Power to license institutions of learning, §§ 29–415 to 29–419.

Religious schools not entitled to privileges and benefits of school laws of district, § 29–512.

Retirement of public school teachers, § 31–701 et seq.

School census, § 31–208 et seq.

Selection of school to be attended, approval of board, § 31–1111.

§ 31–102 [7: 2]. Appointment — Promotion — Transfer or dismissal of directors, teachers, upon recommendation of superintendent.

No appointment, promotion, transfer, or dismissal of any director, supervising principal, principal, head of department, teacher, or any other subordinate to the superintendent of schools, shall be made by the Board of Education, except upon the written recommendation of the superintendent of schools. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2.)

CROSS REFERENCE

General provisions concerning teachers, school officers, and other employees, title 31, ch. 6.

NOTES TO DECISIONS

APPOINTMENT OF TEACHERS

The secretary of the board is not empowered to appoint teachers. This power is vested in the board. *Coleman* v. *District of Columbia* (51 App. D. C. 352, 279 Fed. 990).

Letter from secretary notifying teacher of appointment does not estop the board from denying that she was appointed without condition. *Coleman* v. *District of Columbia* (51 App. D. C. 352, 279 Fed. 990).

MANDAMUS TO RESTORE POSITION

Board of Education may be compelled by mandamus to restore to position a school matron dismissed without authority from superintendent. *Whitwell* v. *United States ex rel. Selden* (61 App. D. C. 169, 58 Fed. (2d) 895).

RULES OF BOARD

The board being empowered to make rules and regulations, they must be deemed to have the force and effect of law. *United States ex rel. Denney* v. *Callahan* (54 App. D. C. 61, 294 Fed. 992); *United States ex rel. Cromwell* v. *Doyle* (69 App. D. C. 215, 99 Fed. (2d) 448).

§ 31–103 [7: 3]. Determination of general policies—Expenditures of funds—Appointment of teachers and employees.

The board shall determine all questions of general policy relating to the schools, shall appoint the executive officers hereinafter provided for, define their duties, and direct expenditures. All expenditures of public funds for such school purposes shall be made and accounted for as provided in section 47–101, under the direction and control of the Commissioners of the District of Columbia. The board shall appoint all teachers in the manner hereinafter prescribed and all other employees provided for in this chapter. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2.)

CROSS REFERENCE

See notes to § 31–101.

§ 31–104 [7: 4]. Annual estimates.

The Board of Education shall annually on the first day of October transmit to the commissioners of the District of Columbia an estimate in detail of the amount of money required for the public schools for the ensuing year, and said commissioners shall transmit the same in their annual estimate of appropriations for the District of Columbia, with such recommendations as they may deem proper. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2.)

CROSS REFERENCES

Annual estimate of salaries, § 31–606.

Apportionment of funds between white and colored schools, § 31–1112.

Budget estimates §§ 47–202, 47–203.

Funds for education of children of men who lost their lives in the World War, § 31–1114.

STATUTORY REFERENCE

Portions of this section are qualified by the National Budget and Audit System. (See U. S. C., title 31, ch. 1.)

§ 31–105 [7: 5]. Superintendent—Appointment—Term of office—Duties.

The board shall appoint one superintendent for all the public schools in the District of Columbia, who shall hold said office for a term of three years and who shall have the direction of and supervision in all matters pertaining to the instruction in all the schools under the Board of Education. He shall have a seat in the board and the right to speak on all matters before the board, but not the right to vote. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

CROSS REFERENCES

Approval of deaf mutes to Columbia Institution for the Deaf, § 31–1008.

Approval of free textbooks and supplies, § 31–404.

Excusing children who are regularly employed from school attendance, § 31–202.

Ex officio member of Commission on Licensure to Practice Healing Art, § 2–103.

Membership and duties on board of examiners, §§ 31–601, 31–602.

Removal of superintendent, § 31–108.

School census, § 31–208 et seq.

§ 31–106 [7: 5a]. Superintendent authorized to act between meetings of the board.

The superintendent of schools of the District of Columbia is authorized to accept the resignation or the application for retirement of any employee, to grant leave of absence to any employee, to extend or terminate any temporary appointment, and to make all changes in personnel and appointments growing out of such resignation, retirement, leave of absence, termination of temporary appointment, or caused by the decease or suspension of any employee, or the organization of a new class or classes, and to perform such other duties necessary for the operation of the public school system as may be authorized by the Board of Education, provisionally and until the next regular meeting of the Board of Education. (Apr. 22, 1932, 47 Stat. 134, ch. 131, § 1.)

CROSS REFERENCE

Appointment, promotion, transfer, or dismissal of teachers or directors, recommendation of superintendent, § 31–102.

§ 31–107 [7: 5b]. Acting superintendent authorized to act in absence of superintendent.

The authority conferred on the superintendent of schools by section 31–106 shall, during his authorized absence, devolve on the person designated as acting superintendent of schools. (Apr. 22, 1932, 47 Stat. 134, ch. 131, § 2.)

CROSS REFERENCE

See note to section 31–106.

§ 31–108 [7: 6]. Removal of superintendent.

The board shall have power to remove the superintendent at any time for adequate cause affecting his character and efficiency as superintendent. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

§ 31–109. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

§ 31–110 [7: 9]. Director of intermediate instruction for white schools—Appointment—Duties.

The board, upon the written recommendation of the superintendent of schools, shall appoint a director of intermediate instruction for the white schools who shall have charge under the direction of the superintendent of the unification of educational work of grades five to eight, inclusive. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

§ 31–111 [7: 10]. Supervisor of manual training—Appointment—Duties.

There shall be appointed by the board a supervisor of manual training who, under the direction of the superintendent, shall have supervision of manual training instruction. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

§ 31–112 [7: 11]. Classification of academic and scientific subjects in certain high schools.

The Board of Education shall classify all academic and scientific subjects in the Central, Eastern, Western, and Business High Schools, and the McKinley Manual Training School into eight departments so that each department shall contain correlated subjects and the M Street High School and the Armstrong Manual Training School shall be similarly classified into four departments so that each department shall contain correlated subjects. (June 20, 1906, 34 Stat. 319, ch. 3446, § 5.)

§ 31–113 [7: 12]. "Head of the department" and "head teacher" defined—Duties—Limitation as to number of students in classes.

Whenever a department includes two or more high schools then the teacher in charge of the department shall be designated "head of the department," otherwise the teacher in charge of the department shall be designated "head teacher": *Provided,* That heads of departments as such have only an advisory capacity in educational matters and upon all questions shall be inferior in authority to the principal of each particular school: *Provided further,* That no class shall be formed in the high schools with less than ten pupils for a period not longer than fifteen days. (June 20, 1906, 34 Stat. 319, ch. 3446, § 5; June 26, 1912, 37 Stat. 157, ch. 182.)

COMPILER'S NOTE

The 1912 act does not amend act of June 20, 1906, but provides for an allowance to principals of grade school buildings for services rendered as such in addition to their grade salary.

CROSS REFERENCES

Head of department of military science and tactics, see § 31–622a.

§ 31–114 [7: 13]. Teachers and officials—Examination—Qualifications—Appointments.

No teacher, head of department, principal, or supervising principal shall be appointed to any position in the graded schools, high schools, manual training schools, or teachers' college, and no director, assistant director, or teacher of special studies shall be appointed until he shall have passed an examination prescribed by the boards of examiners. No person without a degree from an accredited college, or a graduation certificate from an accredited normal school, such normal school graduate to have had at least five years of experience as a teacher in a high school, shall after June 20, 1906, be appointed to teach any academic or scientific subjects in the teachers' college, high, and manual training schools. This provision for examination shall not apply to teachers coming from the teachers' college, or teachers being advanced from the different classes in the grade schools. No teacher of manual training, drawing, domestic science, domestic art, music and physical culture in the teachers' college, high and manual training schools shall be appointed without like qualifications to those required of teachers of academic and scientific subjects in the high schools, and teachers of those subjects shall receive their longevity increase according to their previous number of years of experience in teaching in accredited normal, high and manual training high school. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 26, 1912, 37 Stat. 156, ch. 182; Feb. 25, 1929, 45 Stat. 1276, ch. 314.)

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCE

Board of examiners, powers and duties, § 31–601 et seq.

STATUTORY REFERENCE

Teaching the nature and effect of alcoholic drinks and narcotics on the human system, and requiring teachers to be qualified in the teaching thereof, U. S. C., title 20, §§ 111–113.

NOTES TO DECISIONS

QUALIFICATIONS

When teacher is promoted from class 4 to position of high school teacher in class 6, she is entitled to the increase in salary provided by this act. *District of Columbia* v. *Gardner* (54 App. D. C. 390, 298 Fed. 1005).

Possession of college degree does not alone fulfill eligibility requirements for senior and normal school teachers. *United States ex rel. Gillem* v. *Carusi* (59 App. D. C. 46, 32 Fed. (2d) 942).

§ 31–115 [7:14]. Principals of schools—Duties.

Principals of normal, high, and manual training schools shall each have entire control of his school, both executive and educational, subject only in authority to the superintendent of schools for the white schools and to the colored first assistant superintendent for the colored schools, to whom in each case he shall be directly responsible. (June, 20, 1906, 34 Stat. 320, ch. 3446, § 7, as amended July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.)

COMPILER'S NOTES

Word "first" inserted by compiler on authority of § 31–109.

CODIFICATION

Act June 4, 1924, cited to text, was repealed by act July 21, 1945, 59 Stat. 500, ch. 321, § 21, eff. July 1, 1945. Said act June 4, 1924, did not affect section but placed various teachers and principals in salary classes.

§ 31–116 [7: 15]. Teachers on trial or under investigation to have counsel.

When a teacher is on trial or being investigated he or she shall have the right to be attended by

counsel and by at least one friend of his or her selection. (June 20, 1906, 34 Stat. 321, ch. 3446, § 10.)

CITED

Nalle v. *Oyster* (230 U. S. 165, 57 L. Ed. 1439, 33 Sup. Ct. 1043).

§ 31–117 [7: 16]. Masculine pronoun to include both male and female.

Wherever the masculine pronoun occurs in this chapter it shall be construed to apply to either male or female teachers or employees of the Board of Education. (June 20, 1906, 34 Stat. 321, ch. 3446, § 12.)

§ 31–118 [7: 17]. Teachers' college—Expansion of normal schools.

The Board of Education shall have power to make all necessary rules and regulations for the organization and government of the normal schools, to prescribe the course of study to be pursued therein, and to fix terms for the admission and graduation of pupils: *Provided,* That the Board of Education is hereby authorized, under appropriations hereafter to be made, to expand the two existing normal schools into teachers' colleges, and at the end of the fourth year thereof to award appropriate degrees. (Leg. Assem., June 23, 1873, p. 50, ch. 8, § 3; 45 Stat. 1276, ch. 314.)

AMENDMENT

The act of February 25, 1929, added the proviso.

NOTES TO DECISIONS

NONRESIDENTS

Where section 303 of this title showed that Congress assumed to deal with the subject specifically and in mandatory language, this section did not authorize the board in its discretion to impose a charge on a nonresident student whose father was employed in the District of Columbia. *Cavanagh* v. *Ballou* (D. C., D. C. 1941, 36 F. Supp. 445).

§ 31–119 [7: 40]. Board to designate number of classrooms in elementary school buildings.

For the purpose of determining the classification of teaching principals and administrative principals it shall be the duty of the Board of Education, on the recommendation of the superintendent of the schools, to designate the number of classrooms in each elementary school building. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; June 4, 1924, 43 Stat. 374, ch. 250, § 11.)

AMENDMENT

Although the 1924 act purports to amend the 1906 act, no provisions similar to this section appear in the earlier act.

§ 31–120. Accrediting junior colleges—Effect.

The Board of Education shall be, and is hereby, authorized and empowered to accredit junior colleges operating within the District of Columbia: *Provided,* That the entrance requirements of such junior colleges be not less than high-school graduation, and the number of semester hours required for the title Associate in Arts or Associate in Science be not less than sixty, and the number and character of the courses offered and the number and qualifications of the faculty be reasonable, and the institution be possessed of suitable classroom, laboratory, and library equipment.

That accreditation by the Board of Education of the District of Columbia shall have the same force and effect as is usual in the case of accreditation by the various accrediting agencies of the several states of the Union. (July 2, 1940, 54 Stat. 729, ch. 523.)

Chapter 2.—COMPULSORY SCHOOL ATTENDANCE AND WORK PERMITS

Sec.
31–201. Resident children of 7 to 16 years to have instruction during school year—Duty of parent or guardian.
31–202. Employed children between 14 and 16 excused from attendance after completing eighth grade.
31–203. Mentally or physically unfit excused from attendance—Specialized instruction.
31–204. Board of Education to define valid excuses for absence—Absence without valid excuse unlawful.
31–205. Daily record of attendance.
31–206. Designated absences in a month to be reported.
31–207. Failure to keep child at school a misdemeanor—Penalty.

SCHOOL CENSUS

31–208. Census of children between ages of 3 and 18 years—Daily amendment—Details of enumeration.
31–209. Enrollment and withdrawal of pupils to be reported.
31–210. Neglect or refusal to furnish information for enumeration—Penalty.

ADMINISTRATION

31–211. Department of school attendance and work permits—Creation.
31–212. Director—Appointment—Employees—Competitive examinations.
31–213. Juvenile court given jurisdiction.

§ 31–201 [7: 91]. Resident children of 7 to 16 years to have instruction during school year—Duty of parent or guardian.

Every parent, guardian, or other person residing permanently or temporarily in the District of Columbia who has custody or control of a child between the ages of seven and sixteen years shall cause said child to be regularly instructed in a public school or in a private or parochial school or instructed privately during the period of each year in which the public schools of the District of Columbia are in session: *Provided,* That instruction given in such private or parochial school, or privately, is deemed equivalent by the Board of Education to the instruction given in the public school. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 1.)

CROSS REFERENCES

Board of education, § 31–101 et seq.
Child labor and working permits generally, title 36, ch. 2.
Department of school attendance and work permits, § 31–211 et seq.
Duty to educate colored children, § 31–1110.
Length of school day, § 31–1101.
School census, § 31–208 et seq.
Selection of school to be attended, § 31–1111.

§ 31–202 [7: 92]. Employed children between 14 and 16 excused from attendance after completing eighth grade.

Any child between the ages of fourteen and sixteen years who has completed satisfactorily the eighth-

grade course of study prescribed for the public elementary schools of the District of Columbia, or a course of study deemed by the Board of Education equivalent thereto, may be excused by the superintendent of schools from further attendance at school under the provisions of sections 31–201 to 31–210, provided he is actually, lawfully, and regularly employed. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 2.)

CROSS REFERENCES

Powers and duties of superintendent, § 31–105.
See notes to § 31–201.

§ 31–203 [7: 93]. Mentally or physically unfit excused from attendance—Specialized instruction.

The Board of Education of the District of Columbia may issue a certificate excusing from attendance at school a child who, upon examination ordered by such board, is found to be unable mentally or physically to profit from attendance at school: *Provided, however,* That if such examination shows that such child may benefit from specialized instruction adapted to his needs, he shall attend upon such instruction. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 3.)

§ 31–204 [7: 94]. Board of Education to define valid excuses for absence—Absence without valid excuse unlawful.

The Board of Education shall define in its rules and regulations valid excuses for absence from school, and the absence of a child between the ages of seven and sixteen years for any reason other than so defined as valid shall be unlawful. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 4.)

§ 31–205 [7: 95]. Daily record of attendance.

An accurate daily record of the attendance of all children between the ages of seven and sixteen years shall be kept by the teachers of every public, private, or parochial school and by every teacher giving instruction privately. Such record shall at all times be open to the school-attendance officers or other persons authorized to enforce sections 31–201 to 31–210, who may inspect and copy the same. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 5.)

§ 31–206 [7: 96]. Designated absences in a month to be reported.

It shall be the duty of every principal or head teacher of every public, private, or parochial school, or private teacher to report to the department of school attendance and work permits the name and address of any child between the ages of seven and sixteen years enrolled in his school whenever such child has been absent from school two day sessions or four one-half day sessions or more in any school month, together with the reason for such absence as far as known. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. I, § 6.)

§ 31–207 [7: 97]. Failure to keep child at school a misdemeanor—Penalty.

The parent, guardian, or other person residing permanently or temporarily in the District of Columbia and having charge or control of any child between the ages of seven and sixteen years who is unlawfully absent from public or private school or private instruction shall be guilty of a misdemeanor, and upon conviction of failure to keep such child regularly in public or private school or to cause it to be regularly instructed in private, shall be punished by a fine of $10 or by commitment to jail for five days, or by both, at the discretion of the court: *Provided,* That each two days such child remains away from school unlawfully shall constitute a separate offense: *Provided further,* That upon conviction of the first offense, sentence may, upon payment of costs, be suspended and the defendant placed on probation. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. I, § 7.)

SCHOOL CENSUS

§ 31–208 [7: 98]. Census of children between ages of 3 and 18 years—Daily amendment—Details of enumeration.

It shall be the duty of the director of school attendance and work permits, under instruction of the superintendent of schools, approved by the Board of Education, to cause to be made, annually or as frequently as may be found necessary or desirable, a complete census of all children between the ages of three and eighteen years permanently or temporarily residing in the District of Columbia. Such census shall be amended from day to day as changes of residence occur among children within the ages prescribed in sections 31–201 to 31–210, and as other persons come within the ages prescribed, and as other persons within such ages shall become residents of the District. The record of such enumeration of children shall give the full name, address, race, sex, and date and place of birth of every such child, the school attended by him, and if the child is not at school the name and address of his employer, if any, and the name, address, and occupation of the parents or guardian. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 1.)

§ 31–209 [7: 99]. Enrollment and withdrawal of pupils to be reported.

It shall be the duty of the principal or head teacher of every public, private, or parochial school or private teacher, in accordance with the rules adopted by the Board of Education, to report to the director of the department of school attendance and work permits the name, address, sex, age, and race of every child under eighteen years of age residing permanently or temporarily in the District of Columbia who enrolls in or withdraws from his school. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 2.)

§ 31–210 [7: 100]. Neglect or refusal to furnish information for enumeration—Penalty.

Any parent, guardian, custodian, principal, or teacher of a child between the ages of three and eighteen who willfully neglects or refuses to provide the information required by sections 31–201 to 31–210, or who knowingly makes any false or untrue statement, shall be guilty of a misdemeanor and on conviction shall be punished by a fine of $10 or by commitment to jail for five days, or by both, at the

discretion of the court. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 3.)

ADMINISTRATION

§ 31–211 [7: 141]. Department of school attendance and work permits—Creation.

The Board of Education is hereby authorized to consolidate the administrative duties incident to the enforcement of the provisions of sections 31–201 to 31–213 and of the act to regulate child labor under a single division to be known as the department of school attendance and work permits. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. III, § 1.)

CROSS REFERENCE

Child Labor Law and powers and duties of Board of Education, title 36, ch. 2.

§ 31–212 [7:142]. Director—Appointment—Employees—Competitive examinations.

The Board of Education is hereby authorized, empowered, and directed to appoint a director of said department whose rank shall correspond to that of other directors who serve as officers of the Board of Education, and who shall be known as the Director of the Department of School Attendance and Work Permits, and also to appoint such a number of attendance officers, inspectors, clerks, and other assistants as shall be necessary to carry out the provisions of sections 31–201 to 31–213.

Such appointments, other than that of the director of said department and clerks, shall be made from a list of applicants obtained from open competitive examinations conducted by the respective boards of examiners of the Board of Education, and designed to test the fitness of the applicants for the duties to be performed. (Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, §2; July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.)

AMENDMENTS

Act July 21, 1945, cited to text, amended section by striking out "and who shall be paid the same salary as said directors," following "Board of Education" in first par.

§ 31–213 [7: 143]. Juvenile court given jurisdiction.

The juvenile court of the District of Columbia is hereby given jurisdiction in all cases arising under sections 31–201 to 31–213. (Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, § 3; May 29, 1928, 45 Stat. 1006, ch. 908, § 26.)

AMENDMENT

The act of 1928 changed the words "from" to read "under."

Chapter 3.—TUITION OF NONRESIDENTS

Sec.

31–301. Payment of tuition by nonresidents—Board of Education to fix amount of tuition—Payments deposited in treasury.
31–302. Taxes levied and paid for year preceding time of levying tuition charge credited.
31–303. Admission of pupils whose parents are employed in the District of Columbia.
31–304. Soldiers and sailors on duty at stations adjacent to District of Columbia admitted without tuition.
31–305. Children of officers and men of Army and Navy and of employees of United States stationed outside District admitted without tuition.

§ 31–301 [7: 161]. Payment of tuition by nonresidents—Board of Education to fix amount of tuition—Payments deposited in treasury.

(Except as otherwise provided in this chapter) pupils shall not be admitted to or taught free of charge in the public schools of the District of Columbia who do not reside in said District, or who during such tutelage do not own property in and pay taxes levied by the government of the District of Columbia in excess of the tuition charged under this section to other nonresident pupils, or whose parents do not reside or are not engaged in public duties therein, or during such tutelage pay taxes levied by the government of the District of Columbia in excess of the tuition charged under this section to other nonresident pupils: *Provided*, That any other nonresident pupil may be admitted to and taught in said public schools on the payment of such amount, to be fixed by the Board of Education with the approval of the Commissioners of said District, as will cover the expense of tuition and cost of textbooks and school supplies used by such pupil; and all payments under this section shall be paid into the Treasury of the United States, to the credit of the District of Columbia. (Mar. 3, 1899, 30 Stat. 1056, ch. 422, § 1; Apr. 14, 1906, 34 Stat. 113, ch. 1623; June 26, 1912, 37 Stat. 161, ch. 182.)

COMPILER'S NOTE

Act 1922, 42 Stat. 668, 669, ch. 249, § 1, provided as follows:

"Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States excepting such items of expense as Congress may direct shall be paid on another basis, * * * * * * * After June 30, 1922, where the United States is the owner of ground or the holder thereof in trust for the public, upon which improvements have been made at the joint expense of the United States and the District of Columbia, the revenues therefrom shall first be used to pay the United States 3 per centum of the full value of the ground as a ground rent, and the remainder shall be divided between them in the same proportion that each contributed to said improvements, and for such purposes the assessor for the District of Columbia shall fix the full value of the ground after he has first made oath that he will fairly and impartially appraise the same; and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

The appropriation act of June 7, 1924, 43 Stat. 539, ch. 302, § 1, made a lump sum appropriation as follows: "Any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and in addition, $9,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923, namely:"

Subsequent appropriation acts contained similar provisions, changing only the amount of the appropriation

and the fiscal year (see act of June 12, 1940, 54 Stat. —, ch. 333, § 1). These appropriation acts did not, however, provide for the repeal of the provisions of the 1922 act above quoted. This was done by the act of May 16, 1938, 52 Stat. 375, § 8, which added title 10 to the District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690.

From the foregoing it would seem that there is no longer any apportionment of expenses or segregation of revenues unless specific provision is made therefor by Congress subsequent to the repeal provision.

The words in parentheses were inserted by the compiler.

AMENDMENT

The act of 1906 added provisions for exempting nonresident children owning property in and paying taxes levied by the District and those whose parents pay taxes from paying nonresident tuition. The act of 1912 added the provision that such taxes must be in excess of tuition charged other nonresident pupils. For the amendment of 1922 see the compiler's note above.

Acts of 1906 and 1912 both contained provisions that the money collected be paid into the Treasury of the United States, one-half to credit of United States and one-half to credit of District of Columbia.

CROSS REFERENCES

Admission of nonresident pupils, §§ 31–303 to 31–305.

Disposition of tuition, § 47–126.

Funds for education of children of men who lost their lives in the World War, § 31–1114.

NOTES TO DECISIONS

ENROLLED NONRESIDENTS EXCEPTED

Minor plaintiffs residing outside District of Columbia, who presented their certificates of graduation from junior high school to enrollment officer in high school of District of Columbia and had their names recorded by enrollment officer before enactment of Act July 25, 1947, 61 Stat. 433, prohibiting free instruction of pupils dwelling outside of District unless they were enrolled on date of approval of the act, were "enrolled" as "pupils" within meaning of the act, notwithstanding that they had not received actual class instruction prior to approval of the act. *Wirth* v. *Corning* (D. C., D. C. 1948, 75 F. Supp. 817).

TUITION

That part of this section relative to the admission of nonresident pupils on payment of tuition is permissive and not mandatory. *Ballou* v. *Kemp* (68 App. D. C. 7, 92 Fed. (2d) 556).

§ 31–302 [7: 162]. Taxes levied and paid for year preceding time of levying tuition charge credited.

The taxes levied by the government of the District of Columbia and paid for the year next preceding the time of levying tutelage charges by nonresident pupils or the parents of nonresident pupils shall be accepted as a credit or part credit, as the case may be, on said tutelage. (July 21, 1914, 38 Stat. 536, ch. 191.)

NOTES TO DECISIONS

IN GENERAL

It is natural and desirable that such children as may, should go to Washington for a part, at least, of their educational experience, even though nonresidents' tuition fees may be exacted, and it would be indeed a new principle of taxation if exemption should be limited in favor of institutions which excluded all except residents. *District of Columbia* v. *Mt. Vernon Seminary* (69 App. D. C. 251, 100 Fed. (2d) 116).

§ 31–303 [7: 163]. Admission of pupils whose parents are employed in the District of Columbia.

All pupils whose parents are employed officially or otherwise in the District of Columbia shall be admitted and taught free of charge in the schools of said District. (Mar. 3, 1915, 38 Stat. 910, ch. 80, § 1.)

NOTES TO DECISIONS

CONSTITUTIONALITY

Congress had power to provide for free education within the District of Columbia of adult students whose parents are employed in the District as well as for free education of an infant student, notwithstanding parents resided out of the District. *Cavanagh* v. *Ballou* (D. C., D. C. 1941, 36 F. Supp. 445).

CONSTRUCTION

Where the board of education and superintendent of schools of the District of Columbia interpreted for many years this section as extending the right to graduate as well as to undergraduate schools, and it was inconceivable that Congress was not advised of such interpretation, the interpretation was legislatively adopted and a contrary interpretation could not be urged. *Cavanagh* v. *Ballou* (D. C., D. C. 1941, 36 F. Supp. 445).

Under this section, word "pupils" includes those who might be admitted to graduate schools, such as Wilson Teachers College, as well as to undergraduate schools. *Cavanagh* v. *Ballou* (D. C., D. C. 1941, 36 F. Supp. 445).

Under this section, nonresidents of the District of Columbia, whether adults or minors, may under certain conditions be admitted to any public school in the District, graduate or undergraduate, and, when their parents are employed in the District of Columbia, no tuition shall be charged them, whether adults or minors. *Cavanagh* v. *Ballou* (D. C., D. C. 1941, 36 F. Supp. 445).

MANDAMUS

Statute being mandatory and clear, the duty of the appellant to admit the appellee to the public schools of the District was purely ministerial. Mandamus is the orthodox remedy to compel the performance of a ministerial duty. *Ballou* v. *Kemp* (68 App. D. C. 7, 92 Fed. (2d) 556).

§ 31–304 [7: 164]. Soldiers and sailors on duty at stations adjacent to District of Columbia admitted without tuition.

Soldiers and sailors of the United States not residents of the District of Columbia who are on duty at stations adjacent to the District of Columbia shall be admitted for special instruction to the day schools and night schools of the District of Columbia without payment of tuition. (Mar. 28, 1918, 40 Stat. 470, ch. 28, § 1.)

§ 31–305 [7: 165]. Children of officers and men of Army and Navy and of employees of United States stationed outside District admitted without tuition.

The children of officers and men of the United States Army, Navy, and Marine Corps and children of other employees of the United States stationed outside of the District of Columbia shall be admitted to the public schools without payment of tuition. (May 10, 1926, 44 Stat. 433, ch. 276, § 1; Mar. 2, 1927, 44 Stat. 1314, ch. 271, § 1; May 21, 1928, 45 Stat. 662, ch. 659, § 1; Feb. 25, 1929, 45 Stat. 1279, ch. 314, § 1 and subsequent appropriation acts down to and including June 12, 1940, 54 Stat. 307, ch. 333, § 1.)

REPEATED

Act June 27, 1942, 56 Stat. 435, ch. 452, § 1; act July 1, 1943, 57 Stat. 324, ch. 184, § 1; act June 28, 1944, 58 Stat. 515, ch. 300, § 1.

AMENDMENT

The language of this section is repeated in all appropriation acts subsequent to the Act of 1928, cited to the text.

NOTES TO DECISIONS

PROVISIONS MANDATORY

This section is mandatory, and although many hardships would come about due to insufficient funds to take

care of resident pupils, it was the duty of appellant to admit appellee to the public schools of the District. *Ballou* v. *Kemp* (68 App. D. C. 7, 92 Fed. (2d) 556.)

Chapter 4.—FREE TEXTBOOKS

Sec.
31–401. Textbooks and supplies furnished without charge.
31–402. Books—Property of District—Loaned to students.
31–403. Parents and guardians responsible for books—Liability.
31–404. Limitation on purchases.
31–405. Sale or exchange authorized.
31–406. Expense of textbooks and supplies.

§ 31–401 [7: 253]. Textbooks and supplies furnished without charge.

The Board of Education of the District of Columbia shall provide pupils of the public elementary schools, public junior high schools, and public senior high schools of the District of Columbia free of charge with the use of all textbooks and other necessary educational books and supplies. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 1.)

CROSS REFERENCE

School official may not profit from purchase of school supplies, § 31–1104.

§ 31–402 [7: 254]. Books—Property of District—Loaned to students.

All books purchased by the Board of Education shall be held as property of the District of Columbia and shall be loaned to pupils under such conditions as the Board of Education may prescribe. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 2.)

CROSS REFERENCE

Powers and duties of Superintendent, § 31–105.

§ 31–403 [7: 255]. Parents and guardians responsible for books—Liability.

Parents and guardians of pupils shall be responsible for all books loaned to the children in their charge and shall be held liable for the full price of every such book destroyed, lost, or so damaged as to be made unfit for use by other pupils. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 3.)

§ 31–404 [7: 256]. Limitation on purchases.

The Board of Education shall purchase for use in the public schools only such books and supplies as shall have been duly recommended by the superintendent of schools and formally approved by the Board of Education. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 4.)

CROSS REFERENCE

Board of Education, powers and duties, § 31–101.

§ 31–405 [7: 257]. Sale or exchange authorized.

The Board of Education, in its discretion, is authorized to make exchange or to sell books or other educational supplies which are no longer desired for school use. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 5.)

§ 31–406 [7: 258]. Expense of textbooks and supplies.

The Board of Education is authorized to provide for the necessary expenses of purchase, distribution, care, and preservation of said textbooks and educational supplies out of money appropriated under authority of this chapter. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 6.)

Chapter 5.—VOCATIONAL REHABILITATION OF RESIDENTS OF THE DISTRICT OF COLUMBIA

Sec.
31–501 to 31–507. Repealed.

§§ 31–501 to 31–507. Repealed. July 6, 1943, 57 Stat. 374, ch. 190, § 2.

EFFECTIVE DATE

Section 2 of act July 6, 1943, provided: "Effective July 1, 1943, the Act entitled 'An Act to provide for the vocational rehabilitation of disabled residents of the District of Columbia, and for other purposes,' approved February 23, 1929, as amended, is hereby repealed."

Chapter 6.—TEACHERS, SCHOOL OFFICERS, AND OTHER EMPLOYEES IN GENERAL

Sec.
31–601. Repealed.
31–602. Repealed.
31–603. Repealed.
31–604. Repealed.
31–605. Repealed.
31–606. Repealed.
31–607. Repealed.
31–608. No discrimination in salary because of sex—Deductions affecting salaries—Teacher not to be employed as clerk or librarian.
31–609. Salaries—How paid.
31–610. Repealed.
31–611. Repealed.
31–612. Repealed.
31–613. Repealed.
31–614. Board of Education authorized to establish occupational schools, trade or vocational courses.
31–615. Repealed.
31–616. Salaries of public school librarians.

CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

31–617. Repealed.
31–618. Repealed.
31–619. Repealed.
31–620. Repealed.
31–621. Repealed.
31–622. Repealed.
31–622a. Head of department of military science and tactics—Salary.
31–623. Appointment, classification, and assignment of research assistants.
31–624. Appointment of instructor in automobile driving at Abbott Vocational School—Salary.
31–625. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker—Salary deductions.

METHOD OF PROMOTION OF EMPLOYEES

31–626. Repealed.
31–627. Repealed.
31–628. Repealed.
31–629. Repealed.
31–630. Rules for division of time and computation of pay for services.
31–631. Double salaries—School teachers and employees in District of Columbia.
31–631a. Same—Custodial employees in District of Columbia.

SABBATICAL YEAR

31–632. Granting of leave authorized—Limitation on number.
31–633. Report of person on leave—Termination of leave.
31–634. Teacher's salary while on leave.
31–635. Administrative officers—Salary while on leave—Temporary employees.
31–636. Inclusion of sabbatical year for promotion and retirement purposes.
31–637. Masculine pronoun construed to include female employees.

SALARY SCHEDULES

Sec.
31–638 to 31–658. Repealed.
31–659. Salaries of teachers, school officers, and other employees—Definition—Payment of compensation.

CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES (New)

31–660. Board of Education to establish eligibility requirements and methods of appointment and promotion—Assignment to salary classes—Necessity of examination.
31–661. Assignment to salary classes at time of appointment—Probationary period.

METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARIES

31–662. Rules governing assignment of employees to salary classes—Definition of annual compensation—Increase in salary.
31–663. Longevity increase on date of permanent promotion or appointment.
31–664. Assignment of teachers, school officers, and other employees in service on July 1, 1947, to salary classes.

METHOD OF PROMOTION OF EMPLOYEES

31–665. Annual salary increases within class.
31–666. Salaries upon promotion to higher class.
31–667. Assignment of teachers and other employees on July 1, 1947, to appropriate groups.

ACCOMPANYING LEGISLATION

31–668. Classification of elementary school principals.
31–669. Number of First Assistant Superintendents—Sphere of supervision—Other duties.
31–670. Boards of examiners—Composition—Designation of members.
31–671. Appointment of chief examiners—Compensation.
31–672. Annual substitutes — Appointment, qualifications, and assignment—Pay deductions from absentees—Other substitutes.
31–673. Temporary teachers—Appointment—Term of service—Salary classification.
31–674. Integration in public school system of a department of school attendance, and work permits, evening schools, vacation schools, and Americanization schools—Salaries of employees.
31–675. Classification of certain employees as teachers—Payment of annual salaries.
31–676. Repealed.
31–677. Effective date of salary provisions—Preparation of expenditure estimates—Restrictions on salary increases.
31–678. Leaves of absence and annuitants—Applicability of sections 31–632 to 31–637 and 31–721 to 31–739.
31–679. Salary increases for teachers, school officers and other employees.

SICK AND EMERGENCY LEAVES

31–691. Sick and emergency leaves authorized for teachers and attendance officers.
31–692. Additional leave credits for service prior to July 1, 1949.
31–693. Application of credits to maternity leaves authorized.
31–694. Additional leaves in emergencies.
31–695. Refund required for unearned advanced leave—Exceptions.
31–696. Employment of substitutes.
31–697. Rules and regulations—Definitions.

TEACHER FOREIGN EXCHANGE PROGRAM

31–699. Participation in teacher foreign exchange program authorized—Eligibility.
31–699a. Payment of salary during exchange.
31–699b. Assignment of foreign teachers—Waiver of loyalty oath.

§§ 31–601 to 31–606. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

TRANSFER OF FUNCTIONS, ETC.

Community center department transferred to Recreation Board, see § 8–214.

Transfer of equipment, etc., of Community Center, see § 8–219.

§ 31–607 [7: 48]. Repealed. Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9 (c), eff. July 1, 1949.

§ 31–608 [7: 49]. No discrimination in salary because of sex—Deductions affecting salaries—Teacher not to be employed as clerk or librarian.

In assigning salaries to teachers no discrimination shall be made between male and female teachers employed in the same grade of school and performing a like class of duties; nor shall it be lawful to pay, or authorize or require to be paid, from any of the salaries of such teachers any portion or percentage thereof for the purpose of adding to salaries of higher or lower grades; and no such teacher shall be employed as, or required to discharge the duties of, a clerk or librarian. (Sept. 1, 1916, 39 Stat. 695, ch. 433, § 1.)

§ 31–609 [7: 50]. Salaries—How paid.

The salaries of all teachers, and clerks and librarians in the high and manual-training schools, duly elected, whose services commence with the opening day of school and who shall perform their duties, shall begin on the first day of September and shall be paid in ten monthly installments, the first payment to be made on the 1st day of October, or as near that date as practicable, and the payment for the month of June to be made upon the completion of the school term in June: *Provided,* That the salaries of other teachers shall begin when they enter upon their duties. The Board of Education is authorized to designate the months in which the ten salary payments now required by law shall be made to teachers assigned to instruction in nature study and school gardening, and in health, physical education, and playground activities. (May 26, 1908, 35 Stat. 291, ch. 198; May 21, 1928, 45 Stat. 645, ch. 659, § 1; Feb. 25, 1929, 45 Stat. 1279, ch. 314, § 1; June 29, 1932, 47 Stat. 360, ch. 308, § 1; June 16, 1933, 48 Stat. 236, ch. 93, § 1; Apr. 4, 1938, 52 Stat. 170, ch. 62, § 1; July 15, 1939, 53 Stat. 1017, ch. 281, § 1; June 12, 1940, 54 Stat. 307, ch. 333, § 1.)

AMENDMENT

This section is a composite of the credits cited in the history line.

§§ 31–610 to 31–613. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Transfer of salary of coordinator of Community Center and Playgrounds Department, see § 8–214.

§ 31–614 [7: 31d]. Board of Education authorized to establish occupational schools, trade or vocational courses.

The Board of Education is authorized and empowered to establish occupational schools on the elementary school level for pupils not prepared to pursue vocational courses in the trade or vocational

schools; and also to carry on trade or vocational courses on the senior high school level or in senior high schools. (Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 4.)

CROSS REFERENCE

Classification and assignment of teachers, § 31–617.

§ 31–615. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

§ 31–616 [7: 31f]. Salaries of public school librarians.

The average of the salaries paid librarians in the public schools shall not exceed the average of the salaries paid employees performing the same grade of work in the Free Public Library. (July 15, 1939, 53 Stat. 1014, ch. 281, § 1; June 12, 1940, 54 Stat. 307, ch. 333, § 1.)

CROSS REFERENCE

Classification and assignment of teachers, § 31–617 and notes.

CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

§§ 31–617 to 31–621. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

§ 31–622. Repealed. July 29, 1946, 60 Stat. 709, ch. 693, § 2.

Section, act of June 4, 1935, 49 Stat. 320, ch. 167, provided for appointment of retired Army officer as professor of military science and tactics.

§ 31–622a. Head of department of military science and tactics—Salary.

The Board of Education is hereby authorized to establish in the public schools of the District of Columbia two positions, each with a title "head of department of military science and tactics". Persons shall be appointed or promoted to such positions in accordance with the provisions of sections 31–638 to 31–658, and shall be entitled to receive salaries at the same rate as heads of departments assigned to salary class 17 of the salary schedules set forth in section 31–638. (July 29, 1946, 60 Stat. 708, ch. 693, § 1.)

§ 31–623 [7: 35b]. Classification of research assistants.

Research assistants shall be classified as teachers for pay-roll purposes and for retirement purposes. (Apr. 5, 1939, 53 Stat. 568, ch. 39, § 1–5; July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.)

AMENDMENTS

Section was originally a codification of sections 1–5 of Act April 5, 1939, cited to text. Act July 21, 1945, cited to text, repealed sections 1–3, 5 of said Act April 5, 1939, but did not affect section 4 which now comprises this section.

§ 31–624 [7: 35c]. Appointment of instructor in automobile driving at Abbott Vocational School—Salary.

The Board of Education is hereby authorized to appoint a teacher, class 2–A, for instruction in automobile driving at the Abbott Vocational School at a beginning salary of $2,000. (July 15, 1939, 53 Stat. 1014, ch. 281, § 1; June 12, 1940, 54 Stat. 307, ch. 333, § 1.)

§ 31–625 [7: 53]. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker—Salary deductions.

In the event of the absence of any engineer, assistant engineer, janitor, assistant janitor, laborer, fireman, or caretaker at any time during school sessions the board of education is hereby authorized to appoint a substitute, who shall be paid the salary of the position in which employed, and the amount paid to such substitute shall be deducted from the salary of the absent employee. (Mar. 4, 1913, 37 Stat. 956, ch. 150, § 1.)

METHOD OF PROMOTION OF EMPLOYEES

§§ 31–626 to 31–629. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

TEMPORARY INCREASE IN COMPENSATION

Act Apr. 1, 1943, 57 Stat. 57, ch. 32, as amended by act Mar. 11, 1944, ch. 89, 58 Stat. 115, which provided for temporary increases in the salaries of officers and members of the Metropolitan Police Force and the Fire Department (including the United States Park Police) and teachers, school officers, and other employees of the Board of Education, formerly set out as a note under former section 31–626 terminated on June 30, 1945, by the express provisions of section 2 of said act.

§ 31–630 [7: 51]. Rules for division of time and computation of pay for services.

The following rules for division of time and computation of pay for services rendered are hereby established: Compensations of all teachers and librarians and clerks in the high and manual-training schools shall be divided into ten equal instalments, one of which shall be paid for each school month, and in making payments for a fractional part of a month one-thirtieth of one of such instalments shall be the daily rate of pay. For the purpose of computing such compensation and for computing time for services rendered during a fractional part of a month in connection with the compensation of all teachers and librarians and clerks in the high and manual-training schools, each and every month shall be held to consist of thirty days, without regard to the actual number of days in any calendar month, thus excluding the 31st day of any calendar month from the computation and treating February as if it actually had thirty days. Any person entering the service of the schools during a thirty-one day month and serving until the end thereof shall be entitled to pay for that month from the date of entry to the 30th day of said month, both days inclusive; and any person entering said service during the month of February and serving until the end thereof shall be entitled to one month's pay, less as many thirtieths thereof as there were days elapsed prior to the date of entry: *Provided*, That for one day's unauthorized absence on the 31st day of any calendar month one day's pay shall be forfeited. (May 26, 1908, 35 Stat. 291, ch. 198.)

§ 31–631 [7: 52]. Double salaries—School teachers and employees in District of Columbia.

Section 6, of the Act of Congress approved May 10, 1916 (39 Stat. 120, ch. 117), providing that unless otherwise specifically authorized by law, no money appropriated by any act shall be available for pay-

ment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of $2,000 per annum, shall not apply to teachers of the public schools of the District of Columbia when employed by any of the executive departments or independent establishments of the United States government; nor to teachers in the public schools of the District of Columbia who are also employed as teachers of night schools and vocation schools; nor to employees of the school garden department of the public schools of the District of Columbia; nor to employees of the community center department of the public schools of the District of Columbia. (Oct. 6, 1917, 40 Stat. 384, ch. 79, § 9; July 8, 1918, 40 Stat. 823, ch. 139, § 1; June 5, 1920, 41 Stat. 1017, ch. 253, § 1.)

AMENDMENT

This section is a composite of credits cited in the history line.

§ 31–631a. Same—Custodial employees in District of Columbia.

Section 6, of the Act of Congress approved May 10, 1916 (39 Stat. 120, ch. 117), and Acts amendatory thereto, shall not apply to the custodial employees who are in the employ of the Board of Education of the District of Columbia when such employees are performing work required of them in school buildings during the time these buildings are used for nonrecreational official purposes by any Federal agency or department of the District of Columbia government other than the Board of Education, in accordance with the rules of the Board of Education governing the use of school buildings and grounds, including their use for day or evening schools; and nothing therein contained shall be deemed to prevent any custodial employee from receiving in addition to his pay, salary, or compensation as an employee of the Board of Education of the District of Columbia any other pay, salary, or compensation at a rate not in excess of the rate of pay received as an employee of the Board of Education, for services which may have been rendered subsequent to May 31, 1941, or which may hereafter be rendered to any Federal agency or department of the District of Columbia government other than the Board of Education, during its use of school buildings under the jurisdiction of the Board of Education of the District of Columbia. (July 1, 1942, 56 Stat. 467, ch. 467.)

CROSS REFERENCES

Method of promotion of employees, see sections 31–644 to 31–646.

SABBATICAL YEAR

§ 31–632. Granting of leave authorized—Limitation on number.

The Board of Education, on recommendation of the superintendent of schools, may grant leave of absence with part pay to any employee of said Board of Education whose salary is fixed in sections 31–610, 31–612, who has served in the public schools of the District of Columbia not less than six years continuously prior to filing application for leave, for purposes of educational improvement for a period not exceeding one year at a time, under conditions not herein otherwise specified as the Board of Education may determine, and the place of said person to be filled by the appointment of a qualified temporary employee for the period of said leave: *Provided,* That not more than 2 per centum of the total number of the above-mentioned employees may be on leave with part pay at the same time. (June 12, 1940, 54 Stat. 349, ch. 342, § 1.)

§ 31–633. Report of person on leave—Termination of leave.

Any employee to whom such leave of absence may be granted shall report in writing to the superintendent, in such form as the Board of Education may determine, the manner in which said leave of absence is being employed, and for failure to comply with any requirement of the rules of the Board of Education or to pursue in a satisfactory manner the purpose for which said leave of absence was granted, the Board of Education, on recommendation of the superintendent, may terminate such leave of absence at any time. (June 12, 1940, 54 Stat. 349, ch. 342, § 2.)

§ 31–634. Teacher's salary while on leave.

Any teacher whose salary is fixed in section 31–610, classes 1 to 4, and § 31–612, who is granted leave of absence for educational purposes under the provisions of sections 31–632 to 31–637, shall receive compensation during the period of said leave, paid in the same manner as though on active duty, equal to the difference between the salary which the teacher would have received during the year he is on said leave of absence and the basic annual salary of group A or group C of his salary class, less the amount of his contribution to the retirement fund, in accordance with the provisions of sections 31–701 to 31–720. (June 12, 1940, 54.Stat. 349, ch. 342, § 3.)

§ 31–635. Administrative officers—Salary while on leave—Temporary employees.

Any administrative or supervisory officer mentioned in section 31–632 whose salary is fixed in section 31–610, classes 5 to 12, who is granted leave of absence for educational purposes under the provisions of sections 31–632 to 31–637, shall receive compensation during the period of said leave, paid in the manner as though on active duty, equal to the largest amount to which any teacher in the group B or group D salary class under his supervision would be entitled if given such education leave, less the amount of his contribution to the retirement fund in accordance with the provisions of sections 31–701 to 31–720: *Provided,* That during the period of the leave of said officer, the Board of Education on the recommendation of the superintendent of schools may authorize the temporary assignment to his position of any teacher or officer who serves under said officer on leave: *And provided further,* That the position of the teacher or officer so assigned may be filled during the period of such absence by a qualified temporary employee. (June 12, 1940, 54 Stat. 349, ch. 342, § 4.)

§ 31–636. Inclusion of sabbatical year for promotion and retirement purposes.

The teacher or officer who takes leave of absence with part pay for educational purposes under the

provisions of sections 31–632 to 31–637 shall be construed as in active service, and periods of service for salary increment purposes and for retirement purposes, and the pay which the teacher or officer would have received had leave not been taken shall be used in computing retirement annuities. (June 12, 1940, 54 Stat. 350, ch. 342, § 5.)

§ 31–637. Masculine pronoun construed to include female employees.

Wherever the masculine pronoun occurs in sections 31–632 to 31–637 it shall be construed to mean both male and female employees. (June 12, 1940, 54 Stat. 350, ch. 342, § 6.)

EFFECTIVE DATE

Section 7 of the act of June 12, 1940, ch. 342, provided that the act should take effect on and after July 1, 1940.

§§ 31–638 to 31–658. Repealed, act of July 7, 1947, 61 Stat. 260, ch. 208, title V, § 20, eff. July 1, 1947.

COMPILER'S NOTE

Sec. 20 of the act of July 7, 1947 provided: "The District of Columbia Teachers Salary Act of 1945, approved July 21, 1945, as amended, is hereby repealed." The 1945 act was formerly set out as sections 31—638 to 31—658.

SALARY SCHEDULES

§ 31–659. Salaries of teachers, school officers, and other employees—Definition—Payment of compensation.

On and after July 1, 1947, the salaries of teachers, school officers, and certain other employees of the Board of Education of the District of Columbia shall be as follows, and, wherever the term "other employees" is used in sections 31–659 to 31–678, it shall be interpreted to include only those employees of the Board of Education whose positions are included in the following schedule:

SALARIES OF TEACHERS, SCHOOL LIBRARIANS, RESEARCH ASSISTANTS, AND COUNSELORS

CLASS 1—TEACHERS IN ELEMENTARY SCHOOLS

Group A: A basic salary of $2,500 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,000 per year is reached.

Group C: A basic salary of $3,000 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,500 per year is reached.

CLASS 2—TEACHERS IN JUNIOR HIGH SCHOOLS

Group A: A basic salary of $2,500 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,000 per year is reached.

Group C: A basic salary of $3,000 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,500 per year is reached.

CLASS 3—TEACHERS IN SENIOR HIGH SCHOOLS

Group A: A basic salary of $2,500 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,000 per year is reached.

Group C: A basic salary of $3,000 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,500 per year is reached.

CLASS 4—SCHOOL LIBRARIANS

Group A: A basic salary of $2,500 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,000 per year is reached.

Group C: A basic salary of $3,000 per year, with an annual increase of $100 in salary for fifteen years, or until a maximum salary of $4,500 per year is reached.

CLASS 5—TEACHERS IN VOCATIONAL HIGH SCHOOLS

Group A: A basic salary of $2,500 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,000 per year is reached.

Group C: A basic salary of $3,000 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,500 per year is reached.

CLASS 6—RESEARCH ASSISTANTS AND COUNSELORS

Group A: A basic salary of $2,500 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,000 per year is reached.

Group C: A basic salary of $3,000 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,500 per year is reached.

CLASS 7—INSTRUCTORS IN TEACHERS COLLEGES

Group A: A basic salary of $2,500 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,000 per year is reached.

Group C: A basic salary of $3,000 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,500 per year is reached.

CLASS 8—LIBRARIANS IN TEACHERS COLLEGES

Group A: A basic salary of $2,500 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,000 per year is reached.

Group C: A basic salary of $3,000 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,500 per year is reached.

CLASS 9—CHIEF LIBRARIANS IN TEACHERS COLLEGES

A basic salary of $4,100 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,100 per year is reached.

CLASS 10—ASSISTANT PROFESSORS IN TEACHERS COLLEGES

A basic salary of $4,100 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,100 per year is reached.

CLASS 11—ASSOCIATE PROFESSORS IN TEACHERS COLLEGES

A basic salary of $4,500 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,500 per year is reached.

CLASS 12—PROFESSORS IN TEACHERS COLLEGES

A basic salary of $5,000 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $6,000 per year is reached.

SALARIES OF ADMINISTRATIVE AND SUPERVISORY OFFICERS AND EMPLOYEES IN THE DEPARTMENT OF SCHOOL ATTENDANCE AND WORK PERMITS

CLASS 13—PRINCIPALS IN ELEMENTARY SCHOOLS AND PRINCIPALS IN AMERICANIZATION SCHOOLS

A basic salary of $4,300 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,300 per year is reached.

CLASS 14—ASSISTANT PRINCIPALS IN JUNIOR HIGH SCHOOLS

A basic salary of $4,300 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,300 per year is reached.

CLASS 15—ASSISTANT PRINCIPALS IN VOCATIONAL HIGH SCHOOLS

A basic salary of $4,300 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,300 per year is reached.

CLASS 16—ASSISTANT PRINCIPALS IN SENIOR HIGH SCHOOLS

A basic salary of $4,500 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,500 per year is reached.

CLASS 17—HEADS OF DEPARTMENTS

A basic salary of $4,500 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,500 per year is reached.

CLASS 18—PRINCIPALS OF JUNIOR HIGH SCHOOLS

A basic salary of $4,800 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,800 per year is reached.

CLASS 19—PRINCIPALS OF VOCATIONAL HIGH SCHOOLS

A basic salary of $4,800 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,800 per year is reached.

CLASS 20—PRINCIPALS OF SENIOR HIGH SCHOOLS

A basic salary of $5,300 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $6,300 per year is reached.

CLASS 21—ASSISTANT DIRECTORS

A basic salary of $4,500 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,500 per year is reached.

CLASS 22—DIRECTORS

A basic salary of $5,300 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $6,300 per year is reached.

CLASS 23—DIVISIONAL DIRECTORS

A basic salary of $5,300 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $6,300 per year is reached.

CLASS 24—CHIEF EXAMINERS

A basic salary of $5,300 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $6,300 per year is reached.

CLASS 25—PRESIDENTS OF TEACHERS COLLEGES

A basic salary of $6,400 per year, with an annual increase in salary of $200 for the first six years and $100 for the seventh year, or until a maximum salary of $7,700 per year is reached.

CLASS 26—ASSOCIATE SUPERINTENDENTS

A basic salary of $6,400 per year, with an annual increase in salary of $200 for the first six years and $100 for the seventh year, or until a maximum salary of $7,700 per year is reached.

CLASS 27—ASSISTANT TO THE SUPERINTENDENT (IN CHARGE OF BUSINESS ADMINISTRATION)

A basic salary of $7,400 per year, with an annual increase in salary of $200 for the first six years and $100 for the seventh year, or until a maximum salary of $8,700 per year is reached.

CLASS 28—FIRST ASSISTANT SUPERINTENDENTS

A basic salary of $7,400 per year, with an annual increase in salary of $200 for the first six years and $100 for the seventh year, or until a maximum salary of $8,700 per year is reached.

CLASS 29—SUPERINTENDENT OF SCHOOLS

A salary of $14,000 per year.

DEPARTMENT OF SCHOOL ATTENDANCE AND WORK PERMITS

CLASS 30—DIRECTOR

A basic salary of $4,500 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $5,500 per year is reached.

CLASS 31—CHIEF ATTENDENCE OFFICERS

A basic salary of $3,600 per year, with an annual increase in salary of $100 for ten years, or until a maximum salary of $4,600 per year is reached.

CLASS 32—ATTENDANCE OFFICERS

A basic salary of $2,500 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,000 per year is reached.

CLASS 33—CENSUS SUPERVISORS

A basic salary of $2,500 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,000 per year is reached.

CLASS 34—CHILD-LABOR INSPECTORS

A basic salary of $2,500 per year, with an annual increase in salary of $100 for fifteen years, or until a maximum salary of $4,000 per year is reached.

The teachers, school officers, and other employees provided for in this title, during the first year of service after the effective date of this Act shall receive compensation in accordance with the provisions of sections 31–660, 31–662 to 31–664, 31–666, and 31–669. (July 7, 1947, 61 Stat. 250, ch. 208, title I, § 1, eff. July 1, 1947; Oct. 6, 1949, 63 Stat. 706, ch. 618, § 1, eff. July 1, 1948.)

SHORT TITLE

Sec. 22 of act of July 7, 1947, cited to text, provided: "This Act may be cited as 'District of Columbia Teachers' Salary Act of 1947.'"

EFFECTIVE DATE

Sec. 23 of act of July 7, 1947, cited to text, provided: "This Act [sections 31–659 to 31–678] shall become effective July 1, 1947."

AMENDMENTS

Sec. 1 of act of Oct. 6, 1949, cited to text, struck out the words "with sixteen or more rooms," from the heading of class 13 of the section.

CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

§ 31–660. Board of Education to establish eligibility requirements and methods of appointment and promotion—Assignment to salary classes—Necessity of examinations.

The Board of Education is hereby authorized to establish the eligibility requirements and prescribe such methods of appointment or promotion for teachers, officers, and other employees as it may deem proper. The Board of Education is hereby authorized, empowered, and directed, on written recommendation of the Superintendent of Schools, to classify and assign all teachers, school officers, and other employees to the salary classes and positions in the salary schedule of section 31–659: *Provided,* That teachers, school officers, and other employees on probationary or permanent status shall not be required to take any examinations, either mental or physical, to be continued in the positions in which they are employed on June 30, 1947, or to which they may be transferred and assigned under the provisions of section 31–664. Except as hereinafter provided in this section, no teacher, school officer, or other employee shall be appointed in or promoted to group C in any class or appointed in or promoted to classes 13 to 30, inclusive, or receive a salary in excess of $4,000 in any class or in any class and group unless he possesses a master's degree: *Provided, however,* That any school officer without a master's degree in any one of the classes 13 to 30, inclusive, on June 30, 1947, shall thereafter be entitled to annual increases until he reaches an annual salary rate not more than $500 below the maximum of his class: *And provided further, however,* That no teacher, school officer, or other employee shall receive compensation at a rate less than his annual compensation as of June 30, 1947, including the additional compensation authorized by the Act entitled "An Act to authorize increases in the salary rates of teachers, school officers, and other employees of the Board of Education of the District of Columbia whose pay is fixed and regulated by the 'District of Columbia Teachers' Salary Act of 1945', as amended", approved July 31, 1946. When used in sections 31–659 to 31–678, the words "master's degree" shall mean a master's degree granted in course by an accredited higher educational institution. (July 7, 1947, 61 Stat. 252, ch. 208, title II, § 2, eff. July 1, 1947.)

§ 31–661. Assignment to salary classes at time of appointment—Probationary period.

The Board of Education, on recommendation of the Superintendent of Schools, is authorized, empowered, and directed to assign, at the time of appointment, teachers, school officers, or other employees hereafter appointed to the salary classes and positions in the salary schedule of section 31–659 in accordance with previous experience, eligibility qualifications possessed, and the character of the duties to be performed by such persons: *Provided,* That the first year of service of any newly appointed teacher, school officer, or other employee shall be probationary. (July 7, 1947, 61 Stat. 253, ch. 208, title II, § 3, eff. July 1, 1947.)

METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARIES

§ 31–662. Rules governing assignment of employees to salary classes—Definition of annual compensation—Increase in salary

For the fiscal year ending June 30, 1948, each teacher, school officer, or other employee in the service of the Board of Education on permanent or probationary tenure on June 30, 1947, shall, except as provided in section 31–660, receive the salary provided in the schedule of section 31–659 for his class or position in accordance with the following rules:

(a) For the purposes of the following provisions of this section and of section 31–663, the annual compensation received by any teacher, school officer, or other employee shall be defined as the annual compensation received by such employee on June 30, 1947, under the provisions of title I of the District of Columbia Teachers' Salary Act of 1945, approved July 21, 1945, exclusive of any additional compensation authorized by the Act approved July 31, 1946.

(b) Teachers, school officers, or other employees shall receive an increase in their annual compensation at the rate of $600 at the beginning of the fiscal year ending June 30, 1948: *Provided,* That each teacher, school officer, or other employee shall receive during the fiscal year ending June 30, 1948, the minmum or basic salary of the class or class and group to which he is assigned where the minimum or basic salary of said class or class and group exceeds by more than $600 the annual compensation received by such employee on June 30, 1947: *Provided further,* That each teacher, school officer, or other employee whose salary is increased at the rate of not more than $600 per annum during the fiscal year ending June 30, 1948, shall also receive one annual increase in salary in the amount provided in section 31–659 for his class or class and group if he

would have been entitled to an annual increase on July 1, 1947, under the provisions of said Act of July 21, 1945, as amended. (July 7, 1947, 61 Stat. 253, ch. 208, title III, § 4, eff. July 1, 1947.)

§ 31–663. Annual increases of probationary appointees.

(a) Each teacher, school officer, or other employee in the service of the Board of Education on probationary tenure on June 30, 1947, whose annual compensation is increased under the provisions of sections 31–659 to 31–678 at the rate of not more than $600 during the fiscal year ending June 30, 1948, and each teacher, school officer, or other employee who may be appointed or promoted on probationary tenure after June 30, 1947, shall receive his first annual increase on the date of his permanent appointment or promotion.

(b) Each teacher, school officer, or other employee in the service of the Board of Education on probationary tenure on June 30, 1947, whose annual compensation is increased under the provisions of sections 31–659 to 31–678 at the rate of more than $600 during the fiscal year ending June 30, 1948, shall receive his first annual increase on July 1, 1948. (July 7, 1947, 61 Stat. 253, ch. 208, title III, § 5, eff. July 1, 1947.)

§ 31–664. Assignment of teachers, school officers, and other employees in service on July 1, 1947, to salary classes.

Teachers, school officers, and other employees in the service of the Board of Education on July 1, 1947, assigned to salary classes and positions under the said Act of July 21, 1945, shall be placed in the salary classes and positions of the salary schedule of section 31–659 as follows:

(a) Teachers in kindergartens and elementary schools, now assigned to salary class 1, group A, shall be transferred and assigned to salary class 1, group A, of the schedule of section 31–659;

(b) Teachers in kindergartens and elementary schools, now assigned to salary class 1, group B, shall be transferred and assigned to salary class 1, group A, of the schedule of section 31–659;

(c) Teachers in junior high schools, now assigned to salary class 2, group A, shall be transferred and assigned to salary class 2, group A, of the schedule of section 31–659;

(d) Teachers in junior high schools, now assigned to salary class 2, group B, shall be transferred and assigned to salary class 2, group A, of the schedule of section 31–659;

(e) Teachers in junior high schools, now assigned to salary class 2, group C, shall be transferred and assigned to salary class 2, group C, of the schedule of section 31–659, except that teachers without master's degrees now assigned to salary class 2, group C, shall be transferred and assigned to salary class 2, group A, of the schedule of section 31–659;

(f) Teachers in junior high schools, now assigned to salary class 2, group D, shall be transferred and assigned to salary class 2, group C., of the schedule of section 31–659, except that teachers without master's degrees now assigned to salary class 2, group D, shall be transferred and assigned to salary class 2, group A, of the schedule of section 31–659;

(g) Teachers in senior high schools, now assigned to salary class 3, group A, shall be transferred and assigned to salary class 3, group A, of the schedule of section 31–659, except that teachers with master's degrees now assigned to salary class 3, group A, shall be transferred and assigned to salary class 3, group C, of the schedule of section 31–659;

(h) Teachers in senior high schools, now assigned to salary class 3, group B, shall be transferred and assigned to salary class 3, group C, of the schedule of section 31–659, except that teachers without master's degrees now assigned to salary class 3, group B, shall be transferred and assigned to salary class 3, group A, of the schedule of section 31–659;

(i) Librarians in senior high school and visual instruction libraries, now assigned to salary class 4, group A, shall be transferred and assigned to salary class 4, group A, of the schedule of section 31–659;

(j) Librarians in senior high school and visual instruction libraries, now assigned to salary class 4, group B, shall be transferred and assigned to salary class 4, group A, of the schedule of section 31–659;

(k) Teachers in vocational or trade schools shall be transferred and assigned as follows:

(1) Vocational school teachers now assigned to salary class 5, group A, shall be transferred and assigned to salary class 5, group A, of the schedule of section 31–659;

(2) Vocational school teachers now assigned to salary class 5, group B, shall be transferred and assigned to salary class 5, group A, of the schedule of section 31–659;

(3) Vocational school teachers now assigned to salary class 5, group C, shall be transferred and assigned to salary class 5, group C, of the schedule of section 31–659, except that vocational school teachers without master's degrees now assigned to salary class 5, group C, shall be transferred and assigned to salary class 5, group A, of the schedule of section 31–659; and

(4) Vocational school teachers now assigned to salary class 5, group D, shall be transferred and assigned to salary class 5, group C, of the schedule of section 31–659, except that vocational school teachers without master's degrees now assigned to salary class 5, group D, shall be transferred and assigned to salary class 5, group A, of the schedule of section 31–659;

(*l*) Research assistants shall be transferred and assigned as follows:

(1) Research assistants now assigned to salary class 6, group A, shall be transferred and assigned to salary class 6, group A, of the schedule of section 31–659;

(2) Research assistants now assigned to salary class 6, group B, shall be transferred and assigned to salary class 6, group A, of the schedule of section 31–659;

(3) Research assistants now assigned to salary class 6, group C, shall be transferred and assigned to salary class 6, group C, of the schedule of section 31–659, except that research assistants without

master's degrees now assigned to salary class 6, group C, shall be transferred and assigned to salary class 6, group A, of the schedule of section 31–659; and

(4) Research assistants now assigned to salary class 6, group D, shall be transferred and assigned to salary class 6, group C, of the schedule of section 31–659, except that research assistants without master's degrees now assigned to salary class 6, group D, shall be transferred and assigned to salary class 6, group A, of the schedule of section 31–659;

(m) Instructors in the teachers colleges now assigned to salary class 7, group A, shall be transferred and assigned to salary class 7, group C, of the schedule of section 31–659, except that instructors in teachers colleges without master's degrees now assigned to salary class 7, group A, shall be transferred and assigned to salary class 7, group A, of the schedule of section 31–659;

(n) Instructors in the teachers colleges now assigned to salary class 7, group B, shall be transferred and assigned to salary class 7, group C, of the schedule of section 31–659, except that instructors in teachers colleges without master's degrees now assigned to salary class 7, group B, shall be transferred and assigned to salary class 7, group A, of the schedule of section 31–659;

(o) Librarians in the teachers colleges now assigned to salary class 8, group A, shall be transferred and assigned to salary class 8, group A, of the schedule of section 31–659, except that librarians in the teachers colleges now assigned to salary class 8, group A, with master's degrees shall be transferred and assigned to salary class 8, group C, of the schedule of section 31–659;

(p) Librarians in the teachers colleges now assigned to salary class 8, group B, shall be transferred and assigned to salary class 8, group C, of the schedule of section 31–659, except that librarians in the teachers colleges without master's degrees now assigned to salary class 8, group B, shall be transferred and assigned to salary class 8, group A, of the schedule of section 31–659;

(q) Assistant professors in teachers colleges now assigned to salary class 10, shall be transferred and assigned to salary class 10 of the schedule of section 31–659;

(r) Associate professors in teachers colleges now assigned to salary class 11 shall be transferred and assigned to salary class 11 of the schedule of section 31–659;

(s) Professors in teachers colleges now assigned to salary class 12 shall be transferred and assigned to salary class 12 of the schedule of section 31–659;

(t) Principals in elementary schools with sixteen or more rooms, and principals in Americanization schools, now assigned to salary class 13, shall be transferred and assigned to salary class 13 of the schedule of section 31–659;

(u) Assistant principals in junior high schools, now assigned to salary class 14, shall be transferred and assigned to salary class 14 of the schedule of section 31–659;

(v) Assistant principals in senior high schools, now assigned to salary class 16, shall be transferred and assigned to salary class 16 of the schedule of section 31–659;

(w) Heads of departments, now assigned to salary class 17, shall be transferred and assigned to salary class 17 of the schedule of section 31–659;

(x) Principals of junior high schools, now assigned to salary class 18, shall be transferred and assigned to salary class 18 of the schedule of section 31–659;

(y) Principals of vocational schools, now assigned to salary class 19, shall be transferred and assigned to salary class 19 of the schedule of section 31–659;

(z) Principals of senior high schools, now assigned to salary class 20, shall be transferred and assigned to salary class 20 of the schedule of section 31–659;

(aa) Assistant directors, now assigned to salary class 21, shall be transferred and assigned to salary class 21 of the schedule of section 31–659;

(ab) Supervisors of penmanship now assigned to salary class 7, group B, shall be transferred and assigned to salary class 7, group C, of the schedule of section 31–659 with the title of instructor in the teachers colleges. Those without master's degrees now assigned to salary class 7, group B, shall be transferred and assigned to salary class 7, group A, of the schedule of section 31–659 with the title of instructor in the teachers colleges;

(ac) Divisional directors now assigned to salary class 23, shall be transferred and assigned to salary class 23 of the schedule of section 31–659;

(ad) Chief Examiner of the Board of Examiners, now assigned to salary class 24, shall be transferred and assigned to salary class 24 of the schedule of section 31–659;

(ae) Presidents of teachers colleges, now assigned to salary class 25, shall be transferred and assigned to salary class 25 of the schedule of section 31–659;

(af) Associate superintendents, now assigned to salary class 26, shall be transferred and assigned to salary class 26 of the schedule of section 31–659;

(ag) Assistant to the superintendent (in charge of business administration), now assigned to salary class 27, shall be transferred and assigned to salary class 27 of the schedule of section 31–659;

(ah) First assistant superintendents, now assigned to salary class 28, shall be transferred and assigned to salary class 28 of the schedule of section 31–659;

(ai) Superintendent of Schools, now assigned to salary class 29, shall be assigned and transferred to salary class 29 of the schedule of section 31–659;

(aj) Director of department of school attendance and work permits, now assigned to salary class 30, shall be transferred and assigned to salary class 30 of the schedule of section 31–659;

(ak) Chief attendance officers, now assigned to salary class 31, shall be transferred and assigned to salary class 31 of the schedule of section 31–659;

(al) Attendance officers, now assigned to salary class 32, shall be transferred and assigned to salary class 32 of the schedule of section 31–659;

(am) Census supervisors, now assigned to salary class 33, shall be transferred and assigned to salary class 33 of the schedule of section 31–659;

(an) Child-labor inspectors, now assigned to salary class 34, shall be transferred and assigned to salary class 34 of the foregoing schedule of section 31–659;

(ao) All teachers, school officers, and other employees in the service of the Board of Education on July 1, 1947, not specifically mentioned in the provisions of this section shall be placed in the salary classes and position in the schedule of section 31–659 as determined by the Board in accordance with the eligibility qualifications possessed and the character of duties to be performed by such teachers, school officers, and other employees;

(ap) All teachers, school officers, or other employees, appointed after the effective date of this Act, shall be placed in the salary classes and positions in the schedule of section 31–659 by the said Board, and all teachers, librarians, research assistants, counselors, instructors in the teachers colleges, attendance officers, census supervisors, and child-labor inspectors appointed after July 1, 1947, shall receive longevity increases for placement either according to the number of years of experience required by the Board of Education or the number of years of like experience acceptable to and approved by the Board of Education in accredited schools, school systems, colleges, universities, other recognized institutions, trades and industries, previous to probationary appointment in the public schools of the District of Columbia. In the case of teachers of vocational subjects the Board of Education is authorized and directed to credit approved training and experience in the trades in the same manner and to the same extent as though it were experience in and training for teaching. In crediting previous experience of any person who has been absent from his duties because of naval or military service in the armed forces of the United States or its allies, the Board of Education is hereby authorized to include such naval or military service as the equivalent of approved experience. On July 1, 1947, and thereafter, no teacher or any other employee entitled to longevity increases for placement shall be placed in the salary schedule of section 31–659 for more than the fifth year of accepted and approved experience in salary class 1, group A or group C; salary class 2, group A or group C; salary class 3, group A or group C; salary class 4, group A or group C; salary class 5, group A or group C; salary class 6, group A or group C; salary class 7, group A or group C; and salary class 8, group A or group C, or for more than the fourth year of accepted and approved experience in salary class 32, salary class 33, and salary class 34 in the schedule of section 31–659. This paragraph shall not be construed to increase the allowance for longevity increases for placement of any probationary or permanent teacher or other probationary or permanent employee in the service of the Board of Education on June 30, 1947. No longevity increases for placement as provided in this paragraph shall be granted to any probationary or temporary teacher, librarian, research assistant, counselor, or instructor in the teachers colleges appointed after June 30, 1949, to group C in salary classes 1 to 8, inclusive, in section 31–659, unless credit for such increases is based upon approved teaching or other service rendered after the master's degree had been conferred upon the appointee: *Provided,* That this limitation on placement credit shall not apply to appointments made from current eligible lists effective on July 1, 1949.

(aq) No provision in sections 31–659 to 31–678 shall be interpreted as preventing any teacher, school officer, or other employee of the Board of Education who has been granted leave to enter the armed forces of the United States or its allies from receiving any annual longevity increase or increases to which he otherwise would be entitled when he returns to service in the public schools.

(ar) Every permanent and probationary teacher, librarian, research assistant, counselor, and instructor in the teachers colleges in the employ of the Board of Education on June 30, 1947, who either possessed a master's degree on June 30, 1947, or shall have received a master's degree during the fiscal year ending June 30, 1948, and whose salary during the fiscal year ending June 30, 1948, was less than $3,500, shall be entitled to receive in lieu thereof a salary of $3,000 per annum plus longevity increases for placement in group C in salary classes 1 to 8, inclusive, in section 31–659, of $100 for each year of like service in the public schools of the District of Columbia acceptable to and approved by the Board of Education, including military leave and educational leave with part pay, subsequent to probationary appointment and prior to July 1, 1947, but for not more than the fifth year of such service, to be effective as of July 1, 1947, or on the first of the month immediately following the date on which the master's degree was conferred, whichever is later, and shall be entitled to receive annual increases thereafter in accordance with the provisions of sections 31–663 and 31–665. The provisions of this paragraph shall not operate to reduce the amount of annual compensation of any teacher, librarian, research assistant, counselor, or instructor in the teachers colleges, below the amount of annual compensation received by him during the fiscal year ending June 30, 1948.• (July 7, 1947, 61 Stat. 253, ch. 208, title III, § 6, eff. July 1, 1947, as amended Oct. 6, 1949, 63 Stat. 706; ch. 618, §§ 1–3, eff. July 1, 1948.)

AMENDMENTS

The act of Oct. 6, 1949, cited to text, amended the section as follows:

Sec. 2 added the concluding sentence to paragraph (ap).

Sec. 3 added paragraph (ar).

METHOD OF PROMOTION OF EMPLOYEES

§ 31–665. Annual salary increases—Limitations—In-service training program.

On July 1, 1948, and on the first day of each fiscal year thereafter, if his work is satisfactory, every permanent teacher, school officer, or other employee except as provided in section 31–660, shall receive an annual increase in salary within his salary class or position as hereinbefore provided without action of the Board of Education, except that after a teacher, school officer, or other employee has received five annual increases he shall receive no further increases until he is declared eligible therefor by the Board of Education on the basis of such evidence of successful teaching in the case of a teacher or outstanding service in the case of a school officer or other employee and of increased professional attainments as the Board of Education may prescribe, and that after having been declared so eligible and after having received five more annual increases, he shall receive no further increases until he is declared eligible therefor by the Board of Education on the basis of such evidence of successful teaching in the case of a teacher or outstanding service in the case of a school officer or other employee and of increased professional attainments as the Board of Education may prescribe. A program of in-service training under regulations to be formulated by the Board of Education shall be established to promote continuous professional growth among the teachers, school officers, and other employees, and such teachers, school officers, and other employees shall annually report evidence of participation in the in-service training program thus established and other evidence of professional growth and accomplishment. (July 7, 1947, 61 Stat. 257, ch. 208, title IV, § 7, eff. July 1, 1947.)

NOTES TO DECISIONS

PERMANENT TEACHER

The provision in former section 626 of this title that on first day of each fiscal year every permanent teacher shall receive annual increase in salary was required to be read in light of the previous use of the word "permanent" in former section 619 of this title. *Cooke* v. *Board of Ed.* (App. D. C. 1947, 161 F. 2d 877).

Where teacher having a permanent status in public school system of District of Columbia was granted a leave of absence in order to teach illiterate soldiers, during his leave of absence he retained his status as a "permanent teacher", so that on his resumption of his duties he was entitled to rights and privileges under former section 626 of this title including increased salary undiminished by his temporary absence. *Cooke* v. *Board of Ed.* (App. D. C. 1947, 161 F. 2d 877).

§ 31–666. Salaries upon promotion to higher class.

On and after July 1, 1947, teachers, school officers, and other employees promoted from a lower to a higher salary class or position shall receive a salary in the salary class or position to which promoted which is next above the salary in the salary class or position from which promoted. (July 7, 1947, 61 Stat. 258, ch. 208, title IV, § 8, eff. July 1, 1947.)

§ 31–667. Assignment of teachers and other employees on July 1, 1947, to appropriate groups.

Within the limitations of section 31–660, every teacher, instructor, librarian, and research assistant in the service on July 1, 1947, and every teacher, school officer, or other employee thereafter appointed shall, if the class to which he is assigned be divided into group A and group C, be assigned according to eligibility either to group A or group C, and shall be promoted to group C in salary classes 1, 2, 3, 4, 5, 6, 7 and 8 on the basis of documentary evidence establishing the attainment of a recognized master's degree. (July 7, 1947, 61 Stat. 258, ch. 208, title IV, § 9, eff. July 1, 1947.)

ACCOMPANYING LEGISLATION

§ 31–668. Classification of elementary school principals.

For the purpose of determining the classification of principals in the elementary schools, it shall be the duty of the Board of Education, on the recommendation of the Superintendent of Schools, to designate the number of rooms in each elementary school building or approved combination of elementary school buildings. (July 7, 1947, 61 Stat. 258, ch. 208, title V, § 10, eff. July 1, 1947.)

§ 31–669. Number of First Assistant Superintendents—Sphere of Supervision—Other Duties.

There shall be two First Assistant Superintendents of Schools, one white First Assistant Superintendent for the white schools who, under the direction of the Superintendent of Schools, shall have general supervision over the white schools; and one colored First Assistant Superintendent for the colored schools who, under the direction of the Superintendent of Schools, shall have sole charge of all employees, classes, and schools in which colored children are taught. The First Assistant Superintendents shall perform such other duties as may be prescribed by the Superintendent of Schools. (July 7, 1947, 61 Stat. 258, ch. 208, title V, § 11, eff. July 1, 1947.)

§ 31–670. Boards of Examiners—Composition—Designation of members.

Boards of examiners for carrying out the provisions of the statutes with reference to examinations of teachers shall consist of the Superintendent of Schools and not less than four nor more than six members of the supervisory or teaching staff of the white schools for the white schools, and of the Superintendent of Schools and not less than four nor more than six members of the supervisory or teaching staff of the colored schools for the colored schools. The designations of members of the supervisory or teaching staff for membership on these boards shall be made annually by the Board of Education on the recommendation of the Superintendent of Schools. (July 7, 1947, 61 Stat. 258, ch. 208, title V, § 12, eff. July 1, 1947.)

§ 31–671. Appointment of chief examiners—Compensation.

There shall be appointed by the Board of Education, on the recommendation of the Superintendent

of Schools, a chief examiner for the board of examiners for white schools. An Associate Superintendent in the colored schools shall be designated by the Superintendent of Schools as chief examiner for the board of examiners for the colored schools. All members of the respective boards of examiners shall serve without additional compensation. (July 7, 1947, 61 Stat. 258, ch. 208, title V, § 13, eff. July 1, 1947.)

§ 31–672. Annual substitute teachers—Appointment, qualifications and assignment—Pay deductions from absent teachers—Other substitutes.

The Board of Education, on recommendation of the Superintendent of Schools, is hereby authorized to appoint annual substitute teachers, who shall qualify for said positions by meeting such eligibility requirements as the said board may prescribe and who shall be assigned to the lowest class to which eligible for the type of work to be performed, and who shall be entitled to salary placement credit as provided in paragraph (ap) of section 31–664, but who shall not be entitled to annual increases of said class. The above authorization for the appointment of annual substitute teachers shall not be construed to prevent the Board of Education from the employment of other substitute teachers under regulations to be prescribed by the said board. (July 7, 1947, 61 Stat. 259, ch. 208, title V, § 14, eff. July 1, 1947, as amended Oct. 13, 1949, 63 Stat. 843, ch. 686, § 9 (a), eff. July 1, 1949.)

AMENDMENT

The act of Oct. 13, 1949, cited to text, repealed the sentence: "The said Board shall prescribe the amount to be deducted from the salary of any absent teacher for whom an annual substitute may perform service." which previously appeared as the second sentence of the section.

§ 31–673. Temporary teachers—Appointment—Term of service—Salary classification.

When necessary, the Board of Education, on written recommendation of the Superintendent of Schools, is authorized and empowered to appoint temporary teachers: *Provided,* That such appointments shall be made for a limited period not to extend beyond June 30 of the fiscal year in which the appointments are made, and the Board of Education is authorized to terminate the services of any temporary teachers at any time, on the written recommendation of the Superintendent of Schools: *And provided further,* That all temporary teachers shall receive the basic salary of the class in which service is to be performed plus salary placement credit provided in paragraph (ap) of section 31–664, but shall not be entitled to annual increases of said class. (July 7, 1947, 61 Stat. 259, ch. 208, title V, § 15, eff. July 1, 1947.)

§ 31–674. Integration in public school system of a department of school attendance and work permits, evening schools, vacation schools, Americanization schools, and other activities—Salaries of employees.

The Board of Education is hereby authorized to conduct as parts of the public-school system, a department of school attendance and work permits, evening schools, vacation schools, Americanization schools, and other activities, under and within appropriations made by Congress, and on the written recommendation of the Superintendent of Schools to fix and prescribe the salaries, other than those herein specified, to be paid to the employees of the said departments and activities. (July 7, 1947, 61 Stat. 259, ch. 208, title V, § 16, eff. July 1, 1947.)

§ 31–675. Classification of certain employees as teachers—Payment of annual salaries.

All employees assigned to salary classes 1 to 12, inclusive, and all attendance officers assigned to salary class 32 in the schedule in section 31–659, shall be classified as teachers for pay-roll purposes and their annual salaries shall be paid in ten monthly installments in accordance with existing law. (July 7, 1947, 61 Stat. 259, ch. 208, title V, § 17, eff. July 1, 1947.)

§ 31–676. Repealed. Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9 (b), eff. July 1, 1949.

§ 31–677. Effective date of salary provisions—Preparation of expenditure estimates—Restriction on salary increases.

The rates of salaries designated in sections 31–659 to 31–678 shall become effective on July 1, 1947. The estimates of the expenditures for the operation of the public-school system of the District of Columbia shall hereafter be prepared in conformity with the classification and compensation of employees herein provided. During the fiscal year ending June 30, 1948, no teacher, school officer, or other employee of the Board of Education whose salary is included in the foregoing schedule shall receive any increase in compensation other than as provided in said sections. (July 7, 1947, 61 Stat. 259, ch. 208, title V, § 19, eff. July 1, 1947.)

§ 31–678. Leaves of absence and annuitants—Applicability of sections 31–632 to 31–637 and 31–721 to 31–739.

(a) After July 1, 1947, sections 31–632 to 31–637 shall apply to employees of the Board of Education whose salaries are fixed by sections 31–659 to 31–678.

(b) After July 1, 1947, sections 31–721 to 31–739 shall apply to permanent employees of the Board of Education whose salaries are fixed by sections 31–659 to 31–678, and all references in sections 31–721 to 31–739, to the District of Columbia Teachers' Salary Act of 1945, as amended, shall be interpreted to apply to sections 31–659 to 31–678. Nothing in this subsection shall require the recomputation of the annuity of any person retired under sections 31–721 to 31–739, prior to the effective date of sections 31–659 to 31–678, or of any person retired prior to July 1, 1946, whose annuity is computed in accordance with the provisions of sections 31–721 to 31–739. (July 7, 1947, 61 Stat. 260, ch. 208, title V, § 21, eff. July 1, 1947, as amended Oct. 6, 1949, 63 Stat. ch. 618, § 4, eff. July 1, 1947.)

AMENDMENT

The act of Oct. 6, 1949, cited to text, inserted the word "permanent" before the word "employees" in subsection (b).

COMPILER'S NOTE

Words in text "District of Columbia's Teachers' Salary of 1945" refer to act July 21, 1945, 59 Stat. 488, ch. 321, formerly set out as sections 31–638 to 31–658.

§ 31–679. Salary increases for teachers, school officers and other employees.

(a) Each employee of the Board of Education of the District of Columbia whose salary is fixed and regulated by sections 31–659 to 31–678, except the superintendent of schools, shall receive, in addition to the compensation already provided by such sections, compensation at the rate of $330 per annum.

(b) The basic and maximum salaries for all salary classes in section 31–659, except class 29, are hereby increased $330, respectively. (June 30, 1949, 63 Stat. 376, ch. 287, § 3.)

EFFECTIVE DATE

Par. (c) of the act of June 30, 1949, provided that the salary increases established by this section "shall take effect as of the first day of the first pay period which began after June 30, 1948."

See also, note to § 4–806.

SICK AND EMERGENCY LEAVES

§ 31–691. Sick and emergency leaves authorized for teachers and attendance officers.

All teachers and attendance officers in the employ of the Board of Education of the District of Columbia shall be entitled to cumulative leave with pay for personal illness, presence of contagious disease or death in the home, or pressing emergency, in accordance with such rules and regulations as the said Board of Education may prescribe. Such cumulative leave with pay shall be granted at the rate of one day for each month from September through June of each year, both inclusive. The total cumulation shall not exceed sixty days for probationary and permanent teachers and attendance officers, and the total cumulation shall not exceed ten days for temporary teachers and attendance officers. (Oct. 13, 1949, 63 Stat. 842, ch. 686, § 1, eff. July 1, 1949.)

SHORT TITLE

Section 10 of the act of Oct. 13, 1949, cited to text, provided: "This Act may be cited as 'District of Columbia Teachers' Leave Act of 1949.'"

§ 31–692. Additional leave credits for service prior to July 1, 1949.

In addition to the cumulative leave provided by section 31–691, each probationary and permanent teacher shall be credited on July 1, 1949, with one day of leave with pay for each complete year of service in the public schools of the District of Columbia prior to July 1, 1949: *Provided,* That the total amount to be credited under the provisions of this section shall not exceed twenty days and shall be granted for the same purposes as leave with pay is provided in section 31–691. Attendance officers shall be credited on July 1, 1949, with all cumulative leave with pay to which they are entitled on June 30, 1949, under the provisions of section 31–676. The total cumulation of leave with pay allowable under sections 31–691 to 31–697 and sections 31–659 to 31–678 shall not exceed sixty days, and no attendance officer shall be entitled to annual or sick leave with pay under the provisions of any other act. (Oct. 13, 1949, 63 Stat. 842, ch. 686, § 2, eff. July 1, 1949.)

§ 31–693. Application of credits to maternity leaves authorized.

Probationary and permanent teachers and attendance officers shall be entitled to use all leave to their credit when they are granted maternity leave by the Board of Education. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 3, eff. July 1, 1949.)

§ 31–694. Additional leaves in emergencies.

In cases of serious disability or ailments, and when required by the exigencies of the situation, and in accordance with such rules and regulations as the Board of Education may prescribe, the superintendent of schools may advance additional leave with pay not to exceed twenty days to every probationary or permanent teacher or attendance officer who may apply for such advanced leave. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 4, eff. July 1, 1949.)

§ 31–695. Refund required for unearned advanced leave—Exceptions.

In the event of separation from the service of any teacher or attendance officer who is indebted for unearned advanced leave, such teacher or attendance officer shall refund the amount of pay received for the period of such excess. If such teacher or attendance officer fails to make such refund, deductions therefor shall be made from any salary due him or from any amount standing to his credit under the provisions of sections 31–721 to 31–739. The provisions of this section shall not apply in cases of death, retirement for disability, or in the event that the teacher or attendance officer to whom leave with pay has been advanced is unable to return to duty because of disability. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 5, eff. July 1, 1949.)

§ 31–696. Employment of substitutes.

The Board of Education is hereby authorized to employ substitute teachers and attendance officers for service during the absence of any teacher or attendance officer on leave with pay and to fix the rate of compensation to be paid such substitutes. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 6, eff. July 1, 1949.)

§ 31–697. Rules and regulations—Definitions.

The Board of Education is hereby authorized to prescribe such rules and regulations as it may deem necessary to carry sections 31–691 to 31–697, into effect. The term "teacher" used in sections 31–691 to 31–697, shall include all employees whose salaries are fixed by classes 1 to 12 of section 31–659. The term "attendance officers" shall include all employees whose salaries are fixed by class 32 of section 31–659. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 7, eff. July 1, 1949.)

APPROPRIATION AUTHORIZED

Section 8 of the act of Oct. 13, 1949, cited to text, provided: "There is authorized to be appropriated, out of any moneys in the Treasury of the United States to

the credit of the District of Columbia not otherwise appropriated, such sums as may be necessary to carry out the purposes of this Act, and any appropriations for the public schools of the District of Columbia for personal services are hereby made available for the payment of the substitutes provided for in section 6 [31–696] of this Act."

TEACHER FOREIGN EXCHANGE PROGRAM

§ 31–699. Participation in teacher foreign exchange program authorized—Eligibility.

The Board of Education of the District of Columbia is authorized to participate in the teacher foreign exchange program in cooperation with the United States Office of Education.

Any employee of the Board of Education of the District of Columbia who is subject to the provisions of the District of Columbia Teachers' Salary Act of 1947 (Public Law 163) shall, with the approval of the Board of Education, be eligible to participate in such program, and shall if accepted for such foreign assignment serve for a period not to exceed one calendar year, and shall at the conclusion of such service be returned to the position which he held before the exchange was effected: *Provided,* That in any one calendar year not more than ten such employees shall participate in such program. (Sept. 28, 1950, 64 Stat. 1076, ch. 1091, § 1.)

§ 31–699a. Payment of salary during exchange.

The Board of Education of the District of Columbia is authorized to pay the full salary of the educational employee of said Board during the time such employee is performing teaching duties in a foreign country under such exchange program, in the same manner and to the same extent as if such educational employee were actuallly performing his teaching duties in his regularly assigned position in the public schools of the District of Columbia, and any such educational employee participating in such program shall for purposes of promotion, computation of annual increment, computation of service for pension credit, including salary contributions to the pension fund, and leave of absence credits, be considered as performing teaching duties in the schools of the District of Columbia. (Sept. 28, 1950, 64 Stat. 1077, ch. 1091, § 2.)

§ 31–699b. Assignment of foreign teachers—Waiver of loyalty oath.

(a) Each professionally qualified person from a foreign country exchanged under the provisions of this Act with an educational employee of the Board of Education of the District of Columbia shall during the period of such exchange serve as a substitute for the exchanged teacher and shall be assigned in the public schools of the District of Columbia as the Board of Education shall determine. Such exchange teacher shall serve without compensation for such service from the District of Columbia or any agency thereof: *Provided further,* That the term of such assignment or exchange shall not exceed one calendar year.

(b) Notwithstanding any other provision of law, any foreign teacher, instructor, or professor assigned to duties in the public schools of the District of Columbia under the provisions of this Act shall not be required to take an oath of office or any oath of allegiance or loyalty to the United States, but shall satisfy the Board of Education of the District of Columbia as to his personal, moral, and professional fitness to teach in the public schools of Washington, District of Columbia. (Sept. 28, 1950, 64 Stat. 1096, ch. 1091, § 1.)

Chapter 7.—RETIREMENT OF PUBLIC SCHOOL TEACHERS

Sec.

31–701. Deduction from pay to provide annuity—Basis of deductions—Certificate.
31–702. Deductions deposited in United States Treasury to credit of teacher—Income from investments.
31–703. Retirement age—Continuous-employment requirements.
31–704. Retirement for disability after age of 45—Leave of absence without pay not exceeding two years—No break in continuous service—Medical examination.
31–705. Annuity allowance.
31–706. Minimum-service credit in cases of disability retirement.
31–707. Longevity payable from District revenues—Calculation of annual appropriations—Certification to Budget Bureau—Reserves held by Treasurer of United States—Interest.
31–708. Credit for public-school service outside District of Columbia—Deposit to cover period of service beyond District—Instalment deposits allowed.
31–709. Refund on leaving service—Reinstatement.
31–710. Payments upon death of teacher—Beneficiary.
31–711. Precedence of payments upon death of teacher.
31–712. Continuance in service deemed consent to deductions.
31–713. Retirement provisions not to prevent discharge of teachers.
31–714. Definitions—"Teacher"—"Annual salary"—"His."
31–715. Records to be kept by Commissioners of the District of Columbia—Annual report to Congress—Annual actuarial evaluation of fund.
31–716. Annual estimates—No officer or employee receiving regular salary from Government shall receive additional compensation.
31–716a. Estimates of annual appropriations—Actuarial valuations.
31–717. Commissioners of the District of Columbia to make rules and regulations, and to carry this chapter into effect.
31–718. Funds not assignable, nor subject to execution or levy.
31–719. Chapter not applicable to teachers receiving annuity from a State or other municipality.
31–720. Application of act—Annuities under prior act.

RETIREMENT AFTER JUNE 30, 1946

31–721. Deductions—Filing certificates—Interest bearing accounts—Optional deposits—Refunds.
31–722. Retirement and annuity fund—Separate accounts.
31–723. Voluntary retirement—Retirement at age 70—Minimum period of service.
31–724. Disability — Annual examination — Reappointment—Discontinued annuity—Voluntary deposits.
31–725. Computation of annuity—Options.
31–726. Minimum credit—Restrictions.
31–727. Appropriations calculation.
31–728. Term of service—Reduction of annuity—Contributions on leave—Monthly deposits.
31–729. Deferred annuity—Refunds—Deposit of amount withdrawn.
31–730. Beneficiaries—Death before retirement.
31–731. Consent to deductions.
31–732. Discharge of teacher.
31–733. Definitions.

Sec.
31–734. Records and accounts—Report to Congress—Appropriation estimates.
31–735. Transfer of appropriations.
31–736. Rules and regulations.
31–737. Funds not assignable or subject to execution.
31–738. Applicability.
31–739. Prior retirements—Salary basis—Straight life annuity.

§ 31–701 [7: 61]. Deduction from pay to provide annuity—Basis of deductions—Certificate.

There shall be deducted and withheld from the annual salary of every teacher in the public schools of the District of Columbia an amount computed to the nearest tenth of a dollar that will be sufficient, with interest thereon at 4 per centum per annum, compounded annually, to purchase, under the provisions of this chapter, an annuity equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement, for each year of his whole term of service rendered after June 30, 1926, payable monthly throughout life, for every such teacher who shall be retired, as herein provided.

The deductions herein provided for shall be based on such annuity table or tables as the commissioners of the District of Columbia shall direct: *Provided, however,* That said deductions shall in no case exceed 8 per centum of his annual salary: *And provided further,* That when the annual salary exceeds $2,000 the deductions and benefits shall be made as on an annual salary of $2,000.

The commissioners of the District of Columbia shall cause to be filed with the Board of Education on September 10 of each year a certificate showing the amount of deduction to be made from the salary of each teacher during the year, said deduction to be made in equal amounts, one to be deducted for each school month. A similar certificate shall be filed not later than the 15th day of each calendar month to cover cases of new entrants. No deduction shall be made from less than an entire month's salary. (Jan. 15, 1920, 41 Stat. 387, ch. 39, § 1; June 11, 1926, 44 Stat. 727, ch. 556, § 1.)

AMENDMENT

The 1926 amendment deleted the words "since the passage of Public Act Numbered 254, approved June 20, 1906, for each year of his whole term of service" following the words "annual salary received" in the first paragraph and inserted in lieu thereof the words now contained down to the words "payable monthly, etc."; substituted the commissioners of the District of Columbia for the Secretary of the Treasury; deleted immediately preceding the first proviso and following the word "direct," the words "and shall be varied yearly to correspond to any change in the basic salary of the teacher" and changed the figure $1,500 to $2,000 in the second proviso.

CROSS REFERENCES

Civil Service Retirement Act does not apply to teachers, § 1–217.

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–702 [7: 62]. Deductions deposited in United States Treasury to credit of teacher—Income from investments.

The amount so deducted and withheld from the annual salary of every teacher shall be deposited in the Treasury of the United States and shall be credited, together with interest at 4 per centum per annum, compounded annually, to an individual account of the teacher from whose salary the deduction is made, which account shall be kept by the auditor of the District of Columbia. The fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this chapter. (Jan. 15, 1920, 41 Stat. 387, ch. 39, § 2; June 11, 1926, 44 Stat. 727, ch. 556, § 1.)

AMENDMENT

The 1926 amendment inserted the phrase "which account shall be kept by the auditor of the District of Columbia" and also inserted "Treasurer of the United States" in lieu of "Secretary of the Treasury."

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–703 [7: 63]. Retirement age—Continuous-employment requirements.

Any teacher who shall have reached the age of sixty-two may be retired by the Board of Education on its own motion, or shall be retired if application is made by the teacher. Any teacher who shall have reached the age of seventy shall be retired unless, in the judgment of two-thirds of the Board of Education, such teacher should be longer retained for the good of the service: *Provided,* That no sum shall be paid to any teacher upon his retirement under the provisions of this section unless he shall have been continuously employed as a teacher in the public schools of the District of Columbia from the time of his attainment of the age of fifty-two years. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 3; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

AMENDMENT

The 1926 Amendment added the proviso.

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–704 [7: 64]. Retirement for disability after age of 45—Leave of absence without pay not exceeding two years—No break in continuous service—Medical examination.

Any teacher who shall have reached the age of forty-five, and who shall have been continuously employed in the public schools of the District of Columbia for not less than ten years immediately prior to his retirement, or who shall have been continuously employed for not less than fifteen years prior to his retirement and who by reason of accident or illness not due to vicious habits has become physically or mentally disabled and incapable of satisfactorily performing the duties of his position, may be retired by the Board of Education under the provisions hereinafter stated: *Provided,* That absence of any teacher on authorized leave of absence without pay for a period not in excess of two years shall not constitute a break in continuous employment: *Provided further,* That no teacher shall be retired by the Board of Education under the provi-

sions of this section until said teacher shall have been examined under the direction of the health officer of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of two-thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 4; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

AMENDMENT

The 1926 amendment deleted the words "or shall have taught continuously for fifteen years in the public schools of the District of Columbia" following the words "forty-five" and inserted in lieu thereof the words which now follow the said words "forty-five" down to and including the words "to his retirement"; and, added the provisos.

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–705 [7: 65]. Annuity allowance.

Every teacher who shall be retired under the provisions of section 31–703 or section 31–704 shall receive during the remainder of his life a combined annuity composed of (1) an annuity equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement for each year of his whole term of service after June 30, 1926; (2) a sum equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement for each year of his whole term of service prior to July 1, 1926, but not to exceed 40 years; and (3) an additional sum of $15 for each year of said service, but in neither case to exceed forty years, such annuity to be fixed at the nearest multiple of 12 cents and to be payable monthly and to cease and determine at his death. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 5; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

AMENDMENT

The 1926 amendment deleted the words "(1) a sum equal to 1 per centum of his average basic salary received since the passage of Public Act Numbered 254, approved June 20, 1906, for each year of his whole term of service, and (2) an additional sum of $10 for each year of said service, such annuity to be payable monthly and to cease and determine at his death" following the words "composed of" and inserted in lieu thereof the present words.

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–706 [7: 66]. Minimum-service credit in cases of disability retirement.

In calculating, as provided in section 31–705, the third part of the annuity of a teacher retired under the provisions of section 31–704, a minimum credit of twenty years shall be used in determining the sum allowable to a teacher with less than twenty years of service. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 6; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

AMENDMENT

The 1920 act provided as follows: "That the annuity of a teacher retired under the provisions of section 3 (§ 31–703) hereof shall not be less than $480, and the annuity of a teacher retired under section 4 (§ 31–704) hereof shall not be less than $420."

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–707 [7: 67]. Longevity payable from District revenues—Calculation of annual appropriations—Certification to budget bureau—Reserves held by treasurer of United States—Interest.

The second and third parts of the annuity provided for by section 31–705 shall be paid by appropriations from the same fund as the current expenses of the District of Columbia were paid on June 11, 1926, or may thereafter be paid. The amount of each year's appropriation shall be calculated, on an actuarial basis, as a level percentage of the pay-roll of all participants which shall be adequate to cover the liability normally accrued plus a further level percentage of the pay-roll computed to be sufficient to liquidate, within a period of approximately thirty years after July 1, 1926, the amount of the accrued liability as of that date. The amount of the necessary appropriations shall be certified each year by the commissioners of the District of Columbia to the Bureau of the Budget, and shall be transmitted by it to Congress.

The reserves created as the result of such annual appropriations shall be held by the treasurer of the United States separate from the fund created by the contributions of the teachers, and the fund shall be credited with interest at four per centum per annum, compounded annually. The fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this chapter. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 7; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

AMENDMENT

Act of 1920 provided as follows: "The second part of the annuity provided for by section 5 hereof shall be paid by appropriations from the same fund as the current expenses of the District; and if the deductions from a teacher's salary with accumulated interest shall be insufficient to pay the first part of the annuity provided for, the deficiency shall be paid by appropriations from the same fund as the current expenses of the District of Columbia are now paid or may hereafter be paid."

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–708 [7: 68]. Credit for public-school service outside District of Columbia—Deposit to cover period of service beyond District—Instalment deposits allowed.

In computing length of service of retiring teachers credit may be given, year for year, but not to exceed ten years, for public-school service or its equivalent outside the District of Columbia: *Provided*, That no credit for service outside of the public schools of the District of Columbia shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement fund of the District of Columbia a sum equal to the contributions that would have been required of the teacher if such service had been rendered in the public schools of the District

of Columbia, with interest thereon at 4 per centum per annum, compounded annually, said contributions to be based on the average annual salary of the class to which the teacher is appointed: *Provided further,* That when the average annual salary of the class exceeds $2,000 the contributions shall be based on a salary of $2,000: *Provided further,* That if the teacher so elects he may deposit the required sum in the fund in any number of monthly instalments not exceeding one hundred, with interest at 4 per centum per annum, compounded annually: *And provided further,* That the provisions of this chapter shall not apply to any teacher who receives an annuity from any state or municipality other than the District of Columbia, nor to allow any teacher more than one year's credit for all services rendered in any one fiscal year. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 8; June 11, 1926, 44 Stat. 729, ch. 556, § 1.)

AMENDMENT

The 1926 amendment deleted the second, third, and fourth paragraphs of the section and added the provisos. The deleted paragraphs were as follows:

"No sum shall be paid to any teacher upon his retirement under the provisions of section 3 (§ 31–703) hereof unless he shall have been employed as a public-school teacher continuously in the District of Columbia from the time of his attainment of the age of fifty-two years.

"No sum shall be paid to any teacher upon his retirement under the provisions of section 4 (§ 31–704) hereof unless he shall have been employed continuously as a teacher in the public schools of the District of Columbia for ten years immediately prior to his retirement.

"When the average basic salary exceeds $1,500, the first part of the annuity provided for in section 5 (§ 31–705) hereof shall be based on an average basic salary of $1,500."

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–709 [7: 69]. Refund on leaving service—Reinstatement.

Upon separation of any teacher from the service of the public schools of the District of Columbia, except for retirement under section 31–703 or section 31–704, he shall receive the amount of his deductions, together with the interest then credited thereon.

No teacher who shall withdraw the amount of his deductions under this section shall, after reinstatement, be entitled to credit for previous service unless he shall deposit in the fund the amount so withdrawn by him: *Provided,* That the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding one hundred, with interest at 4 per centum compounded annually, but no credit for previous service shall be given in any case of retirement where the teacher has been separated from teaching service in any public-school system for more than five years. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 9; June 11, 1926, 44 Stat. 729, ch. 556, § 1.)

AMENDMENT

The 1926 amendment deleted in the first paragraph the words "prior to the age of sixty-two years, except for disability, as provided in section 4 (§ 31–704) hereof" and inserted in lieu thereof the words "except for retirement under section 3 (§ 31–703) or section 4 (§ 31–704)" and deleted the words "as provided in section 2 (§ 31–702) hereof" which followed the present last word of the first paragraph; in the second paragraph deleted the words "the benefits under section 6 (§ 31–706) unless he shall have served at least ten years after such reinstatement. In case of his reinstatement in the service of the public schools of the District of Columbia, the monthly deductions thereafter from his salary shall be computed as herein provided and from his age at the date of such reinstatement" which followed the words "be entitled to" and inserted in lieu thereof the words which now conclude the section.

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–710 [7: 70]. Payments upon death of teacher—Beneficiary.

Every teacher from whose salary retirement deductions are made in accordance with this chapter shall be required to designate in writing a beneficiary or beneficiaries to whom the amount of his deductions, together with interest then credited thereon, shall be payable in the event of the death of such teacher. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 10; June 11, 1926, 44 Stat. 729, ch. 556, § 1; Apr. 5, 1939, 53 Stat. 571, ch. 42, § 1.)

AMENDMENTS

In the 1920 act, the second paragraph provided: "In case of the death of an annuitant before he shall have received annuity payments equal to the amount of his deductions, together with the interest credited thereon, as hereinbefore provided, the balance thereof remaining to his credit at the date of his death shall be paid to his legal representative."

The act of 1926 provided as follows: "In case of the death of a teacher while in the service the amount of his deductions, together with the interest then credited thereon, as provided in section 31–702, shall be paid to his legal representatives.

"In the case of the death of an annuitant no part of the deductions made from his salary, with the interest thereon to the credit of his account, shall be returned to his estate unless prior to his retirement he shall have selected, under the provisions of such rules and regulations as the commissioners of the District of Columbia shall prescribe, an annuity which shall carry with it a provision for the return of the unpaid principal or for the continuance of all or part of the annuity as a survivorship annuity."

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–711 [7: 70a]. Precedence of payments upon death of teacher.

In the event of death of any such teacher the order of precedence of payments shall be as follows: First, to the beneficiary, or beneficiaries, designated in writing by the teacher and recorded on his or her individual account; second, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor, or administrator, of the estate; third, if there be no such beneficiary, or if an executor or administrator be not appointed within six months after the death of such teacher, payment shall be made into the registry of the District Court of the United States for the District of Columbia. (Apr. 5, 1939, 53 Stat. 571, ch. 42, § 2.)

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–712 [7: 71]. Continuance in service deemed consent to deductions.

Every teacher who shall continue in the service of the public schools of the District of Columbia after July 1, 1926, as well as every person who thereafter may be appointed to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and agree to the deductions made and provided for in this chapter; and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of this chapter, notwithstanding the provisions of chapter 6 of this title, and of any other law, rule or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 12; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

COMPILER'S NOTE

The above reference to "chapter 6 of this title" was, in the original enactment, a reference to the act of June 20, 1906, the pertinent sections of which are contained in chapter 6 herein.

AMENDMENT

Sec. 11 as set out in the 1926 act is a reenactment of § 12 of the 1920 act changing the date set forth.

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–713 [7: 72]. Retirement provisions not to prevent discharge of teachers.

Nothing in this chapter shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 13; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

AMENDMENT

The 1926 amendment merely reenacted this section of the 1920 act.

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–714 [7: 73]. Definitions—"Teacher"—"Annual salary"—"His."

The term "teacher," under this chapter, shall include all teachers permanently employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are established in chapter 6 of this title, except the employees of the community center department and the department of school attendance and work permits; the term "annual salary" shall be construed to mean the total annual income received during the fiscal year for services rendered in the public day schools of the District of Columbia, including basic salary, longevity allowance, session room allowance, and increase of compensation (bonus); and whenever the pronoun "his" occurs in this chapter it shall be construed to mean both male and female teachers. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 14; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

COMPILER'S NOTE

The above reference to "chapter 6 of this title" was, in the original enactment a reference to the act of June 20, 1906, the pertinent sections of which are contained in chapter 6 herein.

AMENDMENT

The 1926 amendment deleted, following the words "District of Columbia" the first time they are used, the words "including the superintendent of public schools, the assistant superintendents, all supervisors and directors of instruction, group principals, principals, special teachers, and librarians therein; the term 'basic salary' shall be construed to mean the lowest salary of the class in which the teacher is placed," and inserted in lieu thereof the words which now follow the said words "District of Columbia" down to the last semicolon.

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–715 [7: 74]. Records to be kept by Commissioners of the District of Columbia—Annual report to Congress—Annual actuarial evaluation of fund.

The Commissioners of the District of Columbia shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this chapter. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers. The Commissioners of the District of Columbia shall make a detailed comparative report annually to Congress showing all receipts and disbursements under the provisions of this chapter, together with the total number of persons receiving annuities and the amounts paid them. And the Commissioners of the District of Columbia shall have made each year an actual valuation of this retirement fund and the operation thereof, which shall show the financial condition of the fund, and shall report the findings of such investigations to Congress at the opening of the following session. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 15; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

AMENDMENT

The 1926 amendment substituted the Commissioners of the District of Columbia for the Secretary of the Treasury, and changed the requirement that "an actual valuation" be made "every third year" to "each year."

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–716 [7: 75]. Annual estimates—No officer or employee receiving regular salary from government shall receive additional compensation.

The Commissioners of the District of Columbia shall include in their annual estimates of appropriations a sum sufficient to carry out the provisions of this chapter and acts amendatory thereof. No officer or employee receiving a regular salary or compensation from the Government shall receive any additional salary or compensation for any service

rendered in connection with the system of retiring teachers provided for by this chapter. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 16; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

AMENDMENT

The 1926 amendment substituted the Commissioners of the District of Columbia for the Secretary of the Treasury.

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–716a. Estimates of annual appropriations—Actuarial valuations.

The Treasury Department shall prepare the estimates of the annual appropriations required to be made to the teachers' retirement fund, and shall make actuarial valuations of such fund at intervals of five years, or oftener if deemed necessary by the Secretary of the Treasury, and the Commissioners are authorized to expend from money to the credit of the teachers' retirement fund not exceeding $5,000 per annum for this purpose, including personal services, without regard to the Civil Service and classification laws. (July 18, 1950, ch. 467, § 1, 64 Stat. 347.)

SIMILAR PROVISIONS

1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
1949—June 19, 1948, ch. 555, § 1, 62 Stat. 540.
1948—July 25, 1947, 61 Stat. 428, ch. 324, § 1.
1947—July 9, 1946, 60 Stat. 505, ch. 544, § 1.
1946—June 30, 1945, 59 Stat. 275, ch. 209, § 1.
1945—June 28, 1944, 58 Stat. 513, ch. 300, § 1.
1944—July 1, 1943, 57 Stat. 323, ch. 184, § 1.
1943—June 27, 1942, 56 Stat. 434, ch. 452, § 1.
1942—July 1, 1941, 55 Stat. 511, ch. 271, § 1.

§ 31–717 [7: 76]. Commissioners of the District of Columbia to make rules and regulations, and to carry this chapter into effect.

The Commissioners of the District of Columbia are hereby authorized to perform, or cause to be performed, any or all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this chapter into full force and effect. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 17; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

AMENDMENT

The 1926 amendment substituted the Commissioners of the District of Columbia for the Secretary of the Treasury.

CROSS REFERENCES

Rules and regulations generally, § 1–226 and notes.
Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–718 [7: 77]. Funds not assignable, nor subject to execution or levy.

None of the money mentioned in this chapter shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 18; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

AMENDMENT

The 1926 amendment merely reenacted the section of the 1920 act.

CROSS REFERENCES

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–719 [7: 78]. Chapter not applicable to teachers receiving annuity from State or other municipality.

The provisions of this chapter shall not apply to any teacher who receives an annuity from any State or municipality other than the District of Columbia. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 19; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

AMENDMENT

The 1926 amendment merely reenacted the section of the 1920 act.

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

§ 31–720 [7: 79]. Application of act—Annuities under prior act.

The provisions of this chapter shall apply to (A) all teachers who were on the rolls of the public schools of the District of Columbia for the month of June, 1926, if otherwise eligible; and (B) all teachers who, on June 30, 1926, were receiving an annuity under the provisions of this chapter, the annuity to be paid each such teacher after June 30, 1926, to be computed in the manner provided herein: *Provided,* That nothing in this chapter shall be construed to require a reduction in the amount of the annuity being paid to any teacher on July 1, 1926. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 11; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

COMPILER'S NOTE

The act of June 11, 1926, cited to the text above, contains a § 2 which reads: "The amendments herein provided to 'An Act for the retirement of public-school teachers in the District of Columbia,' approved January 15, 1920, shall take effect July 1, 1926."

AMENDMENT

The act of 1926 inserted the letter A in parenthesis, changed "June, 1919" to "June, 1926," and added subsection (B) and the proviso.

CROSS REFERENCE

Retirement after June 30, 1946, see sections 31–721 to 31–739.

RETIREMENT AFTER JUNE 30, 1946

§ 31–721. Deductions — Filing certificates — Interest bearing accounts—Optional deposits—Refunds.

Beginning as the 1st day of the September following the effective date of sections 31–721 to 31–739, there shall be deducted and withheld from the annual salary of every teacher in the public schools of the District of Columbia an annual amount computed to the nearest tenth of a dollar equal to 5 per centum of the teacher's annual salary. The Commissioners of the District of Columbia shall cause to be filed with the Board of Education on September 10 of each year a certificate showing the amount of deduction to be made from the salary of each teacher during the year, said deduction to be made in equal amounts, one to be deducted for each school month. A similar certificate shall be filed not later than the 15th day of each calendar month to cover cases of new entrants. No deduction shall be made from less than an entire month's salary. The amounts deducted and withheld from the annual salary of each teacher, including amounts so deducted and with-

held prior to the effective date of sections 31–721 to 31–739 under sections 31–701 to 31–710, 31–712 to 31–720, shall be credited to an individual account of the teacher from whose salary the deduction is made, together with interest at 4 per centum per annum, compounded annually up to the effective date of sections 31–721 to 31–739 and thereafter at 3 per centum per annum, compounded annually from June 30 of the year in which the deductions are made. These individual interest-bearing accounts shall be kept by the Auditor of the District of Columbia.

Any teacher may at his option and under such regulations as may be prescribed by the Commissioners of the District of Columbia deposit with the Collector of Taxes, District of Columbia, additional sums in multiples of $25 but not to exceed 10 per centum per annum of his annual salary, pay, or compensation, for services rendered since March 1, 1920, which amount together with interest thereon at 3 per centum per annum compounded as of June 30 of each year, shall, at the date of his retirement, be available to purchase an annuity as he shall elect in accordance with such rules and regulations as may be prescribed by the Commissioners of the District of Columbia, in addition to the annuity provided by sections 31–721 to 31–739; the purchase price of such annuity shall be based upon an interest rate of 3 per centum per annum compounded annually and upon such table of mortality as shall from time to time be prescribed by the Commissioners of the District of Columbia. In the event of death or separation from the service of such teacher before becoming eligible for retirement on annuity, the amounts so deposited with interest at 3 per centum compounded annually from June 30 of the year in which the deposits are made shall be refunded in accordance with the provisions of sections 31–721 and 31–730, respectively. A separate individual account shall be kept by the Auditor of the District of Columbia with respect to the voluntary deposits and interest of each teacher. (Aug. 7, 1946, 60 Stat. 875, ch. 779, § 1.)

EFFECTIVE DATE

Sec. 20 of the act of August 7, 1946, cited to text, provided: "The provisions of this Act shall take effect July 1, 1946."

§ 31–722. Retirement and annuity fund—Separate accounts.

The amounts so deducted and withheld from the annual salary of every teacher, and the amounts of additional voluntary deposits, shall be deposited in the Treasury of the United States to the credit of the teachers' retirement and annuity fund. As of the effective date of sections 31–721 to 31–739, there shall be transferred and credited to such fund the balances of funds held for the retirement of teachers under the provisions of sections 31–702 and 31–707. The fund thus created shall be held and invested by the Secretary of the Treasury until paid out as hereinafter provided, and the income derived from such investment shall constitute a part of said fund for the purpose of carrying out the provisions of sections 31–721 to 31–739. Separate accounts shall be maintained by the Treasury with respect to (1) the regular operations of the retirement system, exclusive of those incident to the voluntary deposits; and (2) the voluntary deposits and the supplementary annuities and refunds resulting from such deposits. (Aug. 7, 1946, 60 Stat. 876, ch. 779, § 2.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–723. Voluntary retirement—Retirement at age 70—Minimum period of service.

(a) Any teacher to whom sections 31–721 to 31–739 apply who shall have attained or shall hereafter attain the age of sixty years and has rendered at least thirty years of service computed as prescribed in section 31–728, or shall hereafter attain the age of sixty-two years and has rendered at least fifteen years of service computed as prescribed in section 31–728, may voluntarily retire and shall be eligible for retirement on an annuity computed as provided in section 31–725.

(b) Any teacher to whom sections 31–721 to 31–739 apply who shall have attained or shall hereafter attain the age of fifty-five years and has rendered at least thirty years of service computed as prescribed in sections 31–721 to 31–739, may voluntarily retire and shall be paid an immediate life annuity beginning on the first day of the month following the date of separation from the service having a value equal to the present worth of a deferred annuity at the age of sixty years computed as prescribed in section 31–725 or may elect to receive a deferred annuity beginning at the age of sixty years computed as prescribed in section 31–725.

(c) Any teacher who shall have attained or shall hereafter attain the age of sixty-two years and is eligible for retirement under the provisions of sections 31–721 to 31–739, may be retired by the Board of Education upon written recommendation of the Superintendent of Schools. Any teacher who shall have attained, or shall hereafter attain the age of seventy years, shall be retired unless upon written recommendation of the Superintendent of Schools two-thirds of the members of the Board of Education vote to retain such teacher in the public schools for the good of the service. No sum shall be paid to any teacher upon his retirement under the provisions of this section unless he shall have been employed as a teacher on active duty in the public schools of the District of Columbia for a total period of not less than ten years. (Aug. 7, 1946, 60 Stat. 876, ch. 779, § 3.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–724. Disability—Annual examination—Reappointment—Discontinued annuity—Voluntary deposits.

Any teacher to whom sections 31–721 to 31–739 apply who shall have served on active duty in the public schools of the District of Columbia for a total period of not less than ten years, and who, before becoming eligible for retirement under the conditions defined in the preceding sections hereof, becomes physically or mentally disabled and incapable of satisfactorily performing the duties of his position, by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the

part of the teacher, shall upon his own application or upon order of the Board of Education as provided later in this section be retired on an annuity computed in accordance with the provisions of sections 31–725 and 31–726 hereof: *Provided,* That proof of freedom from vicious habits, intemperance, or willful misconduct for a period of more than five years next prior to becoming so disabled for useful and efficient service shall not be required in any case. No claim shall be allowed under the provisions of this section unless the application for retirement shall have been executed prior to the applicant's separation from the service or within six months thereafter. No teacher shall be retired under the provisions of this section unless examined under the direction of the Health Officer of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of the Superintendent of Schools concurred in by two-thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service.

Every annuitant retired under the provisions of this section, unless the disability for which retired be permanent in character, shall at the expiration of one year from the date of such retirement and annually thereafter, until reaching retirement age as defined in section 31–723 hereof, be examined under the direction of the Health Officer of the District of Columbia in order to ascertain the nature and degree of the annuitant's disability, if any. If an annuitant shall recover before reaching retirement age he shall be reappointed by the Board of Education in accordance with such rules and regulations as the said Board may prescribe to the first position, equal or similar to any position in the public schools occupied by the annuitant before retirement, which becomes vacant after the date the Board of Education receives written notification from the Health Officer of the District of Columbia that the annuitant has recovered and is able to discharge his duties as a teacher in the public schools of the District of Columbia. Payment of the annuity shall be continued until the date of reappointment by the Board of Education. In the event that the annuitant refuses to accept the employment prescribed in this section no annuity shall be paid after the date of such refusal. Should the annuitant fail to appear for examination as required under this section payment of the annuity shall be suspended until continuance of the disability shall have been satisfactorily established. Upon written recommendation of the Superintendent of Schools the Board of Education may order or direct at any time such medical or other examination as it shall deem necessary to determine the facts relative to the nature and degree of disability of any teacher retired on an annuity under this section.

In all cases where the annuity is discontinued under the provisions of this section, the annuity payments made under (1) of section 31–725 hereof shall be charged against his individual account and, unless he shall become reemployed in a position under the purview of sections 31–721 to 31–739, he shall be considered as having been separated from the service for other than retirement purposes and entitled to the benefits of section 31–729 hereof: *Provided, however,* That if such teacher were also receiving an annuity because of voluntary deposits made under the provisions of section 31–721 hereof, such annuity may be continued or, at the option of the teacher, the actuarial reserve value of such annuity may be withdrawn in cash unless the teacher is reemployed in a position within the purview of sections 31–721 to 31–739, in which case the amount of such reserve value shall be treated as a voluntary deposit under the provisions of section 31–721 hereof. (Aug. 7, 1946, 60 Stat. 877, ch. 779, § 4.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–725. Compensation of annuity—Options.

That following the effective date of sections 31–721 to 31–739 every teacher who shall be retired under the provisions of section 31–723 or section 31–724 shall receive an annuity composed of (1) a sum equal to 1 per centum of his average annual salary received during any five consecutive years of allowable service in the public schools of the District of Columbia, at the option of the teacher, for each year of his whole term of service, but in no event shall the amount of the average annual salary used to determine this portion of the annuity be less than the maximum salary for class 1, group A, established by sections 31–638 to 31–658; and (2) an additional sum of $20 for each year of his whole term of service, not exceeding forty. The total annuity shall be fixed at the nearest multiple of 12 cents, and shall be payable monthly. Annuities payable to any retired teacher who has become eligible for retirement because of age as defined in section 31–723 shall be payable during the lifetime of the annuitant. Annuities payable to any teacher retired on account of disability shall be subject to the conditions set forth under section 31–724.

Any teacher retiring under the provisions of sections 31–721 to 31–739 may, at the time of his retirement, elect one of the following options: (1) He may elect to receive in lieu of the life annuity described herein a reduced annuity of equivalent value providing that, in the event the annuitant shall die without having received in annuities purchased by his contributions accumulated with interest to the date of his retirement an aggregate sum equal to the total amount to his credit at time of retirement, the difference shall be paid in accordance with the provisions of section 31–730; or (2) he may elect to receive in lieu of the life annuity as described herein a reduced annuity of equivalent value providing for a life-insurance benefit payable in a lump sum at the time of the annuitant's death. The face amount of such life insurance may be in any amount which the retiring teacher shall designate at the time of retirement but shall not exceed his contributions accumulated with interest to the date of retirement. Payment of such insurance shall be made in accordance with the provisions of section 31–730. Any annuitant who elects to receive the reduced annuity with fixed life-insurance benefits may reconvert the value of the life insurance to an additional annuity of equivalent

value on any anniversary of the retirement date of said annuitant prior to reaching age seventy. (Aug. 7, 1946, 60 Stat. 878, ch. 779, § 5.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–726. Minimum credit—Restrictions.

That in calculating, as provided in section 31–725, the second part of the annuity of a teacher retired under the provisions of section 31–724, a minimum credit of twenty years shall be used in determining the sum allowable to a teacher with less than twenty years of service: *Provided,* That such minimum credit shall not exceed the total number of years of service which the teacher might have served if continuously employed as a teacher in the public schools of the District of Columbia to age sixty. (Aug. 7, 1946, 60 Stat. 878, ch. 779, § 6.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–727. Appropriations calculation.

The amount of each year's appropriation shall be calculated, on an actuarial basis, as a level percentage of the pay roll of all participants which shall be adequate to cover the liability normally accrued plus a further level amount computed to be sufficient to liquidate the unfunded accrued liability within a period of approximately fifty years after the effective date of sections 31–721 to 31–739. (Aug. 2, 1946, 60 Stat. 879, ch. 779, § 7; Aug. 4, 1947, 61 Stat. 750, ch. 476.)

EFFECTIVE DATE

See note under § 31–721.

AMENDMENTS

Act of Aug. 4, 1947, cited to text, substituted "fifty" for "twenty" years.

§ 31–728. Term of service—Reduction of annuity—Contributions on leave—Monthly deposits.

The whole term of service which forms the basis for determining the amount of the annuity provided in section 31–725 shall be computed from the date of original employment as a teacher, other than temporary, in the public schools of the District of Columbia, plus any service credit that may be allowed under the provisions of this section. In computing the length of service of retiring teachers credit may be given, year for year, for (a) public-school service or its equivalent outside the District of Columbia but not to exceed ten years; (b) continuous temporary service in the public schools of the District of Columbia immediately prior to probationary appointment; (c) service in the government of the District of Columbia or the Government of the United States allowable under the Civil Service Act of 1920, as amended; (d) periods of honorable service in the Army, Navy, Marine Corps, or Coast Guard of the United States in time of war; (e) all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 31–632 to 31–637; and the first ten-year period to begin on the date of the first probationary appointment as a teacher in the public schools of the District of Columbia: *Provided, however,* That that portion of the annuity which results from credit for service allowable under (a) and (c) of this section shall be reduced by the amount of any annuity which the retired teacher is entitled to receive under any Federal, State, or municipal retirement or pension system in respect to such service, except that such portion of the annuity after reduction shall not be less than the annuity purchasable with the deposit which the teacher is required to make under the provisions of this section in order to obtain credit for such service: *Provided further,* That no credit for service prescribed in this section, with the exception of periods of honorable service in the Army, Navy, Marine Corps, or Coast Guard of the United States in time of war and all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 31–632 to 31–637, shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement and annuity fund of the District of Columbia a sum equal to the accumulated contributions and interest which he would have had credited to his individual account if such service had been rendered on active duty in the public schools of the District of Columbia, said contributions to be based on the average annual salary of the class to which the teacher is appointed: *Provided further,* That all contributions to the retirement fund made by any teacher on educational leave with part pay shall be determined in accordance with the provisions of section 31–721, but otherwise no provision of this Act shall be interpreted to deprive any teacher employed by the Board of Education of any rights or benefits allowable under sections 31–632 to 31–637: *Provided further,* That if the teacher so elects, he may deposit the required sum in the fund in any number of monthly installments not exceeding fifty with interest at 3 per centum per annum compounded annually, upon making claim with the Auditor, District of Columbia, within one year of the effective date of sections 31–721 to 31–739, or within one year after the original probational appointment or reinstatement in the school service, or within two years after the date of honorable discharge from the military service: *And provided further,* That nothing contained herein shall be construed to allow any teacher more than one year's credit for all services rendered in any one fiscal year. (Aug. 7, 1946, 60 Stat. 879, ch. 779, § 8.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–729. Deferred annuity — Refunds — Deposit of amount withdrawn.

Should any teacher to whom sections 31–721 to 31–739 apply, after having served in the public schools of the District of Columbia for a total period of not less than ten years and before becoming eligible for retirement, become separated from the service, such teacher may elect to receive a deferred annuity beginning at the age of sixty-two years computed as provided in section 31–725: *Provided,* That any teacher who becomes separated from the public schools of the District of Columbia for other than

retirement purposes and who does not elect to receive a deferred annuity as provided for in this section, shall receive as soon as practicable after separation the refund of deductions, deposits, or redeposits with interest thereon, or any voluntary contributions made under the provisions of section 31–721, with interest: *Provided further,* That no teacher who shall withdraw the amount of his deductions, deposits, or redeposits under this section shall, after reinstatement, be entitled to credit for previous service unless he shall deposit in the fund the amount so withdrawn by him: *And provided further,* That the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding one hundred, with interest at 3 per centum compounded annually. (Aug. 7, 1946, 60 Stat. 880, ch. 779, § 9.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–730. Beneficiaries—Death before retirement.

Any teacher from whose salary retirement deductions are made in accordance with sections 31–721 to 31–739 may designate in writing a beneficiary or beneficiaries to whom the amount of his deductions, together with interest then credited thereon, shall be payable, as hereinafter provided, in the event of the death of the teacher before or after retirement.

In the event any teacher shall die before retirement the total amount of his deductions with interest thereon shall be paid, upon the establishment of a valid claim therefor, provided the claim be filed with the Auditor of the District of Columbia within three years after the death of such teacher, to the beneficiary or beneficiaries, if a beneficiary or beneficiaries be designated in writing by the teacher and recorded on his individual account, or, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor or administrator of the estate of the teacher, or, if the amount payable be less than $1,000 and no executor or administrator is appointed, to such person or persons as the Auditor, in his judgment, may determine is or are legally entitled thereto.

On the death of a retired teacher who elected to receive a reduced annuity with death benefits, the amount payable, if any, shall be determined according to the terms of the option so elected, and such amount shall be paid upon the establishment of a valid claim therefor, provided the claim be filed with the Auditor of the District of Columbia within three years after the death of such teacher, to the beneficiary or beneficiaries, if a beneficiary or beneficiaries be designated in writing by the teacher and recorded on his individual account, or, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor or administrator of the estate of the teacher, or, if the amount payable be less than $1,000 and no executor or administrator is appointed, to such person or persons as the Auditor, in his judgment, may determine is or are legally entitled thereto. (Aug. 7, 1946, 60 Stat. 880, ch. 779, § 10.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–731. Consent to deductions.

Every teacher who shall continue in the service of the public schools of the District of Columbia after the passage of sections 31–721 to 31–739, as well as every person who hereafter may be appointed to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and agree to the deductions made and provided for herein; and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be full and complete discharge and acquitance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of sections 31–721 to 31–739, notwithstanding the provisions of the Act of June 20, 1906 (34 Stat. 316), and of any other law, rule, or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia. (Aug. 7, 1946, 60 Stat. 880, ch. 779, § 11.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–732. Discharge of teacher.

Nothing in sections 31–721 to 31–739 shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 12.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–733. Definitions.

The term "teacher," under sections 31–721 to 31–739, shall include all teachers permanently employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are established in sections 31–638 to 31–658, except the employees of the Department of School Attendance and Work Permits; whenever the pronoun "his" occurs in sections 31–721 to 31–739 it shall be construed to mean both male and female; and the term "annual salary" shall be construed to mean the total annual income received during the fiscal year for service rendered in the public day schools (not including summer schools) of the District of Columbia, including basic salary, automatic increases, and longevity allowances, provided for in sections 31–638 to 31–658, and all wartime additional compensation or bonus, and this definition of "annual salary" shall not be construed to affect any deductions which have been made prior to the effective date of sections 31–721 to 31–739 from any teacher's "annual salary" as defined in the Act of January 15, 1920, as amended. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 13.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–734. Records and accounts—Report to Congress—Appropriation estimates.

The Commissioners of the District of Columbia shall prepare and keep all needful tables, records,

and accounts required for carrying out the provisions of sections 31–721 to 31–739. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers. The Commissioners of the District of Columbia shall make a detailed comparative report annually to Congress showing all receipts and disbursements under the provisions of sections 31–721 to 31–739, together with the total number of persons receiving annuities and the amounts paid them. And the Treasury Department shall prepare the estimates of the annual appropriations required to be made to the teachers' retirement and annuity fund, and shall make actuarial valuations of such fund at intervals of five years, or oftener if deemed necessary by the Secretary of the Treasury. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 14.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–735. Transfer of appropriations.

The Commissioners of the District of Columbia shall include in their annual estimates of appropriations a sum sufficient to carry out the provisions of sections 31–721 to 31–739. Appropriations made for the purposes of this Act shall be transferred to the credit of the teachers' retirement and annuity fund established under section 31–722. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 15.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–736. Rules and regulations.

The Commissioners of the District of Columbia are hereby authorized to perform, or cause to be performed, any or all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of sections 31–721 to 31–739 into full force and effect. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 16.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–737. Funds not assignable or subject to execution.

None of the money mentioned in sections 31–721 to 31–739 shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 17.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–738. Applicability.

The provisions of sections 31–721 to 31–739 shall apply to all teachers on the rolls of the public schools of the District of Columbia for the month of June 1946, or thereafter, if otherwise eligible: *Provided,* That nothing in sections 31–721 to 31–739 shall require the reduction of any annuity any teacher on the rolls of the public schools of the District of Columbia for the month of June 1946, would be entitled to receive, under the provisions of sections 31–701 to 31–710, 31–712 to 31–720, upon retirement. The said sections shall not otherwise apply to teachers on the rolls of the public schools of the District of Columbia for the month of June 1946, or thereafter, but such Act shall remain in force and effect with respect to teachers retired prior to the effective date of this Act, subject to the provisions of section 31–739. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 18.)

EFFECTIVE DATE

See note under § 31–721.

§ 31–739. Prior retirements—Salary basis—Straight life annuity.

The annuities of all teachers retired prior to the effective date of sections 31–721 to 31–739 shall be recomputed in accordance with the provisions of section 5 of this Act within ninety days after the approval of sections 31–721 to 31–739 retroactive to the effective date of sections 31–721 to 31–739, and no recomputation shall be made which will reduce the annuity received by any retired teacher: *Provided,* That the average annual salary during any five consecutive years, specified in section 31–725, upon which the annuity is based shall be within the last ten years of allowable service in the public schools of the District of Columbia: *Provided further,* That the increased amount of the annuity resulting therefrom shall be a straight life annuity without any insurance or death benefits of any kind. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 19.)

EFFECTIVE DATE

See note under § 31–721.

Chapter 8.—USE OF SCHOOL BUILDINGS

Sec.

31–801. Control by Board of Education of school buildings and grounds for purposes other than use as schools—Rules and regulations.
31–802. Board of Education authorized to accept free services—Teachers shall not be required or solicited to give—Use of school buildings and grounds.
31–803. Inspector of buildings to control and supervise construction and repairs of school buildings.
31–804. Board of Education may use Franklin School for office purposes.
31–805. Restriction on lot 14 in square 263.
31–806. Sale of part of lot 14 in square 263 authorized—Proceeds, how invested.
31–807. Certain land granted for colored schools to revert to United States.
31–808. Certain property set apart exclusively for school purposes.
31–809. Business High School used for senior high and elementary school purposes.
31–810. Repealed.
31–811. Repealed.

§ 31–801 [7: 171]. Control by Board of Education of school buildings and grounds for purposes other than use as schools—Rules and regulations.

The control of the public schools in the District of Columbia by the Board of Education shall extend to, include, and comprise the use of the public-school buildings and grounds by pupils of the public schools, other children and adults, for supplementary educational purposes, civic meetings for the free discussion of public questions, social centers, centers of

recreation, playgrounds. The privilege of using said buildings and grounds for any of said purposes may be granted by the board upon such terms and conditions and under such rules and regulations as the board may prescribe. (Mar. 4, 1915, 38 Stat. 1190, ch. 165, § 1.)

CROSS REFERENCES

Authority of Recreation Board, see § 8–216.
Board of Education, general provisions, § 31–101, and notes.
Duty to furnish school rooms for colored children, § 31–1113.

§ 31–802 [7: 172]. Board of Education authorized to accept free services—Teachers shall not be required or solicited to give—Use of school buildings and grounds.

The Board of Education is authorized to accept, upon written recommendation of the superintendent of schools, free and voluntary services of the teachers of the public schools, other educators, lecturers, and social workers and public officers of the United States and the District of Columbia: *Provided,* That teachers of the public schools shall not be required or compelled to perform any such services or solicited to make any contribution for such purposes: *Provided further,* That the public-school buildings and grounds of the District of Columbia shall be used for no purpose whatsoever other than those directly connected with the public-school system and as further provided for in this section and section 31–801. (Mar. 4, 1915, 38 Stat. 1190, ch. 165, § 2.)

CROSS REFERENCES

Authority of Recreation Board, see § 8–216.
General provision forbidding acceptance of voluntary services, § 1–215.

§ 31–803 [7: 173]. Inspector of buildings to control and supervise construction and repairs of school buildings.

The inspector of buildings of the District shall have authority and control over and supervision of the construction and repairs of all school buildings if the commissioners deem best to delegate the same to him. (Mar. 3, 1879, 20 Stat. 408, ch. 182.)

CROSS REFERENCES

Building inspector, duties of assistant, § 1–728.
Janitors to make minor repairs, § 31–1105.
Testing building materials, §§ 1–813, 1–814.

NOTES TO DECISIONS

OFFICE OF INSPECTOR—JUDICIAL NOTICE

The court will take judicial notice that there is an executive officer, subject to the authority of the commissioners, designated as the Inspector of Buildings. The appropriation bills of Congress for the District of Columbia have heretofore made provision for the payment of his salary from time to time, and his office and duties have been recognized by other acts. *McBride* v. *Ross* (13 App. D. C. 576).

§ 31–804 [7: 174]. Board of Education may use Franklin School for office purposes.

The Board of Education is authorized to use all necessary floor and room space in the Franklin School Building for office purposes. (Mar. 3, 1917, 39 Stat. 1026, ch. 160; June 5, 1920, 41 Stat. 855, ch. 234; Feb. 26, 1925, 43 Stat. 993, ch. 342, § 5.)

AMENDMENTS

Act of March 3, 1917, provided for use of top floor.
Act of June 5, 1920, provided for use of all space except rooms occupied by grades one, two, three, and four.

§ 31–805 [7: 175]. Restriction on lot 14 in square 263.

The lot of land marked upon the plan of the city of Washington as lot number fourteen, in square number two hundred and sixty-three, which was conveyed to said city by the Commissioner of Public Buildings, under authority of an Act of Congress dated June fifth, eighteen hundred and sixty, for the use of the public schools in said city, shall not be sold, assigned or conveyed or diverted, for any other purpose except as provided in section 31–806. (R. S., D. C., § 317.)

COMPILER'S NOTE

This section is probably executed and obsolete.

CROSS REFERENCE

Sale of public lands and buildings, §§ 9–301 to 9–306 and notes.

§ 31–806 [7: 176]. Sale of part of lot 14 in square 263 authorized—Proceeds, how invested.

The proceeds of that portion of lot number fourteen, in square number two hundred and fifty-three, which was authorized to be sold by an Act of Congress dated June fourth, eighteen hundred and seventy-two, shall be invested by the authorities of the District in another lot or part of a lot in the city of Washington, and in improvements thereon; and the property so purchased shall be used for the purpose of the public schools, and for no other purpose. (R. S., D. C., § 318.)

COMPILER'S NOTES

This section is probably executed and obsolete.
The words "two hundred and fifty-three" are clearly a misprint in the original statute for "two hundred and sixty-three" (see 12 Stat. 27, ch. 77).

§ 31–807 [7: 177]. Certain land granted for colored schools to revert to United States.

The lots of land numbered one, two, and eighteen, in square number nine hundred and eighty-five, in the city of Washington, which were designated and set apart by the Secretary of the Interior to be used for colored schools, and conveyed to the trustees of colored schools for the cities of Washington and Georgetown, by the Commissioner of Public Buildings, under authority of an act of Congress dated July 28, 1866, for the sole use of schools for colored children in the District of Columbia, shall, if converted to other uses, revert to the United States. (R. S., D. C., § 319.)

COMPILER'S NOTE

The words "except as provided in section 31–801" should probably be inserted in the last clause.

CROSS REFERENCE

Duty to furnish school rooms for colored children, § 31–1113.

§ 31–808 [7: 178]. Certain property set apart exclusively for school purposes.

That parcel of land marked and designated upon the map of the city of Washington as part of lot number eleven, in square number one hundred and forty-one, beginning at the northwest corner of said

lot, and running thence due south on the west line of said square, fifty feet; thence due east, thirty feet; thence due north, fifty feet; thence due west on the north line of said square, to the point of beginning, and also that piece of land marked and designated upon said map as a public reservation, located between Eighth and Ninth Streets and K Street and Virginia Avenue Southeast, known as the Anacostia engine house, together with the buildings and improvements thereon, are severally set apart and appropriated for the use of the public schools in the city of Washington, so long as they shall be occupied for that purpose, and no longer. (R. S., D. C., § 320.)

§ 31–809 [7: 179]. Business High School used for senior high and elementary school purposes.

Upon completion of the Roosevelt (Business) High School the building now occupied by the Business High School shall be utilized for senior high and elementary school purposes. (Feb. 23, 1931, 46 Stat. 1395, ch. 282, § 1.)

COMPILER'S NOTE

By act of February 25, 1929, 45 Stat. 1280, ch. 314, funds were appropriated for a new Business High School, and, upon completion of such building, the old building occupied by the Business High School was to be used as an elementary school.

§§ 31–810, 31–811. Repealed July 16, 1946, 60 Stat. 541, ch. 582, § 5, effective July 1, 1946.

Sections, act of Dec. 22, 1942, 56 Stat. 1072, ch. 804, §§ 2, 3, provided that public school buildings and equipment may be used for day nurseries and nursery schools, and related to fees for such nurseries and nursery schools.

Chapter 9.—MEDICAL AND DENTAL COLLEGES

Sec.

31–901. Medical and dental colleges not incorporated by special act of Congress to register with Commissioners—Permit.
31–902. Application for registration and permit—Regulations—Inquiry as to equipment.
31–903. Penalty for failure to register and obtain permit.
31–904. Injunction proceedings—Duty of Commissioners—Jurisdiction of court.
31–905. Repeal provisions.

§ 31–901 [7: 191]. Medical and dental colleges not incorporated by special act of Congress to register with Commissioners—Permit.

It shall be unlawful for any medical or dental college claiming the authority to confer, or actually conferring, the degree of doctor of medicine, or doctor of dental surgery, not incorporated by a special Act of Congress, to conduct its business in the District of Columbia, unless such college shall be registered by the Commissioners of the District of Columbia and granted by them a written permit to commence or continue business in said District in compliance with the requirements of this chapter. (May 4, 1896, 29 Stat. 112, ch. 154, § 1.)

CROSS REFERENCE

Institutions of learning generally, § 29–401 et seq.

§ 31–902 [7: 192]. Application for registration and permit—Regulations—Inquiry as to equipment.

It shall be the duty of the proper officers of any such college, before commencing or continuing business, to apply to the said Commissioners for registration and a permit to commence or continue business; and said Commissioners are hereby authorized and required to make such regulations concerning the form of such application, the evidence to be adduced in support thereof, and the method of taking such evidence as they may deem best, and shall have power, and it shall be their duty, to give public notice of all hearings upon such applications; and no registration and permit shall be granted until after the Commissioners shall have, by the inquiry and hearing hereinbefore provided for and such other inquiry as they may see fit to make, satisfied themselves that all such medical or dental colleges are fully equipped, both by the character and fitness of the faculty and the sufficiency of their appliances, to give suitable and sufficient instruction in the theory and practice of medicine or dental surgery. (May 4, 1896, 29 Stat. 113, ch. 154, § 2.)

COMPILER'S NOTE

Section 3 of the act of May 4, 1896, 29 Stat. 113, ch. 154, provided as follows: "It shall be the duty of the proper officers of every medical or dental college not incorporated by a special act of Congress which is now doing business in said District to apply for such certificate and registration within thirty days of the passage of this act; and no such college hereafter sought to be opened in said District shall commence business without first obtaining such registration and permit."

§ 31–903 [7: 193]. Penalty for failure to register and obtain permit.

Such of the officers and of the faculty of any such medical or dental college in existence on May 4, 1896, and of every such college thereafter sought to be opened in said District, which shall continue or commence to offer instruction in such capacity without first obtaining registration and permit, as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the police court of said District, upon an information similar to that filed in the case of violations of the police regulations made by the said Commissioners, shall be fined not less than twenty-five nor more than two hundred and fifty dollars, and in default of payment thereof shall be imprisoned in the common jail of said District not less than thirty nor more than ninety days; said fines when collected to be paid into the Treasury of the United States to the credit of the District of Columbia. (May 4, 1896, 29 Stat. 113, ch. 154, § 4.)

§ 31–904 [7: 194]. Injunction proceedings — Duty of commissioners—Jurisdiction of court.

In any case when such action shall be necessary in the opinion of the said Commissioners to give full effect to the intent of this chapter they shall have power, and it shall be their duty, to file in the District Court of the United States for the District of Columbia, in the name of the said District, a bill in equity against the proper parties praying an injunction against the opening or continuance of any such college not registered and granted a permit as aforesaid; and jurisdiction is hereby conferred upon such court to hear and determine such causes. (May 4, 1896, 29 Stat. 113, ch. 154, § 5.)

§ 31–905 [7: 195]. Repeal provisions.

All acts and parts of acts enacted prior to May 4, 1896, and all charters obtained by any medical or dental college prior to Mar. 4, 1896, under the general incorporation laws in force in said District, so far as inconsistent with this chapter, are hereby repealed. (May 4, 1896, 29 Stat. 113, ch. 154, § 6.)

Chapter 10.—THE COLUMBIA INSTITUTION FOR THE DEAF

Sec.
31–1001. Establishment of corporation—Powers.
31–1002. Power to confer degrees.
31–1003. Terms of deed part of charter.
31–1004. Use and alienation of property.
31–1005. Management—Alteration of constitution.
31–1006. Government directors—Appointment—Tenure.
31–1007. Government directors—Term of office—Control of disbursements—Accounts.
31–1008. Admission of deaf-mutes from District—Not an institution of charity.
31–1009. Indigent feeble-minded applicants—Secretary of Interior—Cost of instruction—Annual estimates.
31–1010. Expenses of students from District—Division between District and Federal Treasury.
31–1011. Education of colored deaf-mute children of District.
31–1012. Admission of students from States and Territories—No such student to be supported by United States.
31–1013. Limitation on number of pupils from one State or Territory.
31–1014. Number and compensation of employees included in annual budget.
31–1015. Judges of the municipal court to report deaf and dumb persons in District.
31–1016. Repealed.
31–1017. Annual report of president and directors.
31–1018. Itemized report of expenses.
31–1019. Education of indigent blind persons—Cost of instruction.
31–1020. Appropriation for instruction of indigent blind from District—Division between District and Federal Treasury.
31–1021. Title to certain real estate transferred to institution.
31–1022. Secretary of the Interior to supervise.
31–1023. Purchase of supplies.
31–1024. Report of Convention of American Instructors of the Deaf.

§ 31–1001 [7: 211]. Establishment of corporation — Powers.

The corporation created by the Act of February 16, 1857, under the name of the "Columbia Institution for the Instruction of the Deaf and Dumb and the Blind," shall have perpetual succession, and be capable to take, hold, and enjoy lands, tenements, hereditaments, and personal property, to use a common seal, and to alter the same at pleasure. But no real or personal property shall be held by the corporation, except such as may be necessary to the maintenance and efficient management of the institution. (Feb. 16, 1857, 11 Stat. 161, ch. 46, § 1; Feb. 23, 1865, 13 Stat. 436, ch. 50, § 1; R. S., § 4859; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

AMENDMENT

The name was originally "The Columbia Institute for the Instruction of the Deaf and Dumb, and the Blind," as set out above, but the act of Feb. 23, 1865 (13 Stat. 436) changed it to "Columbia Institute for the Instruction of the Deaf and Dumb." Finally the act of March 4, 1911, 36 Stat. 1422 provided: "From and after the passage of this act the Columbia Institution for the Deaf and Dumb shall be known and designated as the Columbia Institution for the Deaf."

CROSS REFERENCES

Education in other institutions, § 31–1011.
Education of the blind, § 31–1019.
Feeble-minded persons, § 31–1009.

§ 31–1002 [7: 212]. Power to confer degrees.

The board of directors of the Columbia Institution for the Deaf are authorized and empowered to grant and confirm such degrees in the liberal arts and sciences to such pupils of the institution, or others, who, by their proficiency in learning or other meritorious distinction they shall think entitled to them, as are usually granted and conferred in colleges; and to grant to such graduates diplomas or certificates, sealed and signed in such manner as said board of directors may determine, to authenticate and perpetuate the memory of such graduation. (Apr. 8, 1864, 13 Stat. 45, ch. 52; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

AMENDMENT

Under act of 1911 the Columbia Institution for the Deaf and Dumb shall be known and designated as the Columbia Institution for the Deaf.

§ 31–1003 [7: 213]. Terms of deed part of charter.

The terms and conditions of the deed of transfer of the funds and property of Washington's Manual Labor School and Male Orphan Asylum Society of the District of Columbia shall be as obligatory upon the Columbia Institution for the Deaf as if they formed a part of its charter. (R. S., § 4860; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

AMENDMENT

The 1911 act provided that the Columbia Institution for the Deaf and Dumb should thereafter be known as the Columbia Institution for the Deaf.

§ 31–1004 [7: 214]. Use and alienation of property.

No part of the real or personal property held or acquired by the Columbia Institution for the Deaf shall be devoted to any other purpose than the education of the deaf and dumb, nor shall any portion of the real estate be aliened, sold, or conveyed, except under the authority of a special act of Congress. (R. S., § 4861; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

CROSS REFERENCE

See amendment note to § 31–1001.

§ 31–1005 [7: 215]. Management—Alteration of constitution.

The Columbia Institution for the Deaf shall be managed as provided for in its constitution, and such additional regulations as may from time to time be found necessary. The constitution may be altered consistently with law, in the manner therein provided. (R. S., § 4862; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

CROSS REFERENCES

See amendment note to § 31–1001.
Officers, trustees, or directors may not deal with the institution for financial gain, § 32–1007.

§ 31–1006 [7: 216]. Government directors — Appointment—Tenure.

In addition to the directors whose appointment has been provided for by law, there shall be three other directors of the Columbia Institution for the Deaf, appointed in the following manner: One Senator by the President of the Senate, and two Representatives by the Speaker of the House. These directors shall hold their offices for the term of a single Congress and be eligible to a reappointment. (R. S., § 4863; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

CROSS REFERENCE

See amendment note to § 31–1001.

§ 31–1007 [7: 217]. Government directors — Term of office—Control of disbursements—Accounts.

Directors appointed under the provisions of section 31–1006 shall remain in office until the appointment and acceptance of office of their successors; and the directors of the institution shall have control of the disbursements of all moneys appropriated by Congress for the benefit of said institution, accounts for which shall be settled and adjusted at the General Accounting Office as required by the provisions of section 236 of the Revised Statutes of the United States of America. (July 1, 1898, 30 Stat. 624, ch. 546, § 1; June 10, 1921, 42 Stat. 24, ch. 18, § 305.)

AMENDMENT

The act of 1898 provided that accounts should be settled at the Treasury Department in accordance with § 236 of the Revised Statutes. The 1921 act amended this section of the Revised Statutes to provide for settlement in the General Accounting Office. As so amended, this section is set forth as § 71 of title 31, U. S. Code.

CROSS REFERENCES

Officers, trustees, or directors may not deal with the institution for financial gain, § 32–1007.

Other provisions concerning term of office of members of Congress or Senators, § 32–1004.

§ 31–1008 [7: 218]. Admission of deaf-mutes from District—Not an institution of charity.

All deaf mutes of teachable age, of good mental capacity, and properly belonging to the District of Columbia shall be received and instructed in the Columbia Institution for the Deaf, their admission thereto being subject to the approval of the Superintendent of Public Schools in the District of Columbia. And said institution shall not be regarded nor classified as an institution of charity. (Mar. 1, 1901, 31 Stat. 844, ch. 670, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

AMENDMENT

Act of 1911 changed the name from Columbia Institution for the Deaf and Dumb to the Columbia Institution for the Deaf.

§ 31–1009 [7: 219]. Indigent feeble-minded applicants—Secretary of Interior—Cost of instruction—Annual estimates.

When any indigent applicant for admission to the Columbia Institution for the Deaf, belonging to the District of Columbia, and being of teachable age, is found on examination by the president of the institution to be of feeble mind, and hence incapable of receiving instruction among children of sound mind, the Secretary of the Interior may cause such person to be instructed in some institution for the education of feeble-minded children in Pennsylvania, or some other state, at a cost not greater for each pupil than is, or may be for the time being, paid by such state for similar instruction.

The estimates for this expense shall each year be submitted in the annual estimates for the expenses of the government of the District of Columbia. (June 16, 1880, 21 Stat. 275, ch. 235; Aug. 30, 1890, 26 Stat. 393, ch. 837, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

COMPILER'S NOTE

By Reorganization Plan No. IV, April 11, 1940, the functions of the Interior Department relating to the Columbia Institution for the Deaf were transferred to the Federal Security Agency. See U. S. C., Title 5, § 133t, note.

AMENDMENTS

Act of 1890 added second paragraph of this act.

Act of 1911 changed name of Columbia Institution for Deaf and Dumb to the Columbia Institution for the Deaf.

CROSS REFERENCE

District Training School for feeble-minded persons, § 32–601 et seq.

§ 31–1010 [7: 220]. Expenses of students from District—Division between District and Federal Treasury.

All expenses attending the instruction of deaf and dumb persons admitted to the Columbia Institution for the Deaf from the District of Columbia, under section 31–1008, shall be paid from the revenues of the District of Columbia, and estimates for such expenses shall each year be submitted in the regular estimates for the expenses of the government of the District of Columbia. (Mar. 2, 1889, 25 Stat. 962, ch. 411, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

AMENDMENT

Act of 1911 changed name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

CROSS REFERENCES

See amendment note to § 31–1001.

Division of expenses, see Compiler's Note under § 32–401.

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

§ 31–1011 [7: 221]. Education of colored deaf-mute children of District.

The directors of the Columbia Institution for the Deaf are authorized to provide for the education of colored deaf-mute children properly belonging to the District of Columbia, in the Maryland School for Colored Deaf-Mutes, or some other suitable school, at a cost not exceeding the per capita expense of educating the State pupils in such school. (Mar. 3, 1905, 33 Stat. 901, ch. 1406, § 1; June 27, 1906, 34 Stat. 503, ch. 3553; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

AMENDMENTS

Acts of 1905 and 1906 are the same in substance.

Act of 1911 changed name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

§ 31–1012 [7: 222]. Admission of students from States and Territories—No such student to be supported by United States.

Deaf mutes, not exceeding one hundred and forty-five in number, residing in the several States and

Territories, applying for admission to the collegiate department of the Columbia Institution for the Deaf, shall be received on the same terms and conditions as those prescribed by law for residents of the District of Columbia, at the discretion of the president of the institution; but no student coming from either of the States shall be supported by the United States during any portion of the time he remains therein. (R. S., § 4865; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1; July 1, 1918, 40 Stat. 680, ch. 113, § 1; June 24, 1935, 49 Stat. 394, ch. 286.)

AMENDMENTS

R. S., § 4865, limited the number of nonresident students to 40.

The 1911 act changed the name of the institution from the Columbia Institution for the Instruction of the Deaf and Dumb.

The 1918 act limited the number of nonresident students to 125.

The 1935 act raised the number to 145.

§ 31–1013 [7: 223]. Limitation on number of pupils from one State or Territory.

There shall not be admitted to the Columbia Institution for the Deaf under section 31–1012, nor shall there be maintained after such admission, at any one time from any state or territory exceeding three deaf-mutes while there are applications pending from deaf-mutes, citizens of states or territories having less than three pupils in said institution. (Aug. 30, 1890, 26 Stat. 392, ch. 837, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

AMENDMENT

Act of 1911 changed the name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

§ 31–1014 [7: 224]. Number and compensation of employees included in annual Budget.

There shall be included in the annual Budget a statement showing the number of persons employed each year in the Columbia Institution for the Deaf and the compensation paid to each. (Aug. 30, 1890, 26 Stat. 392, ch. 837, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1; June 10, 1921, 42 Stat. 20, ch. 18, § 214.)

AMENDMENTS

The 1890 act provided for the inclusion of the statement required by this section in the Book of Estimates.

The 1911 act changed the name of the institution from the Columbia Institution for the Instruction of the Deaf and Dumb.

The national budget system was created by the act of 1921.

§ 31–1015 [7: 225]. Judges of the municipal court to report deaf and dumb persons in District.

It shall be the duty of the judges of the municipal court of the District of Columbia to ascertain the names and residences of all deaf and dumb persons within their respective districts; who of them are of teachable age, and also who of them are in indigent circumstances; and to report the same to the president of the Columbia Institution for the Deaf. (R. S., § 4866; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

COMPILER'S NOTE

The words "within their respective districts" are now meaningless in the light of sections 11–701 to 11–749, which extends the jurisdiction of the municipal court to the entire District of Columbia. For a number of years recommendations for admission to the Columbia Institution for the Deaf have been made by the Superintendent of Schools and his assistants and not by judges of the municipal court.

AMENDMENTS

The 1909 act changed the name and jurisdiction of the justice of the peace courts to the Municipal Court of the District of Columbia.

The 1911 act changed the name of the institution from the Columbia Institution for the Instruction of the Deaf and Dumb.

§ 31–1016. Repealed. Aug. 7, 1946, 60 Stat. 871, ch. 770, § 1 (61).

§ 31–1017 [7: 227]. Annual report of president and directors.

It shall be the duty of the president and directors of the Columbia Institution for the Deaf to report to the Secretary of the Interior the condition of the institution on the 1st day of July in each year, embracing in the report the number of pupils of each description received and discharged during the preceding year, and the number remaining in the institution; also the branches of knowledge and industry taught, and the progress made therein; also a statement showing the receipts of the institution, and from what sources, and its disbursements, and for what objects. (R. S., § 4868; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

COMPILER'S NOTE

Under Reorganization Plan No. IV, April 11, 1940, the annual report of the president and directors of the Columbia Institution for the Deaf and the superintendent thereof, should be made to the Federal Security Administrator instead of the Secretary of the Interior. See U. S. C., Title 5, § 133t, note.

CROSS REFERENCE

See amendment note to § 31–1016.

§ 31–1018 [7: 228]. Itemized report of expenses.

The report of the Columbia Institution for the Deaf shall contain an itemized statement of all employees, the salaries or wages, respectively, of each of them, and also of all other expenses of said institution. (Mar. 3, 1883, 22 Stat. 625, ch. 143; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

CROSS REFERENCE

See amendment note to § 31–1016.

§ 31–1019 [7: 229]. Education of indigent blind persons—Cost of instruction.

Whenever the Secretary of the Interior is satisfied, by evidence produced by the president of the Columbia Institution for the Deaf, that any blind person of teachable age can not command the means to secure an education, he may cause such person to be instructed in some institution for the education of the blind, in Maryland, or some other State, at a cost not greater for each pupil than is, or may be for the time being, paid by such State, and to cause the same to be paid out of the Treasury of the United States. (R. S., § 4869; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

COMPILER'S NOTE

This section relates to the education of blind persons as to which neither the Columbia Institution for the Deaf nor the Secretary of the Interior exercises, at the present time, any authority. The Superintendent of Schools of

the District of Columbia exercises full charge of the education of blind children in the District of Columbia.

CROSS REFERENCE

See amendment note to § 31–1016.

§ 31–1020 [7: 230]. Appropriation for instruction of indigent blind from District—Division between District and Federal Treasury.

The indefinite appropriation to pay for the instruction of the indigent blind children of the District of Columbia, formerly instructed in the Columbia Institution for the Deaf, shall be paid out of the revenues of the District of Columbia. (Mar. 3, 1899, 30 Stat. 1101, ch. 424, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

AMENDMENTS

Act of 1911 changed name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

Act of 1899 provided for 50 percent of the expense to be paid from funds of the District of Columbia and 50 percent from the Treasury.

CROSS REFERENCE

See § 31–1010.

§ 31–1021 [7: 231]. Title to certain real estate transferred to institution.

The title to all that parcel of land lying between the west boundary of West Virginia Avenue, as said avenue was laid on July 1, 1916, with a width of sixty-six feet, and the east boundary of the grounds of the Columbia Institution for the Deaf, said parcel of land fronting on Florida Avenue about ten and one-half feet and containing one-tenth of an acre, more or less, and being formerly part of the Baltimore and Ohio Railroad right of way, shall be vested in the Columbia Institution for the Deaf, United States of America, trustee, and the Secretary of the Interior is authorized and directed to issue a patent for the said parcel of land to the said Columbia Institution for the Deaf. (July 1, 1916, 39 Stat. 310, ch. 209.)

CROSS REFERENCE

Closing or adjusting streets and highways for benefit of religious or charitable organizations, § 7–113.

STATUTORY REFERENCES

Ninth Street Northeast approach.—In order to provide a suitable approach to the Ninth Street Northeast overpass across the tracks of the Baltimore and Ohio and Pennsylvania Railroads and furnish better access to a part of the property of the Columbia Institution for the Deaf, described in the records of the office of the assessor for the District of Columbia as parcel 141/4, the board of directors of the Columbia Institution for the Deaf are hereby authorized to dedicate to the District of Columbia a strip of land ninety feet wide traversing the north part of said property approximately as shown and designated on the revised highway plan of the District of Columbia as Mount Olivet Road Northeast. (Act of Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 1.)

Adjustment of boundaries and exchange of properties.—In order to readjust the boundaries and exchange properties of the Columbia Institution for the Deaf, parcel 141/4, and Brentwood Park, United States Reservation Numbered 495, the board of directors of the Columbia Institution for the Deaf and the Secretary of the Interior are hereby authorized to convey fee-simple title by deeds, each to the other, to such parts of the property of the Columbia Institution for the Deaf and Brentwood Park (United States Reservation Numbered 495) as in their judgment is to the mutual advantage of both the institution and the park and playground system of the District of Columbia, provided such exchange of properties shall be approved by the National Capital Park and Planning Commission. (Act of Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 2.)

Sale of lands authorized—Investment of proceeds.—The board of directors of the Columbia Institution for the Deaf are further authorized to sell and to convey fee-simple title by deed that portion of its real estate, now owned by the Columbia Institution for the Deaf or acquired by exchange under section 2 of this act, which will lie north of the proposed location of Mount Olivet Road extended after a definite survey of such road is established, such sale to be subject to the approval of the Secretary of the Interior. Funds received by the sale of this portion of real property of the institution shall be considered a part of the capital structure of the corporation, which may be invested in securities, buildings, or other real property by the board of directors. If invested in securities, only the income from such investment shall be used for current expenses of the institution. (Act of Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 3.)

§ 31–1022 [7: 232]. Secretary of the Interior to supervise.

The Secretary of the Interior is charged with the supervision of public business relating to the Columbia Institution for the Deaf. (R. S., § 441; Mar. 4, 1911, 36 Stat. 1422, ch. 285.)

COMPILER'S NOTE

By Reorganization Plan No. IV, April 11, 1940, the functions of the Interior Department relating to the Columbia Institution for the Deaf were transferred to the Federal Security Agency. See U. S. C., Title 5, § 133t, note.

AMENDMENT

The 1911 act changed the name of the Institution from the Columbia Institution for the Instruction of the Deaf and Dumb.

STATUTORY REFERENCE

This section is in U. S. C., Title 5, § 485.

§ 31–1023 [7: 233]. Purchase of supplies.

The purchase of supplies and equipment or the procurement of services for the Columbia Institution for the Deaf may be made in open market, without compliance with sections 5 and 6, title 41 of the Code of Laws of the United States of America, in the manner common among business men, when the aggregate amount of the purchase or services does not exceed $100 in any instance. (June 5, 1924, 43 Stat. 392, ch. 264; Mar. 3, 1925, 43 Stat. 1143, ch. 462; Jan. 12, 1927, 44 Stat. 936, ch. 27, § 1; Oct. 10, 1940, 54 Stat. 1110, ch. 851, § 2 (g).)

AMENDMENT

The acts of 1925 and 1927 repeat the provisions of the act of 1924.

STATUTORY REFERENCE

This section is in U. S. C., Title 5, § 496.

§ 31–1024 [7: 234]. Report of Convention of American Instructors of the Deaf.

The Convention of American Instructors of the Deaf shall report to Congress, through the president of the Columbia Institution for the Deaf at Washington, District of Columbia, such portions of its proceedings and transactions as its officers shall deem to be of general public interest and value concerning the education of the deaf. (Jan. 26, 1897, 29 Stat. 499, ch. 94, § 4.)

Chapter 11.—MISCELLANEOUS

Sec.
31–1101. Whole school-day sessions to be given.
31–1102. Compulsory vaccination against smallpox.

Sec.
31–1103. Service in high school cadets compulsory—Excuse.
31–1104. School officials not to profit on supplies or textbooks purchased for schools.
31–1105. Janitors to do minor repair work—Selection.
31–1106. Names of certain schools changed.
31–1107. John A. Chamberlain Vocational School.
31–1108. Title and jurisdiction over Reservation 277–F transferred for school purposes—Authority to close streets and alleys.
31–1109. Board of Education may accept and apply donations for colored schools—Accounting.
31–1110. Education of colored children.
31–1111. Placement of children in schools.
31–1112. Proportionate amount of school moneys to be set apart for colored schools.
31–1113. Facilities for educating colored children to be provided.
31–1114. Education of children of veterans who lost lives during war—Appropriation authorized.
31–1115. Bond not required for supplies issued by War Department.
31–1116. School cadets—Issuance of arms—Insurance.

§ 31–1101 [7: 241]. Whole school-day sessions to be given.

All children of school age being instructed in the schools of the District beyond the second grade shall be given a whole school-day session. (June 20, 1906, 34 Stat. 316, ch. 3446, § 1.)

§ 31–1102 [7: 242]. Compulsory vaccination against smallpox.

No child shall be admitted into the public schools who shall not have been duly vaccinated or otherwise protected against the smallpox. (R. S., D. C., § 274.)

§ 31–1103 [7: 243]. Service in high school cadets compulsory—Excuse.

Every male pupil in attendance at the high schools shall be admitted to and shall serve in the high school cadets unless excused from such service by the principal, on certificate of one of the medical inspectors of schools that he is physically disqualified for such service, or on the written request of his parent or guardian. (Mar. 2, 1907, 34 Stat. 1141, ch. 2510.)

Cross Reference

Bond or fire insurance not required on military equipment, §§ 31–1115, 31–1116.

§ 31–1104 [7: 244]. School officials not to profit on supplies or textbooks purchased for schools.

No school official, teacher, or member of the Board of Education shall receive any pecuniary benefit on account of school supplies or textbooks purchased for the use of the public schools in the District of Columbia. (Aug. 7, 1894, 28 Stat. 254, ch. 232.)

Cross Reference

Purchase of school books and supplies, § 31–401 et seq.

§ 31–1105 [7: 245]. Janitors to do minor repair work—Selection.

The janitors of the principal school buildings, in addition to their other duties, shall do all minor repairs to buildings and furniture, glazing, fixing seats and desks, and take care of the heating apparatus, and shall be selected with reference to their qualifications to perform this work. (Feb. 25, 1885, 23 Stat. 318, ch. 145.)

Cross Reference

Construction and repair of school buildings under control of building inspector, § 31–803.

§ 31–1106 [7: 246]. Names of certain schools changed.

The school formerly known as the M Street High School (old) shall be known as Robert Gould Shaw Junior High School.

The school formerly known as Central High School (old) and annex shall be known as Columbia Junior High School. (June 29, 1922, 42 Stat. 689, ch. 249.)

§ 31–1107 [7: 246a]. John A. Chamberlain Vocational School.

The new school building built to replace the Lenox Vocational School shall, when occupied, be known as the John A. Chamberlain Vocational School. (July 15, 1939, 53 Stat. 1016, ch. 281, § 1.)

§ 31–1108 [7: 247]. Title and jurisdiction over Reservation 277–F transferred for school purposes—Authority to close streets and alleys.

Title to and jurisdiction over reservation 277–F, being part of square 3526, are transferred to the District of Columbia, the said reservation to be included in the site acquired or to be acquired for the McKinley Technical High School; and the commissioners of the District of Columbia are hereby authorized and directed to close all streets and alleys in the area acquired or to be acquired for the McKinley Technical High School and the Langley Junior High School buildings and grounds, where title to the property on both sides of any such streets or alleys shall be in the District of Columbia, the title to the land in such streets or alleys so closed to revert to the District of Columbia for school purposes. (Mar. 4, 1925, 43 Stat. 1320, ch. 556.)

Cross References

Abandonment or readjustment of street and highways to provide land for schools, § 7–113.
Certain streets closed or abandoned, § 7–123.

§ 31–1109 [7: 248]. Board of Education may accept and apply donations for colored schools—Accounting.

The Board of Education is authorized to receive any donations or contributions that may be made for the benefit of the schools for colored children by persons disposed to aid in the elevation of the colored population in the District, and to apply the same in such manner as in their opinion shall be best calculated to effect the object of the donors; the board of education to account for all funds so received. (R. S., D. C., § 283; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

§ 31–1110 [7: 249]. Education of colored children.

It shall be the duty of the Board of Education to provide suitable and convenient houses or rooms for holding schools for colored children, to employ and examine teachers therefor, and to appropriate a proportion of the school funds, to be determined upon number of white and colored children, between the ages of 6 and 17 years, to the payment of teachers' wages, to the building or renting of schoolrooms, and other necessary expenses pertaining to said schools, to exercise a general supervision over them, to estab-

lish proper discipline, and to endeavor to promote a thorough, equitable and practical education of colored children in the District of Columbia. (R. S., D. C. § 281; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

AMENDMENTS

Act of 1878 abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

Act of 1906 gave control of the public schools of the District to the board of education appointed by Supreme (now District) Court Judges.

CROSS REFERENCES

Compulsory school attendance, § 31–201 et seq.

Division of salaries between white and colored schools, § 31–628.

General powers and duties of board of education, § 31–103.

Supervision and control of colored schools, § 31–109.

§ 31–1111 [7: 250]. Placement of children in schools.

Any white resident shall be privileged to place his or her child or ward at any one of the schools provided for the education of white children in the District of Columbia he or she may think proper to select, with the consent of the Board of Education; and any colored resident shall have the same rights with respect to colored schools. (R. S., D. C. § 282; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

AMENDMENTS

Act of June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

Act of June 20, 1906, gave control of the public schools of the District to the board of education appointed by Supreme (now District) Court Judges.

CROSS REFERENCE

See notes to § 31–1110.

§ 31–1112 [7: 251]. Proportionate amount of school moneys to be set apart for colored schools.

It shall be the duty of the proper authorities of the District to set apart each year from the whole fund received from all sources by such authorities applicable to purposes of public education in the District of Columbia, such a proportionate part of all moneys received or expended for school or educational purposes, including the cost of sites, buildings, improvements, furniture and books, and all other expenditures on account of schools, as the colored children between the ages of 6 and 17 years bear to the whole number of children, white and colored, between the same ages, for the purpose of establishing and sustaining public schools for the education of colored children; and such proportion shall be ascertained by the last reported census of the population made prior to such apportionment, and shall be regulated at all times thereby. (R. S., D. C., § 306; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

AMENDMENTS

Act of June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

Act of June 20, 1906, gave control of the public schools of the District to the board of education appointed by Supreme (now District) Court Judges.

CROSS REFERENCE

See notes to § 31–1110.

§ 31–1113 [7: 252]. Facilities for educating colored children to be provided.

It is the duty of the Board of Education to provide suitable rooms and teachers for such a number of schools in the District of Columbia as, in its opinion, will best accommodate the colored children in the District of Columbia. (R. S., D. C., § 310; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

AMENDMENTS

Act of June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

Act of June 20, 1906, gave control of the public schools of the District to the Board of Education appointed by Supreme (now District) Court Judges.

CROSS REFERENCE

See notes to § 31–1110.

§ 31–1114 [7: 259]. Education of children of veterans who lost lives during war—Appropriation authorized.

There is hereby authorized to be appropriated, from funds to the credit of the District of Columbia in the Treasury of the United States not otherwise appropriated, the sum of $3,600, annually, for the fiscal years 1935 to 1943, inclusive, for aid in the education of children (between the ages of sixteen and twenty-one years, inclusive, who have had their domicile in the District of Columbia for at least five years) of those who lost their lives during the World War as a result of service in the military or naval forces of the United States, including tuition, fees, maintenance, and the purchase of books and supplies: *Provided,* That not more than $200 shall be available for any one child in any one year: *Provided further,* That appropriations made in accordance with this section shall be expended, under rules and regulations prescribed by the Board of Education of the District of Columbia, only for such children as the said Board, from time to time, may find to be in need of such aid and in such amounts as the said Board from time to time may determine in the case of each child. (June 19, 1934, 48 Stat. 1125, ch. 671.)

CROSS REFERENCES

Free textbooks, § 31–401 et seq.

Liability for tuition, § 31–301 et seq.

§ 31–1115 [7: 260]. Bond not required for supplies issued by War Department.

A bond shall not be required on account of military supplies or equipment issued by the War Department for military instruction and practice by the students of high schools in the District of Columbia. (July 15, 1939, 53 Stat. 1015, ch. 281, § 1; June 12, 1940, 54 Stat. —, ch. 333, § 1.)

§ 31–1116. School cadets—Issuance of arms—Insurance.

Arms authorized to be issued by the War Department to high school cadets of the District of Columbia shall hereafter be issued without requiring that the same shall be insured from loss by fire. (April 27, 1904, 33 Stat. 379, ch. 1628.)

Chapter 12.—AVIATION EDUCATION IN HIGH SCHOOLS

Sec.
31–1201. Aviation education in high-school curricula.
31–1202. Teachers of aeronautics.
31–1203. Free textbooks, maps, and supplies.
31–1204. Annual estimates of expenses.

§ 31–1201. Aviation education in high-school curricula.

That the Board of Education is hereby authorized and directed to establish and to include in the curricula of the senior high schools of the District of Columbia, as an additional optional course, a course in aeronautics, which shall include instruction in aerodynamics, the theory of flight, the airplane and its engine, mechanics, engineering, meteorology, practical air navigation, map reading, and such other allied subjects as the Board in its discretion may deem it advisable to prescribe. Such course shall be first offered during the high-school term beginning in 1942. Thereafter such additional courses in aeronautics may be added as deemed desirable by the Board of Education. The same credit toward graduation may be given for said course as is given for other optional courses in said schools. (Dec. 16, 1941, 55 Stat. 806, ch. 585, § 1.)

§ 31–1202. Teachers of aeronautics.

The Board is further authorized to employ a sufficient number of teachers of aeronautics, not to exceed six, adequately to instruct those pupils who elect to pursue the said course, at the salary rates authorized for teachers in the senior high schools. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 2.)

§ 31–1203. Free textbooks, maps, and supplies.

The Board shall provide the pupils of the senior high schools, free of charge, with the use of all aeronautical textbooks, maps, and other necessary educational supplies required for said course. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 3.)

§ 31–1204. Annual estimates of expenses.

The Board shall hereafter include in its annual estimates of money required for the public schools of the District of Columbia for the ensuing year an amount sufficient to defray the expenses herein authorized. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 5.)

APPROPRIATION

Sec. 4 of the act of Dec. 16, 1941, cited to text, provided "There is hereby authorized to be appropriated a sum not to exceed $16,000 in order to carry out the purposes of this act."

Chapter 13.—EDUCATIONAL AGENCY FOR SURPLUS PROPERTY

Sec.
31–1301. Educational Agency for Surplus Property established—functions and duties.
31–1302. Working capital fund provided—Rules and regulations of Agency.
31–1303. Termination of Agency.

§ 31–1301. Educational Agency for Surplus Property established—Functions and duties.

There is hereby established in the municipal government of the District of Columbia the District of Columbia Educational Agency for Surplus Property, hereinafter referred to as the "Agency", which shall under the direction of the Commissioners of the District of Columbia carry out in the District of Columbia the State functions contemplated by sections 203 (j) and 203 (k) of the Federal Property and Administrative Services Act of 1949, approved June 30, 1949 (Public Law 152, Eighty-first Congress), and such other duties relating to the distribution of surplus property, or other functions, as the Commissioners may in their discretion assign to such Agency, and for the purposes of section 203 (j) of such Act, the District of Columbia shall be deemed to be a State. The Commissioners are authorized to appoint a director for such Agency and such other personnel as may be necessary with compensation to be fixed in accordance with the Classification Act of 1923, as amended. The Commissioners are also authorized to appoint an advisory board for such Agency to be composed of not more than ten members: *Provided,* That the membership of such board shall include representatives of the tax-supported, tax-exempt, and nonprofit educational institutions in the District of Columbia: *And provided further,* That the members of such advisory board shall serve without compensation and at the pleasure of the Commissioners. Such advisory board may submit reports and recommendations to the Commissioners as well as to the Agency. (Aug. 16, 1950, 64 Stat. 450, ch. 720, § 1.)

§ 31–1302. Working capital fund provided—Rules and regulations of Agency.

There is hereby authorized to be appropriated from any money in the Treasury to the credit of the District of Columbia not exceeding $15,000 as a working capital fund for the operation of the Agency, which fund shall be used as a permanent revolving fund for all necessary expenses of such Agency. There shall be deposited to the credit of such fund such amounts as may be appropriated pursuant to this chapter, together with such amounts as the respective branches of the government of the District of Columbia and the private educational institutions authorized by law to participate in the distribution of surplus property shall pay as fees for services rendered by the Agency. The Commissioners are authorized to promulgate rules and regulations governing the manner in which the Agency shall carry out its duties, including the fixing of reasonable fees to be charged for its services. (Aug. 16, 1950, 64 Stat. 450, ch. 720, § 2.)

§ 13–1303. Termination of Agency.

The authority of the Agency and of the Advisory Board shall terminate upon direction of the Commissioners of the District of Columbia and in any event no later than the repeal of sections 203 (j) and 203 (k) of the Federal Property and Administrative Services Act of 1949. Upon such termination, the assets of the Agency shall be disposed of as the Commissioners may direct. (Aug. 16, 1950, 64 Stat. 451, ch. 720, § 3.)

TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL AND PENAL INSTITUTIONS AND AGENCIES

Chap.		Sec.
1.	Association for Works of Mercy	32–101
2.	Washington Humane Society	32–201
3.	Hospitals and asylums—General provisions	32–301
4.	Saint Elizabeths Hospital	32–401
5.	Industrial Home School	32–501
6.	District Training School	32–601
7.	Home care for dependent children	32–701
7A.	Aid to Dependent Children	32–751
7B.	Placement of Children in Family Homes	32–781
8.	National Training School for Boys	32–801
9.	National Training School for Girls	32–901
10.	Miscellaneous	32–1001

Chapter 1.—ASSOCIATION FOR WORKS OF MERCY

Sec.

32–101. Custody and control of girls under 18 years of age—How obtained—Approval by probate court.

32–102. Girls under 18 years of age convicted of crime—Commission to custody of association.

32–103. Custody and discharge of inmates.

32–104. Probate court may appoint association as guardian—Term of guardianship.

§ 32–101 [8: 111]. Custody and control of girls under 18 years of age—How obtained—Approval by probate court.

The Association for Works of Mercy, a charitable corporation in the District of Columbia, is hereby authorized and empowered to receive and have the custody and control of, and to suitably maintain, teach, employ, and discipline girls under the age of eighteen years, resident in the District of Columbia, until they attain the age of eighteen years. The right to the custody and control of any such girl shall be obtained in the manner following:

First. By a written instrument executed by the father of such girl, giving such custody and control to said association and renouncing parental rights.

Second. If the father be not living, or is unknown, or not resident in the District of Columbia, by a written instrument executed by the mother of such girl, giving such custody and control to said association and renouncing parental rights.

Third. By a written instrument executed by the guardian of the person of such girl, giving such custody and control to said association and renouncing the rights of guardianship.

Fourth. If there be no father, or mother, or guardian of such girl living, or known, resident in the District of Columbia, by an instrument in writing executed by such girl, surrendering herself to the custody, control, and maintenance of said association.

Fifth. No such instrument shall be effectual in law until it shall be approved by the judge of the probate court of the District of Columbia by an indorsement of such approval thereon signed by such judge. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 1; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

CROSS REFERENCES

National Training School for Girls, § 32–901 et seq.

Powers and duties of Board of Public Welfare, § 3–101 et seq.

§ 32–102 [8: 112]. Girls under 18 years of age convicted of crime—Commission to custody of association.

When any girl under the age of eighteen years shall be duly convicted of any offense punishable by fine or imprisonment for a term less than two years before any court in the District of Columbia, if it shall appear to the satisfaction of the court that such girl is a suitable subject for the custody of said association, the court may, instead of imposing such fine or imprisonment, and with the assent of said association, cause such girl to be committed to the custody and control of said association, there to remain until she shall attain the age of eighteen years, or be otherwise discharged in due course of law. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 2.)

§ 32–103 [8: 113]. Custody and discharge of inmates.

A girl, duly received into the institution of the said association, shall. be kept there, disciplined, instructed, employed, and governed under the direction of said association until she is either reformed and discharged or has attained the age of eighteen years; but the association shall have the right to discharge and return to the parents, guardian, or protector any girl who, in its judgment, ought, for any cause, to be removed from the institution, and in such case the association shall enter upon its minutes the reasons for her discharge; and in case such girl was received under the order of any criminal court, a copy of the minute of such reasons shall be forthwith transmitted to the court under whose order she was received. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 3.)

§ 32–104 [8: 114]. Probate court may appoint association as guardian—Term of guardianship.

The probate court of the District of Columbia shall have power to appoint the said association the guardian of the person of any girl under the age of eighteen years, in the same manner and with the same effect that it has power to appoint guardians of the person of female infants. And such guardianship shall continue until such girl shall attain the age of eighteen years, unless the probate court shall discharge the same or otherwise direct. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 4; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

Chapter 2.—WASHINGTON HUMANE SOCIETY

Sec.
32–201. Incorporation—Name.
32–202. Officers.
32–203. Officers to be chosen from members.
32–204. By-laws.
32–205. Police to arrest law violators at request of member of society—Evidence of membership.
32–206. Disposition of fines.
32–207. Law effective throughout District.
32–208. Society authorized to prevent cruelty to children.
32–209. Commissioners to aid in enforcing laws affecting children—Detailing of police to assist society—Arrest of offenders—Children in house of ill-fame.
32–210. Detailing of police to aid in enforcement of laws relating to cruelty to animals.
32–211. Right to alter, amend or repeal reserved.

§ 32–201 [8: 121]. Incorporation—Name.

N. P. Chipman, J. P. Newman, B. Peyton Brown, John A. L. Morrell, Mathew G. Emery, Joseph H. Bradley, senior, William R. Woodward, E. Whittlesey, Warren Choate, Andrew B. Duvall, A. S. Solomons, W. G. Metzerott, Alexander R. Shepperd, S. J. Bowen, H. M. Sweeney, Benjamin E. Gittings, William Tucker, Charles H. Lane, W. Burris, William McPheeters, E. F. N. Faehtz, J. L. Gatchel, John R. Elvans, Edgar I. Booraem, L. H. Hopkins, Thomas P. Keene, W. D. Blackford, F. H. Day, J. Sayles Brown, William Lanborn, E. L. Corbin, N. A. West, John R. Arrison, W. A. Farlee, Benjamin F. Fuller, Robert A. Slater, Alonzo Bell, A. T. Kinney, John J. Jett, A. M. Scott, A. C. White, A. E. Newton, A. S. Taylor, William H. Rowe, Robert Reyburn, W. H. Slater, John C. Parker, William J. Wilson, S. S. Baker, A. Jones, S. R. Bond, John F. Cook, D. W. Anderson, George A. Hall, Charles H. Moulton, John Edwin Mason, Allison Nailor, junior, David A. Burr, T. C. Grey, R. H. Marsh, Thomas Perry, George F. Gulick, and Theodore F. Gatchel, all of the District of Columbia, and such other persons as were associated with them in conformity to this chapter, and their successors duly chosen, were constituted and created a body corporate in the District of Columbia, to be known as the Washington Humane Society. (June 21, 1870, 16 Stat. 158, ch. 135, § 1; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

AMENDMENT

This section is a composite of credits cited in the history line.

§ 32–202 [8: 122]. Officers.

The officers of said corporation shall consist of a president, five vice-presidents, one secretary, one treasurer, an executive committee of eleven members, and such other officers as shall from time to time seem necessary to this society. (June 21, 1870, 16 Stat. 158, ch. 135, § 2.)

§ 32–203 [8: 123]. Officers to be chosen from members.

The foregoing officers shall be chosen from among the members of the society. (June 21, 1870, 16 Stat. 158, ch. 135, § 3.)

§ 32–204 [8: 124]. By-laws.

The said society, for fixing the terms of admission of its members, for the government of the same, for the election, changing, and altering the officers above named, and for the general regulation and management of its affairs, shall have power to form a code of by-laws, not inconsistent with the laws of the District of Columbia, or of the United States, which code, when formed and adopted at a regular meeting, shall, until modified or rescinded, be equally binding as this chapter upon the society, its officers, and members. (June 21, 1870, 16 Stat. 158, ch. 135, § 4.)

§ 32–205 [8: 125]. Police to arrest law violators at request of member of society—Evidence of membership.

The police force of the District of Columbia shall, upon application of any member of the association, who shall have viewed any violation of the law or ordinances of the city for the prevention of cruelty to animals, arrest offending parties without a warrant, who shall be taken by such police officer before the police court for trial; and the proper evidence of such membership to a police officer shall be the exhibition of a badge or certificate of membership. (June 21, 1870, 16 Stat. 158, ch. 135, § 5; R. S., D. C., § 998; Mar. 3, 1901, 31 Stat. 1196, ch. 854, § 43.)

AMENDMENT

Section 43 of the 1901 act (§ 11–602) gives to and defines the jurisdiction of the police court. As enacted, the 1870 act provided for jurisdiction of "offending parties" by the justice of the peace court.

CROSS REFERENCES

Arrest of persons keeping animals or fowls for fighting or baiting, § 22–809.

Arrests under statutes relating to the prevention of cruelty to children and animals, § 22–804.

Criminal prosecution, § 22–801 et seq.

§ 32–206 [8: 126]. Disposition of fines.

One-half of all the fines collected through the instrumentality of the society or its agents, for violations of such laws, shall accrue to the benefit of said society. (June 21, 1870, 16 Stat. 158, ch. 135, § 6; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 48.)

CROSS REFERENCE

Association entitled to fines and forfeitures levied in prosecution of laws to prevent cruelty to animals, § 22–806.

§ 32–207 [8: 127]. Law effective throughout District.

The provisions of sections 32–201 to 32–207 shall be general within the boundaries of the District of Columbia. (June 21, 1870, 16 Stat. 159, ch. 135, § 7.)

§ 32–208 [8: 128]. Society authorized to prevent cruelty to children.

The Washington Humane Society is authorized to extend its operations to the protection of children as well as animals from cruelty and abuse. In pursuance thereof the said society may cause its proper officers or agents to prefer complaints, before any court in the District of Columbia having jurisdiction, for the violation of any law relating to or affecting the protection of children in said District, and by its proper attorney may aid in bringing the facts before such court in any proceeding taken. (Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

NOTES TO DECISIONS

POWERS OF SOCIETY

This section and § 32–209 gave the Washington Humane Society authority to prefer complaints before any

court of the District of Columbia having jurisdiction in any case where the welfare of a child was involved. They also gave authority and power to the agents of said society to take before said courts dependent and delinquent children, and to prosecute those responsible for such dependency or delinquency. *Richardson* v. *Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

§ 32–209 [8: 129]. Commissioners to aid in enforcing laws affecting children—Detailing of police to assist society—Arrest of offenders—Children in house of ill-fame.

The commissioners of the District of Columbia shall, by the police force of said District, aid the said society, its officers and agents, in the enforcement of all laws relating to or affecting the protection of children; and the commissioners of the said District, and their successors, are authorized, in their discretion, to detail, from time to time, an officer or officers to aid specially in the work of said society, or they may commission any duly appointed agents of said society special police officers, without compensation; and such agents or officers shall have power to arrest, without warrant, all persons violating in their presence or sight any law relating to or affecting the protection of children, or other parties so offending by virtue of a warrant issued by the juvenile court of the District of Columbia, which offenders shall be taken by such agents or officers before the said juvenile court of the District of Columbia for trial. Said agents or officers are also hereby empowered to bring before the said court any child who is subjected to cruel treatment, wilful abuse, or neglect, or any child under seventeen years of age found in a house of ill-fame; and said court may commit such child to an orphan asylum or other public charitable institution in the District of Columbia, with the consent of the constituted authorities of such asylum or institution, or make such other disposition thereof as provided by law in cases of vagrant, destitute, or abandoned children. (Feb. 13, 1885, 23 Stat. 302, ch. 58, § 2; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8.)

AMENDMENT

The act of 1906 changed the authority from police court to the "juvenile court" and raised age limit to "seventeen."

NOTES TO DECISIONS

REHABILITATION

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

MARRIAGE OF WARD OF COURT

The marriage of an incorrigible girl does not automatically terminate the control of the juvenile court over such minor. *Richardson* v. *Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

§ 32–210 [8: 130]. Detailing of police to aid in enforcement of laws relating to cruelty to animals.

The commissioners of the District of Columbia are authorized, in their discretion, to detail from time to time one or more members of the Metropolitan police force to aid the Washington Humane Society in the enforcement of laws relating to cruelty to animals as well as of the laws relating to cruelty to children. (June 25, 1892, 27 Stat. 60, ch. 135, § 2.)

§ 32–211 [8: 131]. Right to alter, amend, or repeal reserved.

Congress shall have power to alter, amend, or repeal sections 32–201 to 32–207 at any time. (June 21, 1870, 16 Stat. 159, ch. 135, § 8.)

Chapter 3.—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS

Sec.

32–301. Private hospitals and asylums—To be licensed.
32–302. Health officer to enforce regulations—Inspection.
32–303. Penalties for violation of sections 32–301, 32–302 or regulations.
32–304. Commissioners of the District of Columbia to make regulations.
32–305. Prosecutions in police court.
32–306. Smallpox hospital—Regulations.
32–307. Washington Asylum Hospital continued.
32–308. Admission of pay patients to psychopathic ward of Gallinger Hospital.
32–309. Admission of pay patients to contagious-disease ward of Gallinger Hospital.
32–310. Admission of pay patients to Tuberculosis Hospital.
32–311. Limitation on erection of hospital for contagious diseases.
32–312. Children's tuberculosis sanatorium—Construction and equipping authorized.
32–313. Admission of pay patients to Children's Tuberculosis Sanatorium.
32–314. Repairs or improvements to Columbia Hospital to be under direction of Superintendent of United States Capitol Building.
32–315. Vacancies among trustees of Columbia Hospital filled by Commissioners.
32–316. Providence and Garfield Memorial Hospitals to accept contagious-disease cases sent by Commissioners.
32–316a. Providence Hospital authorized to conduct medical and nursing school—Examinations—Certificate awards.
32–317. The Freedmen's Hospital—Direction—Expenditures.
32–318. Admission of patients to Freedmen's Hospital—Charges—Disposition of money collected.
32–318a. Charges for treatment of patients at Freedmen's Hospital.
32–319. Authority to contract for the care and treatment of persons from District of Columbia in Freedmen's Hospital.
32–320. Unclaimed money of deceased patients.
32–321. Availability of appropriations.
32–322. Availability of appropriations to furnish medical services to non-indigent persons.

§ 32–301 [8: 141]. Private hospitals and asylums—To be licensed.

No person shall in the District of Columbia establish or maintain any private hospital or asylum, either for the reception of human beings or of domestic animals, unless or until licensed by the commissioners of said District. (Apr. 20, 1908, 35 Stat. 64, ch. 148, § 1.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Exemption from provisions of Alcoholic Beverage Control Act, § 25–109.

Hospital liens, § 38–301 et seq.

Powers and duties of Board of Public Welfare concerning charitable, corrective, and penal institutions, § 3–101 et seq.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.

NOTES TO DECISIONS

LIABILITY FOR TORTS

Employees of charitable hospital are not "beneficiaries" but are strangers to the charity, and the hospital's immunity from liability for torts of its employees or agents does not preclude recovery by them for injuries. *Hughes* v. *President and Directors of Georgetown College* ((D. C.-D. C.), 33 Fed. Supp. 867).

§ 32–302 [8: 142]. Health officer to enforce regulations—Inspection.

It shall be the duty of the health officer of the District of Columbia, and of such agents and employees in the service of the health department of said District as he may designate for that purpose, to enforce the provisions of sections 32–301 to 32–305 and of all regulations made by authority thereof; and said health officer and agents and employees are hereby authorized, in the performance of the duty aforesaid, to enter and inspect during all reasonable hours all private hospitals and asylums in said District. No person shall interfere with said health officer, or with any agent or employee aforesaid, in the performance of his official duty, nor hinder, prevent, or refuse to permit any inspection authorized by said sections. (Apr. 20, 1908, 35 Stat. 64, ch. 148, § 2.)

§ 32–303 [8: 143]. Penalties for violation of sections 32–301, 32–302 or regulations.

Any person who, for himself or as the employee or agent of another person, or as a member, officer, or employee or a firm or corporation, violates any of the provisions of sections 32–301, 32–302, or any regulations made hereunder by the commissioners of the District of Columbia, or aids in the violation thereof, shall be punished by a fine not exceeding two hundred dollars or by imprisonment for not more than thirty days, or by both fine and imprisonment, in the discretion of the court. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 3.)

§ 32–304 [8: 144]. Commissioners of the District of Columbia to make regulations.

The commissioners of the District of Columbia be, and they are hereby, authorized and empowered to promulgate from time to time such regulations as in their judgment public interests require to govern the establishment and maintenance of private hospitals and asylums, whether for human beings or for domestic animals, and to regulate the issue, suspension, and revocation of licenses aforesaid. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 4.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Rules and regulations generally, § 1–226 and notes.

§ 32–305 [8: 145]. Prosecutions in police court.

All prosecutions under sections 32–301 to 32–304 shall be in the police court of the District of Columbia upon information signed by the corporation counsel of said District or by one of his assistants. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 5.)

§ 32–306 [8: 146]. Smallpox hospital—Regulations.

The commissioners of the District of Columbia are hereby authorized to make rules and regulations for the government of the smallpox hospital. (June 8, 1896, 29 Stat. 281, ch. 373.)

CROSS REFERENCE

Power of Commissioners to make rules and regulations to prevent and control spread of communicable diseases, § 6–118.

§ 32–307 [8: 147]. Washington Asylum Hospital continued.

The hospital service being rendered on June 29, 1922, by the Washington Asylum Hospital, in so far as it is not provided for in the new buildings of the Gallinger Municipal Hospital, may be continued in the old buildings occupied on June 29, 1922. (June 29, 1922, 42 Stat. 702, ch. 249, § 1.)

NOTES TO DECISIONS

DEDICATION OF TRACT REPEALED

Mere change of location of the Gallinger Hospital served to repeal the original dedication of the Upshur tract for municipal hospital purposes. *Rudolph* v. *Hunt* (52 App. D. C. 343, 286 Fed. 1007).

§ 32–308 [8: 148]. Admission of pay patients to psychopathic ward of Gallinger Hospital.

Pay patients may be admitted to the psychopathic ward of the Gallinger Municipal Hospital for care and treatment at such rates and under such regulations as may be established by the Commissioners of the District of Columbia, in so far as such admissions will not interfere with admission of indigent patients. (June 7, 1924, 43 Stat. 568, ch. 302, § 1.)

COMPILER'S NOTE

This section may be superseded by § 3–108, which gives the Board of Public Welfare power to regulate admission of patients.

§ 32–309 [8: 148a]. Admission of pay patients to contagious-disease ward of Gallinger Hospital.

Pay patients may be admitted to the contagious-disease ward of the Gallinger Municipal Hospital for care and treatment at such rates and under such regulations as may be established by the Commissioners of the District of Columbia, in so far as such admissions will not interfere with admission of indigent patients. (Apr. 14, 1932, 47 Stat. 79, ch. 98, § 1.)

COMPILER'S NOTE

This section may partially supersede § 3–108, which gives the Board of Public Welfare power to regulate admission of patients.

§ 32–310 [8: 149]. Admission of pay patients to Tuberculosis Hospital.

Pay patients may be admitted to the Tuberculosis Hospital for care and treatment at such rates and under such regulations as may be established by the Commissioners of the District of Columbia, in so far as such admissions will not interfere with admission of indigent patients. (June 7, 1924, 43 Stat. 568, ch. 302.)

CROSS REFERENCE

Tuberculosis hospital under jurisdiction and control of the health department, § 6–117.

§ 32–311 [8: 150]. Limitation on erection of hospital for contagious diseases.

No building for use as a public or private hospital for contagious diseases shall be erected in the District of Columbia within three hundred feet of any

building owned by a private individual or any other party than the one erecting the building. (Mar. 2, 1895, 28 Stat. 758, ch. 176.)

CROSS REFERENCE

Commissioners may make rules and regulations to control and prevent spread of communicable diseases, § 6–118.

§ 32–312 [8: 151]. Children's tuberculosis sanatorium—Construction and equipping authorized.

The Commissioners of the District of Columbia are authorized to acquire, by purchase, condemnation, or otherwise, a site, and to cause to be constructed thereon, in accordance with plans and specifications approved by such commissioners, suitable buildings and structures for use as a children's tuberculosis sanatorium, including necessary approaches and roadways, heating and ventilating apparatus, furniture, equipment, and accessories. (Mar. 1, 1929, 45 Stat. 1425, ch. 422, § 1.)

COMPILER'S NOTES

Section 2 of the act of March 1, 1929, 45 Stat. 1425, ch. 422, D. C. Code 1929, title 8, § 152, authorized an appropriation of $500,000, or so much thereof as might be necessary to carry out the provisions of § 1 of said act (§ 32–312), to be appropriated in like manner as other appropriations for the District of Columbia.

The act of April 18, 1930 (46 Stat. 218, ch. 186), increased the authorized appropriation for the children's tuberculosis sanatorium from $500,000 to $625,000 or so much thereof as may be necessary. The act further provided: "That if the land proposed to be acquired as a site for the said sanatorium is without the District of Columbia the title to said property shall be taken directly to and in the name of the United States, and in case a satisfactory price cannot be agreed upon for the purchase of said land, the Attorney General of the United States, at the request of the Commissioners of the District of Columbia, shall institute condemnation proceedings to acquire such land as may be selected for said site either in the State of Maryland or in the State of Virginia in accordance with the laws of said States, and expenses of procuring evidence of title or of condemnation, or both, shall be paid out of the appropriation herein made for the purchase of said site."

§ 32–313. Admission of pay patients to Children's Tuberculosis Sanatorium.

Pay patients may hereafter (after June 23, 1936) be admitted to the Children's Tuberculosis Sanatorium for care and treatment at such rates and under such regulations as may be established by the commissioners of the District of Columbia, insofar as such admissions will not interfere with admission of indigent patients. (June 23, 1936, 49 Stat. 1880, ch. 726, § 1.)

§ 32–314 [8: 153]. Repairs or improvements to Columbia Hospital to be under direction of Superintendent of United States Capitol Building.

All repairs or improvements made to the Columbia Hospital for Women and Lying-in Asylum buildings and grounds shall be made under the direction and supervision of the Superintendent United States Capitol Building and Grounds under estimates submitted to Congress through the Secretary of the Interior. (Mar. 4, 1915, 38 Stat. 1147, ch. 147.)

§ 32–315 [8: 154]. Vacancies among trustees of Columbia Hospital filled by Commissioners.

As vacancies occur among the trustees of the Columbia Hospital for Women and Lying-in Asylum, other than members of Congress, they shall be filled by the District commissioners. (Mar. 3, 1893, 27 Stat. 551, ch. 199, § 1.)

§ 32–316 [8: 155]. Providence and Garfield Memorial Hospitals to accept contagious-disease cases sent by Commissioners.

Providence Hospital and Garfield Memorial Hospital shall receive at any time such patients suffering with minor contagious diseases as may be sent by the commissioners of the District of Columbia at the request of the Health Officer of the District. (July 1, 1898, 30 Stat. 635, ch. 546.)

CROSS REFERENCE

Rules and regulations by Commissioners to prevent spread of communicable diseases, §§ 6–118, 32–306.

§ 32–316a. Providence Hospital authorized to conduct medical and nursing school—Examinations—Certificate awards.

The Providence Hospital is authorized to conduct not only a hospital, clinic, and all the departments, staffs, and services usually connected therewith, but also a school for the education and training of nurses and interns with full power to examine the said nurses and interns and to issue suitable certificates evidencing the completion of their courses of training. (Oct. 29, 1945, 59 Stat. 551, ch. 439, § 2.)

CHANGE OF NAME

Section 1 of act Oct. 29, 1945, cited to text, provided; "The corporate name of the said corporation shall be 'Providence Hospital' instead of 'The Directors of Providence Hospital.'"

§ 32–317 [8: 156]. The Freedmen's Hospital—Direction—Expenditures.

The Freedmen's Hospital in the District of Columbia shall, until otherwise ordered by Congress, be continued under the direction of the Secretary of the Interior who shall submit estimates for expenses and maintenance. (R. S., § 2038; June 23, 1874, 18 Stat. 223, ch. 455, § 1.)

COMPILER'S NOTE

By Reorganization Plan No. IV, April 11, 1940, the functions relating to the Freedmen's Hospital were transferred from the Interior Department to the Federal Security Agency. See U. S. C., title 5, § 133t, note.

AMENDMENTS

R. S. 2038 provided as follows: "The Freedmen's Hospital and Asylum in the District of Columbia is, until otherwise ordered by Congress, continued under the control and supervision of the Secretary of War, who shall make all estimates, pass all accounts, and be responsible to the Treasury for all expenditures; but no part of any appropriation shall be used in support of, or to pay the expenses on account of, any person hereafter to be admitted to such Hospital and Asylum, unless persons removed thither from some other Government hospital."

§ 32–318 [8: 157]. Admission of patients to Freedmen's Hospital—Charges—Disposition of money collected.

Patients may be admitted to Freedmen's Hospital for care and treatment on the payment of such reasonable charges therefor as the Secretary of the Interior shall prescribe. All moneys so collected

shall be paid into the treasury to the credit of Freedmen's Hospital, to be disbursed under the supervision of the Secretary of the Interior for subsistence, fuel and light, clothing, bedding, forage, medicine, medical and surgical supplies, surgical instruments, repairs, furniture, and other absolutely necessary expenses incident to the management of the hospital. (June 26, 1912, 37 Stat. 172, ch. 182, § 1; May 29, 1928, 45 Stat. 992, ch. 901, § 1, par. 78.)

COMPILER'S NOTE

The act of 1928 amended this section by deleting the following: "A report as to expenditures thereof shall be made annually to Congress."

§ 32–318a. Charges for treatment of patients at Freedmen's Hospital.

The amounts to be charged the District of Columbia and other establishments of the Government for the treatment of patients for which they are responsible shall be calculated on the basis of a per diem rate approved by the Bureau of the Budget. (July 3, 1945, 59 Stat. 366, ch. 263, Title II; July 26, 1946, 60 Stat. 687, ch. 672, Title II; July 8, 1947, 61 Stat. 265, ch. 210, Title II.)

AMENDMENTS

Act July 8, 1947, cited to text, substituted the words "Bureau of the Budget" in lieu of "the President."

Act July 26, 1946, cited to text, amended section by omitting "recommended annually in advance by the Federal Board of Hospitalization and" preceding "approved."

§ 32–319 [8: 158]. Authority to contract for the care and treatment of persons from District of Columbia in Freedmen's Hospital.

The Secretary of the Interior is authorized to enter into contract with the Board of Public Welfare of the District of Columbia for the care and treatment of persons from the District of Columbia admitted to the Freedmen's Hospital; and any money that may be received, from this source, shall be paid to the Secretary of the Interior, to be applied to the uses and purposes of the hospital. (Mar. 3, 1905, 33 Stat. 1190, ch. 1483, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

AMENDMENT

Act of 1905 was amended by substituting Board of Public Welfare for Board of Charities.

§ 32–320 [8: 159]. Unclaimed money of deceased patients.

All unclaimed money left at the Freedmen's Hospital by deceased patients shall, after a period of three years, be deposited in the treasury of the United States to the credit of miscellaneous receipts. (July 1, 1916, 39 Stat. 311, ch. 209, § 1.)

§ 32–321. Availability of appropriations.

No District of Columbia appropriations shall be available for the care of persons, except in emergency cases, where the person has been a resident of the District of Columbia for less than one year at the time of application for admission. (June 28, 1944, 58 Stat. 519, ch. 300, § 1; June 30, 1945, 59 Stat. 282, ch. 209, § 1.)

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 1, 57 Stat. 328.
1943—June 27, 1942, ch. 452, § 1, 56 Stat. 441.
1942—July 1, 1941, ch. 271, § 1, 55 Stat. 517.
1941—June 12, 1940, ch. 333, § 1, 54 Stat. 323.

§ 32–322. Availability of appropriations to furnish medical services to non-indigent persons.

No part of any appropriation for Gallinger Municipal Hospital or the Health Department shall be used for furnishing, other than at rates prescribed by the Commissioners, clinical services, drugs, pharmaceutical preparations, or X-ray service, to persons who are not indigent, except in emergency cases or where the Commissioners determine it to be necessary in the public interest. (June 30, 1945, 59 Stat. 282, ch. 209, § 1; July 9, 1946, 60 Stat. 511, ch. 544, § 1.)

Chapter 4.—SAINT ELIZABETHS HOSPITAL

Sec.

32–401. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia—Admission.
32–401a. District of Columbia funds—Availability based on residence.
32–402. Payment of Federal Treasury of part of expense from appropriations for District.
32–403. Payments to superintendent to be credited to appropriations for care and maintenance of patients.
32–404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.
32–405. Admission of indigent insane of District of Columbia—"Indigent insane person" defined.
32–406. Private patients—Rate of board—Friends to comply with regulations.
32–406a. Patients of District of Columbia or Federal Government—Payment for care—Accounting.
32–407. Admission of insane convicts.
32–408. Authorization to accept gifts.
32–409. Same—Custody and investment of gifts.
32–410. Same—Gifts of intangible personal property.
32–411. Same—Gifts of real property.
32–412. Admission of applicants.
32–413. Applicants' rights of release—Exceptions.
32–414. Costs of board, medical care and treatment.
32–415. Regulations—Approval of Federal Security Administrator.
32–416. Regulations relating to Board of Public Welfare—District of Columbia.
32–417. Commitments by special commissioners of certain United States District Courts.
32–417a. Certain officers and employees of United States authorized to apprehend persons believed to be of unsound mind—Proceedings thereafter.
32–417b. Admission upon written applications—Right of release.
32–417c. Superintendent to receive persons committed or apprehended under §§ 32–417 and 32–417a.
32–417d. Examinations—Adjudications — Laws applicable—Expense of care and treatment.
32–417e. Military personnel to be transferred.
32–417f. Persons entitled to care in a Veterans' Administration facility.
32–417g. Superintendent authorized to pay expenses of transfers.

§ 32–401 [16: 11]. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia—Admission.

The expense of the indigent persons who may be admitted to Saint Elizabeths Hospital from the District of Columbia shall be paid from the revenues of

said District, provided that such indigent persons shall be admitted only upon the order of the executive authority of said District. (Mar. 3, 1877, 19 Stat. 347, ch. 105; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

COMPILER'S NOTES

Acts 1922, 42 Stat. 668, 669, ch. 249, § 1, provided as follows: "Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States excepting such items of expense as Congress may direct shall be paid on another basis * * *. After June 30, 1922, where the United States is the owner of ground or the holder thereof in trust for the public, upon which improvements have been made at the joint expense of the United States and the District of Columbia, the revenues therefrom shall first be used to pay the United States 3 per centum of the full value of the ground as a ground rent, and the remainder shall be divided between them in the same proportion that each contributed to said improvements, and for such purposes the assessor for the District of Columbia shall fix the full value of the ground after he has first made oath that he will fairly and impartially appraise the same; and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

The appropriation act of June 7, 1924, 43 Stat. 539, ch. 302, § 1, made a lump-sum appropriation as follows: "Any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and in addition, $9,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923, namely:"

Subsequent appropriation acts contained similar provisions, changing only the amount of the appropriation and the fiscal year (see Act of June 12, 1940, 54 Stat. —, ch. 333, § 1). These appropriation acts did not, however, provide for the repeal of the provisions of the 1922 act above quoted. This was done by the act of May 16, 1938, 52 Stat. 375, § 8, which added Title 10, to the District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690.

From the foregoing it would seem that there is no longer any apportionment of expenses or segregation of revenues unless specific provision is made therefor by Congress subsequent to the repeal provision.

CROSS REFERENCES

Commitment of feeble-minded persons, § 32–622.

Federal Government now makes a lump-sum appropriation for the District, § 47–134.

Other provisions concerning insane persons, criminally insane, inquests, commitment, payment of expenses, §§ 21–301 to 21–333, 24–301 to 24–303.

STATUTORY REFERENCE

See U. S. C., title 24, §§ 161–222.

NOTES TO DECISIONS

CHARGES FOR INDIGENT AND DANGEROUSLY INSANE PERSONS

St. Elizabeths Hospital is a United States government institution, but under appropriate statutes indigent insane persons and insane persons of dangerous tendencies residing in the District of Columbia are admitted to its benefits, and the expense of their support and treatment is chargeable to the District of Columbia. *Fitzhugh* v. *District of Columbia* (71 App. D. C. 290, 109 Fed. (2d) 837).

§ 32–401a. District of Columbia funds—Availability based on residence.

The funds of the District of Columbia shall not be available for the care of any person admitted hereafter to Saint Elizabeths Hospital who has not lived in the District of Columbia for more than one year immediately prior to application for voluntary admission or the filing of the petition provided for in the Act approved June 8, 1938, as amended: *Provided,* That nothing herein shall be construed to limit or otherwise modify any authority of Saint Elizabeths Hospital or its Superintendent pursuant to law to admit, receive, detain, or care for any individual. (June 19, 1948, 62 Stat. 549, ch. 555, § 1.)

§ 32–402 [16: 12]. Payment by Federal Treasury of part of expense from appropriations for District.

The expense of the indigent patients admitted to Saint Elizabeths Hospital from the District of Columbia shall be reported to the treasury department, and charged against the appropriations to be paid toward the expenses of the District by the general government, without regard to the date of their admission. (Mar. 3, 1879, 20 Stat. 395, ch. 182, § 1; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

CROSS REFERENCE

See Compiler's Notes to § 32–401.

§ 32–403 [16: 12a]. Payments to superintendent to be credited to appropriations for care and maintenance of patients.

All sums paid to the superintendent of Saint Elizabeths Hospital for the care of patients that he is authorized by law to receive shall be deposited to the credit on the books of the Treasury Department of the appropriation made for the care and maintenance of the patients at Saint Elizabeths Hospital for the year in which the support, clothing, and treatment is provided, and be subject to requisition upon the approval of the Secretary of the Interior. (May 10, 1939, 53 Stat. 737, ch. 119, § 1; June 18, 1940, 54 Stat. 460, ch. 395, § 1.)

COMPILER'S NOTE

By Reorganization Plan No. IV, April 11, 1940, the functions relating to Saint Elizabeths Hospital were transferred from the Interior Department to the Federal Security Agency. See U. S. C., title 5, § 133t, note.

§ 32–404 [16: 13]. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.

All collections or reimbursements on account of charges paid or payable by the District of Columbia for the care and support of the insane of said District at Saint Elizabeths Hospital shall be made to the commissioners of the District of Columbia and covered into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (Mar. 4, 1913, 37 Stat. 917, ch. 149; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

AMENDMENT

This act of 1916 changed the name of "Government Hospital for the Insane" to "Saint Elizabeths Hospital."

CROSS REFERENCE

See notes to § 32–401.

§ 32–405 [16: 13a]. Admission of indigent insane of District of Columbia—"Indigent insane person" defined.

All indigent insane persons residing in the District of Columbia at the time they became insane shall be entitled to the benefits of Saint Elizabeths Hospital. An indigent insane person within the meaning of this section shall be one who is insane and unable to support himself and family, or himself, if he has no family, under the visitation of insanity. (R. S., § 4844; Mar. 3, 1877, 19 Stat. 347, ch. 105; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

COMPILER'S NOTES

The words "Such indigent persons shall be admitted only upon order of the executive authority of the District of Columbia" should probably be included after the first sentence, in view of the act of March 3, 1877.

This section is in U. S. C., title 24, § 201, which provides for admissions upon authority of the Secretary of the Interior as set forth by R. S., § 4844, cited to the text. The later law, act March 3, 1877, although not cited as a source to the section in U. S. C., may have superseded R. S., § 4844 to that extent.

AMENDMENT

The act of 1916 changed the name of "Government Hospital for the Insane" to "Saint Elizabeths Hospital."

CROSS REFERENCE

See notes to § 32–401.

NOTES TO DECISIONS

PATIENT'S ESTATE, LIABILITY

The estate of a patient committed to St. Elizabeths Hospital while a resident of the District of Columbia is liable to the District for his maintenance, and statute of limitations does not run against the District in its claim for such maintenance. *Hart* v. *Commissioners of District of Columbia* (App. D. C. 1946, 155 F. 2d 877).

Where court committing patient to St. Elizabeths Hospital was of view that patient's estate should be used for support of his family in preference to his own support, when patient's wife and child died and other children became of age or married, that primary obligation ceased and patient's estate thereupon became available for his own maintenance. *Hart* v. *Commissioners of District of Columbia* (App. D. C. 1946, 155 F. 2d 877).

§ 32–406 [16: 14]. Private patients—Rate of board—Friends to comply with regulations.

Whenever there are vacancies, private patients from the District may be received at a rate of board to be determined by the visitors, to be in no case less than the actual cost of their support, and may remain until restored to reason.

The friends of the patient shall comply with the regulations of the hospital in respect to payment of board and in all other respects. (R. S., §§ 4853, 4854.)

STATUTORY REFERENCE

See U. S. C., title 24, § 204.

NOTES TO DECISIONS

EFFECTIVE DATE OF ACT

The provision that the committee or trustee of an insane person shall reimburse the District for care and expenses up to the time of appointment was intended to relate back to the date of the passage of the act. *Fitzhugh* v. *District of Columbia* (71 App. D. C. 290, 109 Fed. (2d) 837).

§ 32–406a. Patients of District of Columbia or Federal Government—Payments for care—Accounting.

The District of Columbia, or any branch of the Government requiring Saint Elizabeths Hospital to care for patients for which they are responsible, shall pay by check to the Superintendent upon his written request, either in advance or at the end of each month, such amounts as shall be calculated by the Superintendent to be due for such care on the basis of a per diem rate approved by the Bureau of the Budget and bills rendered by the Superintendent of Saint Elizabeths Hospital in accordance herewith shall not be subject to audit or certification in advance of payment; proper adjustments of such bills paid for in advance on the basis of such calculations shall be made monthly or quarterly, as may be agreed upon by the Superintendent of Saint Elizabeths Hospital and the District of Columbia government, department, or establishments concerned. All sums paid to the Superintendent of Saint Elizabeths Hospital for the care of patients that he is authorized by law to receive shall be deposited to the credit on the books of the Treasury of this appropriation and be subject to requisition upon the approval of the Superintendent of Saint Elizabeths Hospital. (July 8, 1947, 61 Stat. 271, ch. 210, Title II.)

SIMILAR PROVISIONS

Similar provisions for the fiscal year 1947 were contained in act July 26, 1946 (60 Stat. 693, ch. 672, Title II).

§ 32–407 [16: 21]. Admission of insane convicts.

Any person becoming insane during the continuance of his sentence in the United States penitentiary shall have the same privilege of treatment in Saint Elizabeths Hospital during the continuance of his mental disorder as is granted in title 24, section 211 of the Code of Laws of the United States of America to persons who escape the consequences of criminal acts by reason of insanity, unless it be the opinion, both of the physician to the penitentiary and the superintendent of the hospital, that such insane convict is so depraved and furious in his character as to render his custody in the hospital insecure, and his example pernicious. (R. S., § 4852; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

AMENDMENT

The act of 1916 changed the name of "Government Hospital for the Insane" to "Saint Elizabeths Hospital."

CROSS REFERENCES

See notes to § 32–401.

This section is in U. S. C., title 24, § 211a.

§ 32–408. Authorization to accept gifts.

The Federal Security Administrator is authorized to accept on behalf of the United States gifts made unconditionally by will or otherwise for the improvement, maintenance, or operation of Saint Elizabeths Hospital in the District of Columbia. Conditional gifts may be so accepted if recommended by the Surgeon General of the Public Health Service, and the principal of and income from any such conditional

gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress. (Nov. 7, 1941, 55 Stat. 760, ch. 469, § 1.)

§ 32–409. Same—Custody and investment of gifts.

Any unconditional gift of money accepted pursuant to the authority granted in section 32–408, the net proceeds from the liquidation (pursuant to section 32–410 or section 32–411) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of Saint Elizabeths Hospital, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The income from such investments shall be available for expenditure in the improvement, maintenance, or operation of Saint Elizabeths Hospital, subject to the same examination and audit as provided for appropriations made for Saint Elizabeths Hospital by Congress. (Nov. 7, 1941, 55 Stat. 760, ch. 469, § 2.)

§ 32–410. Same—Gifts of intangible personal property.

The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in section 32–408 shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them or may liquidate them whenever in his judgment the purposes of the gifts will be served thereby. The income from any such property held by the Secretary of the Treasury shall be available for expenditure as is provided in section 32–411. (Nov. 7, 1941, 55 Stat. 761, ch. 469, § 3.)

§ 32–411. Same—Gifts of real property.

The Federal Security Administrator shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in section 32–408 and he shall permit such property to be used for the improvement, maintenance, or operation of Saint Elizabeths Hospital or he may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in section 32–409: *Provided,* That the income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Federal Security Administrator for the maintenance, preservation, or repair and insurance of such property and that any proceeds from insurance may be used to restore the property insured. Any such property when not required for the improvement or operation of the Saint Elizabeths Hospital may be liquidated by the Federal Security Administrator whenever in his judgment the purposes of the gifts will be served thereby. (Nov. 7, 1941, 55 Stat. 761, ch. 469, § 4.)

§ 32–412. Admission of applicants.

(a) The Superintendent of Saint Elizabeths Hospital may receive therein as a boarder and patient any adult person who appears to the Superintendent to be in need of mental care and treatment in a mental hospital, and who makes written application therefor and who is determined by the Superintendent to be mentally competent to make such application; and any person, under the age of twenty-one years, who appears to the Superintendent to be in need of mental care and treatment in a mental hospital, and whose parent, legal guardian, or other legal representative makes written application on behalf of such minor: *Provided,* That no such person shall be received as a boarder and patient in Saint Elizabeths Hospital under authority of this section unless the certification provided for in subsection (b) of this section shall have been made with respect to him: *Provided further,* That no person shall be permitted to remain in such hospital as boarder and patient after the need for his treatment at a mental hospital has ceased: *And provided further,* That no person shall be permitted to remain in such hospital as a boarder and patient after the Superintendent of Saint Elizabeths Hospital or his authorized representative has been notified that the certification provided for in subsection (b) has been revoked.

(b) Upon request therefor by the Superintendent of Saint Elizabeths Hospital, the Board of Public Welfare, if it finds that any person with respect to whom the application described in subsection (a) has been made was a resident of and domiciled within the District of Columbia for one year next preceding the time of such application, shall certify to the Superintendent that it will reimburse Saint Elizabeths Hospital the cost of caring for such person as provided in section 32–414; except that if the Board finds that such person, or any other person legally responsible for his care, is able to pay all or any part of the cost of such care, the Board shall not be required to make a certification unless it has, pursuant to section 32–414, made an agreement satisfactory to it for payment to the District of Columbia of the cost of such care or such part of such cost. (June 22, 1948, 62 Stat. 572, ch. 597, § 1.)

EFFECTIVE DATE

Section 6 of act June 22, 1948, cited to text, provided: "This Act [sections 32–412 to 32–416] shall become effective sixty days after enactment."

§ 32–413. Applicant's rights of release—Exceptions.

Any person received at Saint Elizabeths Hospital for mental care and treatment under section 32–412 shall not be detained there more than three days after having given written notice to the Superintendent thereof requesting his release, or, in the case of any such person who is under the age of twenty-one years, more than three days after he or his parent, legal guardian, or other legal representative gives such notice: *Provided,* That (a) if within such three-day period there shall be filed in the District Court of the United States for the District of Columbia a petition with respect to such person, as provided by sections 21–301 to 21–325, or (v) if an au-

thorized representative of the Board of Public Welfare, upon receipt of a notice signed by the Superintendent of Saint Elizabeths Hospital or his authorized representative stating that in his opinion said person is of unsound mind and should not be allowed to remain at liberty or go unrestrained, shall within such three-day period file a verified petition for a writ de lunatico inquirendo, or for an order of commitment, accompanied by the aforesaid notice, in the said District Court, alleging upon information and belief that such person is of unsound mind and should not be allowed to remain at liberty or go unrestrained, such person shall be detained by the Superintendent of Saint Elizabeths Hospital until a final judgment is entered by the Court upon any such petition and any petition filed in accordance with clause (b) of this proviso, accompanied by the aforesaid notice, shall forthwith be referred by the Court to the Commission on Mental Health, which said petition and notice shall be sufficient to initiate proceedings before said Commission. Pending the hearing upon the petition, such person need not be sent to Gallinger Hospital for observation and treatment, but shall be detained in Saint Elizabeths Hospital for observation and treatment. (June 22, 1948, 62 Stat. 572, ch. 597, § 2.)

EFFECTIVE DATE

For effective date see note to section 32–412.

§ 32–414. Costs of board, medical care, and treatment.

The cost of board, medical care, and treatment furnished under sections 32–412 to 32–416 shall be a charge upon the District of Columbia and shall be paid by the District of Columbia to Saint Elizabeths Hospital. The District of Columbia is authorized to make such agreement as it deems necessary with any patient seeking board, medical care, and treatment under sections 32–412 to 32–416, or any other person or persons legally responsible therefor, for payment to the District of Columbia of the cost of such board, medical care, and treatment, or for the payment of a part of such cost; and is further authorized to take appropriate steps by legal action or otherwise to enforce such agreement, or, in the absence of an agreement, to recover such cost of board, medical care, and treatment, or any part thereof, from the patient or from any person or persons legally liable therefor. The District of Columbia shall not be charged with the cost of board, medical care, and treatment furnished for any boarder and patient with respect to whom the certification required under section 32–412 shall have been revoked by the Board of Public Welfare, and the said Board is authorized to order revocation of any such certification: (a) When any person fails to make any payment under any agreement entered into under sections 32–412 to 32–416 for the cost of board, medical care, and treatment; or (b) when, after a boarder and patient has been admitted to such hospital under a certification, without any agreement having been entered into for his care and treatment, the said Board determines, upon evidence satisfactory to it, that such boarder and patient is able, or other persons legally liable for his care are financially able, to bear all or part of such cost; or (c) when such certification has been made erroneously: *Provided,* That revocation of such certification shall not take effect until a copy of the order of revocation shall have been served upon the Superintendent of Saint Elizabeths Hospital or his authorized representative. (June 22, 1948, 62 Stat. 573, Ch. 597, § 3.)

EFFECTIVE DATE

For effective date see note to section 32–412.

§ 32–415. Regulations—Approval of Federal Security Administrator.

The Superintendent of Saint Elizabeths Hospital, with the approval of the Federal Security Administrator, is authorized to prescribe such regulations as he shall deem necessary to carry out the provisions of sections 32–412 to 32–416 relating to the hospital. (June 22, 1948, 62 Stat. 574, ch. 597, § 4.)

EFFECTIVE DATE

For effective date see note to section 32–412.

§ 32–416. Regulations relating to Board of Public Welfare—District of Columbia.

The Commissioners of the District of Columbia are authorized to prescribe such regulations as they shall deem necessary to carry out the provisions of sections 32–412 to 32–416 relating to the Board of Public Welfare and the District of Columbia. (June 22, 1948, 62 Stat. 574, ch. 597, § 5.)

EFFECTIVE DATE

For effective date see note to section 32–412.

§ 32–417. Commitments by special commissioners of certain United States District Courts.

Any United States commissioner specially designated for that purpose by the United States District Court for the Eastern District of Virginia or by the United States District Court for the District of Maryland shall have jurisdiction and authority to commit to Saint Elizabeths Hospital in the District of Columbia, for observation and diagnosis, any person found in any place over which the United States has exclusive or concurrent jurisdiction in Arlington County, Fairfax County, or the city of Alexandria, in the State of Virginia, or in Montgomery County or in Prince Georges County, in the State of Maryland, who is alleged, and is believed by the commissioner, to be of unsound mind. Any United States commissioner specially designated for that purpose by the United States District Court for the District of Columbia shall have like jurisdiction and authority in the case of any person temporarily detained in Saint Elizabeths Hospital, pursuant to section 32–417a. Any such commitment shall be for a period not exceeding thirty days and may be made only after a hearing before the commissioner upon the testimony under oath of at least two witnesses who shall testify as to their belief that the said person is of unsound mind and, in addition, upon the testimony under oath or affidavit of two physicians, at least one of whom is skilled in the treatment and diagnosis of nervous and mental disorders, who shall testify or certify in writing that they have examined the said person alleged to be of unsound mind and believe said person to be

of unsound mind and not fit to remain at liberty and go unrestrained, and that such person should be in custody in a hospital for the treatment of mental or nervous disorders for his own safety and welfare and for the preservation of the peace and good order. It shall be the duty of the head of the agency of the United States in control of the place where such person is apprehended to forthwith notify the husband or wife or some near relative or friend of the person so apprehended whose address may be known to said agency head or whose address can by reasonable inquiry be ascertained by him: *Provided further*, That in the case of any person described in section 32–417d, the agency head shall notify the head of the department having jurisdiction over the service to which the individual belongs. The agency of the United States in control of the place where such person is apprehended is authorized to employ physicians for the aforesaid purpose and to pay compensation for their services and to pay expenses of witnesses in such proceedings out of funds available therefor. Physicians who are officers or employees of the United States or who are members of the armed forces of the United States are hereby authorized to render such services without additional compensation. (Oct. 11, 1949, 63 Stat. 759, ch. 672, § 1.)

§ 32–417a. Certain officers and employees of United States authorized to apprehend persons believed to be of unsound mind—Proceedings thereafter.

Any officer or employee of the United States authorized to make arrests, and any guard or watchman employed by the United States is hereby authorized and empowered to apprehend and detain any person whom he believes to be of unsound mind and found in any of the aforesaid places and, except as provided in section 32–417b, to bring such person for a hearing before a United States Commissioner for the district where such person was apprehended and designated as provided in section 32–417. If an immediate hearing before a commissioner cannot be had, such officer or employee is authorized and empowered to take such person to Saint Elizabeths Hospital and the Superintendent of Saint Elizabeths Hospital is authorized to detain such person pending a hearing before a United States commissioner for the District of Columbia, designated as provided in section 32–417, for a period not exceeding seventy-two hours. Such commissioner shall hold a hearing as promptly as practicable after the apprehension of such person and in any event not later than seventy-two hours thereafter. Such hearing shall be conducted at Saint Elizabeths Hospital if the Superintendent thereof shall certify that in his opinion it would be prejudicial to the health of the patient or unsafe to produce the patient at a hearing elsewhere. If, after any hearing at a place other than Saint Elizabeths Hospital, the commissioner commits a person to Saint Elizabeths Hospital, any officer, employee, guard, or watchman above-mentioned is authorized to transport such person to Saint Elizabeths Hospital in accordance with the order of the commissioner. (Oct. 11, 1949, 63 Stat. 760, ch. 672, § 2.)

§ 32–417b. Admission upon written application—Right of release.

Any person in any of the places described in section 32–417 may, upon his written application, be admitted for observation and diagnosis to Saint Elizabeths Hospital in the discretion of the Superintendent thereof for a period not exceeding 30 days. Any such person expressing a desire for release from Saint Elizabeths Hospital shall be released within 72 hours thereafter, unless proceedings for his adjudication as a person of unsound mind shall have been instituted as provided for in sections 32–417d. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 3.)

§ 32–417c. Superintendent to receive persons committed or apprehended under §§ 32–417 and 32–417a.

The Superintendent of Saint Elizabeths Hospital is hereby authorized and directed to receive for observation and diagnosis any person apprehended or committed as provided in sections 32–417 and 32–417a for the periods therein prescribed, unless such person is sooner discharged or returned to his home or to the State of his residence. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 4.)

§ 32–417d. Examinations—Adjudications—Laws applicable—Expense of care and treatment.

The Superintendent of Saint Elizabeths Hospital shall promptly examine any person committed as provided in sections 32–417 and 32–417a, and (a) if found to be of sound mind, shall forthwith discharge said person, or (b) if found to be of unsound mind, shall return such person to the State of his residence or to his relatives, if practicable. Proceedings for the adjudication of such person, or of any person admitted to the hospital pursuant to section 32–417b, as a person of unsound mind and for the appointment of a committee of his person or property may be instituted in the United States District Court for the District of Columbia by the Federal Security Administrator or by any party interested. The laws of the District of Columbia shall be applicable to such proceedings. Nothing in this Act shall be construed as imposing upon the District of Columbia the expense of care and treatment of any person apprehended, detained, or committed under sections 32–417 to 32–417g unless such person be a resident of the District of Columbia as defined in section 21–317. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 5.)

§ 32–417e. Military personnel to be transferred.

Any person belonging to the Army, Navy, Air Force, Marine Corps, or Coast Guard arrested, apprehended, detained, or committed under the provisions of sections 32–417 to 32–417g shall, upon the request of the head of the department having jurisdiction over the service to which the individual belongs, be transferred forthwith to the custody of such department. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 6.)

§ 32–417f. Persons entitled to care in a Veterans' Administration facility.

If any person adjudicated to be of unsound mind under the provisions of sections 32–417 to 32–417g is

entitled to care and treatment in a Veterans' Administration facility, he may be committed by the United States District Court for the District of Columbia to the custody of the Administrator of Veterans' Affairs for placement in an available facility or may be transferred by the Superintendent of Saint Elizabeths Hospital to any such facility: *Provided,* That nothing in sections 32–417 to 32–417g shall limit, restrict, or deprive the courts of any State or the District of Columbia of jurisdiction to commit to the Veterans' Administration any insane person entitled to care and treatment by the Veterans' Administration in accordance with the laws so made and provided by such States or the District of Columbia. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 7.)

§ 32–417g. Superintendent authorized to pay expenses of transfers.

The Superintendent of Saint Elizabeths Hospital is authorized to arrange for and pay the expenses of the transfer of any person committed to his custody pursuant to the provisions of sections 32–417 to 32–417g or admitted to the Hospital pursuant to section 32–417b to his relatives or to a hospital in the State of his residence and in connection with such transfer is authorized to pay the transportation and expenses of attendants necessary to insure safe travel. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 8.)

Chapter 5.—INDUSTRIAL HOME SCHOOL

Sec.

32–501. Control and management—Board of Public Welfare—Supplies—Disposition of income.
32–502. Abolishment of Board of Trustees—Duties transferred to Board of Public Welfare.
32–503. Exchange of portion of Naval Observatory grounds for portion of Industrial Home School site—Sale of balance of tract—Use of land if not sold—Funds available for new school site.
32–504. Receipts from Industrial Home School for Colored Children—Credit.

§ 32–501 [8: 41]. Control and management—Board of Public Welfare—Supplies—Disposition of income.

The Board of Public Welfare shall have complete and exclusive control and management of the Industrial Home School. All supplies for said school shall be obtained by requisition upon said commissioners, and all moneys received at said school as income thereof from sale of products and from payments for board and instruction, or otherwise, shall be paid over to said commissioners to be expended by them for the support of the school. (June 11, 1896, 29 Stat. 410, ch. 419; Feb. 28, 1923, 42 Stat. 1361, ch. 148; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

COMPILER'S NOTE

The Industrial Home School was established as a "private benevolent charity," and incorporated under the general corporation laws of the District on May 5, 1870, according to "Charitable and Reformatory Institutions in the District of Columbia," by Dr. George M. Kober (Sen. Doc. No. 207, 69th Congress, 2d Session, p. 244 et seq.).

AMENDMENT

The first sentence of this section is taken from the act of 1926, cited to the text, and the last sentence is from the original act of 1896. Prior to enactment of the 1926 act establishing the Board of Public Welfare, the act of 1923 abolished the Board of Trustees and transferred its powers to Board of Children's Guardians.

CROSS REFERENCES

Appointment of superintendent of Industrial Home School, § 3–107.

Powers and duties of Board of Public Welfare in general, § 3–101 et seq.

§ 32–502 [8: 42]. Abolishment of Board of Trustees—Duties transferred to Board of Public Welfare.

Board of Children's Guardians, successors of trustees of the Industrial Home School of the District of Columbia, is abolished, and the powers and duties of such board as specified and restricted by law are transferred to the Board of Public Welfare. (Feb. 28, 1923, 42 Stat. 1361, ch. 148; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCES

Officers, trustees, or directors may not deal with the institution for financial gain, § 32–1007.

See notes to § 32–501.

§ 32–503 [8: 43]. Exchange of portion of Naval Observatory grounds for portion of Industrial Home School site—Sale of balance of tract—Use of land if not sold—Funds available for new school site.

The Secretary of the Navy is hereby authorized and empowered to convey to the District of Columbia, free from all encumbrances and without costs to the District of Columbia, all right, title, and interest of the United States of America to that portion of the Naval Observatory grounds, with the improvements thereon, lying outside of Naval Observatory Circle and east of Massachusetts Avenue Northwest, Washington, District of Columbia, containing fourteen and four hundred and forty-nine one-thousandths acres, more or less, and also that other portion lying outside of and adjoining said Naval Observatory Circle on the south, containing one and seven hundred and six one-thousandths acres, more or less, in consideration of which the Board of Commissioners of the District of Columbia are authorized and empowered to convey to the United States of America, free from all encumbrances and without cost to the United States of America, all right, title, and interest of the District of Columbia to that portion of the Industrial Home School site, with the improvements thereon, lying within said Naval Observatory Circle, containing approximately six and seventy-six one-hundredths acres: *Provided,* That the said Board of Commissioners are further authorized and empowered on behalf of the District of Columbia to utilize or sell, as they see fit, all of that remaining portion of the said Industrial Home School site with the improvements thereon lying outside of the said Observatory (one-thousand-foot radius) Circle, and also all of the land and improvements thereon east of Massachusetts Avenue and south of said Naval Observatory Circle, hereunder authorized to be acquired from the United States of America: *Provided further,* That if utilized the land shall be used for school, playground, or highway purposes or transferred to the Director of the National Park Service to become part of the park system of the District of Columbia: *Provided*

further, That all of the proceeds from the sale of the aforesaid Industrial Home School property and one-half of the proceeds from the sale of any of said lands mentioned as lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to the credit of the District of Columbia and are made available for the purchase of a site and the erection thereon of suitable buildings for a new Industrial Home School: *Provided further,* That the remaining half of the proceeds from the sale of any of said land lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to the credit of the Naval Observatory: *And provided further,* That the said Board of Commissioners of the District of Columbia shall be permitted to continue to use all of the Industrial Home School property herein mentioned until such time as it may have acquired another site and constructed suitable buildings thereon in which to house the inmates of said Industrial Home School. The Secretary of the Navy, on behalf of the United States, and the Board of Commissioners, on behalf of the District of Columbia, are hereby authorized to execute and deliver all instruments necessary to accomplish the aforesaid purposes. (Mar. 3, 1927, 44 Stat. 1386, ch. 354, §§ 1, 2.)

COMPILER'S NOTE

This section is partly executed and obsolete.

CROSS REFERENCES

Execution of instruments generally, § 1–214

Office of Public Buildings and Parks has been abolished and its functions transferred to the National Park Service.

§ 32–504 [8: 44]. Receipts from Industrial Home School for Colored Children—Credit.

All moneys received at the Industrial Home School for Colored Children as income from sale of products and from payment of board or of instruction or otherwise shall be paid into the Treasury of the United States to the credit of the District of Columbia. (Feb. 25, 1929, 45 Stat. 1292, ch. 314.)

Chapter 6.—DISTRICT TRAINING SCHOOL

Sec.
32–601. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioners of the District of Columbia.
32–602. Control and supervision—Board of Public Welfare—Name.
32–603. "Feeble-minded person" defined.
32–604. Rules and regulations to be prescribed—Annual reports—Inventory.
32–605. Superintendent—Appointment and qualifications.
32–606. Sale of products—Disposition of proceeds.
32–607. Persons received—Age limit.
32–608. Petition to district court by guardian, relative, or reputable citizen, for admission of feeble-minded person—Contents of petition—Verification—Notice—Process.
32–609. Summons—Contents—Return day—Service—Cause heard without answer.
32–610. Appointment of physicians to examine feeble-minded person—Qualifications—Certificates to be made only after personal examination.
32–611. Warrant to take custody of feeble-minded person before hearing—Detention pending hearing—Place of detention.
32–612. Hearing—Continuances—Proof to be taken—Jury trial.
32–613. Dismissal and discharge if not feeble-minded—Decree placing person in institution if feeble-minded—Controlling purpose of proceedings.
32–614. Private and public patients—Bond for support and maintenance—Sufficiency and justification of sureties.
32–615. Liability of estate of public patient for maintenance.
32–616. Proceedings to charge relatives legally responsible for maintenance of public patient—Collector of taxes to collect maintenance payments—Enforcement of order—Liability of deceased's estate.
32–617. Public patients may become private patients by filing bond and paying advance.
32–618. Restrictions on discharge—Petition for discharge—Causes for discharge—Superintendent to be notified—Notice of variation of order—Denial of one petition not a bar to another.
32–619. Violating any provision of this chapter—Conniving to procure improper commitments—Misdemeanor—Penalty.
32–620. Proceeding when child brought before juvenile court appears feeble-minded.
32–621. Upon conviction of crime, court may order inquiry hereunder—Procedure.
32–622. Transfer to St. Elizabeths Hospital when patient becomes insane.
32–623. Separate docket of feeble-minded cases.
32–624. Transfer of feeble-minded from National Training Schools for Boys or Girls.
32–625. Removal from school of nonresidents of the District of Columbia.
32–626. Paroles may be granted—Conditions—Expense—Discretion of Superintendent—Violation—Return.
32–627. Citation, order, or process on inmates to be served only by superintendent.
32–628. Contracts of inmates to be first approved by District Court.
32–629. Invalidity of any part not to affect remainder of chapter.

§ 32–601 [8: 51]. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioners of the District of Columbia.

The commissioners of the District of Columbia are authorized and directed to acquire a site for a home and school for feeble-minded persons, said site to be located in the District of Columbia or in the State of Maryland or in the State of Virginia, and to erect thereon suitable buildings for a home and school for feeble-minded persons. The title to said land is to be taken directly to and in the name of the United States. But the land so acquired shall be under the jurisdiction of the commissioners of the District of Columbia as agents of the United States. The persons to be admissible to said home and school and the proceedings with reference to securing such admission to be in accordance with law. (Feb. 28, 1923, 42 Stat. 1360, ch. 148.)

§ 32–602 [8: 52]. Control and supervision—Board of Public Welfare—Name.

The institution for the custody, care, education, training, and treatment of feeble-minded persons, established by section 32–601, shall be under the control and supervision of the Board of Public Welfare of the District, and shall be known as the District Training School. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

AMENDMENT

The act of 1926 transferred the powers and duties of the Board of Charities of the District of Columbia to the Board of Public Welfare.

CROSS REFERENCES

General provisions concerning powers and duties of Board of Public Welfare, § 3–101 et seq.

Officers, trustees, or directors may not deal with the institution for financial gain, § 32–1007.

§ 32–603 [8: 53]. "Feeble-minded person" defined.

The words "feeble-minded persons" in this chapter shall be construed to mean any person afflicted with mental defectiveness from birth or from an early age, so pronounced that he is incapable of managing himself and his affairs, or being taught to do so, and who requires supervision, control, and care for his own welfare, or for the welfare of others, or for the welfare of the community, and is not insane or of unsound mind to such an extent as to require his commitment to Saint Elizabeths Hospital, as provided by title 24, chapter 4, of the Code of Laws of the United States of America, or other laws in effect on March 3, 1925, with respect to the commitment and custody of insane persons. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 2.)

CROSS REFERENCE

Other provisions concerning incompetent persons, see title 21.

§ 32–604 [8: 54]. Rules and regulations to be prescribed—Annual reports—Inventory.

The Board of Public Welfare shall make all necessary rules and regulations for enforcing discipline, for imparting instruction or preserving health, and for the physical, intellectual, and moral training of the inmates of said institution. The said board shall make annually to the Commissioners of the District of Columbia a report for the preceding fiscal year ending the 30th day of June. Said report shall show for such period the number and names of the superintendent, officers, teachers, and all other regular employees, and the salaries paid to each, and what, if any, other emoluments are allowed and to whom. Said board shall also cause a full and accurate inventory to be taken at the close of each fiscal year, showing the number of acres of land and the value thereof, the number, kind, and value of buildings, the various kinds of personal property and the value thereof, and a copy of said inventory, duly verified on oath by the officer making said inventory, shall accompany said report. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 3; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and Board of Public Welfare was substituted therefor.

CROSS REFERENCES

Powers and duties of Board of Public Welfare, § 3–101 et seq.

Rules and regulations generally, § 1–226 and notes.

§ 32–605 [8: 55]. Superintendent — Appointment and qualifications.

The Board of Public Welfare shall appoint a superintendent, who shall be experienced in the care, training, and treatment of the feeble-minded. He shall be the chief executive officer of the institution and may be removed by the commissioners of the District of Columbia upon recommendation of the board. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 4; Mar. 16, 1926, 44 Stat. 208, 209, ch. 58, §§ 1, 2, and 5.)

AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and Board of Public Welfare was substituted therefor.

CROSS REFERENCE

Other provisions giving Board of Public Welfare power to appoint superintendent, § 3–107.

§ 32–606 [8: 56]. Sale of products—Disposition of proceeds.

The superintendent of the said institution may sell such of the farm, greenhouse, and garden products, and the products of the industrial shops as may not be required in the maintenance and conduct of the home and school, and the funds so secured shall be paid into the treasury of the United States to the credit of the District of Columbia. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 5; Mar. 3, 1925, 43 Stat. 1216, ch. 477; May 10, 1926, 44 Stat. 417, ch. 276; Mar. 2, 1927, 44 Stat. 1297, ch. 271; May 21, 1928, 45 Stat. 645, ch. 659.)

COMPILER'S NOTES

This section as originally enacted provided that the funds from sale of produce should be paid into the Treasury "to the credit of the United States and the District of Columbia in the proportion required by law." The several appropriation acts cited in the history line provide for crediting of such income wholly to the United States.

The act of June 29, 1922, 42 Stat. 668, ch. 249 (title 20, § 670a of the 1929 Code, Supp. V), formed the basis for various sections of the code which provide for the 60% payment by the District of certain expenses, was repealed by the act of May 16, 1938, 52 Stat. 375, ch. 223, § 8, adding title X to the act of August 17, 1937, 50 Stat. 673, ch. 690. This repealing act does not provide any substitute provision, and consequently the aforesaid sections are left without foundation in the statutes. The aforesaid 1922 act, p. 671, contains a provision repealing all prior inconsistent acts, and, therefore, the prior acts which were the bases for these various sections no longer apply.

§ 32–607 [8: 57]. Persons received—Age limit.

There shall be received into the said institution, subject to such rules and regulations as the Board of Public Welfare may adopt and pursuant to the provisions of this chapter, feeble-minded persons of not more than forty-five years of age. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 6; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1 and 2.)

AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

CROSS REFERENCES

Other provisions for admission of feeble-minded persons, § 31–1009.

Powers and duties of the Board of Public Welfare generally, § 3–101 et seq.

§ 32–608 [8: 58]. Petition to District Court by guardian, relative, or reputable citizen, for admission of feeble-minded person—Contents of petition—Verification—Notice—Process.

When any person who is a resident of the District of Columbia shall be supposed to be feeble-minded his guardian, or any relative, or any reputable citizen

of the District of Columbia may file with the clerk of the District Court of the United States for the District of Columbia a petition, in writing, setting forth that the person therein named is feeble-minded, and such other facts as are necessary to bring such person within the purview of this chapter; also the name and residence of some person, if any there be, actually supervising, caring for, or supporting such person and of at least one person, if any there be, legally chargeable with such supervision, care, or support, or that such names and residence are unknown to the petitioner, and also the names and residences, or that the same are unknown, of the parents or guardians.

The petition shall also allege whether or not such person has been examined by a qualified physician having personal knowledge of the condition of such alleged feeble-minded person. There shall be indorsed on such petition the names and residences of witnesses known to the petitioner, by whom the truth of the allegations of the petition may be proved, as well as the name and residence of a qualified physician, if any is known to the petitioner, having personal knowledge of the case.

All persons named in such petition or whose names are indorsed thereon shall be notified of such proceedings by proper summons issued by the clerk of said court. The petition shall be verified by affidavit, which shall be sufficient if it states that it is based upon information and belief. Process shall be issued against such persons as are mentioned in the petition but whose names are unknown to the petitioner, by the designation "To all whom it may concern," and such designation and notice shall be sufficient to authorize the court to hear and determine the proceedings as though the parties had been summoned by their proper names. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 7.)

CROSS REFERENCE

Insanity inquests, § 21–306 et seq.

RULES OF CIVIL PROCEDURE

These rules do not apply to lunacy proceedings, Rule 81 (a) (1).

§ 32–609 [8: 59]. Summons—Contents—Return day—Service—Cause heard without answer.

The summons shall require all persons upon whom served to personally appear at the time and place stated therein and to bring into court the alleged feeble-minded person. No written answer shall be required to the petition, but the cause shall stand for hearing upon the petition on the return day of the summons. The summons shall be made returnable at any time within twenty days after the date thereof. No service of process shall be necessary upon any of the persons named in the petition or whose names are indorsed thereon if they appear or are brought before the court personally without service of summons. Summons in proceedings hereunder may be served by any officer authorized by law to serve processes of the District Court of the United States for the District of Columbia. (Mar. 3, 1925, 43 Stat. 1136, ch. 460, § 8.)

CROSS REFERENCE

See notes to § 32–608.

§ 32–610 [8: 60]. Appointment of physicians to examine feeble-minded person — Qualifications — Certificates to be made only after personal examination.

Upon the filing of such petition the court shall appoint two physicians, at least one of whom shall be skilled in the diagnosis and treatment of mental diseases to make an examination of the alleged feeble-minded person to determine his mental and physical condition, and their certificate shall be filed with the court on or before the hearing on the petition. The persons so appointed are empowered to go where such alleged feeble-minded person may be and make such personal examination of him as will enable them to offer an opinion as to his physical and mental condition, and no certificate shall be made by them except after such examination. (Mar. 3, 1925, 43 Stat. 1136, ch. 460, § 9.)

CROSS REFERENCE

See notes to § 32–608.

§ 32–611 [8: 61]. Warrant to take custody of feeble-minded person before hearing—Detention pending hearing—Place of detention.

Upon the filing of the petition, or upon motion at any time thereafter, if it shall be made to appear to the court by evidence given under oath that it is for the best interest of the alleged feeble-minded person or of other persons or of the community that such person be at once taken into custody, or that the service of summons will be ineffectual to secure the presence of such person, a warrant may issue on the order of the court directing that such person be taken into custody and brought before the court forthwith or at such time and place as the judge may appoint, and, pending the hearing of the petition, the court may make any order for the detention of such feeble-minded person, or the placing of such feeble-minded person under temporary guardianship of some suitable person, on such person entering into a recognizance for his appearance, as the court shall deem proper. But no such alleged feeble-minded person shall, during the pendency of the hearing of the petition, be detained in any place provided for the detention of persons charged with or convicted of any criminal or quasi-criminal offense. (Mar. 3, 1925, 43 Stat. 1136, ch. 460, § 10.)

CROSS REFERENCE

See notes to § 32–608.

§ 32–612 [8: 62]. Hearing—Continuances—Proof to be taken—Jury trial.

At any time after the filing of the petition and pending the final disposition of the case the court may continue the hearing from time to time. The court shall in all cases take proofs as to the financial circumstances of the patient and his relatives legally liable for his support, and shall take proofs as to the alleged condition of such person and his personal and family history, and shall fully investigate the facts before making an order, and if no jury is required the court shall determine the question of whether such person is a feeble-minded person. If the court shall deem it necessary, or if such alleged feeble-minded person or any relative or any person with whom he may reside shall so demand, a jury

shall be summoned to determine the question of whether such person is feeble-minded. Such jury shall be selected from the jurors in attendance upon the court or a special jury may be summoned to determine such question. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 11.)

CROSS REFERENCE

See notes to § 32–608.

§ 32–613 [8: 63]. Dismissal and discharge if not feeble-minded—Decree placing person in institution if feeble-minded—Controlling purpose of proceedings.

If the court or the jury shall find such alleged feeble-minded person not to be feeble-minded as defined in this chapter, he shall order the petition dismissed and the person discharged. If the court shall find such alleged feeble-minded person to be feeble-minded and subject to be dealt with under this chapter, having due regard to all the circumstances appearing on the hearing, the guiding and controlling thought throughout the proceedings to be the welfare of the feeble-minded person and the welfare of the community, the court shall enter a decree directing that such feeble-minded person be placed in the said institution, and such decree so entered shall stand and continue binding upon all persons whom it may concern until rescinded or otherwise regularly superseded or set aside. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 12.)

CROSS REFERENCE

See notes to § 32–608.

§ 32–614 [8: 64]. Private and public patients—Bond for support and maintenance—Sufficiency and justification of sureties.

If at the time of or before the making of such order a bond in the penal sum of $1,000, executed by a surety company authorized to do business in the District of Columbia, or by two or more sureties to be approved by the court, running to the United States and conditioned for the payment of the support and maintenance of the patient in the manner prescribed by law, shall be delivered to the court, together with the sum of $50 as an advance payment toward the support of such patient, admission shall be ordered as a private patient, otherwise as a public patient. Such bond and advance payment, together with the order of admission and bond, shall be transmitted by the clerk of the court to the superintendent of the institution. Until such bond and advance payment are delivered to the superintendent the person shall be admitted to the home and training school only as a public patient. At the request of the superintendent, the court shall require the sureties on such bond to justify their responsibility anew or order that a new bond be given in place of the original, which justification or new bond shall be transmitted to the superintendent, and unless such justification or bond shall be delivered to the superintendent within thirty days the patient shall from the time of such request be regarded as a public patient. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 13.)

CROSS REFERENCE

See notes to § 32–608.

§ 32–615 [8: 65]. Liability of estate of public patient for maintenance.

If the order for admission is as a public patient, and it shall appear then or at any time thereafter that the patient has an estate out of which the Government may be reimbursed for his maintenance, in whole or in part, the court shall order the payment out of such estate of the whole or such part of the cost of maintenance of said patient at said institution as it shall deem just, regard being had for the needs of those having a legal right to support out of said estate, which said order shall remain in full force and effect unless modified by the court. Upon the death of such feeble-minded person while an inmate at such institution or within five years after discharge therefrom, his estate shall be liable to the District of Columbia for the cost of his maintenance at said institution, and the claim of the District of Columbia shall be a preferred claim. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 14; Apr. 28, 1945, 59 Stat. 100, ch. 102.)

AMENDMENTS

The act of Apr. 28, 1945, cited to text, amended section generally by making patient liable at any time for cost of his maintenance, and by adding the second sentence.

CROSS REFERENCE

See notes to § 32–608.

§ 32–616 [8: 66]. Proceedings to charge relatives legally responsible for maintenance of public patient—Collector of Taxes to collect maintenance payments—Enforcement of order—Liability of deceased's estate.

If the order for admission is as a public patient and the court at any time finds that the patient has not an estate out of which the District of Columbia may be fully reimbursed for his maintenance, the father, mother, husband, wife, and adult children of such feeble-minded person, if of sufficient ability, shall pay the cost to the District of Columbia of his maintenance at the District Training School, at Laurel, Maryland. The Commissioners of the District of Columbia may petition the District Court of the United States for the District of Columbia, at any time during the commitment of such feeble-minded person to said institution, to direct any such relative or relatives to pay the District of Columbia, in whole or in part, for his maintenance at said institution: *Provided,* That in no case shall any such relative or relatives be required to pay more than the actual cost to the District of Columbia of the maintenance of such feeble-minded person.

If the District Court of the United States for the District of Columbia finds that any such relative or relatives is or are able to pay for the maintenance of such feeble-minded person, in whole or in part, it may make an order requiring payment by any such relative or relatives of such sum or sums as it may find he or they are reasonably able to pay and as may be necessary to provide for the maintenance of such feeble-minded person. Said order shall require the payment of such sum or sums to the Collector of Taxes of the District of Columbia annually, semiannually, quarterly, or monthly, as the court may direct. It shall be the duty of the said Collector of Taxes to collect the said sum or sums due under

this section and section 32–615, and turn the same into the Treasury of the United States to the credit of the District of Columbia. If any such relative or relatives made liable for the maintenance of such feeble-minded person shall fail to provide or pay for such maintenance, in accordance with the order of court, the court shall issue to such relative or relatives a citation to show cause why he or they should not be adjudged in contempt. The citation shall be served at least ten days before the hearing thereon.

Any such order may be enforced against any property of any such relative or relatives made liable for the maintenance of such feeble-minded person, in the same way as if it were an order for temporary alimony in a divorce case.

Upon the death of any such relative ordered by the court to pay for the maintenance of such feeble-minded person in whole or in part, the estate of such relative shall be liable to the District of Columbia for the unpaid amount due the District of Columbia under said order of court at the time of the death of said relative, and the claim of the District of Columbia shall be a preferred claim against such estate. (Mar. 3, 1925, 43 Stat. 1138, ch. 460, § 15; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2; Apr. 28, 1945, 59 Stat. 100, ch. 102.)

AMENDMENTS

The act of 1926 abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

The act of Apr. 28, 1945, cited to text, amended section generally.

CROSS REFERENCE

See notes to § 32–608.

§ 32–617 [8: 67]. Public patients may become private patients by filing bond and paying advance.

If any person shall be admitted as a public patient, his order for admission may be changed to that of a private patient by executing and delivering to the court the bond and advance payment for his support mentioned in section 32–615. Thereupon the court shall make an order changing the admission of said person from a public to a private patient. (Mar. 3, 1925, 43 Stat. 1138, ch. 460, § 16.)

CROSS REFERENCE

See notes to § 32–608.

§ 32–618 [8: 68]. Restrictions on discharge—Petition for discharge—Causes for discharge—Superintendent to be notified—Notice of variation of order—Denial of one petition not a bar to another.

No feeble-minded person admitted to the said institution pursuant to an order of court as herein provided shall be discharged therefrom except as herein provided, except that nothing herein contained shall abridge the right of petition for the writ of habeas corpus. At any time after the admission of the feeble-minded person pursuant to an order of court as herein provided, any of the relatives or friends of the feeble-minded person, or any reputable citizen, or the superintendent of the institution having the feeble-minded person in charge, or the Board of Public Welfare, may petition the court that entered the order of admission to discharge the feeble-minded person, or to vary the order of the court sending the feeble-minded person to the institution. If on the hearing of the petition the court is satisfied that the welfare of the feeble-minded person or the welfare of others or the welfare of the community requires his discharge or a variation of the order, the court may enter such order of discharge or variation as the court thinks proper. Discharges and variations of orders may be made for either of the following causes: Because the person adjudged to be feeble-minded is not feeble-minded; because he has so far improved as to be capable of caring for himself; because the relatives or friends of the feeble-minded person are able and willing to supervise, control, care for, and support him, and request his discharge, and in the judgment of the superintendent of the institution having the person in charge no evil consequences are likely to follow such discharge; but the enumeration of grounds of discharge or variation herein shall not exclude other grounds of discharge or variation which the court, in its discretion, may deem adequate, having due regard for the welfare of the person concerned or the welfare of others or the welfare of the community. On any petition of discharge or variation the court may discharge the feeble-minded person from all supervision, control, and care, or make such variation of the order as to maintenance as the court thinks fit under all the circumstances appearing on the hearing of the petition: The superintendent of the institution having the feeble-minded person in charge must be notified of the time and place of hearing on any petition for discharge or variation, as the court shall direct, and no order of discharge or variation shall be entered without giving such superintendent a reasonable opportunity to be heard; and the court may notify such other persons, relatives, and friends of the feeble-minded person as the court may think proper of the time and place of the hearing on any petition for discharge or variation of prior order. No person shall be charged with any greater degree of financial responsibility for the support of such feeble-minded person by variation of the order as to maintenance without notice and a reasonable opportunity to be heard. The denial of one petition for discharge or variation shall be no bar to another on the same or different grounds within a reasonable time thereafter, such reasonable time to be determined by the court in its discretion, discouraging frequent, repeated, frivolous, ill-founded petition for discharge or variation of prior order. (Mar. 3, 1925, 43 Stat. 1138, ch. 460, § 17; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

CROSS REFERENCE

See notes to § 32–608.

§ 32–619 [8: 69]. Violating any provision of this chapter—Conniving to procure improper commitments—Misdemeanor—Penalty.

Any person who shall knowingly contrive or who shall conspire to have any person adjudged feeble-minded under this chapter, unlawfully and improperly, or any person who shall violate any provision

of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not exceeding $1,000, or imprisoned not exceeding one year, or both, in the discretion of the court in which such conviction is had. (Mar. 3, 1925, 43 Stat. 1139, ch. 460, § 18.)

CROSS REFERENCE

See notes to § 32–608.

§ 32–620 [8: 70]. Proceeding when child brought before juvenile court appears feeble-minded.

When a child is brought before the juvenile court of the District of Columbia as a dependent or delinquent child, if it appears to the court, on the testimony of a physician or psychologist or other evidence, that such person or child is feeble-minded within the meaning of this chapter the court may adjourn the proceedings and direct some suitable officer of the court or other suitable reputable person to file a petition under this chapter; and the court may order that pending the preparation, filing, and hearing of such petition the person or child be detained in a place of safety or be placed under the guardianship of some suitable person on that person entering into recognizance for his appearance. (Mar. 3, 1925, 43 Stat. 1139, ch. 460, § 19.)

CROSS REFERENCE

See notes to § 32–608.

§ 32–621 [8: 71]. Upon conviction of crime, court may order inquiry hereunder—Procedure.

On the conviction by a court of record of competent jurisdiction of any person of any crime, misdemeanor, or any violation of any ordinance which is in whole or in part a violation of any statute of the District of Columbia, the court, if satisfied on the testimony of a physician or a psychologist or other evidence that the person or child is feeble-minded within the meaning of this chapter, may suspend sentence, or suspend entering an order sending the child to a reformatory, training, or industrial school, and direct that a petition be filed under this chapter. When the court directs a petition to be filed it may order that, pending the preparation, filing and hearing of the petition, the person or child be detained in a place of safety, or be placed under the guardianship of any suitable person on that person entering into a recognizance for his appearance. If upon the hearing of said petition or upon any subsequent hearing under this chapter the person is found not to be feeble-minded, the court shall impose sentence. (Mar. 3, 1925, 43 Stat. 1139, ch. 460, § 20.)

CROSS REFERENCE

See notes to § 32–608.

§ 32–622 [8: 72]. Transfer to St. Elizabeths Hospital when patient becomes insane.

When any person shall become insane while confined in said institution and the superintendent shall certify in writing that such patient is insane and is not a fit subject for care and maintenance at said institution, the said District Court shall issue an order for his admission to Saint Elizabeths Hospital. Such transfer shall not affect the liability on any bond for private support, or any order for reimbursement for public support, but all such bonds and orders for reimbursement shall be liable and in full force for the cost of maintenance at the said asylum. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 21.)

§ 32–623 [8: 73]. Separate docket of feeble-minded cases.

The District Court of the United States for the District of Columbia shall keep a separate docket of proceedings in feeble-mindedness, upon which shall be made such entries as will, together with the papers filed, preserve a complete and perfect record of each case, the original petitions, writs, and returns made thereto and the reports of commissions shall be filed with the clerk of the court. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 22.)

§ 32–624 [8: 74]. Transfer of feeble-minded from National Training Schools for Boys or Girls.

Whenever the superintendent of the National Training School for Boys or of the National Training School for Girls shall certify to the said court that in his opinion any inmate thereof has become or is feeble-minded, the court shall permit such superintendent or any other reputable citizen of the District of Columbia to file a petition as provided in section 32–610. If such inmate shall be found and adjudged to be feeble-minded, the court shall immediately issue an order for his admission as a public patient to the District Training School. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 23.)

§ 32–625 [8: 75]. Removal from school of nonresidents of the District of Columbia.

The District Training School is intended for the benefit of bona fide residents of the District of Columbia. The Board of Public Welfare shall cause any person who has been admitted, but who has not acquired a legal residence in the District, to be removed as soon as possible to the state in which he belongs. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 24; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

§ 32–626 [8: 76]. Paroles may be granted—Conditions—Expense—Discretion of Superintendent—Violation—Return.

It shall be within the discretion of the superintendent, under general conditions prescribed by the Board of Public Welfare, to grant paroles to patients where the conditions in the homes in which they are to reside are satisfactory and where such paroles are deemed by the superintendent as not injurious to the interest of the patients or the public. The expense of such a vacation shall in every case be borne by the guardian, relatives, or other persons responsible for the care of such patient while on such vacation. It shall be within the discretion of the superintendent to grant a parole for an indefinite period to a patient who has improved sufficiently to warrant such opportunity and when satisfactory supervision for such patient while on such leave is assured. If the condi-

tions of any parole granted under this chapter are violated, the patient may be taken up and returned the same as an escaped patient. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 25; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

§ 32–627 [8: 77]. Citation, order, or process on inmates to be served only by Superintendent.

Any citation, order, or process required by law to be served on an inmate of the institution shall be served only by the superintendent or by some one designated in writing by him. Return thereof to the court from which the same issued may be made by the person making such service and such service and return shall have the same force and effect as if it had been made by the United States marshal of the District of Columbia or by the sheriff of the county in which the institution is located. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 26.)

§ 32–628 [8: 78]. Contracts of inmates to be first approved by District Court.

No public or private patient in said institution shall be allowed to execute any contract, deed, will, or other instrument unless such execution shall have first been allowed and approved by an order to be entered of record by the said District Court of the United States for the District of Columbia, and a certified copy of such order shall be furnished to the superintendent at the time of the execution of such instrument. Such order of the court shall be evidence only of the capacity of such patient to make such instrument. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 27.)

§ 32–629 [8: 79]. Invalidity of any part not to affect remainder of chapter.

The invalidity of any part of this chapter shall not be construed to affect the validity of any other part capable of having practical operation and effect without the invalid part. (Mar. 3, 1925, 43 Stat. 1141, ch. 460, § 28.)

Chapter 7.—HOME CARE FOR DEPENDENT CHILDREN

Sec.
32–701 to 32–710. Repealed.

§§ 32–701 to 32–710. Repealed. June 14, 1944, 58 Stat. 278, ch. 257, § 17.

Chapter 7A.—AID TO DEPENDENT CHILDREN

Sec.
32–751. Congressional declaration—Establishment of system of aid to dependent children.
32–752. Definitions.
32–753. Eligible children.
32–754. Administration by Board of Public Welfare—Rules and regulations—Reports.
32–755. Determination of amount and manner of assistance rendered.
32–756. Application to Board—Form—Information required.
32–757. Investigation by Board.
32–758. Granting of assistance—Determination of amount and starting date.
32–759. Reconsideration by Board of grants—Alteration or withdrawal of assistance.
32–760. Review of Board's action.
32–761. Effect of subsequent legislation upon awards.
32–762. Cooperation between Board and Social Security Board.
32–763. Appropriations.
32–764. Payment of expenses.
32–765. Penalty for obtaining or receiving allowance by false misrepresentation, fraud, or deceit.

§ 32–751. Congressional declaration—Establishment of system of aid to dependent children.

The care and assistance of dependent children is hereby declared to be a special matter of public concern and a necessity in promoting the public health and welfare. To provide such care and assistance at public expense, a system of aid to dependent children is hereby established for the District of Columbia, (June 14, 1944, 58 Stat. 277, ch. 257, § 1.)

SAVING CLAUSE

Section 18 of the act of June 14, 1944, cited to text, provided: "If any provisions of this Act [§§ 32–751 to 32–765] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provisions to other persons or circumstances, shall not be affected thereby."

SHORT TITLE

Section 16 of the act of June 14, 1944, cited to text, provided: "This Act [§§ 32–751 to 32–765] shall be cited as the 'Aid to Dependent Children Act'."

REPEALS

Section 17 of the act of June 14, 1944, cited to text, provided: "The Act entitled 'An Act to provide home care for dependent children in the District of Columbia', approved June 22, 1926 [§§ 32–701 to 32–710], and all other provisions of law in conflict with this Act, [§§ 32–751 to 32–756], are hereby repealed."

§ 32–752. Definitions.

The terms "aid" and "assistance" wherever used in sections 32–751 to 32–765 shall be construed to mean money payments with respect to a dependent child or dependent children. As used in sections 32–751 to 32–765, the term "dependent child" shall be construed to mean a child under the age of eighteen who has been deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt in a place of residence maintained by one or more of such relatives as his or their own home. (June 14, 1944, 58 Stat. 277, ch. 257, § 2.)

§ 32–753. Eligible children.

Aid to dependent children shall be granted with respect to a child who has resided in the District of Columbia for one year immediately preceding the application or who was born in the District of Columbia within one year immediately preceding the application, one or both of whose parents has resided in the District of Columbia for one year immediately preceding the birth. (June 14, 1944, 58 Stat. 277, ch. 257, § 3.)

§ 32–754. Administration by Board of Public Welfare—Rules and regulations—Reports.

The Board of Public Welfare of the District of Columbia shall administer assistance under sections 32–751 to 32–765. It shall prescribe the form and print and supply the blanks for applications, reports, and affidavits, and such other forms as it may deem advisable, and shall make rules and regulations necessary for the carrying out of the provisions of sections 32–751 to 32–765 and shall make and render any and all reports required by the Social Security Board of the United States Government or otherwise authorized or required by law, and comply with such provisions as the Social Security Board of the United States Government may, from time to time, find necessary to assure the correctness and verification of such reports. (June 14, 1944, 58 Stat. 277, ch. 257, § 4.)

§ 32–755. Determination of amount and manner of assistance rendered.

The amount of assistance for any child and the manner of providing it shall be determined by the Board of Public Welfare with due regard to the conditions existing in each case, and shall be sufficient when added to all other income and support available to the child, to provide such child with a reasonable subsistence compatible with decency and health. (June 14, 1944, 58 Stat. 277, ch. 257, § 5.)

§ 32–756. Application to Board—Form—Information required.

Application for assistance under sections 32–751 to 32–765 shall be made to the Board of Public Welfare. The application shall be made in the manner and form prescribed by the Board of Public Welfare, and shall contain information as to the age and residence of the child and such other information as may be required by the Board of Public Welfare. (June 14, 1944, 58 Stat. 277, ch. 257, § 6.)

§ 32–757. Investigation by Board.

Upon the receipt of an application for assistance, an investigation and record shall be made of the circumstances in order to determine the dependency of the child and to ascertain the facts supporting the application and such other information as may be required by the Board of Public Welfare. (June 14, 1944, 58 Stat. 277, ch. 257, § 7.)

§ 32–758. Granting of assistance—Determination of amount and starting date.

Upon completion of such investigation the Board of Public Welfare shall decide whether the child is eligible for assistance under the provisions of sections 32–751 to 32–765, and shall determine the amount of such assistance and the date on which assistance shall begin. (June 14, 1944, 58 Stat. 277, ch. 257, § 8.)

§ 32–759. Reconsideration by Board of grants—Alteration or withdrawal of assistance.

All assistance grants made under sections 32–751 to 32–765 shall be reconsidered by the Board of Public Welfare as frequently as it may deem necessary. After such further investigations as the Board of Public Welfare may deem necessary, the amount of assistance may be changed, or assistance may be entirely withdrawn if the Board of Public Welfare finds that the child's circumstances have altered sufficiently to warrant such action. (June 14, 1944, 58 Stat. 278, ch. 257, § 9.)

§ 32–760. Review of Board's action.

If an application is not acted upon within a reasonable time of the filing of the application, or is denied in whole or in part, or if any award of assistance is modified or canceled under any provision of sections 32–751 to 32–765, the applicant or recipient may appeal for a hearing to the Board of Public Welfare in a manner and form prescribed by the Board. (June 14, 1944, 58 Stat. 278, ch. 257, § 10.)

§ 32–761. Effect of subsequent legislation upon awards.

All assistance granted under sections 32–751 to 32–765 shall be deemed to be granted and to be held subject to the provisions of any amending or repealing Act that may hereafter be passed, and no person shall have any claim for compensation or otherwise, by reason of a child's assistance being affected in any way by any amending or repealing Act. (June 14, 1944, 58 Stat. 278, ch. 257, § 11.)

§ 32–762. Cooperation between Board and Social Security Board.

The Board of Public Welfare is hereby authorized and directed to cooperate in all necessary respects with the Social Security Board of the United States Government in the administration of sections 32–751 to 32–765, and to accept any sums allotted or appropriated by such Board, as are available under the provisions of the Social Security Act. (U. S. C., title 42, §§ 301–1351). (June 14, 1944, 58 Stat. 278, ch. 257, § 12.)

§ 32–763. Appropriations.

Congress shall appropriate annually and make available to the order of the Board of Public Welfare of the District of Columbia such sums as may be needed to pay the share of the District of Columbia for aid to dependent children provided under sections 32–751 to 32–765 together with a sufficient sum to defray its share of administrative expenses to be incurred in connection therewith, and include such sums in the annual District of Columbia Appropriation Act. Should the sum so appropriated, however, be expended or exhausted during the year for the purposes for which it was appropriated, additional sums shall be appropriated by Congress as the case demands to carry out provisions of such sections. The balance remaining in the appropriation "Home care for dependent children" as contained in the District of Columbia Appropriation Act, 1944, approved July 1, 1943 (Public Law 107, Seventy-eighth Congress, first session), as of June 14, 1944 is hereby made available to carry out the provisions of such sections and shall continue available for such purpose through June 30, 1944. (June 14, 1944, 58 Stat. 278, ch. 257, § 13.)

REFERENCES IN TEXT

Words "District of Columbia Appropriation Act, 1944, approved July 1, 1943 (Public Law 107, Seventy-eighth Congress, first session") refer to act July 1, 1943, ch. 184, 57 Stat. 312.

§ 32–764. Payment of expenses.

All necessary expenses incurred by the District of Columbia in carrying out the provisions of sections 32–751 to 32–765 shall be paid in the same manner as other expenses of the District of Columbia are paid. (June 14, 1944, 58 Stat. 278, ch. 257, § 14.)

§ 32–765. Penalty for obtaining or receiving allowance by false misrepresentation, fraud, or deceit.

Any adult person who attempts to obtain, or obtains, or aids or assists any child or other person to obtain, by false representation, fraud, or deceit, any allowance under sections 32–751 to 32–765, or who receives for the benefit of any child any allowance knowing it to have been fraudulently obtained, shall upon conviction in the Municipal Court for the District of Columbia, criminal division, be punished by a fine of not more than $500 or by imprisonment for not more than one year, or by both such fine and imprisonment. (June 14, 1944, 58 Stat. 278, ch. 257, § 15.)

Chapter 7B.—PLACEMENT OF CHILDREN IN FAMILY HOMES

Sec.
32–781. Purpose of chapter.
32–782. Child-placing agency—License.
32–783. Appointment of supervisory committee by Commissioners—Composition and tenure—Chairman—Promulgation of rules and regulations.
32–784. Application for license—Form—Investigation by Board—Provisional license—Term and renewal.
32–785. Persons authorized to place children—Custody, control, supervision, and visitation by agency—Compensation.
32–786. Agency vested with parental rights—Consent to adoption—Adoption petition—Parents' relinquishment of rights—Recordation.
32–787. Revocation of license of child-placing agency—Notice—Reinstatement.
32–788. Penalty for operation as child-placing agency without license—Jurisdiction.
32–789. Rules and regulations by Board.

§ 32–781. Purpose of chapter.

The purpose of sections 32–781 to 32–789 is to secure for each child under sixteen years of age who is placed in a family home, other than his own or that of a relative within the third degree, such care and guidance as will serve the child's welfare and the best interests of the District of Columbia; and to secure for him custody and care as near as possible to that which should have been given him by his parents. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 1.)

EFFECTIVE DATE

Section 11 of the act of Apr. 22, 1944, cited to text, provided: "This Act [§§ 32–781 to 32–788] shall become effective four months after date of the approval of this Act [April 22, 1944], except section 3 hereof [§ 32–783], which shall become effective on the date of the approval of this Act [April 22, 1944.]."

REPEALS

Section 10 of the act of Apr. 22, 1944, cited to text, provided: "That sections 173, and 402 to 411, both inclusive, of the Code of Law for the District of Columbia, approved March 3, 1901 [§§ 36–101 to 36–111], are hereby repealed."

CROSS REFERENCES

Adoption proceedings, see §§ 16–201 to 16–207.

NOTES TO DECISIONS

PURPOSE

The purpose of this chapter is to regulate procedure for placing children for adoption to protect children and parents from corrupt, irresponsible, careless, or untrained intermediaries. *Goodman* v. *District of Columbia* (D. C. Mun. App. 1947, 50 A. 2d 812).

§ 32–782. Child-placing agency—License.

Any person, firm, corporation, association, or public agency that receives or accepts a child under sixteen years of age and places or offers to place such child for temporary or permanent care in a family home other than that of a relative within the third degree shall be deemed to be maintaining a child-placing agency. No child-placing agency shall be maintained in the District of Columbia without a license issued by the Commissioners of the District of Columbia: *Provided,* That notwithstanding any provisions of section 32–784 such a license shall be issued forthwith to any corporation or association chartered by special Act of Congress and having under its charter the purposes or powers of a child-placing agency as herein defined. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 2.)

EFFECTIVE DATE

For effective date, see note set out under § 32–781.

NOTES TO DECISIONS

ATTORNEYS

A lawyer is within his rights under this chapter so long as he gives only legal advice, appears in court in adoption proceedings representing either relinquishing or adopting parents, and refrains from serving as an intermediary, go-between, or placing agent and leaves or refers placement of children and arrangements for their placement to agencies duly licensed for that purpose. *Goodman* v. *District of Columbia* (D. C. Mun. App. 1947, 50 A. 2d 812).

A lawyer, as such in placing children for adoption, is not exempt from this chapter notwithstanding he acts without compensation and with humane motives, and, to place babies for adoption, he must have a license as a child-placing agency. *Goodman* v. *District of Columbia* (D. C. Mun. App. 1947, 50 A. 2d 812).

§ 32–783. Appointment of supervisory committee by Commissioners—Composition and tenure—Chairman—Promulgation of rules and regulations.

Within sixty days after the passage of sections 32–781 to 32–789, the Commissioners shall appoint, after consultation with the Board of Public Welfare, a committee of eight persons to formulate and adopt rules and regulations, subject to the approval of the Commissioners, prescribing standards of placement, care, and services to be required of child-placing agencies, pursuant to the intent and purposes of such sections. The committee shall be composed of a member of the Board of Public Welfare who shall act as chairman of said committee, a member of the staff of the Health Department of the District of Columbia, a member of the staff of the Board of Public Welfare of the District of Columbia, and one representative from each of five charitable organizations of the District of Columbia having an organized program for placing children in family homes. Each member of said committee shall serve for a term of one year and until his successor is

appointed and qualified. The rules and regulations shall be reviewed by the committee annually and, subject to the approval of the Commissioners, may be amended when deemed necessary. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 3.)

EFFECTIVE DATE

Section 11 of the act of Apr. 22, 1944, cited to text, provided: "This Act [§§ 32–781 to 32–789] shall become effective four months after date of the approval of this Act [April 22, 1944], except section 3 hereof [§ 32–783], which shall become effective on the date of the approval of this Act [April 22, 1944]."

§ 32–784. Application for license—Form—Investigation by Board—Provisional license—Term and renewal.

An application for a license as a child-placing agency shall be made to the Commissioners on forms provided by them and in the manner prescribed. Before such license is issued the Board of Public Welfare shall arrange to have an investigation made of the activities and standards of care of the agency and shall consult with persons having official connection with the agency. If the Board is satisfied as to the good character and intent of the applicant, and that the agency is adequately financed, and that its staff, procedures, and services conform to the established standards of care, said Board shall recommend to the Commissioners that a license be issued.

A provisional license may be issued to any agency which is temporarily unable to conform to all the provisions of the established standards of care upon terms and conditions prescribed by the Commissioners upon recommendation of the Board of Public Welfare.

All licenses shall be issued for one year from the date thereof and may be renewed annually on the application of the agency, except that provisional licenses may be issued for not more than three successive years from the date of the passage of sections 32–781 to 32–789. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 4.)

EFFECTIVE DATE

For effective date, see note set out under § 32–781.

§ 32–785. Persons authorized to place children—Custody, control, supervision, and visitation by agency—Compensation.

No person other than the parent, guardian, or relative within the third degree, and no firm, corporation, association, or agency, other than a licensed child-placing agency, may place or arrange or assist in placing or arranging for the placement of a child under sixteen years of age in a family home or for adoption. In accordance with the rules and regulations promulgated hereunder, any licensed child-placing agency may accept children for placement in family homes and shall have and maintain care, custody, and control of any such child until returned to the person from whom received or until responsibility for the child is transferred to another child-welfare agency or terminated by the order of a court of competent jurisdiction.

Every such agency shall keep and maintain careful supervision of all children under its care, including those placed in family homes, and its officers or agents shall visit all such homes and families as often as may be necessary to promote the welfare of such child: *Provided*, That legally adopted children shall not be subject to such supervision and visitation, or other supervision or visitation. Every such agency shall keep such records as shall be required by the rules and regulations promulgated hereunder and all records regarding children and all facts learned about children and their parents or relatives shall be deemed confidential.

Such agency shall in no case charge or receive from the person or persons legally adopting any child any compensation whatsoever therefor; and in no case shall any person taking a child with the intention of adoption demand or receive from such agency any compensation whatsoever for the care of such child even though it shall be returned to the agency. (Apr. 22, 1944, 58 Stat. 194, ch. 174, § 5.)

EFFECTIVE DATE

For effective date, see note set out under § 32–781.

§ 32–786. Agency vested with parental rights—Consent to adoption—Adoption petition—Parents' relinquishment of rights—Recordation.

Whenever a licensed child-placing agency shall have been given the permanent care and guardianship of any child and the rights of the parent or parents of such child shall have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the agency is vested with parental rights and may consent to the adoption of the child pursuant to the statutes regulating adoption procedure. In any such adoption proceeding filed in the District of Columbia, which is consented to by a child-placing agency licensed pursuant to sections 32–781 to 32–789, the provisions of section 16–201 requiring the petition to state the name, age, race, occupation, and address of the natural parents, and requiring the Board of Public Welfare to verify the allegations of the petition, make investigation, and report its findings and recommendations to the Court, shall not apply. Except in proceedings for adoption no parent may voluntarily assign or otherwise transfer to another his rights and duties with respect to the permanent care and control of a child under sixteen years of age unless such relinquishment of parental rights is made to a licensed child-placing agency. Such relinquishment of parental rights shall be a statement in writing signed by the person relinquishing such parental rights who shall subscribe his name thereto and acknowledge the same before a representative of the licensed child-placing agency in the presence of at least one witness. Said relinquishment of parental rights shall be recorded and filed in a properly sealed file in the Office of the Clerk of the District Court of the United States for the District of Columbia. The seal of said file shall not be broken except for good cause shown and upon the written order of a justice of said court. (Apr. 22, 1944, 58 Stat. 194, ch. 174, § 6.)

EFFECTIVE DATE

For effective date, see note set out under § 32–781.

§ 32–787. Revocation of license of child-placing agency—Notice—Reinstatement.

The Commissioners may refuse to reissue or may revoke or suspend the license of any child-placing agency after full hearing on proof of violation of any provisions of sections 32–781 to 32–789 or the rules and regulations promulgated hereunder. Before any license shall be suspended or revoked the holder thereof shall have notice in writing of the charge or charges and shall, at the date and place specified in said notice, which shall be at least five days after the service thereof, be given a hearing by said Commissioners, or their designated agents, with a full opportunity to produce testimony in his, her, or its behalf. Any licensee whose license has been suspended or revoked may, after the expiration of ninety days, on application to the said Commissioners, have the same reinstated or reissued upon satisfactory proof that the disqualification has ceased. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 7.)

EFFECTIVE DATE

For effective date, see note set out under § 32–781.

§ 32–788. Penalty for operation as child-placing agency without license—Jurisdiction.

Any person, firm, corporation, association, or public agency who conducts a child-placing agency without a license as provided for in sections 32–781 to 32–789 or who violates any of the provisions of such sections shall, upon conviction, be fined not more than $300 or imprisoned for not more than ninety days, or both. Prosecution for violations of such sections shall be upon information in the criminal division of the municipal court of the District of Columbia by the corporation counsel of the District of Columbia. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 8.)

EFFECTIVE DATE

For effective date, see note set out under § 32–781.

NOTES TO DECISIONS

EVIDENCE

Evidence authorized conviction of violation of this chapter. *Goodman* v. *District of Columbia* (D. C. Mun. App. 1947, 50 A. 2d 812).

§ 32–789. Rules and regulations by Board.

The Board of Public Welfare is authorized to make such investigations and inspections as are necessary to carry out the provisions of sections 32–781 to 32–789. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 9.)

EFFECTIVE DATE

For effective date, see note set out under § 32–781.

Chapter 8.—NATIONAL TRAINING SCHOOL FOR BOYS

Sec.

32–801. Name.
32–802. Board of Trustees—Appointment—President.
32–803. One commissioner of District to be trustee.
32–804. Two consulting trustees.
32–805. Corporate capacity and powers of board.
32–806. By-laws, rules, and regulations.
32–807. Contracts and purchases—President of board its executive officer—Annual reports.
32–808. Superintendent and other employees—Appointment—Compensation.
32–809. Treasurer—Bond—Duties.
32–810. Superintendent's bond.
32–811. Powers and duties of superintendent and subordinate officers.
32–812. Superintendent—In charge of lands and other property—Books of account—Register of boys—Examinations of school and accounts.
32–813. Report by officers to commissioners of District—Contents.
32–814. Disposition of proceeds of farm and shops.
32–815. Boys committed—Commitment by court or judge.
32–816. Period of detention.
32–817. Number of boys limited to number that can be properly accommodated—Notice to court.
32–818. Enticing boy from school or harboring escaped boy—Penalty—Arrest and return.
32–819. Employment and instruction of boys—Apprenticing—Indentures.
32–820. Release on parole of juvenile offenders committed.
32–821. Board of Trustees authorized to parole—Attorney General.
32–822. Support of boys committed—Accounts—Payment—Rate.

§ 32–801 [8: 171]. Name.

The reform school of the District of Columbia shall be known and designated as the National Training School for Boys. (May 27, 1908, 35 Stat. 380, ch. 200, § 1.)

CROSS REFERENCE

Application of provisions of this chapter to National Training School for Girls, § 32–907.

§ 32–802 [8: 172]. Board of trustees—Appointment—President.

The National Training School for Boys shall be in the charge of, and governed and managed by, a board of seven trustees, who shall be appointed by the President of the United States, upon the recommendation of the Attorney General, each for the term of three years, but in such a manner that the terms of not more than three of them shall expire within any one or the same year. One of the trustees shall be elected president of the board, whose duty shall be prescribed by the board. (May 3, 1876, 19 Stat. 49, ch. 90, § 1; May 27, 1908, 35 Stat. 380, ch. 200, § 1.)

COMPILER'S NOTE

By Reorganization Plan No. II, May 9, 1939, the Board of Trustees of the National Training School for Boys was abolished and its functions transferred to the Department of Justice to be administered by the Director of the Bureau of Prisons. See U. S. C., title 5, § 133t, note.

AMENDMENT

The act of 1908 changed the name of the Reform School of the District of Columbia to the National Training School for Boys.

§ 32–803 [8: 173]. One Commissioner of District to be trustee.

One of the commissioners of the District of Columbia, to be selected by the Board of Commissioners, shall be a trustee, with all the powers, privileges, and duties of other trustees of said school. (June 4, 1880, 21 Stat. 156, ch. 121, § 1.)

§ 32–804 [8: 174]. Two consulting trustees.

Two consulting trustees shall be appointed, namely, one Senator of the United States, by the Presiding Officer of the Senate, for the term of four years, and one Member of the House of Representatives, by the Speaker thereof, for the term of two years. (May 3, 1876, 19 Stat. 52, ch. 90, § 16.)

CROSS REFERENCE

Other provisions concerning term of office, § 32–1004.

§ 32–805 [8: 175]. Corporate capacity and powers of board.

The board of trustees shall be a corporation by the name of the "Board of Trustees of the National Training School for Boys," for the purpose of taking and holding, in trust for the United States property of every description which has been purchased, appropriated, or set apart for the use of the institution, or which may hereafter be purchased, appropriated, or set apart for its use, or given or bequeathed to it, or to the said board, for its use, with all power necessary to carry this purpose into effect, and to protect and preserve such property, including the land and buildings, fences, stock, fruit, crops, and trees of all kinds. (May 3, 1876, 19 Stat. 49, ch. 90, § 2; May 27, 1908, 35 Stat. 380, ch. 200, § 1.)

AMENDMENT

The act of 1908 changed the name of the Reform School of the District of Columbia to the National Training School for Boys.

CROSS REFERENCE

Officers, trustees or directors may not deal with institution for financial gain, § 32–1007.

§ 32–806 [8: 176]. By-laws, rules, and regulations.

The Board of Trustees may make such by-laws, rules, and regulations for their own government and that of the institution, its officers, employees, and inmates, the employment, discipline, instruction, education, removal, and absolute, temporary, or conditional release of all boys committed to the school, as they may deem necessary and proper, and as are not contrary to the Constitution and to the laws of the District of Columbia. (May 3, 1876, 19 Stat. 52, ch. 90, § 15; June 5, 1900, 31 Stat. 267, ch. 715.)

AMENDMENT

The act of 1876 read as follows: "That the board of trustees may make such by-laws, rules and regulations for their own and the government of the institution, its officers, employees, and inmates, as they may deem necessary and proper."

CROSS REFERENCES

Employment or apprenticing prisoners, § 32–819.

General provisions concerning imprisonment of criminals do not apply to National Training School for Boys, § 24–402.

Rules and regulations generally, § 1–226.

Transfer of feeble-minded to District Training School, § 32–624.

§ 32–807 [8: 177]. Contracts and purchases—President of board its executive officer—Annual reports.

All contracts and purchases made for or on account of the school shall be made in the name of the board and by whomsoever the board may direct. The president of the board shall be its executive officer, and it shall be his duty to make an annual report to the Attorney General, to be accompanied by the annual report of the superintendent and treasurer. (May 3, 1876, 19 Stat. 51, ch. 90, § 14.)

§ 32–808 [8: 178]. Superintendent and other employees—Appointment—Compensation.

The Board of Trustees may appoint a superintendent, two or more teachers or assistants, and a matron whose salaries are fixed by law; they may also employ two or more master mechanics, a farmer, a gardener, and such other persons, as servants and laborers, as may be necessary, and fix their compensation, subject to the approval of the Attorney General. (May 3, 1876, 19 Stat. 49, ch. 90, § 3.)

§ 32–809 [8: 179]. Treasurer—Bond—Duties.

The Board of Trustees shall appoint a treasurer, who shall, before entering upon the duties of his office, give a bond to the United States with two or more sureties, to be approved by the General Accounting Office, in the sum of $20,000, or a larger sum, at the option of the said General Accounting Office, conditioned that he shall faithfully account for all the money received by him as treasurer; and it shall be his duty to keep a clear and full record of his accounts as treasurer, and report an abstract of the same to the Board of Trustees once in every two months, and shall also make an annual report to the Board of Trustees. (May 3, 1876, 19 Stat. 49, ch. 90, § 4; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

AMENDMENT

The act of 1921 provided that the bond be approved by the General Accounting Office instead of the First Comptroller of the Treasury.

§ 32–810 [8: 180]. Superintendent's bond.

Before entering upon the duties of his office, the superintendent shall give a bond to the Board of Trustees, with sureties, to be approved by the Attorney General of the United States, in the sum of $3,000, conditioned that he shall faithfully account for all money received by him, and faithfully perform all the duties incumbent on him as superintendent of said school. (May 3, 1876, 19 Stat. 50, ch. 90, § 5.)

§ 32–811 [8: 181]. Powers and duties of superintendent and subordinate officers.

The superintendent shall reside at the institution constantly and he, with such subordinate officers as may be appointed in accordance with section 32–808, shall have the charge and custody of the boys; shall govern them in accordance with such rules and regulations as the Board of Trustees may prescribe in its by-laws; shall employ them in agricultural, mechanical or other labor; shall give them instruction in reading, writing, arithmetic, geography, and such other studies and in such arts and trades as the trustees may direct; and shall employ such methods of discipline as will, as far as possible, reform their characters, preserve their health, promote regular improvement in their studies and employments, and secure in them fixed habits of religion, morality, and industry. (May 3, 1876, 19 Stat. 50, ch. 90, § 6.)

§ 32–812 [8: 182]. Superintendent—In charge of lands and other property—Books of account—Register of boys—Examinations of school and accounts.

The superintendent shall have charge of the lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining to the institution, within the precincts thereof,

under the Board of Trustees, including the farm in possession of the board where the school was first located; and he shall keep in suitable books, regular and complete accounts of all his receipts and expenditures, and of all the property intrusted to him, so as to show clearly the income and expenses of the institution; and he shall account, in such manner as the trustees may prescribe, for all the money received by him from the proceeds of the institution or otherwise; and he shall keep a register of the names and ages of all boys committed to the institution, with the dates of their admission and discharge, and such particulars of their history before and after leaving the institution as he can obtain.

His books and all documents relating to the school shall at all times, be open to the inspection of the trustees, who shall, once or more in every month, carefully examine his accounts, and the vouchers and documents connected therewith, and make a record of the result of such examination; and, once in every three months, the institution shall be thoroughly examined in all its departments by three or more of the trustees, and a report of such examination shall be made to the board. (May 3, 1876, 19 Stat. 50, ch. 90, § 7.)

§ 32–813 [8: 183]. Report by officers to Commissioners of District—Contents.

The officers of said school shall at the end of each fiscal year make a report to the commissioners of the District of Columbia, which shall embrace a full and complete inventory of all the personal property in detail, the number of employees, and number of days each is employed during the year and price paid each, and the amount of garden, field, and other products produced, together with the disposition made of said personal property, products, and so forth. (Mar. 3, 1881, 21 Stat. 459, ch. 134, § 1.)

§ 32–814 [8: 184]. Disposition of proceeds of farm and shops.

The net proceeds of the farm and shops shall be covered into the treasury, to the credit of the United States. (Mar. 3, 1905, 33 Stat. 1211, ch. 1483.)

§ 32–815 [8: 185]. Boys committed—Commitment by court or judge.

Whenever any boy under the age of seventeen years shall be brought before any court of the District of Columbia, or any judge of such court, and shall be convicted of any crime or misdemeanor punishable by fine or imprisonment, other than imprisonment for life, such court or judge, in lieu of sentencing him to imprisonment in the jail, or fining him, may commit him to said school, to remain until he shall arrive at the age of twenty-one years, unless sooner discharged by the Board of Trustees. Except as otherwise provided in sections 11–909 and 11–910, the judges of the criminal and juvenile courts of the District of Columbia shall have power to commit to said school, any boy under seventeen years of age who may be liable to punishment by imprisonment under any existing law of the District of Columbia, or any law that may be enacted and in force in said District. Except as otherwise provided in sections 11–909 and 11–910, the juvenile court shall have power to commit to said school, first, any boy under seventeen years of age, with the consent of his parent or guardian, against whom any charge of committing any crime or misdemeanor shall have been made, the punishment of which, on conviction, would be confinement in jail or prison; second, any boy under seventeen years of age who is destitute of a suitable home and adequate means of obtaining an honest living, or who is in danger of being brought up, or is brought up, to lead an idle or vicious life; third, any boy under seventeen years of age who is incorrigible, or habitually disregards the commands of his father or mother, or guardian, who leads a vagrant life, or resorts to immoral places or practices, or neglects or refuses to perform labor suitable to his years and condition, or to attend school. (May 3, 1876, 19 Stat. 50, ch. 90, § 8; June 5, 1900, 31 Stat. 266, ch. 715; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8.)

Amendments

This section originally contained a last sentence providing for commitment upon application of a parent, guardian, or relative having charge of the boy.

The 1900 amendment raised the age limit for commitment from 16 to 17 years.

The police court originally had jurisdiction under this section. However, the 1906 act created the juvenile court, and the words were changed and the exception inserted by the compilers of the 1929 edition of this code in conformity therewith. This 1906 act, as now amended, appears herein as chapter 9 of title 11.

Cross Reference

Commitment by juvenile court, § 11–915.

NOTES TO DECISIONS

In General

This section and acts amendatory thereto were obviously framed to operate according to the age of the individual who comes within its purview and without consideration of either the property rights of the child or her social status. *Richardson* v. *Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

Issue on Appeal

On appeal from order committing infant to National Training School for Boys until 21 years of age, the issue was whether there was sufficient evidence to support a finding that the boy's welfare or the safety and protection of the public required removal from the home of his parents. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

Rehabilitation

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

Sufficiency of Findings

A finding that infant's welfare and the safety and protection of the public could not be adequately safeguarded without removing infant from his home and parents was not sustained by the evidence. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

§ 32–816 [8: 186]. Period of detention.

Every boy sent to said school shall remain until he is twenty-one years of age, unless sooner discharged or bound as an apprentice. (May 3, 1876, 19 Stat. 51, ch. 90, § 9; June 5, 1900, 31 Stat. 267, ch. 715.)

Amendment

The act of 1900 deleted a provision that "no boy shall be retained after the superintendent shall have reported him fully reformed."

NOTES TO DECISIONS

IN GENERAL

Attempts at escape from institutions are forbidden to all inmates, and if they consider their confinement improper, they are bound to take other means to test the question. *Aderhold* v. *Soileau* ((C. C. A. 5), 67 Fed. (2d) 259).

§ 32–817 [8: 187]. Number of boys limited to number that can be properly accommodated—Notice to court.

Whenever there shall be as large a number of boys in the school as can be properly accommodated, it shall be the duty of the president of the Board of Trustees to give notice to the criminal and juvenile courts of the fact, whereupon no boys shall be sent to the school by said courts until notice shall be given them by the president of the board that more can be received. (May 3, 1876, 19 Stat. 51, ch. 90, § 10; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8.)

AMENDMENT

The 1906 act created the Juvenile Court. See note to § 32–815.

§ 32–818 [8: 188]. Enticing boy from school or harboring escaped boy—Penalty—Arrest and return.

If any person shall entice, or attempt to entice, away from said school any boy legally committed to the same, or shall harbor, conceal, or aid in harboring or concealing any boy who shall have escaped from said school, such person shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall pay a fine of not less than $10 or more than $100, which shall be paid to the treasurer of the Board of Trustees; and any policeman shall have power, and it is hereby made his duty, to arrest any boy, when in his power so to do, who shall have escaped from said school, and return him thereto. (May 3, 1876, 19 Stat. 51, ch. 90, § 11.)

§ 32–819 [8: 189]. Employment and instruction of boys—Apprenticing—Indentures.

The trustees shall have full power to place any boy committed as herein described, during his minority, at such employment and cause him to be instructed in such branches of useful knowledge, as may be suitable to his years and capacity, as they may see fit; and they may, with the consent of any such boy, bind him out as an apprentice during his minority, or for a shorter period, to learn such trade and employment as in their judgment will tend to his future benefit; and the president of the board shall, for such purpose, have power to execute and deliver, on behalf of the said board, indentures of apprenticeship for any such boy; and such indentures shall have the same force and effect as other indentures of apprenticeship under the laws of the District of Columbia, and be filed and kept among the records in the office of the said school and it shall not be necessary to record or file them elsewhere. (May 3, 1876, 19 Stat. 51, ch. 90, § 12.)

§ 32–820 [8: 190]. Release on parole of juvenile offenders committed.

Every male juvenile offender who is now or may hereafter be committed to said school, and who has by his conduct given sufficient evidence that he has reformed, may be released on parole as provided in section 32–821. (Feb. 26, 1909, 35 Stat. 657, ch. 217, § 1.)

§ 32–821 [8: 191]. Board of Trustees authorized to parole—Attorney General.

If it shall appear to the satisfaction of the Board of Trustees of said school that there is reasonable probability that any boy detained in the said school will, if conditionally released, remain at liberty without violating the laws, then said Board of Trustees may in its discretion parole such boy under such conditions and regulations as the said Board of Trustees may deem proper. The parole of all such juvenile offenders committed by courts other than those of the District of Columbia shall be subject to the approval of the Attorney General of the United States. (Feb. 26, 1909, 35 Stat. 657, ch. 217, § 2.)

§ 32–822 [8: 192]. Support of boys committed—Accounts—Payment—Rate.

For the support of the boys sent to said school, as hereinbefore mentioned, the District of Columbia shall pay to the Board of Trustees the actual per capita cost of maintenance of such boys; and it shall be the duty of the superintendent to make out and render to the proper officers monthly accounts at the close of each month for the support of the boys in said school, which shall be paid on demand; and, if not paid within ten days from the time the account is presented, shall draw interest at the rate of 1 per centum per month until paid. The per capita cost of persons committed from the District of Columbia and maintained in the National Training School for Boys shall be fixed at a rate not less than $4.50 per week for each person. (May 3, 1876, 19 Stat. 51, ch. 90, § 13; Aug. 1, 1914, 38 Stat. 657, ch. 223, § 1; Mar. 28, 1918, 40 Stat. 494, ch. 28, § 1.)

AMENDMENTS

The original act provided for a payment of $2 for each boy per week.

The 1914 amendment added the last sentence.

The provision that the District should pay the actual per capita cost of maintenance was contained in the 1918 act.

Chapter 9.—NATIONAL TRAINING SCHOOL FOR GIRLS

Sec.

32–901. Name.
32–902. Authority of Board of Public Welfare—Powers—Property.
32–903. Powers of board.
32–904. By-laws, rules, and regulations—Release of girls.
32–905. Officers and employees—Appointment—Compensation.
32–905a. Same—Compensation of superintendent.
32–906. Control over inmates—Segregation of white and colored.
32–907. Provisions relating to National Training School for Boys applicable.
32–908. Girls committed—Commitment by court or judge.
32–909. Period of detention.
32–910. Release on parole of juvenile offenders committed.
32–911. Board authorized to parole—Attorney General.
32–912. Appropriations—Disbursement.
32–913. Right to amend or repeal chapter.

§ 32–901 [8: 211]. Name.

The reform school for girls of the District of Columbia shall be known and designated as the National Training School for Girls. (June 26, 1912, 37 Stat. 171, ch. 182, § 1.)

§ 32–902 [8: 212]. Authority of Board of Public Welfare—Powers—Property.

The Board of Public Welfare as the successor to the board of trustees of the National Training School for Girls is authorized and empowered to establish and maintain a training school for girls at any place within the District of Columbia, subject to the approval of the commissioners thereof, and for that purpose may take and receive by gift, grant, or devise, such real estate and personal property as may be necessary for the purposes of said corporation. At the dissolution of said corporation, or if it should cease for the space of six months to maintain a training school for girls, all the property, real and personal, of said corporation shall vest in the United States. (July 9, 1888, 25 Stat. 245, ch. 595, § 2; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

COMPILER'S NOTES

The first clause is largely executed and obsolete.

The words "said corporation" are obscure and probably inaccurate.

AMENDMENT

The act of 1926 established the Board of Public Welfare as successor to trustees.

§ 32–903 [8: 213]. Powers of board.

The Board of Public Welfare shall have the same power and authority in relation to girls as the Board of Trustees of the National Training School for Boys possess in relation to boys. (July 9, 1888, 25 Stat. 246, ch. 595, § 3; May 27, 1908, 35 Stat. 380, ch. 200, § 1.)

AMENDMENT

The act of 1908 substituted Board of Public Welfare for board of trustees.

CROSS REFERENCES

General provisions concerning imprisonment of criminals do not apply to National Training School for Girls, § 24–402.

General provisions concerning powers and duties of Board of Public Welfare, § 3–101 et seq.

Girls under care and custody of Association for Works of Mercy, § 32–101 et seq.

Other provisions concerning the application of laws relating to the National Training School for Boys, § 32–907.

Power and authority of the board of trustees of the National Training School for Boys, § 32–801 et seq.

Transfer of feeble-minded to District Training School, § 32–624.

§ 32–904 [8: 214]. By-laws, rules, and regulations—Release of girls.

The Board of Public Welfare may make such by-laws, rules, and regulations for the government of the institution, its officers, teachers, employees, and inmates, the employment, discipline, instruction, education, removal, and absolute, temporary, or conditional release of all girls committed to the school as they may deem necessary and proper and as are not contrary to the Constitution and to the laws of the District of Columbia; and may from time to time alter, amend, and change the same. (May 3, 1876, 19 Stat. 52, ch. 90, § 15; July 9, 1888, 25 Stat. 246, ch. 595, § 5; Feb. 25, 1901, 31 Stat. 809, ch. 478; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

AMENDMENTS

This section, which in the 1876 and 1888 acts provided merely that the board of trustees should make such by-laws, rules, and regulations for themselves and the inmates as they deemed proper was amended to read as above by the act of 1901.

The board of trustees was abolished upon organization of the Board of Public Welfare by the 1926 act.

CROSS REFERENCE

Rules and regulations generally, § 1–226.

§ 32–905 [8: 215]. Officers and employees—Appointment—Compensation.

The Board of Public Welfare shall have authority to appoint such officers, agents, teachers, and other employees as may be necessary, and fix the rate of compensation of the same, subject to the approval of the Commissioners of the District of Columbia. (July 9, 1888, 25 Stat. 246, ch. 595, § 4; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

AMENDMENT

The act of 1926 substituted Board of Public Welfare for the trustees of the Reform School.

CROSS REFERENCES

Appointment of superintendent, § 3–107.

Officers, trustees, or directors may not deal with institution for financial gain, § 32–1007.

§ 32–905a. Same—Compensation of superintendent.

The salary of the superintendent of the National Training School for Girls shall be at the rate of $4,651 per annum. (Sept. 29, 1943, 57 Stat. 569, ch. 249, § 2, as amended June 28, 1944, 58 Stat. 521, ch. 300, § 1; June 30, 1945, 59 Stat. 285, ch. 209, § 1; July 9, 1946, 60 Stat. 513, ch. 544, § 1; July 25, 1947, 61 Stat. 439, ch. 324, § 1; June 19, 1948, 62 Stat. 548, ch. 555, § 1; June 29, 1949, 63 Stat. 303, ch. 279, § 1.)

AMENDMENTS

The act of June 19, 1948, cited to text, amended section by increasing the salary from $4,400 to $4,526 annually.

The act of July 25, 1947, cited to text, amended section by increasing the salary from $3,640 to $4,400 annually.

The act of July 9, 1946, cited to text, amended section by increasing the salary from $3,200 to $3,640 annually.

The act of June 30, 1945, cited to text, amended section by increasing the salary from $2,700 to $3,200 annually.

The act of June 28, 1944, cited to text, amended section by reducing salary from $3,600 to $2,700 annually.

The act of June 29, 1949, cited to text, amended section by increasing the salary from $4,526 to $4,651 annually.

§ 32–906 [8: 216]. Control over inmates—Segregation of white and colored.

The Board of Public Welfare shall have the same power and authority over such girls during the period of their commitment to the school, or while they are being conducted to or from said school, as they possess over such girls within the limits of the District of Columbia. When the buildings authorized to be constructed shall be in readiness to receive girls committed to said school, it shall not be lawful to keep white and colored girls on the same reservations under the control of the Board of Public Welfare as the legal successor to the board of trustees of said

school. (Feb. 28, 1923, 42 Stat. 1358, ch. 148, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

AMENDMENT

The act of 1926 substituted Board of Public Welfare as successor to the trustees of the National Training School.

§ 32–907 [8: 217]. Provisions relating to National Training School for Boys applicable.

All the sections of chapter 8 of this title, not inconsistent with the provisions of this chapter, are hereby made applicable to the National Training School for Girls of the District of Columbia, except the word "girls" shall be understood wherever the word "boys" occurs in said chapter, and the words "eighteen years" wherever the words "sixteen years" occur. (July 9, 1888, 25 Stat. 246, ch. 595, § 6; June 26, 1912, 37 Stat. 171, ch. 182, § 1.)

AMENDMENT

The act of 1912 provided that the "Reform School for Girls of the District of Columbia" should hereafter be known as the "National Training School for Girls."

NOTES TO DECISIONS

IN GENERAL

Under this section, a reform school for girls of the District was authorized, the powers thereof to be exercised by a Board of Trustees, which board was given the same powers and duties relative to girls as were given with respect to boys, by act of May 3, 1876. *Richardson* v. *Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

§ 32–908 [8: 218]. Girls committed—Commitment by court or judge.

Whenever any girl under the age of seventeen years shall be brought before any court of the District of Columbia or any judge of such court, and shall be convicted of any crime or misdemeanor punishable by fine or imprisonment other than imprisonment for life, such court or judge, in lieu of sentencing her to imprisonment in the jail or fining her, may commit her to said school, to remain until she shall arrive at the age of twenty-one years unless sooner discharged by the Board of Public Welfare. Except as otherwise provided in sections 11–909 and 11–910, the judges of the criminal and juvenile courts of the District of Columbia shall have power to commit to said school, first any girl under seventeen years of age who may be liable to punishment by imprisonment under any existing law of the District of Columbia or any law that may be enacted and in force in said District; second, any girl under seventeen years of age, with the consent of her parent or guardian, against whom any charge of crime or misdemeanor shall have been made, upon probable cause shown to the satisfaction of the court; third, any girl under seventeen years of age who is destitute of a suitable home and adequate means of obtaining an honest living or who is in danger of being brought up, or is brought up, to lead an idle or vicious life; fourth, any girl under seventeen years of age who is incorrigible or habitually disregards the commands of her father or mother or guardian, who leads a vagrant life, or resorts to immoral places or practices, or neglects or refuses to perform labor suitable to her years and condition or to attend school. (May 3, 1876, 19 Stat. 50, ch. 90, § 8; July 9, 1888, 25 Stat. 245, ch. 595, § 6; Feb. 25, 1901, 31 Stat. 809, ch. 478; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

AMENDMENTS

The 1876 act, relating to a school for boys (§ 32–815), was made applicable to a similar school for girls by the act of 1888, cited to the text.

The age limit for commitment was changed to 17 years by the 1901 act.

The police court originally had jurisdiction under this section. However, the 1906 act created the juvenile court, and the words were changed and the exception inserted by the compilers of the 1929 edition of this code in conformity therewith. This 1906 act, as now amended, appears herein as chapter 9 of Title 11.

The act of 1926 provided for the Board of Public Welfare.

CROSS REFERENCE

Commitment of juveniles by juvenile court, § 11–915.

NOTES TO DECISIONS

IN GENERAL

This section and acts amendatory thereto, were obviously framed to operate according to the age of the individual who comes within its purview, and without consideration of either the property rights of the child or her social status. *Richardson* v. *Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

MARRIAGE OF CHILD

Marriage of a female child, in itself, does not automatically terminate the control of delinquent or dependent children. *Richardson* v. *Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

§ 32-909 [8: 219]. Period of detention.

Every girl sent to the National Training School for Girls shall remain until she is twenty-one years of age unless sooner discharged or bound as an apprentice. (May 3, 1876, 19 Stat. 51, ch. 90, § 9; Feb. 25, 1901, 31 Stat. 809, ch. 478.)

NOTES TO DECISIONS

ATTEMPTS AT ESCAPE

Attempts at escape from institution are forbidden to all inmates, and if they consider their confinement improper, they are bound to take other means to test the question. *Aderhold* v. *Soileau* ((C. C. A. 5), 67 Fed. (2d) 259).

§ 32–910 [8: 220]. Release on parole of juvenile offenders committed.

Every female juvenile offender who is now or may hereafter be committed to said school, and who has by her conduct given sufficient evidence that she has reformed, may be released on parole as hereinafter provided. (Apr. 15, 1910, 36 Stat. 300, ch. 164, § 1.)

§ 32–911 [8: 221]. Board authorized to parole—Attorney General.

If it shall appear to the satisfaction of the Board of Public Welfare that there is reasonable probability that any girl detained in the said school will, if conditionally released, remain at liberty without violating the laws, then said Board of Trustees may, in its discretion, parole such girl under such conditions and regulations as the said Board of Public Welfare may deem proper. The parole of all such juvenile offenders committed by courts other than those of the District of Columbia shall be subject to the approval of the Attorney General of the United States. (Apr. 15, 1910, 36 Stat. 300, ch. 164, § 2; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

AMENDMENT

The act of 1926 provided for the Board of Public Welfare as successor to trustees.

§ 32–912 [8: 222]. Appropriations—Disbursement.

Appropriations made for the National Training School for Girls shall be disbursed by the disbursing officer of the District of Columbia in the manner provided by law for expenditure from appropriations for general expenses of the government of said District. (June 5, 1920, 41 Stat. 865, ch. 234, § 1.)

§ 32–913 [8: 223]. Right to amend or repeal chapter.

Congress shall have the right to alter, amend, or repeal this chapter at any time. (July 9, 1888, 25 Stat. 246, ch. 595, § 8.)

Chapter 10.—MISCELLANEOUS

Sec.

32–1001. Visitation of charities supported in whole or in part by District revenues by Commissioners of the District of Columbia.
32–1002. Visitorial power of Commissioners over certain designated organizations.
32–1003. Appropriations for charitable and reformatory institutions to be lien on property.
32–1004. Terms of Members of Congress while acting as trustees of charitable institutions.
32–1005. Compensation of physicians to the poor.
32–1006. Voluntary medical service for charitable institutions.
32–1007. Trustees of charitable institutions supported by congressional appropriations not to traffic therewith for gain.
32–1008. Congressional policy as to appropriations to institutions under sectarian control.
32–1009. Sale of products of Home for Aged and Infirm.
32–1010. Admission of pay patients to Home for Aged and Infirm.

§ 32–1001 [8: 231]. Visitation of charities supported in whole or in part by District revenues by Commissioners of the District of Columbia.

The commissioners of the District of Columbia are required to visit and investigate the management of all institutions of charity within the District which may be appropriated for out of the District revenues, in whole or in part, and shall require an itemized report of receipts and expenditures to be made to them, to be transmitted with their annual report to Congress, which report shall also include such recommendations as the commissioners may deem proper concerning the necessity for such institutions, together with a plan for their organization and management, and estimates of appropriations necessary for their maintenance. (July 5, 1884, 23 Stat. 127, ch. 227.)

COMPILER'S NOTE

This section may be qualified or superseded by § 3–111, which requires the Board of Public Welfare to investigate and inspect institutions of charity supported in whole or in part by public funds.

§ 32–1002 [8: 232]. Visitorial power of Commissioners over certain designated organizations.

The commissioners of the District of Columbia are authorized to visit, investigate the management of, and have a report of the receipts and expenditures of the Columbia Hospital for Women and Lying-in Asylum, the Children's Hospital, Saint Ann's Infant Asylum, National Association for Colored Women and Children, Women's Christian Association, Little Sisters of the Poor, and the German Orphan Asylum, so long as they respectively accept money appropriated by Congress for their aid. (June 4, 1880, 21 Stat. 157, ch. 121, § 1.)

CROSS REFERENCE

See compiler's note to § 32–1001.

§ 32–1003 [8: 233]. Appropriations for charitable and reformatory institutions to be lien on property.

All sums of money appropriated and expended in aid of the purchase of real estate for charitable or reformatory institutions in the District of Columbia, or for buildings or for permanent improvements to buildings thereon, shall (subject to any trust deed, mortgage, or other security or encumbrance existing on such property at the time of its purchase, or created at the time of its purchase) be a lien upon such property, and in case of the dissolution of any such corporation owning such property, or in case of the disposal of such property, by such corporation, entitle the United States to reimbursement in proportion to any other contributions or funds used for such purposes; and the acceptance by any such corporation of any sum of money appropriated for the foregoing purposes shall be deemed an acceptance of and agreement to this provision. (Mar. 3, 1893, 27 Stat. 552, ch. 199, § 1.)

CROSS REFERENCE

General provisions concerning sale of public lands, § 9–301 et seq.

§ 32–1004 [8: 234]. Terms of Members of Congress while acting as trustees of charitable institutions.

In all cases where Members of Congress or Senators are appointed to represent Congress on any Board of Trustees or Board of Directors of any corporation or institution to which Congress makes any appropriation, the term of said Members or Senators, as such trustee or director, shall continue until the expiration of two months after the first meeting of the Congress chosen next after their appointment. (Mar. 3, 1893, 27 Stat. 553, ch. 199, § 1.)

CROSS REFERENCES

Other provisions concerning term of office of Member of Congress or Senator acting as trustee for the National Training School for Boys, § 32–804.

Term of office of Members of Congress or Senators acting as directors of Columbia Institution for the Deaf, § 31–1007.

STATUTORY REFERENCE

This section is in U. S. C., title 31, § 722.

§ 32–1005 [8: 235]. Compensation of physicians to the poor.

The compensation of the physicians to the poor shall not exceed forty dollars per month each. (Feb. 25, 1885, 23 Stat. 314, ch. 145.)

§ 32–1006 [8: 236]. Voluntary medical service for charitable institutions.

The Commissioners of the District of Columbia are authorized to accept voluntary medical service for public charitable institutions. (May 18, 1910, 36 Stat. 409, ch. 248, § 1.)

CROSS REFERENCE

General provision forbidding acceptance of voluntary services, § 1–215.

§ 32–1007 [8: 237]. Trustees of charitable institutions supported by congressional appropriations not to traffic therewith for gain.

No member or members of any board or boards of trustees or directors of any charitable institution, organization or corporation in the District of Columbia, which is supported in whole or in part by appropriations made by Congress, shall engage in traffic with said institution, organization or corporation for financial gain, and any member or members of such board of trustees or directors who shall so engage in such traffic shall be deemed legally disqualified for service on said board or boards. (June 11, 1896, 29 Stat. 410, ch. 419, § 1.)

CROSS REFERENCE

Members or employees of Board of Public Welfare may not deal with any institution under its control, inspection, or supervision for financial gain, § 3–113.

§ 32–1008 [8: 238]. Congressional policy as to appropriations to institutions under sectarian control.

It is hereby declared to be the policy of the Government of the United States to make no appropriation of money or property for the purpose of founding, maintaining, or aiding by payment for services, expenses, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control; and no money appropriated for charitable purposes in the District of Columbia, shall be paid to any church or religious denomination, or to any institution or society which is under sectarian or ecclesiastical control. (June 11, 1896, 29 Stat. 411, ch. 419, § 1; Mar. 3, 1897, 29 Stat. 683, ch. 387.)

AMENDMENT

The section as enacted in 1896 was reenacted in 1897.

NOTES TO DECISIONS

SECULAR CORPORATION

Appropriation for Providence Hospital, a secular corporation created by act of Congress, was not unconstitutional as a law respecting the establishment of religion, even though all the members of the corporation belonged to one religious body. *Bradfield* v. *Roberts* (175 U. S. 291, 44 L. Ed. 168, 20 Sup. Ct. 121, affg. 12 App. D. C. 453).

§ 32–1009 [8: 239]. Sale of products of Home for Aged and Infirm.

The commissioners are authorized, under such regulations as they may prescribe, to sell the surplus products of the Home for the Aged and Infirm. All moneys derived from such sales shall be paid into the Treasury of the United States to the credit of the District of Columbia and the United States in the proportions required by law. (June 5, 1920, 41 Stat. 865, ch. 234.)

§ 32–1010. Admission of pay patients to Home for Aged and Infirm.

Pay patients may be admitted to the Home for the Aged and Infirm for care and treatment at such rates and under such regulations as may be established by the Board of Public Welfare, insofar as such admissions will not interfere with admission of indigent patients: *Provided, however,* That the rates shall not exceed the estimated per capita cost for the current year. (June 14, 1950, 64 Stat. 212, ch. 235.)

TITLE 33.—FOOD AND DRUGS

Chap.		Sec.
1.	Adulteration	33–101
2.	Candy	33–201
3.	Milk, cream, and ice cream	33–301
4.	Uniform Narcotic Drug Act	33–401
5.	Meats and Meat Products	33–501

Chapter 1.—ADULTERATION

Sec.

33–101. Adulterated foods or drugs not to be sold or exposed for sale.
33–102. Definition of "drug" and "food"—Best quality to be furnished.
33–103. Adulterated article defined.
33–104. Rules and regulations for collecting and examining drugs and food—Director of public health.
33–105. Complaints to be investigated.
33–106. Drug and food samples to be sold to agents of health department.
33–107. Portion of sample analyzed to be sealed and retained for defendant.
33–108. Representative of health department not to be interfered with.
33–109. Prosecutions—Penalties.
33–110. Repeal—Certain prior laws unaffected.
33–111. Special services for detection of adulteration.

§ 33–101 [20: 1221]. Adulterated foods or drugs not to be sold or exposed for sale.

No person shall, within the District of Columbia, by himself or by his servant or agent, or as the servant or agent of any other person, sell, exchange, or deliver, or have in his custody or possession with the intent to sell or exchange, or expose or offer for sale or exchange, any article of food or drug which is adulterated within the meaning of this chapter. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 1.)

CROSS REFERENCES

Adulteration of candy, §§ 33–201 to 33–203.

Implied warranties, see notes to § 28–1115 *Hanbeck* v. *Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).

Uniform Narcotic Drug Act, § 33–401 et seq.

Weights and measures, § 10–101 et seq.

STATUTORY REFERENCE

Federal Food, Drug and Cosmetic Act, U. S. C., title 21, § 321 et seq.

NOTES TO DECISIONS

WANT OF KNOWLEDGE AS A DEFENSE

It is no defense for a druggist prosecuted for selling an adulterated drug to show simply that he was at the time of sale ignorant of the fact that the drug was adulterated, as he must know what he sells, or proposes to sell, and that it conforms to the standard prescribed by law. *District of Columbia* v. *Lynham* (16 App. D. C. 85).

§33–102 [20: 1222]. Definition of "drug" and "food"—Best quality to be furnished.

The term "drug," as used in this chapter, shall include all medicines for external or internal use, antiseptics, disinfectants, and cosmetics. The term "food," as used in this chapter, shall include confectionery, condiments, and all articles used for food or drink by man, and if there be more than one quality of any article of food or drug known by the same name the best quality thereof shall be furnished to the purchaser, unless he otherwise requests at the time of making such purchase, or unless he be notified at such time of the inferior quality of the article delivered. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 2.)

§ 33–103 [20: 1223]. Adulterated article defined.

An article shall be deemed to be adulterated within the meaning of this chapter:

(a) In the case of drugs: First, if, when sold under or by a name recognized in the United States Pharmacopoeia, it differs from the standard of strength, quality, or purity laid down in the edition thereof at the time official; second, if when sold under or by a name not recognized in the United States Pharmacopoeia, but which is found in the German, French, or English Pharmacopoeia, it differs from the strength, quality, or purity laid down therein; third, if, when sold as a patented medicine, compounded drug, or mixture, it is not composed of all of the ingredients advertised or printed or written on the bottles, wrappers, or labels of or on or with the patented medicine, compounded drug, or mixture: *Provided,* That if the defendant in any prosecution under this chapter, in respect to the sale of any such patented medicine, compounded drug, or mixture, shall prove to the satisfaction of the court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the purchaser, and with a written warranty to that effect; that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution.

(b) In the case of food: First, in the case of cheese, if it is not made exclusively from milk or cream, or both, with or without common salt; second, in the case of coffee, if it is not composed entirely of the seed of the Caffea arabica; third, in the case of lard, if it is not made exclusively from the rendered fat of the healthy hog; fourth, in the case of tea, if it is not composed entirely of the genuine leaf of the tea plant not exhausted; fifth, in the case of all kinds of vinegar, if it contains an acidity equivalent to the presence of less than four per centum of absolute acetic acid; and cider vinegar, if it is not made from the pure apple juice and contains less than one and five-tenths per centum of total solids; sixth, in the case of cider, if it is not made from the legitimate product of pure apple juice; in the case of wines and fruit juices, if not made from the pure fruit as represented; and in the case of cider, wines, fruit juices, and malt

liquors, if not free from salicylic acid or other preservatives; and in the case of malt liquors, if not free from piric acid, coculus indicus, colchicine, colocynth, aloes, and wormwood; seventh, in the case of glucose, if it contains more than five one-hundredths per centum of ash; eighth, in the case of flour, if it is not composed entirely of one single ground cereal; ninth, in the case of bread, if there is any addition of alum, sulphate of copper, borax, or sulphate of zinc, or other poisonous or harmful ingredient, and if it contains more than thirty-one per centum of moisture, more than two per centum of ash, and less than six and twenty-five one-hundredths per centum of albuminoids; tenth, in the case of olive oil, if it is not made exclusively from the olive berry (Olea europæa), and its specific gravity at fifteen and six-tenths degrees centigrade (sixty degrees Fahrenheit) "actual density" to be not more than nine hundred and seventeen one-thousandths nor less than nine hundred and fourteen one-thousandths: *Provided*, That an offense shall not be deemed to be committed under this section in the following cases, that is so say, first, where the order calls for an article of food or drug inferior to such standard, or where such difference is made known by being plainly written or printed on the package; second, where the article of food or drug is mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight, or measure or conceal its inferior quality, if at the time such article is delivered to the purchaser it is made known to him that such article of food or drug is so mixed. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 3; June 30, 1906, 34 Stat. 768, ch. 3915; Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 13.)

COMPILER'S NOTE

Act of 1925 defines the following terms: milk, cream, pasteurized, raw milk, pasteurized milk, certified milk, reconstructed milk, skimmed milk, and ice cream.

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCE

Other provision for regulation and control of production and sale of milk and milk products, § 33–301 et seq.

NOTES TO DECISIONS

CONSTRUCTION OF ACT

It is no defense for party prosecuted for selling adulterated foods to show that he was ignorant of such fact, as he must know what he sells and that it conforms with the law. *District of Columbia* v. *Lynham* (16 App. D. C. 85.)

It was never intended that this act should hold manufacturers liable for misstatements as to the curative merits of his goods. This is a criminal statute creating a new offense and should be liberally construed. *United States* v. *Johnson* ((D. C.-Mo.), 177 Fed. 313).

INTERSTATE COMMERCE

There is nothing in the act to regulate the traffic of foods within the States. Its main purpose was to prevent inferior goods from being sold in interstate commerce. *United States* v. *Charles L. Heinle Specialty Co.* ((D. C.-Pa.), 175 Fed. 299).

LABELS

Under this act the label on drugs must state the substance from which such derivative is produced. *United States* v. *Antikamnia Chemical Co.* (231 U. S. 654, 58 L. Ed. 419, 34 Sup. Ct. 222).

If the labels on the goods are, in fact, true, then there is no violation of the act. The object of the statute is to protect the public from fraud in the purchase of food. *United States* v. *Sixty-eight Cases of Syrup* ((D. C.-Ill.), 172 Fed. 781).

Where food product is labeled "Compound: pure comb and strained honey and corn syrup," it is not misbranded under the terms of this, merely because the percentage of corn syrup is much greater. *United States* v. *Boeckmann* ((C. C.-N. Y.), 176 Fed. 382).

REVIEW

Where decree in favor of the United States condemning certain food has been fully executed, and costs against claimant voluntarily paid, the appellate court will not review the case. *Charles* v. *United States* ((C. C. A. 5), 183 Fed. 566).

§ 33–104 [20: 1224]. Rules and regulations for collecting and examining drugs and food—Director of public health.

It shall be the duty of the director of public health of the District of Columbia, under the direction of the commissioners of said District, to adopt such measures as may be necessary to facilitate the enforcement of this chapter, and prepare rules and regulations with regard to the proper method of collecting and examining drugs and articles of food in said District. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 4.)

COMPILER'S NOTE

Act of Aug. 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia shall be known as the Director of Public Health.

CROSS REFERENCE

Rules and regulations generally, § 1–226.

§ 33–105 [20: 1225]. Complaints to be investigated.

It shall be the duty of the director of public health to investigate a complaint for a violation of any of the provisions of this chapter on the information of any person who lays before him satisfactory evidence by which to substantiate such complaint. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 5.)

COMPILER'S NOTE

Act of Aug. 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia shall be known as the Director of Public Health.

§ 33–106 [20: 1226]. Drug and food samples to be sold to agents of health department.

Every person offering for sale or delivering to any purchaser any drug or article of food included in the provisions of this chapter shall furnish to any analyst or other officer or agent of the health department, who shall apply to him for the purpose and shall tender him the value of the same, a sample sufficient for the purpose of analysis of any such drug or article of food which is in his possession. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 6.)

CROSS REFERENCE

Provisions for regulation and control of production and sale of milk and milk products, § 33–301 et seq.

§ 33–107 [20: 1227]. Portion of sample analyzed to be sealed and retained for defendant.

In all cases where any drug or article of food shall be taken as a sample to be examined and analyzed the person making the analysis shall reserve a portion of the sample, which shall be sealed, for a period

of thirty days from the time of taking such sample, and in case of a complaint the reserved portion alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 7.)

CROSS REFERENCE

Provisions regulating production and sale of milk and milk products, § 33–301 et seq.

§ 33–108 [20: 1228]. Representative of health department not to be interfered with.

No person shall hinder, obstruct, or in any way interfere with any inspector, analyst, or other person of the health department in the performance of his duty in carrying out the provisions of this chapter. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 8.)

§ 33–109 [20: 1229]. Prosecutions—Penalties.

All prosecutions under this chapter shall be in the police court of said District, on information brought in the name of the District of Columbia, and on its behalf; and any person or persons violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars nor more than one hundred dollars. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 9.)

§ 33–110 [20: 1230]. Repeal—Certain prior laws unaffected.

All acts and parts of acts inconsistent with this chapter are hereby repealed: *Provided,* That nothing in this chapter contained shall be construed as modifying or repealing any of the provisions of "An Act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886, or of "An Act defining cheese, and also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of 'filled cheese,'" approved June 6, 1896. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 10.)

COMPILER'S NOTE

The act of August 2, 1886 appears at 24 Stat. 209, ch. 840, and the act of June 6, 1896 appears at 29 Stat. 253, ch. 337.

§ 33–111. Special services for detection of adulteration.

Not to exceed $400 may be expended for special services in detecting adulteration of drugs and foods, including candy and milk. July 18, 1950, ch. 467, § 1, 64 Stat. 347.

SIMILAR PROVISIONS

1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
1949—June 19, 1948, ch. 555, § 1, 62 Stat. 544.
1948—July 25, 1947, ch. 324, § 1, 61 Stat. 436.
1947—July 9, 1946, ch. 544, § 1, 60 Stat. 511.
1946—June 30, 1945, ch. 209, § 1, 59 Stat. 282.
1945—June 28, 1944, ch. 300, § 1, 58 Stat. 519.
1944—July 1, 1943, ch. 184, § 1, 57 Stat. 327.
1943—June 27, 1942, ch. 452, § 1, 56 Stat. 439.
1942—July 1, 1941, ch. 271, § 1, 55 Stat. 517.
1941—June 12, 1940, ch. 333, § 1, 54 Stat. 323.

Chapter 2.—CANDY

Sec.
33–201. Adulterated candy not to be made or sold.
33–202. Penalty.
33–203. Prosecuting attorneys to appear.

§ 33–201 [20: 1241]. Adulterated candy not to be made or sold.

No person or corporation shall, by himself, his servant, or agent, or as the servant or agent of any other person or corporation, manufacture for sale or knowingly sell or offer to sell any candy adulterated by the admixture of terra alba, barytes, talc, or any other mineral substance, by poisonous colors or flavors, or other ingredients deleterious or detrimental to health. (May 5, 1898, 30 Stat. 398, ch. 241, § 1.)

CROSS REFERENCE

Adulteration generally, § 33–101 et seq.

NOTES TO DECISIONS

WARRANTY

Complaint alleging that injury to plaintiff, caused by biting a stone contained in a confection, was caused by defendant's breach of warranty, stated a good cause of action and would not be dismissed on motion. *Saunders* v. *Goldstein* ((D. C.-D. C.), 30 Fed. Supp. 150).

§ 33–202 [20: 1242]. Penalty.

Any person or corporation convicted of violating any of the provisions of this chapter shall be punished by a fine not exceeding one hundred dollars. The candy so adulterated shall be forfeited and destroyed under the direction of the court. (May 5, 1898, 30 Stat. 398, ch. 241, § 2.)

§ 33–203 [20: 1243]. Prosecuting attorneys to appear.

It is hereby made the duty of the prosecuting attorneys of the District of Columbia to appear for the people and to attend to the prosecution of all complaints under this chapter in all the courts of said District. (May 5, 1898, 30 Stat. 398, ch. 241, § 3.)

EFFECTIVE DATE

Section 4 of the act provided "That this act shall take effect upon its passage." This act was approved May 5, 1898.

Chapter 3.—MILK, CREAM, AND ICE CREAM

Sec.
33–301. Production, transportation, and sales—Restriction.
33–302. Dairy requirements — Permit — Application details—Certificate of soundness of cattle—"Person" defined—Application for permit to be acted upon within thirty days if practicable.
33–303. Suspension of permit—Statement of reasons—Notice.
33–304. Interstate shipments of milk or cream into District for ice cream permitted if conforming to State law requirements.
33–305. Permit revocable for refusal to permit inspections.
33–306. Milk, cream, and ice cream to be seized if brought to District illegally—Owner to be notified of seizure—Destruction.
33–307. Rules and regulations to protect supply—Publication.
33–308. Milk wagons to bear name of owner and location of dairy—Trucks bringing milk, cream, or ice cream to District to bear name of owner.
33–309. Dealers to keep posted names of persons supplying milk, cream, and ice cream—General distributors to keep record of persons supplying commodities.
33–310. Indicative labels required for "skimmed milk," "reconstructed milk," or "reconstructed cream."

Sec.
33–311. Restrictions on sales and use before and after parturition.
33–312. Permit holder to report communicable disease in himself, family, or dairy employees.
33–313. Definitions and standards of different classes of milk, cream, and ice cream—Health tests.
33–314. Milk, cream, or ice cream not to be sold or offered for sale that does not comply with requirements—All containers of milk or cream shall have grade plainly printed thereon.
33–315. Pasteurization to be done under regulations of director of public health.
33–316. Penalty for interfering with director of public health.
33–317. Names of shippers to be posted in receiving station—Record of shipments kept—Reports to director of public health.
33–318. Milk and cream to be received only from licensed shippers.
33–319. Penalties—Prosecution.
33–320. No officer or employee of health department to be employee of a dairy or dealer in dairy supplies—"Dairy" defined.
33–321. Rules relative to milk supply applicable to States shipping to District.
33–322. Automobile allowance for inspectors.

§ 33–301 [20: 1251]. Production, transportation, and sales—Restriction.

None but pure, clean, and wholesome milk, cream, or ice cream conforming to the definitions hereinafter specified shall be produced in or shipped into the District of Columbia or held or offered for sale therein, and then only as hereinafter provided. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 1.)

Compiler's Note

The original act contains the following additional words preceding the present first word, "That from and after the passage of this act." The act was approved February 27, 1925.

The title of the act of March 2, 1895, 28 Stat. 709, ch. 164, read: "An act to regulate the sale of milk in the District of Columbia, and for other purposes."

The title of the act of Feb. 27, 1925, 43 Stat. 1004, ch. 358, read: "An act to regulate within the District of Columbia the sale of milk, cream, and ice cream, and for other purposes."

Section 20 of the act of 1925 repealed all acts or parts of acts inconsistent therewith.

The act of 1895 was not in conflict with the Federal Pure Food Act of 1906 (U. S. C. 1934, title 21, § 1, et seq.). The act of 1895, looked primarily to the regulation of the source of supply, while the act of 1906 dealt with the sale of misbranded and adulterated foods, and the later act dealt with it when placed in the market. The former aimed at the regulation of the sources of supply to secure sanitary additions and surroundings; the latter operated when the milk reached the District and was subject to tests as to misbranding and adulteration. *District of Columbia* v. *Simpson* (47 App. D. C. 6).

Upon comparing the provisions of the act of 1895 with those of the later act of 1898, it is clear beyond reasonable doubt that section 3 of the former act has been repealed by operation and fair intendment of sections 4, 6, 7, and 8 of the latter act of 1898; and this was affirmed by the last section of the act of 1898, when it declared that all acts and parts of acts inconsistent therewith were thereby repealed. It is conceded that section 7 of the act of 1895 was repealed by the provision of the subsequent act changing the marketable standard of milk, and we think that section 13 of the act of 1895 is also repealed, because inconsistent with the provisions of the latter act and because the provisions of the latter act were intended to furnish the one general and sole rule upon the subject.

The act of 1895, however, is only impliedly repealed by the subsequent act of 1898, so far as the provisions of the latter act are repugnant to it, or so far only as the latter statute, making new provisions is plainly intended as a substitute for provisions contained in the former act. *Weigand* v. *District of Columbia* (22 App. D. C. 559).

Since the enactment of 1898 act above referred to (§§ 33–102 to 33–110 herein), the act of Feb. 27, 1925 (§§ 33–301 to 33–319) has become a law and it, in connection with the 1898 act, is deemed to supersede in its entirety the 1895 act which was set out, in part in the District of Columbia Code of 1929 as §§ 1270–1276 of title 20. Consequently, the act of 1895, as set out in the District of Columbia Code of 1929, has been omitted.

Cross References

Adulteration of milk, § 33–103.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Statutory References

Filled milk, U. S. C., title 21, §§ 61–64.

Importation of milk and cream, U. S. C., title 21, §§ 141–149.

NOTES TO DECISIONS

In General

Moving consideration in the passage of this act was to safeguard the public health, and it is of course within the power of Congress, in the exercise of its police powers in the District, to say how this shall be accomplished. *Leaman* v. *District of Columbia* (60 App. D. C. 395, 55 Fed. (2d) 1020).

Hermetically Sealed Cans

Sterilized cream sold in hermetically sealed cans is cream within this section. *Leaman* v. *District of Columbia* (60 App. D. C. 395, 55 Fed. (2d) 1020).

§ 33–302 [20: 1252]. Dairy requirements—Permit—Application details—Certificate of soundness of cattle—"Person" defined—Application for permit to be acted upon within 30 days if practicable.

No person shall keep or maintain a dairy or dairy farm within the District of Columbia, or produce for sale any milk or cream therein, or bring or send into said District for sale, any milk, cream, or ice cream without a permit so to do from the director of public health of said District, and then only in accordance with the terms of said permit. Said permit shall be for the calendar year only in which it is issued and shall be renewable annually on the 1st day of January of each calendar year thereafter. Application for said permit shall be in writing upon a form prescribed by said director of public health and shall be accompanied by such detailed description of the dairy or dairy farm or other place where said milk, cream, or ice cream are produced, handled, stored, manufactured, sold, or offered for sale as the said director of public health may require, and shall be accompanied by a certificate signed by an official of the health department of the District of Columbia, the United States Department of Agriculture, or some veterinarian authorized by the United States Department of Agriculture or the health department of the District of Columbia, detailed for the purpose, certifying that the cattle producing such milk or cream are physically sound, and in the case of milk or cream held, offered for sale, or sold as such shall in addition be accompanied by a certificate signed by one of the officials aforesaid certifying the cattle producing such milk or cream have reacted negatively to the tuberculin test as prescribed by the Bureau of Animal Industry, United States Department of Agriculture, within one year previous to the filing of the application: *Provided*,

That the words "person" or "persons" in sections 33–301 to 33–319 shall be taken and construed to include firms, associations, partnerships, and corporations, as well as individuals: *Provided further,* That the director of public health may accept the certification of a state or municipal health officer: *And provided further,* That final action on each application shall, if practicable, be taken within thirty days after the receipt of such application at the health department. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 2.)

COMPILER'S NOTE

Act of Aug. 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia shall be known as the Director of Public Health.

§ 33–303 [20: 1253]. Suspension of permit—Statement of reasons—Notice.

The director of public health is hereby authorized and empowered to suspend any permit issued under authority of sections 33–301 to 33–319, whenever in his opinion the public health is endangered by the impurity of unwholesomeness of the milk, cream, or ice cream supplied by any person, and such suspension shall remain in force until such time as the said director of public health is satisfied the danger no longer continues: *Provided,* That whenever any permit is suspended the director of public health shall furnish in writing to the holder of said permit his reasons for such suspension, and the dealer receiving such milk or cream shall also be promptly notified by the director of public health of such suspension. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 3.)

COMPILER'S NOTE

See note to § 33–302.

§ 33–304 [20: 1254]. Interstate shipments of milk or cream into District for ice cream permitted if conforming to State law requirements.

Nothing in sections 33–301 to 33–319 shall be construed to prohibit interstate shipments of milk or cream into the District of Columbia for manufacturing into ice cream: *Provided,* That such milk or cream is produced or handled in accordance with the specifications of an authorized medical milk commission or a state board of health. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 4.)

COMPILER'S NOTE

This section affects or supersedes § 33–321.

§ 33–305 [20: 1255]. Permit revocable for refusal to permit inspections.

Failure or refusal on the part of any person holding a permit under authority of sections 33–301 to 33–319 to permit the director of public health of the District of Columbia, or his duly appointed representative, to inspect the dairy, dairy farm, cattle, and all appurtenances of such dairy, dairy farm, or other places where said milk, cream, or ice cream are produced, stored, manufactured, handled, offered for sale, or sold may be deemed sufficient to suspend or revoke such permit at the discretion of said director of public health. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 5.)

COMPILER'S NOTE

See note to § 33–302.

§ 33–306 [20: 1256]. Milk, cream, and ice cream to be seized if brought to District illegally—Owner to be notified of seizure—Destruction.

The director of public health or his duly appointed representative is authorized to seize all milk, cream, or ice cream which may, in violation of the provisions of sections 33–301 to 33–319, be brought into the District of Columbia. The owner of any such milk, cream, or ice cream shall be at once notified of such seizure; and if he shall fail within twenty-four hours to direct the removal of the same from the District of Columbia, the director of public health may destroy or otherwise dispose of the said milk, cream, or ice cream. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 6.)

COMPILER'S NOTE

See note to § 33–302.

§ 33–307 [20: 1257]. Rules and regulations to protect supply—Publication.

The director of public health of the District of Columbia, under the direction of and with the approval of the commissioners of said District, is hereby authorized and empowered to make and enforce all such reasonable regulations, consistent with sections 33–301 to 33–319, from time to time, as he may deem proper, to protect the milk, cream, and ice cream supply of the said District of Columbia: *Provided, however,* That such regulations shall be published once at least thirty days in some daily newspaper in the District of Columbia of general circulation before any penalty be exacted for violation thereof. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, §7.)

COMPILER'S NOTE

The wording of the proviso is somewhat confusing and probably erroneous, but it is set forth as it is contained in the act of Congress. If it means that no penalty shall be exacted within thirty days after publication thereof, the proviso conforms to the general rule as set forth in § 1–225.

See note to § 33–302.

CROSS REFERENCES

Rules and regulations for pasteurization, § 33–315.
Rules and regulations generally, § 1–226 and notes.

§ 33–308 [20: 1258]. Milk wagons to bear name of owner and location of dairy—Trucks bringing milk, cream, or ice cream to District to bear name of owner.

All milk wagons within the District of Columbia shall have the name of the owner, the number of the permit, and the location of the dairy from which said wagons haul milk or cream painted thereon plainly and legibly: *Provided,* That all trucks or wagons engaged in bringing milk, cream, or ice cream into the said District shall have the name and address of the owner painted plainly and legibly thereon. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 8.)

§ 33–309 [20: 1259]. Dealers to keep posted names of persons supplying milk, cream, and ice cream—General distributors to keep record of persons supplying commodities.

All persons within the District of Columbia, having or offering for sale, or having in their possession with intent to sell milk, cream, or ice cream, shall at all times keep the name or names of the person or persons from whom the said milk, cream, or ice

cream have been obtained posted in a conspicuous place wherever such milk, cream, or ice cream are kept or offered for sale: *Provided, however,* That general distributors of milk, cream, or ice cream shall only be required to keep a record of the name of all persons from whom said distributor is receiving milk, cream, or ice cream, which record shall at all times be open to inspection by the director of public health or his duly authorized representative. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 9.)

COMPILER'S NOTE

See note to § 33–302.

§ 33–310 [20: 1260]. Indicative labels required for "skimmed milk," "reconstructed milk," or "reconstructed cream."

No person shall sell, exchange, or deliver, or have in his possession with intent to sell, exchange, or deliver, any "skimmed milk," or "reconstructed milk," or "reconstructed cream" unless every can, vessel, package, or container is plainly labeled conveying to the purchaser the exact nature of its contents. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 10.)

§ 33–311 [20: 1261]. Restrictions on sales and use before and after parturition.

It shall be unlawful for any person or persons to sell, offer for sale, or have in their possession with intent to sell, within the District of Columbia, milk or cream taken from cows less than fifteen days before or seven days after parturition, nor shall any such milk or cream be used in the manufacture of ice cream. (Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 11.)

§ 33–312 [20: 1262]. Permit holder to report communicable disease in himself, family, or dairy employees.

Any person or persons holding a permit issued under authority of sections 33–301 to 33–319 being afflicted, or any member of his family, hired help, or other person on said dairy farm being afflicted with a communicable disease, or if he has reason to suspect any such communicable disease, shall report the same to the director of public health of the District of Columbia within twenty-four hours after becoming aware thereof. Wilful violation of this section shall be deemed sufficient cause for revocation of said permit. (Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 12.)

§ 33–313 [20: 1263]. Definitions and standards of different classes of milk, cream, and ice cream—Health tests.

For the purpose and within the meaning of sections 33–301 to 33–319 "milk" shall be held to be the lacteal secretion obtained from the complete milking of cows.

"Cream" is that portion of the milk rich in fat which rises to the surface of the milk on standing or is separated from it by centrifugal force or otherwise, and shall contain not less than 20 per centum of butter fat and shall not be offered for sale or sold unless and until it has been pasteurized under regulations prescribed by the director of public health, and shall be free from pathogenic organisms and from visible dirt.

The term "pasteurized" as used in sections 33–301 to 33–319 shall be held to mean the process of heating every particle of milk or milk products (1) to a temperature of not less than 143 degrees Fahrenheit and, if heated to not more than 159 degrees Fahrenheit holding at such temperature for at least thirty minutes, or (2) to a temperature of not less than 160 degrees Fahrenheit and holding at such temperature for at least fifteen seconds.

"Raw milk" is milk produced from healthy cows as determined by physical examination and by a tuberculin test made within one year previous to the time of filing of the application; said physical examination and tuberculin test shall be made by an official of the health department of the District of Columbia, the United States Department of Agriculture, or some veterinarian authorized by the United States Department of Agriculture or the health department of the District of Columbia, to make such examination and tuberculin test; and said tuberculin test shall be repeated at least one time during each succeeding calendar year; and when reactors are found in any dairy herd licensed under sections 33–301 to 33–319 the tuberculin test shall be repeated semiannually thereafter until such time as tuberculosis is eradicated from the herd: *Provided,* That no cow or bull shall be added to any dairy herd licensed under sections 33–301 to 33–319 until such cow or bull has first been physically examined and tuberculin tested as hereinbefore provided. The farm on which the milk is produced shall rate not less than 80 per centum, the dairy from which such milk is sold or distributed not less than 90 per centum, and the cows producing the milk not less than 95 per centum on the rating cards in use at the time by the health department of the District of Columbia, and said milk shall not at any time contain less than 3.5 per centum of butter fat nor less than 11.5 per centum of total solids; nor shall it contain when delivered to the consumer more than twenty thousand bacteria per cubic centimeter total count, and no colon bacilli or other pathogenic organism shall be present in one-fiftieth cubic centimeter, and the milk shall be free from all visible dirt.

"Pasteurized milk" is milk produced from healthy cows, as determined by the physical examination and tuberculin test as hereinbefore provided for "raw" milk. Said milk shall be pasteurized under regulations prescribed by the director of public health. The milk immediately after being pasteurized shall be cooled to a temperature of not more than forty-five degrees Fahrenheit and maintained to at least such temperature. The farm on which the milk is produced must rate not less than 70 per centum, the dairy from which said milk is sold or distributed not less than 85 per centum, and the cows producing the milk not less than 90 per centum on the rating cards in use on February 27, 1925, by the health department of the District of Columbia. It shall not contain less than 3.5 per centum of butterfat or 11.5 per centum total solids; nor shall it contain when delivered to the consumer more than forty thousand bacteria, total count, per cubic centimeter, and be free from colon bacilli and other pathogenic organ-

isms and all visible dirt. No such milk shall be pasteurized more than one time.

"Certified milk" is milk produced and handled in accordance with specifications of an authorized medical milk commission and must be labeled according to the specifications of the commission which certifies to the quality of the product. A copy of the necessary articles of certification must be filed in the health department of the District of Columbia and be approved by the director of public health of said District.

"Reconstructed milk" or "cream" means milk or cream which has been concentrated or dried in any manner and subsequently restored to a liquid state.

"Skimmed milk" is that part of milk from which the fat has been partly or entirely removed and shall contain not less than 9 per centum of milk solids, inclusive of fat.

"Ice cream" means the frozen product or mixture made from pasteurized cream, milk, or product of milk sweetened with sugar, to which has been added pure, wholesome food gelatin, vegetable gum, or other thickener, with or without wholesome flavoring extract, fruits, nuts, cocoa, chocolate, eggs, cake, candy, or confections, and which contains not less than 8 per centum, by weight of milk (butter) fat. (Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 13; Aug. 8, 1946, 60 Stat. 936, ch. 887.)

AMENDMENTS

Act Aug. 8, 1946, cited to text, amended definition of "pasteurized".

COMPILER'S NOTE

See note to § 33–302.

§ 33–314 [20: 1264]. Milk, cream, or ice cream not to be sold or offered for sale that does not comply with requirements—All containers of milk or cream shall have grade plainly printed thereon.

No person in the District of Columbia shall handle, sell, offer for sale, or have in his possession with intent to sell, any milk, cream, or ice cream which does not comply with the definitions hereinbefore specified, and all bottles, cans, vessels, or other containers in which said milk or cream is sold or offered for sale shall have plainly and legibly printed thereon the grade of the milk or cream which is contained therein. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 14.)

CROSS REFERENCE

Other provisions regulating milk containers, § 10–114.

§ 33–315 [20: 1265]. Pasteurization to be done under regulations of director of public health.

The pasteurization of all milk or cream required under sections 33–301 to 33–319 to be pasteurized shall be done under regulations to be prescribed by the director of public health of the District of Columbia and open to the supervision of said director of public health. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 15.)

COMPILER'S NOTE

See note to § 33–302.

CROSS REFERENCES

Other provisions for rules and regulations, § 33–307.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

§ 33–316 [20: 1266]. Penalty for interfering with director of public health.

Any person who shall molest, hinder, or in any manner prevent said director of public health or his duly appointed agent from performing any duty imposed upon him or them by the provisions of sections 33–301 to 33–319 shall be deemed guilty of violating the provisions of sections 33–301 to 33–319 and be liable to the penalty prescribed therefor. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 16.)

COMPILER'S NOTE

See note to § 33–302.

§ 33–317 [20: 1267]. Names of shippers to be posted in receiving station—Record of shipments kept—Reports to director of public health.

Every person, or persons, receiving a permit to ship milk or cream into the District of Columbia from any creamery, or receiving station, aforesaid, shall keep posted at all times in such creamery, or receiving station, the names of all persons licensed under sections 33–301 to 33–319, who are delivering milk or cream at any such creamery, or receiving station, and shall keep a record of all milk and cream received, and furnish from time to time a sworn statement giving such information relative thereto as the said director of public health may require. The director of public health of the District of Columbia shall have power by regulation to include other places than creameries, or receiving stations, under the provisions of this section, from time to time, as may be necessary in his judgment. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 17.)

COMPILER'S NOTE

See note to § 33–302.

§ 33–318 [20: 1268]. Milk and cream to be received only from licensed shippers.

No person in the District of Columbia licensed under sections 33–301 to 33–319 shall receive any milk or cream from any source until he shall have first ascertained from the health department that the person from whom such milk is obtained holds a license from the director of public health of said District to send milk or cream into the District of Columbia. (Feb. 27, 1925, 43 Stat. 1008, ch. 358, § 18.)

COMPILER'S NOTE

See note to § 33–302.

§ 33–319 [20: 1269]. Penalties—Prosecution.

Any person or persons violating any of the provisions of sections 33–301 to 33–319, or of any of the regulations promulgated under said sections shall, on conviction, be punished for the first offense by a fine of not more than $10; for the second offense by a fine of not more than $50, and for any subsequent offenses within one year, a fine of not more than $500, or by imprisonment in the workhouse for not more than thirty days, or by both such fine and imprisonment, in the discretion of the court, and in addition any license issued under authority of said sections may be revoked. Prosecutions hereunder shall be in the police court by the District of Columbia. (Feb. 27, 1925, 43 Stat. 1008, ch. 358, § 19.)

§ 33–320 [20: 1277]. No officer or employee of health department to be employee of a dairy or dealer in dairy supplies—"Dairy" defined.

No officer or employee of the health department shall, during his continuance in office, serve in his private capacity, for fee, gift, or reward, any person licensed to keep or maintain a dairy or dairy farm in said District or to bring or to send milk into said District, or any person who has applied or is about to apply for such license, or any manufacturer or dealer in foods, drugs, or disinfectants, or similar materials: *Provided further,* That every place where milk is sold shall be deemed a dairy under the law for purposes of inspection. (Mar. 2, 1907, 34 Stat. 1145, ch. 2510.)

§ 33–321 [20: 1278]. Rules relative to milk supply applicable to States shipping to District.

The examinations, inspection, rules and regulations concerning the milk supply of the District of Columbia shall be applied alike to each state shipping milk into said District. (Mar. 3, 1915, 38 Stat. 915, ch. 80.)

COMPILER'S NOTE

This section is affected or superseded by § 33–304.

§ 33–322. Automobile allowance for inspectors.

Inspectors of dairy farms may receive an allowance for furnishing privately owned motor vehicles in the performance of official duties at the rate of not to exceed $312 per annum for each inspector. (June 12, 1940, 54 Stat. 307, ch. 333, § 1.)

Chapter 4.—UNIFORM NARCOTIC DRUG ACT

Sec.

33–401. Definitions.
33–402. Acts declared unlawful.
33–403. Manufacturers and wholesalers—License required.
33–404. Qualifications for licenses—Revocation and suspension.
33–405. Use of official written orders.
33–406. Sale on written orders—Vendees—"Lawful possession" defined.
33–407. Authorized uses.
33–408. Sales by apothecaries.
33–409. Professional use of narcotic drugs—Return of unused drugs.
33–410. Preparations exempted—Conditions—Paregoric.
33–411. Records to be kept—Form—Preservation.
33–412. Labels.
33–413. Authorized possession of narcotic drugs by individuals.
33–414. Search warrants — Requirements — Form — Contents—Return—Penalty for interfering with service.
33–415. Persons and corporations exempted.
33–416. Common nuisances.
33–417. Forfeiture by unlawful possession—Disposition—Record.
33–418. Notice of conviction to be sent to licensing board—Revocation, suspension, and reinstatement of license.
33–419. Inspection of records—Divulging information contained in records.
33–420. Obtaining a narcotic drug unlawfully—Communication to physician not privileged—False statements or false personation in procurement — False label — Application to section 33–410.
33–421. Prosecution—Burden of proof on defendant of any exception, excuse, proviso, exemption.
33–422. Enforcement—Employees of Board of Pharmacy—Salaries—Cost of forms.
33–423. Penalties.
33–424. Effect of acquittal or conviction under Federal narcotic laws.
33–425. Construction—Provisions severable.

§ 33–401 [6: 345]. Definitions.

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

(a) "Person" includes any corporation, association, copartnership, or one or more individuals.

(b) "Physician" means a person authorized by law to practice medicine or osteopathy in the District of Columbia.

(c) "Dentist" means a person authorized by law to practice dentistry in the District of Columbia.

(d) "Veterinarian" means a person authorized by law to practice veterinary medicine in the District of Columbia.

(e) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescription.

(f) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared on official written orders but not on prescription.

(g) "Apothecary" means a licensed pharmacist as defined by the laws of the District of Columbia and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this chapter shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him by the pharmacy laws of the District of Columbia.

(h) "Hospital" means an institution or clinic for the care and treatment of the sick and injured, approved by the director of public health of the District of Columbia as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

(i) "Laboratory" means a laboratory approved by the director of public health of the District of Columbia as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(j) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(k) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(*l*) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium.

(m) "Cannabis" includes all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including specifically the drugs known as American hemp, marihuana, Indian hemp or hasheesh, as used in cigarettes or in any other articles, compounds, mixtures, preparations, or products whatsoever, but shall not include the mature stalks of such plant; fiber produced from such stalks; oil or cake made from the seeds of such plant; any compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom); fiber, oil or cake; or the sterilized seed of such plant which is incapable of germination.

(n) "Narcotic drugs" means coca leaves, opium, cannabis, and every substance not chemically distinguishable from them.

(o) "Federal narcotic laws" means the laws of the United States relating to opium, cocoa leaves, cannabis, and other narcotic drugs.

(p) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law and, if no such order form is provided, then on an official form provided for that purpose by the Board of Pharmacy.

(q) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

(r) "Registry number" means the number assigned to each person registered under the federal narcotic laws.

(s) "Board of Pharmacy" means the Board of Pharmacy of the District of Columbia as provided by section 2–608. (June 20, 1938, 52 Stat. 785, ch. 532, § 1.)

Compiler's Note

See note to § 33–302.

Cross Reference

Other provisions concerning sale of dangerous drugs, §§ 2–610 to 2–615.

Statutory References

Federal Narcotic Drugs Import and Export Act, U. S. C., title 21, §§ 171–185.

Federal Food, Drug, and Cosmetic Act, U. S. C., title 21, § 321 et seq.

§ 33–402 [6: 345a]. Acts declared unlawful.

It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this chapter. (June 20, 1938, 52 Stat. 787, ch. 532, § 2.)

Cross Reference

Exemptions, §§ 33–409, 33–410, 33–415.

§ 33–403 [6: 345b]. Manufacturers and wholesalers—License required.

No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the Board of Pharmacy. Licenses shall be issued for a period of one year and may be renewed for a like period. A fee of $10 shall be paid to the Board of Pharmacy for any license so issued or renewed. The said Board of Pharmacy is authorized to have printed such licenses as may be necessary and to be paid for out of the money collected by it for the issuance of licenses. At the close of each fiscal year any funds unexpended in excess of the sum of $100 shall be paid into the treasury of the United States to the credit of the District of Columbia. (June 20, 1938, 52 Stat. 787, ch. 532, § 3.)

Cross References

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Refund of fees when license refused, § 47–1018.

§ 33–404 [6: 345c]. Qualifications for licenses—Revocation and suspension.

No license shall be issued under section 33–403 unless and until the applicant therefor has furnished proof satisfactory to the Board of Pharmacy of the following:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves, cannabis, or other narcotic drugs, or to any person who is a narcotic-drug addict.

The Board of Pharmacy may suspend or revoke any license issued by said board under the provisions of this chapter for cause. (June 20, 1938, 52 Stat. 787, ch. 532, § 4.)

§ 33–405 [6: 345d]. Use of official written orders.

An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. It shall be unlawful for a manufacturer or wholesaler to sell, barter, exchange, or give away any preparation or remedy described in section 1041, Title 26, U. S. Code, which contains not more than two grains of opium, or not more than one-fourth of a grain of morphine, or not more than one-eighth of a grain of heroin, or not more than one grain of codeine, or any salt or derivative of any of them in one fluid or avoirdupois ounce, except in pursuant of a written order, on a form to be issued in blank by the District of Columbia Board of Pharmacy. Every person who shall accept

any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid preparations shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer or agent authorized for that purpose.

The Board of Pharmacy shall cause suitable written order forms to be prepared for the purchase of narcotics for which no form is provided by the United States Commissioner of Narcotics, and shall cause the same to be for sale by said board at a cost not to exceed $1 a hundred, to those persons who shall have registered under the federal narcotic laws. The Board of Pharmacy shall keep an account of the number of forms sold and the names and addresses of the purchasers and the serial numbers of such forms sold to each purchaser. Whenever the Board of Pharmacy shall sell any such forms it shall cause the name and address of the purchaser thereof to be plainly written or stamped thereon before delivering the same. The said board is authorized and directed to make such rules and regulations, not inconsistent with law, as it may deem necessary for the administration and enforcement of this chapter.

It shall be deemed a compliance with this section if the parties to the transaction have complied with the federal narcotic laws respecting official order forms if such order forms are authorized and required by federal laws, or, if no such order form is provided, then with the rules and regulations of the Board of Pharmacy respecting official order forms. (June 20, 1938, 52 Stat. 787, ch. 532, § 5.)

CROSS REFERENCE

Rules and regulations generally, § 1–226 et seq.

§ 33–406 [6: 345e]. Sale on written orders—Vendees—"Lawful possession" defined.

(a) A duly-licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(1) To a manufacturer, wholesaler, or apothecary;

(2) To a physician, dentist, or veterinarian;

(3) To a hospital, but only for use by or in that hospital: *Provided,* That the official written order is signed by a physician, dentist, veterinarian, or pharmacist connected with that hospital; and

(4) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(b) A duly-licensed manufacturer or wholesaler may also sell narcotic drugs to any of the following persons:

(1) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States Government or of the District of Columbia, or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties.

(2) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon duly licensed in some state, territory, or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft, for the actual medical needs of persons on board such ship or aircraft, when not in port: *Provided,* That such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft, or to a physician, surgeon, or retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service.

(3) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(c) Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful only if obtained and used in the regular course of business, occupation, profession, employment, or duty of the possessor. (June 20, 1938, 52 Stat. 788, ch. 532, § 6.)

§ 33–407 [6: 345f]. Authorized uses.

A person in charge of a hospital or of a laboratory, or in the employ of the District of Columbia or of any state, or of any political subdivision thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory, or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft who obtains narcotic drugs under the provisions of section 33–406, or otherwise, shall not administer, nor dispense, nor otherwise use such drugs, within the District of Columbia, except within the scope of his employment or official duty, and then only for scientific or medical purposes and subject to the provisions of this chapter. (June 20, 1938, 52 Stat. 789, ch. 532, § 7.)

§ 33–408 [6: 345g]. Sales by apothecaries.

(a) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian, dated and signed, in ink or indelible pencil, on the day when issued, by the physician, dentist, or veterinarian prescribing said narcotic drugs. The prescription when issued shall also state the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. The prescription shall not be refilled.

(b) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(c) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than 20 per centum of the complete solution, to be used for medical purposes. (June 20, 1938, 52 Stat. 789, ch. 532, § 8.)

§ 33–409 [6: 345h]. Professional use of narcotic drugs—Return of unused drugs.

(a) Physicians and dentists.—A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe in writing, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the patient for whom the narcotic drug is prescribed and the full name, address, and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered.

(b) Veterinarians.—A veterinarian, in good faith and in the course of his professional practice only and not for use by a human being, may prescribe in writing, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the owner of the animal; the species of the animal for which the narcotic is prescribed; and the full name, address, and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered.

(c) Return of unused drugs.—Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient. (June 20, 1938, 52 Stat. 790, ch. 532, § 9.)

§ 33–410 [6: 345i]. Preparations exempted—Conditions—Paregoric.

Except as otherwise in this chapter specifically provided, said sections shall not apply to the following cases:

(a) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce or, if a solid or semisolid preparation, in one avoirdupois ounce (1) not more than two grains of opium, (2) not more than one-quarter of a grain of morphine or of any of its salts, (3) not more than one grain of codeine or of any of its salts, (4) not more than one-eighth of a grain of heroin or of any of its salts.

(b) Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this chapter shall apply to all liniments, ointments, and other preparations that contain coca leaves in any quantity or combination.

The exemptions authorized by this section shall be subject to the following conditions:

(1) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

Such preparation shall be prescribed, administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter.

Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or sold to any person, or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold in compliance with the general provisions of this chapter.

Manufacturers or wholesalers shall sell tincture opii camphorata, commonly known as paregoric, only in accordance with the provisions of sections 33–405, 33–406, on official written order forms provided for that purpose by the Board of Pharmacy. It shall be unlawful for any person to bring into or have in his possession for sale in the District of Columbia any paregoric unless an official written order form has been issued therefor. No person shall dispense or sell any paregoric at retail to any person without a prescription from a duly licensed physician, dentist, veterinarian, or other duly authorized person. Prescriptions shall be retained and filed as provided in section 33–408. (June 20, 1938, 52 Stat. 790, ch. 532, § 10.

§ 33–411 [6: 345j]. Records to be kept—Form—Preservation.

(a) Physicians, dentists, veterinarians, and other authorized persons.—Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription in accordance with the provisions of subsection (e) of this section. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping

a record of the amount of such solution or other preparation applied by him to individual patients.

(b) Manufacturers and wholesalers.—Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (e) of this section.

(c) Apothecaries.—Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (e) of this section.

(d) Vendors of exempted preparations.—Every person who purchases for resale, or who sells narcotic drug preparations exempted by section 33–410 shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection (e) of this section.

(e) Form and preservation of records.—The form of records shall be prescribed by the Board of Pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced, and the proportion of resin contained in or producible from the plant *Cannabis sativa* L., received, or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered, or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft. (June 20, 1938, 52 Stat. 791, ch. 532, § 11.)

§ 33–412 [6: 345k]. Labels.

(a) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this chapter, shall alter, deface, or remove any label so affixed.

(b) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist, or veterinarian he shall affix to the container in which such drug is sold or dispensed a label showing his own name, address, and registry number, or the name, address, and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal, and the species of the animal; the name, address, and registry number of the physician, dentist, or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed as long as any of the original contents remain. (June 20, 1938, 52 Stat. 792, ch. 532, § 12.)

§ 33–413 [6: 345*l*]. Authorized possession of narcotic drugs by individuals.

A person to whom or for whose use any narcotic drug has been prescribed, sold, or dispensed by a physician, dentist, apothecary, or other person authorized under the provisions of section 33–406, and the owner of any animal for which any such drug has been prescribed, sold, or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. (June 20, 1938, 52 Stat. 792, ch. 532, § 13.)

§ 33–414 [6: 345m]. Search warrants—Requirements—Form—Contents—Return—Penalty for interfering with service.

(a) A search warrant may be issued by any judge of the police court of the District of Columbia or by a United States commissioner for the District of Columbia when any narcotic drugs are manufactured, possessed, controlled, sold, prescribed, administered, dispensed, or compounded, in violation of the provisions of this chapter, and any such narcotic drugs and any other property designed for use in connection with such unlawful manufacturing, possession, controlling, selling, prescribing, administering, dispensing, or compounding, may be seized thereunder, and shall be subject to such disposition as the court may make thereof and such narcotic drugs may be taken on the warrant from any house or other place in which they are concealed.

(b) A search warrant cannot be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or commissioner is thereupon satisfied of the existence of the grounds of the ap-

plication or that there is probable cause to believe their existence, he must issue a search warrant, signed by him, to the major and superintendent of police of the District of Columbia or any member of the Metropolitan police department, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the place named for the property specified and to bring it before the judge or commissioner.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or commissioner must insert a direction in the warrant, that it be served in the daytime unless the affidavit is positive that the property is in the place to be searched in which case he must insert a direction that it be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following in effect: "I, ————, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(*l*) The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the clerk of the police court.

(n) Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than $1,000 or imprisoned not more than two years. (June 20, 1938, 52 Stat. 792, ch. 532, § 14.)

CROSS REFERENCE

Search warrants, § 23–301 et seq.

§ 33–415 [6: 345n]. Persons and corporations exempted.

The provisions of this chapter restricting the possession and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties. (June 20, 1938, 52 Stat. 794, ch. 532, § 15.)

§ 33–416 [6: 345*o*]. Common nuisances.

Any store, shop, warehouse, dwelling-house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance. (June 20, 1938, 52 Stat. 794, ch. 532, § 16.)

§ 33–417 [6: 345p]. Forfeiture by unlawful possession—Disposition—Record.

All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States Commissioner of Narcotics, by the officer who destroys them.

(b) Upon written application by the Board of Pharmacy, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said Board of Pharmacy for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within the District of Columbia not operated for private gain, the Board of Pharmacy may, in its discretion, deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The Board of Pharmacy may from time to time deliver excess stocks of such narcotic drugs to the United States Commissioner of Narcotics, or may destroy the same.

(d) The Board of Pharmacy of the District of Columbia shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal or District of Columbia officers charged with the enforcement of federal and District narcotic laws. (June 20, 1938, 52 Stat. 794, ch. 532, § 17.)

CROSS REFERENCE

Disposition of goods seized under search warrants generally, § 23–301 et seq.

§ 33–418 [6: 345q]. Notice of conviction to be sent to licensing board—Revocation, suspension, and reinstatement of license.

On the conviction of any person of the violation of any provision of this chapter, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business, and the said board or officer may in its or his discretion suspend or revoke the license of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing for good cause, said board or officer may reinstate such license or registration. (June 20, 1938, 52 Stat. 795, ch. 532, § 18.)

§ 33–419 [6: 345r]. Inspection of records—Divulging information contained in records.

Prescriptions, orders, and records, required by this chapter, and stocks of narcotic drugs, shall be open for inspection only to federal and District of Columbia officers whose duty it is to enforce the laws of the District of Columbia, or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. (June 20, 1938, 52 Stat. 795, ch. 532, § 19.)

§ 33–420 [6: 345s]. Obtaining a narcotic drug unlawfully—Communication to physician not privileged—False statements or false personation in procurement—False label—Application to section 33–410.

(a) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the forgery or alteration of a prescription or of any written order; or (3) by the concealment of a material fact; or (4) by the use of a false name or the giving of a false address.

(b) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(c) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this chapter.

(d) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

(e) No person shall make or utter any false or forged prescription or false or forged written order.

(f) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(g) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of section 33–410, in the same way as they apply to transactions under all other sections. (June 20, 1938, 52 Stat. 795, ch. 532, § 20.)

§ 33–421 [6: 345t]. Prosecution—Burden of proof on defendant of any exception, excuse, proviso, exemption.

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this chapter, and the burden of proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant. (June 20, 1938, 52 Stat. 796, ch. 532, § 21.)

§ 33–422 [6: 345u]. Enforcement—Employees of Board of Pharmacy—Salaries—Cost of forms.

It is hereby made the duty of the major and superintendent of police of the District of Columbia to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States relating to narcotic drugs.

The commissioners of the District of Columbia are authorized to employ such personal services for the clerical work of the Board of Pharmacy as may be necessary to carry out the provisions of this chapter and to provide for the expenses of said board, including the cost of preparation and distribution of such official order forms as may be provided by the regulations of the Board of Pharmacy. Salaries of employees shall be fixed in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, ch. 13). The commissioners of the District of Columbia shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized. (June 20, 1938, 52 Stat. 796, ch. 532, § 22.)

§ 33–423 [6: 345v]. Penalties.

Any person violating any provision of this chapter, or of any regulation made by the Board of Pharmacy under authority of said sections, shall upon conviction be punished, for the first offense, by a

fine of not less than $100 nor more than $1,000, or by imprisonment for not exceeding one year, or by both such fine and imprisonment, and for any subsequent offense by a fine of not less than $500 nor more than $5,000, or by imprisonment for not exceeding ten years, or by both such fine and imprisonment. (June 20, 1938, 52 Stat. 796, ch. 532, § 23.)

§ 33–424 [6: 345w]. Effect of acquittal or conviction under Federal narcotic laws.

No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under any United States statute governing the sale or distribution of narcotic drugs, of the same act or omission which, it is alleged, constitutes a violation of this chapter. (June 20, 1938, 52 Stat. 796, ch. 532, § 24.)

§ 33–425 [6: 345x]. Construction—Provisions severable.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (June 20, 1938, 52 Stat. 796, ch. 532, § 25.)

Chapter 5.—MEATS AND MEAT PRODUCTS

Sec.

33–501. Horse meat and horse meat products—Labeling or marking—Notification to consumer.
33–502. Same—Director of public health to make regulations.
33–503. Same—Penalties.

§ 33–501. Horse meat and horse meat products—Labeling or marking—Notification to consumer.

After thirty days after the date of enactment of sections 33–501 to 33–503, it shall be unlawful for any person, firm, or corporation, or any officer, agent, or employee thereof, to sell or offer for sale within the District of Columbia to any person any horse meat or food product thereof unless such meat or food product is plainly and conspicuously labeled, marked, branded, or tagged "horse meat" or "horse-meat product", as the case may be, or, in the case of any horse meat or food product thereof which is sold or offered for sale to any consumer at a hotel, restaurant, or similar establishment, unless such consumer is notified that the food which he receives contains horse meat or food products thereof. (July 3, 1943, 57 Stat. 372, ch. 188, §1.)

§ 33–502. Same—Director of public health to make regulations.

The director of public health of the District of Columbia, subject to the approval of the Commissioners of the District of Columbia, is authorized to make such regulations as may be necessary to carry out the purposes of sections 33–501 to 33–503. (July 3, 1943, 57 Stat. 372, ch. 188, § 3.)

§ 33–503. Same—Penalties.

Any person who willfully violates any provision of sections 33–501 to 33–503, or any regulation prescribed thereunder, shall, upon conviction thereof, be fined not more than $500, or imprisoned for not more than one year, or both. (July 3, 1943, 57 Stat. 372, ch. 188, § 2.)

TITLE 34.—HOTELS AND LODGING-HOUSES

Chap. Sec.
1. Rights and liabilities 34–101

Chapter 1.—RIGHTS AND LIABILITIES

Sec.
34–101. Hotel proprietors and innkeepers furnishing safe and giving notice not liable for injury to guests' property—When value exceeds $500—Liability for certain retained property.
34–102. Liability for baggage stolen from rooms—Effect of printed notice.
34–103. Lien of boarding-house and innkeepers.
34–104. Enforcement of lien by sale.
34–105. Enforcement of lien by bill in equity.

§ 34–101 [13: 1]. Hotel proprietors and innkeepers furnishing safe and giving notice not liable for injury to guests' property—When value exceeds $500—Liability for certain retained property.

Whenever the proprietor of any hotel or inn in the District of Columbia shall provide in such hotel or inn a suitable safe or vault for the safe-keeping of any money, jewelry, or other articles of value, other than wearing apparel, belonging to or in the custody of guests, and shall notify the guests thereof by keeping conspicuously posted in the office and on the inside of the entrance door of the sleeping-rooms of said hotel or inn a notice printed in distinct English type, such proprietor shall not be liable for the loss of or injury to any such property by theft or otherwise sustained by any guests unless such guest has offered to deliver the same to such proprietor for custody in such safe or vault and such proprietor has omitted or refused to receive it and deposit it in such safe or vault and to give such guest a receipt therefor: *Provided,* That in no case shall such proprietor be liable for the loss or injury to property so deposited in an amount exceeding the sum of $500, except by special contract in writing, stating the kind and value of property received, the kind and extent of the liability of said proprietor, and the reasonable consideration to be paid for such safe-keeping, not in excess of the customary insurance charge or premium, and which said contract shall be signed by said guest and said proprietor or his clerk: *Provided further,* That nothing herein contained shall apply to such an amount of money and such jewelry or other articles of value as is usual, common, or prudent for guests to retain in their rooms. (Dec. 21, 1920, 41 Stat. 1081, ch. 2, § 1.)

CROSS REFERENCES

Defrauding hotel, § 22–1301.
Embezzlement by proprietor, § 22–1205.
License fee, hotels, § 47–2328.
License fee, lodging-houses, § 47–2330.

§ 34–102 [13: 2]. Liability for baggage stolen from rooms—Effect of printed notice.

Whenever the proprietor of any hotel or inn shall keep posted in a conspicuous manner on the inside of the entrance door to the sleeping-rooms of said hotel or inn a notice printed in distinct English type requiring the guests occupying said rooms to lock or bolt the door of said room and upon leaving said room to lock the door and deposit the key at the office, the proprietor shall not be liable for any baggage stolen from said room if it shall appear that said room was left by the guest unlocked or unbolted, or that the key was not so deposited at the office at the time of the loss of said baggage, unless the loss is directly or indirectly caused by or attributable to the proprietor or his employee or employees. (Dec. 21, 1920, 41 Stat. 1082, ch. 2, § 2.)

§ 34–103 [13: 3]. Lien of boarding-house and innkeepers.

Every inn-keeper, keeper of a boarding-house, or house of private entertainment shall have a lien upon and may retain possession of the baggage and effects of any guest or boarder for the amount which may be due him from such guest for board and lodging until such amount is paid. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1261.)

CROSS REFERENCE

Fraudulent representations to obtain accommodations, fraudulent removal of baggage, criminal penalty, § 22–1301.

§ 34–104 [13: 5]. Enforcement of lien by sale.

If the amount due and for which a lien is given by section 34–103 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263.)

§ 34–105 [13: 6]. Enforcement of lien by bill in equity.

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264.)

TITLE 35.—INSURANCE

Chap.		Sec.
1.	Insurance Department—General provisions	35–101
2.	Provisions applicable to more than one kind of insurance	35–201
3.	Life Insurance Act—Definitions	35–301
4.	Department of Insurance with respect to life companies	35–401
5.	Domestic life companies	35–501
6.	Foreign and alien life companies	35–601
7.	Provisions relating to all life insurance companies	35–701
8.	Life Insurance Act—Penalties—Constitutionality	35–801
9.	Fraternal benefit associations	35–901
10.	Industrial life insurance	35–1001
11.	Marine insurance	35–1101
12.	Insurance agents other than life	35–1201
13.	Fire, casualty, and marine insurance	35–1301
14.	Regulation of Fire Insurance Rates	35–1401
15.	Regulation of Casualty and Other Insurance Rates	35–1501

Chapter 1.—INSURANCE DEPARTMENT—GENERAL PROVISIONS

Sec.

35–101. Department of Insurance created—Superintendent of Insurance—Subject to supervision of Commissioners.

35–102. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.

35–103. Annual statements—Statement to be published in newspaper.

35–104. Companies organized outside of United States to file and publish statements.

35–105. Statement of business in District of Columbia.

35–106. Superintendent to make annual report.

35–107. Superintendent's reports to be bound.

35–108. Inquiries as to District companies.

§ 35–101 [5: 171]. Department of Insurance created—Superintendent of Insurance—Subject to supervision of Commissioners.

There shall be, and is hereby, established in the District a Department of Insurance, under the direction of the commissioners of the District. The said commissioners are authorized and directed to appoint a Superintendent of Insurance and one clerk. The said superintendent and clerk shall devote their services exclusively to the business of said department. Said superintendent shall have supervision of all matters pertaining to insurance, insurance companies, and beneficial orders and associations, subject only to the general supervision of the commissioners. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 645; June 30, 1902, 32 Stat. 534, ch. 1329.)

COMPILER'S NOTES

Insofar as any of the provisions of this chapter conflict with the Life Insurance Act of 1934 (48 Stat. 1177, ch. 672), chapters 3–8 of this title, they have been repealed by § 4 of ch. VI of said act which read as follows: "All laws or parts of laws, insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any of the provisions of this act, are hereby repealed."

Any provisions of this chapter in conflict with the "Fire and Casualty Act" (act of Oct. 9, 1940, 54 Stat. 1063, ch. 792), chapter 13 of this title, have been repealed. Section 46 of said act provided as follows: "All laws or parts of laws, insofar as they relate to business affected hereby, and are in conflict with any of the provisions of this act, are hereby repealed."

AMENDMENTS

The law originally provided for a salary of $2,500 for the superintendent and a salary of $1,000 for the clerk.

The law as amended in 1902 changed the salary of the superintendent to $3,500.

The salaries are now provided for in the Classification Act, U. S. C., title 5, § 673.

CROSS REFERENCES

Application of this chapter to marine insurance companies, § 35–1102.

Department of Insurance and its powers and duties with respect to fire, casualty, and marine insurance, §§ 35–1301 to 35–1350.

Department of Insurance and its powers and duties with respect to life insurance, §§ 35–401 to 35–532.

Power of Superintendent to interpret the law, see note to § 35–102. *Drake* v. *United States ex rel. Bates* (30 App. D. C. 312).

NOTES TO DECISIONS

SUPERINTENDENT

Superintendent of insurance is a subordinate official, appointed by and under the supervision and control of the Commissioners of the District. *Griffith* v. *Rudolph* (54 App. D. C. 350, 298 Fed. 672).

§ 35–102 [5: 172]. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.

It shall be the duty of said superintendent to see that all laws of the United States relating to insurance or insurance companies, benefit orders, and associations doing business in the District are faithfully executed; to keep on file in his office copies of the charters, declarations of organization, or articles of incorporation of every insurance company, benefit association, or order, including life, fire, marine, accident, plate-glass, steam-boiler, burglary, cyclone, casualty, livestock, credit, and maturity companies or associations doing business in the District; and before any such insurance company, association, or order shall be licensed to do business in the District it shall file with said superintendent a copy of its charter, declaration of organization, or articles of incorporation, duly certified in accordance with law by the insurance commissioners or other proper officers of the state, territory, or nation where such company or association was organized; also a certificate setting forth that it is entitled to transact business and assume risks and issue policies of insur-

ance therein, and such other information as said superintendent may require; and if its principal office is located outside the District it shall appoint some suitable person, resident in said District, as its attorney, upon whom legal process may be served: *Provided, however,* That should said company or association neglect or refuse to appoint such attorney, or should such attorney absent himself from the District, said legal process may be served upon the Superintendent of Insurance of the District of Columbia. Said superintendent shall have power to make such rules and regulations, subject to the general supervision of the commissioners, not inconsistent with law, as to make the conduct of each company in the same line of insurance conform in doing business in the District. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 646; Jan. 17, 1912, 37 Stat. 53, ch. 11.)

COMPILER'S NOTE

This section as enacted also contained at the end of the first sentence "and the fees for filing with the superintendent such papers as are required by this section shall be ten dollars, to be paid to the collector of taxes, and no other license fee shall be required of such insurance companies or associations except as provided in sections six hundred and fifty-four (§ 35–1201) and six hundred and fifty-five (§ 35–1202) of this subchapter." However, § 35–1113 of this code provides for fees of marine insurance companies, § 35–1345 provides for fees of fire, marine, and casualty insurance companies, § 35–402 provides for fees of life insurance companies, and § 47–1901 provides for an annual license fee upon all insurance companies.

AMENDMENT

The 1912 amendment added "and such other information as said superintendent may require" following "a certificate setting forth that it is entitled to transact business and assume risks and issue policies of insurance therein," and added the proviso clause at the end of the first sentence.

CROSS REFERENCES

IN GENERAL

Application of this chapter to fire, casualty, and marine insurance companies, see notes to § 35–101.

Application to life insurance companies, see notes to § 35–101.

Enlargement of department for purpose of administering laws regulating marine insurance, § 35–1130.

Insurance under Employees' Compensation Act, § 35–205.

Liability policy or bond for motor carriers, § 44–301.

Motor vehicle liability policies; powers of department; form and requisites of policies, § 40–412.

Rules and regulations governing liability policy or bond for motor carrier, § 44–301.

REVOCATION OR SUSPENSION OF LICENSES, CERTIFICATES, AND PERMITS

Failure of domestic company to keep books, records, and files within the District, § 35–204.

Failure to file annual statements, §§ 35–103, 47–1805.

Failure to pay taxes, § 35–105.

Impairment of capital, § 35–202.

Impairment of capital or insolvency, § 35–201.

License or certificate of authority of life insurance companies, § 35–405, and notes.

Life insurance agents, § 35–426 et seq.

Marine insurance agents, § 35–1124.

Revocation or suspension of certificate of authority of fire, casualty, or marine insurance company, § 35–1306.

Revocation or suspension of license of fire, casualty, or marine insurance agent, § 35–1340 and notes.

Revocation or suspension of organization permits, § 35–506 et seq.

RULES AND REGULATIONS

Administration of the "Fire and Casualty Act," § 35–1304.

Governing annual statements, § 35–103.

Governing election to convert stock to mutual company, § 35–519.

Liquidation of life insurance companies, § 35–419.

Rules and regulations generally, § 1–226 and notes.

NOTES TO DECISIONS

DOMESTIC CORPORATIONS

Sections 646 and 647 of 1901 code (§§ 35–102, 35–103), relative to filing copies of charter, "were intended to apply to companies organized without the District and doing business within the District." *American Home Life Ins. Co.* v. *Drake* (30 App. D. C. 263).

GROUP HEALTH ASSOCIATION

When Group Health Association was not engaged in the business of insurance or indemnity, and not specifically exempted from the regulations pertaining to them, the superintendent could not challenge generally and without regard to features of insurance or indemnity as to validity of the incorporation. *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

Apart from any specific exemption, the business of a Group Health Association was not that of insurance so as to bring it within meaning of this act. *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

INTERPRETATION OF LAWS

"No provision of the law conferred or attempted to confer upon the superintendent of insurance the power to make and enforce an interpretation of the laws relating to insurance companies, agents, or brokers. Such power is a judicial one, that can be exercised by the courts alone." *Drake* v. *United States ex rel. Bates* (30 App. D. C. 312).

RULES AND REGULATIONS

As to superintendent's power to promulgate regulations for the proper enforcement of the law, see *Drake* v. *United States ex rel. Bates* (30 App. D. C. 312).

There is neither express nor implied authority in the superintendent to make rules or to apply the drastic provisions of those rules solely to mutual companies. Without such authority, the limit of his power is to make rules consistent with the provisions of the law. *Hutchins Mut. Ins. Co.* v. *Hazen* (70 App. D. C. 174, 105 Fed. (2d) 53).

§ 35–103 [5: 173]. Annual statements—Statement to be published in newspaper.

The said superintendent shall furnish, in December of each year, to every insurance company or association, local, domestic, and foreign, doing business in the District of Columbia, or its agent or attorney in the District, the necessary blank forms for the annual statements for such company or association, which shall be returned to the superintendent on or before the first day of March in each year, signed and sworn to by the president or vice-president and secretary or assistant secretary, or, if a foreign company, by its manager or proper representative within the United States, showing its true financial condition as of the next preceding 31st day of December, which shall include a statement of its assets and liabilities classified according to regulations made by the Superintendent of Insurance on that day, the amount and character of business transacted, losses sustained, and money received and expended during the year, and such other information as the said superintendent may deem necessary. Such annual statements shall be printed in at least one daily newspaper published in the District of Columbia, in the month of March in each year; and any such company or association failing to comply with the provisions aforesaid shall have its license to do business

in the District revoked. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 647; June 30, 1902, 32 Stat. 534, ch. 1329; Aug. 18, 1911, 37 Stat. 22, ch. 26.)

COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.

AMENDMENTS

The 1902 amendment added "or vice-president" after "president" and "or assistant secretary" after "secretary."

The 1911 amendment substituted "local, domestic, and foreign, doing business in the District of Columbia" for "hereinbefore mentioned."

The 1901 code also contained the word "detailed" between the words "include a" and "statement of its assets and liabilities." The 1902 act changed this word to "classified," and it was omitted in the amendment of 1911.

CROSS REFERENCES

Annual statements for fire, casualty, and marine insurance companies, § 35–1311.

Annual statement of companies operating upon Lloyd's plan, § 35–1324.

Application to fire, casualty, or marine insurance companies, § 35–101 and notes.

Application to life insurance, § 35–101 and notes.

Other provisions concerning annual statement and taxes, § 35–202.

Revocation or suspension of license, § 35–102 and notes.

Rules and regulations, § 35–102 and notes.

NOTES TO DECISIONS

GROUP HEALTH ASSOCIATION

Group Health Association cannot properly be brought within the laws relating to insurance or to organizations providing "for the payment of indemnity on account of sickness or accident." *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

REVOCATION OF LICENSE

Under this section, there is authority in the Superintendent to revoke a company's license for failure on its part promptly to furnish him with an annual statement of its true financial condition. *Hutchins Mut. Ins. Co.* v. *Hazen,* (70 App. D. C. 174, 105 Fed. (2d) 53).

§ 35–104 [5: 175]. Companies organized outside of United States to file and publish statements.

The financial statements of insurance companies or associations, required hereby to be filed annually with the Superintendent of Insurance, shall set forth specifically the assets, liabilities, and conduct of the affairs within the United States of companies or associations organized outside of the territorial limits of the United States, and such statement shall be verified under oath by the manager and assistant manager or other proper officers of such companies or associations within the United States; and so much of this chapter as requires the publication of annual statements shall only extend to the statements respecting the affairs of such foreign companies or associations within the United States. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 649.)

COMPILER'S NOTES

This section as enacted contains at the beginning the following provision: "No insurance company or association organized outside the territorial limits of the United States shall be licensed to do business in the District until it shall have complied with the laws of some one of said States requiring a deposit of not less than one hundred thousand dollars, or deposited in the registry of the supreme court of the District (District Court of the United States for the District of Columbia) United States or municipal bonds, the market value of which shall not be less than one hundred thousand dollars, to be approved by the superintendent of insurance and the Commissioners of the District, to be held and maintained unimpaired in the registry of said court as a reserve fund for the liquidation of any judgment or judgments that may be obtained against such insurance company or association in said court or any inferior court of competent jurisdiction in said District." However, § 35–1105 of this code provides for deposits by foreign marine insurance companies, § 35–601 provides for deposits by foreign life insurance companies, and § 35–1326 provides the requirements for issuance of a certificate of authority to foreign fire, marine, and casualty insurance companies.

This section is superseded in whole or in part by chapter 18 of title 47.

CROSS REFERENCES

Application to fire, casualty, and marine insurance companies, § 35–101 and notes.

Application to life insurance, § 35–101 and notes.

Other provisions concerning annual statement and taxes, §§ 35–103, 35–202.

Revocation or suspension of license, § 35–102 and notes.

§ 35–105 [5: 176]. Statement of business in District of Columbia.

Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the superintendent, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to two per centum of said premium receipts of the last preceding calendar year, in lieu of all other taxes, except taxes upon real estate and any license fees provided for in sections 35–1201 to 35–1202; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per centum per month shall be charged against the company, which, together with said taxes, shall be collected before said company shall be allowed to resume business. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 650; June 30, 1902, 32 Stat. 534, ch. 1329.)

COMPILER'S NOTES

Act of August 17, 1937, 50 Stat. 676, ch. 690, title II, § 6, as amended May 16, 1938, 52 Stat. 358, ch. 223, § 2, set out as § 47–1806 of this code relating to taxation of insurance companies, provides for the payment of taxes "equal to 2 per centum of their policy and membership fees and net premium receipts."

This section is superseded in whole or in part by chapter 18 of title 47.

AMENDMENT

Act of 1902 struck out quotation marks which were contained in the section as enacted in 1901.

CROSS REFERENCES

Application to fire, casualty, and marine companies, § 35–101, and notes.

Application to life insurance, § 35–101, and notes.

Other provisions concerning annual statement and taxes, §§ 35–103, 35–202.

Taxation of marine insurance companies, § 35–1111.

NOTES TO DECISIONS

ASSESSMENT COMPANIES

This section does not apply to assessment companies organized solely for mutual protection. *American Home Life Ins. Co.* v. *Drake* (30 App. D. C. 263).

GROUP HEALTH ASSOCIATION

Apart from any specific exemption, the business of appellee Group Health Association is not that of insurance to bring it within this section of statute. *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

SECTION CONSTRUED

This section was construed in *District of Columbia* v. *Georgetown Gas Light Co.* (45 App. D. C. 63), relative to taxation of banks, gas, electric, and telephone companies, and continuing taxation on insurance companies in accordance with 1901 code, § 650 (§ 35–105).

§ 35–106 [5: 177]. Superintendent to make annual report.

The Superintendent of Insurance shall report annually to the commissioners of the District, on or before the thirty-first day of March, the financial condition of each insurance company and association doing business in said District, as of the thirty-first day of December next preceding. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 651.)

CROSS REFERENCES

Application to fire, casualty, and marine companies, § 35–101 and notes.

Application to life insurance, § 35–101 and notes.

§ 35–107 [5: 177a]. Superintendent's reports to be bound.

After May 18, 1910, the annual reports of the Superintendent of Insurance shall be printed and bound in one volume, and shall be ready for distribution not later than the first day of the next regular session of Congress thereafter. (May 18, 1910, 36 Stat. 379, ch. 248.)

§ 35–108 [5: 178]. Inquiries as to District companies.

It shall be the duty of the said Superintendent of Insurance to ascertain whether the capital required by law or the charter of each insurance company or association organized under the laws of the District of Columbia has been actually paid up in cash and is held by its board of directors subject to their control, according to the provisions of their charter, or has been invested in property worth not less than the full amount of the capital stock required by its charter; or, if a mutual company, that it has received and is in actual possession of securities, as the case may be, to the full extent of the value required by its charter; and the president and secretary of such company or association shall make a declaration under oath to said superintendent, who is hereby empowered to administer oaths when hereby required, that the tangible assets exhibited to him represent bona fide the property of the company or association, which sworn declaration shall be filed and preserved in the office of said superintendent; and any such officer swearing falsely in regard to any of the provisions hereof shall be deemed guilty of perjury and shall be subject to all the penalties prescribed by law in the District of Columbia for that crime. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 652.)

CROSS REFERENCES

Application to fire, casualty, and marine insurance companies, § 35–101 and notes.

Application to life insurance, § 35–101 and notes.

Capital stock to be fully paid in cash, amount of capital, § 35–202.

Impairment of capital, § 35–201.

Inspection and examination of insurance companies, §§ 35–201, 35–202, 35–418, 35–903, 35–1313.

NOTES TO DECISIONS

GROUP HEALTH ASSOCIATION

Whether the decision is made on the technical legal character of the arrangements, the letter of the bond, or on a practical consideration of the functions performed by Group Health Association and the methods used by it in performing them, it properly cannot be brought within the laws relating to insurance or to organizations providing "for the payment of indemnity on account of sickness or accident." *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

Chapter 2.—PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF INSURANCE

Sec.

35–201. Life and fire insurance companies to maintain reinsurance reserves—Suspension of license upon impairment of capital stock—Penalty for acting for unlicensed company—Superintendent may make examination to determine impairment in capital, or insolvency.

35–202. "Health, accident, and life insurance companies" defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to commissioners— Fraternal beneficial and certain other organizations exempt.

35–203. Copy of application to be delivered with policy—Statements in application as defense.

35–204. Principal office to be in District of Columbia—Keeping and removing of records—Reincorporation of companies chartered by special acts—Penalties—Prosecutions.

35–205. Compensation insurance regulations—Facts to be filed with Superintendent of Insurance—Approval required—Withdrawal of approval—Petition for review—Time for filing.

§ 35–201 [5: 174]. Life and fire insurance companies to maintain reinsurance reserves—Suspension of license upon impairment of capital stock—Penalty for acting for unlicensed company—Superintendent may make examination to determine impairment in capital, or insolvency.

All life and fire insurance companies or associations licensed to do business in said District shall be required to maintain a reinsurance reserve fund; and whenever any such company or association not excepted from the operations hereof shall become insolvent or impaired to the extent of twenty-five per centum of its capital stock it shall be the duty of the superintendent to suspend its license; and unless such impairment or insolvency shall be made good within sixty days thereafter, it shall be the duty of the Superintendent of Insurance to revoke its license to do business in the District; and it shall be unlawful for any insurance company, association, or order to do business in the District without a license, or to continue business after the revocation of its license, and any such company or association violating this provision shall be liable to a penalty of twenty

dollars for each day it transacts business without such license, to be recovered by the commissioners of the District by an action of debt in any court of the District of competent jurisdiction. And any person who shall aid in carrying on the business of any such company, or shall act as agent or solicitor for any company not licensed to do business in said District, or whose license is revoked, shall be guilty of a misdemeanor, and on conviction thereof in the police court of said District shall be punished by a fine not exceeding one hundred dollars, or, in default of payment thereof, by imprisonment in the jail of the District for not less than ten nor more than sixty days. And the Superintendent of Insurance shall issue such license to any such insurance company or association whenever it shall have complied with the provisions of section 35–102, subject, however, to the provisions of sections 35–1201, 35–1202: *Provided,* That the Superintendent of Insurance shall have power to make an official examination into the affairs of any insurance company or association organized under the laws of the District of Columbia, or having its principal office therein, at his discretion, for the purpose of ascertaining whether such company is impaired or insolvent, as aforesaid. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 648.)

COMPILER'S NOTES

This section as enacted contains at the beginning the following: "No fire insurance company, except mutual fire insurance companies organized in the District of Columbia under special act of Congress or the general laws of said District, or mutual companies of other States licensed to do business in the said District, which has a paid-up capital of less than one hundred thousand dollars, shall be permitted to do business therein, and." Sections 35–1103 and 35–1316, of this code provide for the paid-in capital stock of fire insurance companies.

The act of June 19, 1934, 48 Stat. 1177, ch. 672, ch. VI, § 4, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3–8 of this title) are hereby repealed." See notes to § 35–101.

Any provisions of this chapter in conflict with the "Fire and Casualty Act" (act of Oct. 9, 1940, 54 Stat. 1063, ch. 792), chapter 13 of this title, have been repealed. Section 46 of said act provided as follows: "All laws or parts of laws, insofar as they relate to business affected hereby, and are in conflict with any of the provisions of this act, are hereby repealed."

CROSS REFERENCES

Application of this chapter to marine insurance companies, § 35–1102.

Benefits from health and accident insurance are not subject to claims of creditors, § 35–717.

Capital and surplus of fire, casualty, and marine insurance companies, § 35–1316.

Capital, reserves, and deposits of life insurance companies, § 35–415 to 35–417.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Impairment of capital, § 35–202.

Insolvency or impairment of capital or surplus of fire, casualty, or marine companies, receivership, §§ 35–1306, 35–1308 to 35–1310.

Inspection and examination of insurance companies, §§ 35–108, 35–202, 35–418, 35–903, 35–1313.

Licensing fire, casualty, and marine insurance companies, § 35–1305.

Life insurance companies may reinsure, § 35–537.

Minors may contract for health and accident insurance, § 35–430.

Revocation or suspension of license, § 35–102 and notes.

Stock required to be fully paid for in cash, § 35–108.

§ 35–202 [5: 179]. "Health, accident, and life insurance companies" defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to Commissioners—Fraternal beneficial and certain other organizations exempt.

Every corporation, joint-stock company, or association not exempt herein, transacting business in the District of Columbia, which collects premiums, dues, or assessments from its members or from holders of its certificates or policies, and which provides for the payment of indemnity on account of sickness or accident, or a benefit in case of death, shall be known as "health, accident, and life insurance companies or associations." No such company or association shall transact business within the District of Columbia unless it shall have in assets or in capital stock fully paid up in cash, or in both together, not less than twenty-five thousand dollars as a capital or guarantee fund; which assets may be invested in United States, State, county, municipal bonds, and bonds of the District of Columbia, or railroad bonds; but investments in the bonds of railroads shall be limited to the bonds of those railroads which have paid dividends on their capital stock for the ten years immediately previous to the date of the investment; or in improved real estate, or in first mortgages on improved real estate; but no loan on real estate shall be made for an amount exceeding seventy per centum of its assessed value, such investments to be approved by the Superintendent of Insurance of the District of Columbia. No such health, accident, and life insurance company or association, transacting on August 15, 1911, or thereafter the business of health, accident, and life insurance, or either or all said kinds of insurance, in the District of Columbia shall issue policies or certificates providing, either singly or in aggregate, a greater accident or death benefit than five hundred dollars, or a greater weekly indemnity than twenty dollars, on any one person unless such company or association has in assets or in capital stock fully paid up in cash, or in both together, not less than one hundred thousand dollars invested and approved as aforesaid. Every such company or association shall pay to the collector of taxes for the District of Columbia a sum of money, as tax, equal to one per centum of all moneys received from members of policy or certificate holders within the District of Columbia, said tax to be paid on or before the 1st day of March of each year on the amount of such income for the year ending December 31st next preceding; and shall also file annually with said Superintendent of Insurance, on or before the 1st day of March of each year, a sworn statement, on blanks furnished by said Superintendent of Insurance, showing its true financial condition, income, disbursements, assets, and liabilities on the 31st day of December next preceding, and such other information as said Superintendent of Insurance may require; and shall pay to the said collector of taxes ten dollars for filing such statement. Said Superintendent of Insurance

shall examine from time to time and at least as often as once a year all companies or associations described herein; and when he finds the capital stock of any such company impaired or its assets reduced in value to an amount less than required by the provisions hereof he shall at once give notice of said fact to said company or association, and unless said impairment is made good within sixty days after said notice, it shall be the duty of said superintendent to revoke or suspend the license of said company or association until such impairment shall have been made good; and any company or association that issues policies or certificates of insurance as described herein without a license from said superintendent or during a suspension thereof, as herein provided, shall be fined not less than twenty dollars nor more than one hundred dollars per day: *Provided,* That if any such company or association shall feel aggrieved by the decision of said superintendent concerning the investment or impairment of its assets or capital stock, it shall have the right to appeal, within ten days, from the decision of said superintendent to the Board of Commissioners of the District of Columbia, who shall prescribe rules and regulations for the hearing of said appeal, and their decision shall be final: *Provided also,* That when any such company or association shall have complied with the provisions contained herein, the Superintendent of Insurance shall issue to it a license to transact its business in the District of Columbia: *Provided, however,* That nothing contained in this section shall interfere with or abridge the rights of any fraternal beneficial association licensed to transact business under sections 35–901 to 35–917, or incorporated by special act of Congress: *And provided further,* That nothing contained herein shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army or Navy, or solely of employees of any other branch of the United States government service, or solely of employees of any individual, company, firm, or corporation.

Nothing herein contained shall repeal or affect the other provisions of sections 35–101 to 35–108 regulating foreign corporations, or corporations, associations, or companies who are nonresidents of the District of Columbia (to whom the provisions of this section shall also be applicable), or the provisions of section 35–108 relating to inquiry into the affairs of District companies. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 653; Aug. 15, 1911, 37 Stat. 16, ch. 12, §§ 1, 2.)

Compiler's Notes

The first paragraph of this section is the first section of the act of August 15, 1911. The second paragraph of this section is the proviso clause of the second section of that act. The first part of § 2 of the act of August 15, 1911, was "That all Acts and parts of Acts inconsistent herewith be, and the same are hereby, repealed: *Provided,* That."

Act of August 15, 1911, also contained a provision making the second sentence effective 90 days after its passage.

This section is, largely if not wholly, superseded by chapter 13 of this title, see notes to § 35–201.

This section is superseded, in part, by chapter 18 of title 47.

Amendment

Prior to the 1911 amendment, which struck out the original section, this section contained provisions relating to companies transacting life insurance on the assessment plan, exempting them from the provisions of § 35–108 and providing for the furnishing of annual statements by such companies.

Cross References

Appeals under "Fire and Casualty Act," §§ 35–1348, 35–1349.

Capital and surplus of fire, casualty, and marine insurance companies, § 35–1316.

Capital, reserves, and deposits of life insurance companies, §§ 35–415 to 35–417.

Excepted from application of marine insurance provisions, § 35–1103.

Health and accident insurance may be written under the "Fire and Casualty Act," § 35–1314.

Inspection and examination of insurance companies, §§ 35–108, 35–201, 35–418, 35–903, 35–1313.

Investments for life insurance companies, §§ 35–535, 35–536.

Investments for marine insurance companies, §§ 35–1118, 35–1119.

Other provisions concerning annual statement and taxes, §§ 35–103 to 35–105, 35–1311, 47–1801 et seq.

Other provisions concerning investments, § 35–1321.

Provisions for formation of companies, § 35–501, subd. (d).

Required policy provisions for health and accident insurance, §§ 35–712, 35–1332.

Revocation or suspension of license, see notes to § 35–102.

NOTES TO DECISIONS

Application for Reinstatement

This provision applies to an application for the reinstatement of a lapsed policy. *Metropolitan Life Ins. Co.* v. *Burch* (39 App. D. C. 397).

Benefit Order

Grand Lodge of Brotherhood of Railroad Trainmen is a benefit order, within the meaning of the section, as amended, and subject to its provisions. *Brotherhood of Railroad Trainmen* v. *Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184).

Entire Application

Copy of entire application must be attached; "it is not left to the discretion of the insurer to select such parts of the application as it may deem material for delivery with its policy." *Metropolitan Life Ins. Co.* v. *Hawkins* (31 App. D. C. 493).

Fraudulent Representations

This applies to fraudulent representations in application for previous policy made part of second policy. *Northwestern Mut. Life Ins. Co.* v. *Gott* (62 App. D. C. 379, 68 Fed. (2d) 426).

Group Health Association

Apart from any specific exemption, the business of appellee Group Health Association is not that of insurance to bring it within this section of statute. *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

The appellee Group Health Association held to be a distributing, not an accumulating agency, and to require it to maintain a guarantee fund was not the intent of Congress. *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

It is not necessary to decide whether the exemption or definition of health and accident insurance companies has any effect upon the regulations prescribed by other sections of the code. Apart from any specific exemption the business of the Group Health Association is not that of insurance so as to bring it within those sections. *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

Payment of Indemnity

This provision does not include all "insurance" companies, but only those which provide for the "payment of indemnity on account of sickness." The statute does not include necessarily contracts "to indemnify," but is limited to those which provide for the "payment" of in-

demnity. The word "payment" is not used as equivalent to "indemnify." *Group Health Assn.* v. *Moor* ((D. C.-D. C.), 24 Fed. Supp. 445).

REPORT BY RECEIVERS

Where business of insurance association has been so injured by ill will and protracted litigation among the stockholders that it has become insolvent, and its capital and reserve have been seriously impaired, receivers pendente lite were properly appointed to take possession of its assets and to report on the condition of its affairs. *Provident Relief Assn.* v. *Vernon* (57 App. D. C. 235, 19 Fed. (2d) 709).

RESERVES

There is no provision of the general law broad enough to cover regulations governing in the minutest detail the operation and business of an insurance company, but the statute itself makes a clear distinction between stock companies and mutual companies with respect to maintaining a reserve. *Hutchins Mut. Ins. Co.* v. *Hazen* (70 App. D. C. 174, 105 Fed. (2d) 53).

§ 35–203 [5: 183]. Copy of application to be delivered with policy—Statements in application as defense.

Each life insurance company, benefit order, and association doing a life insurance business in the District of Columbia shall deliver with each policy issued by it a copy of the application made by the insured so that the whole contract may appear in said application and policy, in default of which no defense shall be allowed to such policy on account of anything contained in, or omitted from, such application. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 657; June 30, 1902, 32 Stat. 534, ch. 1329.)

COMPILER'S NOTE

This section is largely superseded by §§ 35–703, subd. (3); 35–705, subd. (3); 35–711, subd. (2).

AMENDMENT

Prior to its amendment in 1902 this section read "Each life insurance company doing business in the District of Columbia shall attach to each policy issued by such company a copy of the application made by the insured, so that the whole contract may appear in said application and policy."

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Prior to the amendment by the act of June 30, 1902, this section "did not cover policies (certificates) issued by fraternal beneficial associations." *Brotherhood of Railroad Trainmen* v. *Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184.)

IN GENERAL

"This section was intended to remedy a mischief and is to be given a liberal interpretation to that end." *Metropolitan Life Ins. Co.* v. *Burch* (39 App. D. C. 397).

ENTIRE CONTRACT

Purpose in adopting this section was to compel insurance companies, whether old line or fraternal, to state the entire contract either in the policy or the policy and application, so that the insured would be able to find the terms defining his obligations and rights as a policyholder in not more than two papers. *Brotherhood of Railroad Trainmen* v. *Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184).

INCORPORATION BY REFERENCE

This section could not be satisfied by making a section of the constitution of the insurer a part of the contract by reference, for it requires an actual incorporation in the certificate and application of every element of the agreement "so that the whole contract may appear in said application and policy." *Brotherhood of Railroad Trainmen* v. *Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184).

MISSTATEMENT OF AGE

Misstatement of age is no defense where copy of application was not delivered "with the policy or at any other time." *Brotherhood of Railroad Trainmen* v. *Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184).

ORAL APPLICATION

This provision does not extend to an oral application. *Washington Fidelity Nat. Ins. Co.* v. *Burton* (287 U. S. 97, 77 L. Ed. 196, 53 Sup. Ct. 26, revg. 61 App. D. C. 3, 56 Fed. (2d) 300).

POLICY CONSTITUTING CONTRACT

Where a life policy by its terms constitutes the entire agreement, this section does not prevent an insurer from basing a defense on a policy provision stating that if within two years of date of issue insured has received treatment or has been attended by any physician for any serious disease, the policy should be voidable unless reference to such treatment is endorsed on the policy, even though the policy was issued on a written application and no copy of the application was delivered with the policy. *Pullen* v. *Sun Life Ins. Co. of America*, 1941 (121 F. 2d 110, 74 App. D. C. 197, certiorari denied 62 S. Ct. 112, 314 U. S. 613, 86 L. Ed. 494).

Where written application, if there was one, was not delivered with industrial life policy, but policy by its terms constituted the entire agreement, this section did not prevent insurer from making any defense that it had under the terms of the policy. *Eureka-Maryland Assur. Co.* v. *Gray*, 1941 (121 F. 2d 104, 74 App. D. C. 191, certiorari denied 62 S. Ct. 114, 314 U. S. 613, 86 L. Ed. 494).

PRELIMINARY REPORT OF AGENT

A preliminary report, signed only by the agent, intended for the general information of the company and not referred to in the policy, is no part of the contract of insurance and need not be attached thereto. *Griffin* v. *Metropolitan Life Ins. Co.* (36 App. D. C. 8).

PROVISIONS OUTSIDE CONTRACT

"No provision in the rules or elsewhere of an insurance company or fraternal order which was not physically embodied in the policy or application should be regarded as a part of the contract." *Brotherhood of Railroad Trainmen* v. *Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184).

§ 35–204 [5: 183a]. Principal office to be in District of Columbia—Keeping and removing of records—Reincorporation of companies chartered by special acts—Penalties—Prosecutions.

Any corporation now or hereafter formed or organized under any provision of law in force and effect in the District of Columbia to engage in an insurance business shall maintain its principal office within said District and shall keep its books, records, and files therein, and shall not remove from said District either its principal office or its books, records, or files without the permission of the Commissioners of the District of Columbia first had and obtained: *Provided, however,* That nothing contained in this section shall be construed to apply to the books, records, and files of any such corporation kept in a branch-office agency of such corporation, which books, records, and files relate solely to the business transacted by the said branch-office agency: *And provided further,* That any insurance corporation created by special Act of Congress is authorized upon resolution of its board of directors or trustees to reincorporate under the laws of any State of the United States, a certified copy of such resolution of such board of directors or trustees having first been filed in the office of the Superintendent of Insurance of the District of Columbia and recorded in the office

of the Recorder of Deeds of the District of Columbia. Upon compliance with the above conditions, the assets of the said corporation shall thereby become vested in the new corporation. Said new corporation shall faithfully carry out any and every right, obligation, and liability of said original corporation.

Any corporation violating any of the provisions of this section shall forthwith forfeit its charter, which forfeiture shall operate as a revocation of its license to do business within said District.

Any officer, agent, or employee of any such corporation who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall pay a fine of not less than $300 or be imprisoned for not more than ninety days, or by both such fine and imprisonment. All prosecutions under this section shall be upon information filed in the police court of the District of Columbia in the name of the District of Columbia by the corporation counsel thereof or any of his assistants. (Mar. 3, 1901, ch. 854, as added May 17, 1932, 47 Stat. 158, ch. 189.)

CROSS REFERENCES

Application to fire, casualty, and marine companies, see notes to § 35–201.

Application to life insurance, see notes to § 35–201.

Revocation or suspension of license, see notes to § 35–102.

§ 35–205 [5: 183b]. Compensation insurance regulations—Facts to be filed with Superintendent of Insurance—Approval required—Withdrawal of approval—Petition for review—Time for filing.

Every insurance corporation or association authorized to transact business in the District of Columbia, which insures employers against liability for compensation under the Employees' Compensation Act, shall file with the Superintendent of Insurance its manual of classifications and underwriting rules, together with basic rates for each class, and also merit rating plans designed to modify the class rates, none of which shall take effect until the Superintendent of Insurance shall have approved the same as adequate and reasonable for the group of risks to which they respectively apply. The Superintendent of Insurance may withdraw his approval of any premium rate or schedule made by any insurance corporation or association, if, in his judgment, such premium rate or schedule is inadequate or unreasonable: *Provided,* That upon petition of the company or association or any other party aggrieved the opinion of the Superintendent of Insurance shall be subject to review by the District Court of the United States for the District of Columbia: *Provided further,* That any petition for review shall be filed with said court within thirty days after the rendition of opinion by the Superintendent of Insurance. (Mar. 3, 1901, ch. 854, as added April 16, 1934, 48 Stat. 592, ch. 144.)

Chapter 3.—LIFE INSURANCE ACT—DEFINITIONS

Sec.
35–301. Short title—Application of law.
35–302. Definitions.

§ 35–301 [5: 216]. Short title—Application of law.

Chapters 3 to 8 of this title shall be known as the "Life Insurance Act." All life-insurance companies now or hereafter incorporated or formed by authority of any general or special law of this District or by other Act of Congress, and all foreign and alien companies authorized to do business in this District, shall be subject to said chapters. (June 19, 1934, 48 Stat. 1127, ch. 672, § 1, ch. I.)

COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, ch. VI, § 4, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any of the provisions of this act (Life Insurance Act, Chapters 3–8), are hereby repealed."

Section 5, chapter VI, of this act provided as follows: "This act shall become effective immediately upon passage and approval."

CROSS REFERENCE

Application to existing companies, § 35–520.

§ 35–302 [5: 216a]. Definitions.

In chapters 3–8 of this title, unless the context otherwise requires—

"District" means the District of Columbia;

"Commissioners" means the commissioners of the District of Columbia;

"Superintendent" means the Superintendent of Insurance of the District of Columbia;

"Department" means the Department of Insurance of the District of Columbia;

"Company" means any life insurance company and includes a corporation, company, or association of persons engaged in or proposing to engage in the business of life insurance;

"Domestic company" means an insurance company organized under the laws of the District, or formed or organized under an Act of Congress;

"Foreign company" means an insurance company organized under the laws of any State of the United States, or of any Territory or insular possession of the United States;

"Alien company" means a company organized under the laws of any country other than the United States or a Territory or insular possession thereof;

"Person" includes individuals, corporations, associations, and partnerships; personal pronouns include all genders; the singular includes the plural, and the plural includes the singular;

The term "general agent" in chapters 3–8 of this title shall include an individual, copartnership, or corporation authorized in writing by a company, association, or exchange to solicit risks and collect premiums, and/or issue policies in its behalf.

The term "agent" in chapters 3–8 of this title shall include an individual, copartnership, or corporation authorized in writing by a company, association, or exchange to solicit risks and collect premiums in its behalf.

The term "solicitor" in chapters 3–8 of this title shall include any individuals authorized in writing by a duly-licensed agent to solicit risks and collect premiums in behalf of said agent.

The terms "agent" and "solicitor" shall not include officers or salaried employees of any company, association, or exchange which is authorized to transact

business in the District, who do not solicit, negotiate, or place risks.

The term "broker" in chapters 3–8 of this title shall include consultant, surveyor and/or any person, partnership, association, or corporation who, for money, commission, or anything of value, acts or aids in any manner on behalf of the insured in negotiating contracts of insurance or placing risks or taking out insurances, including surety bonds;

"Net premium receipts" means gross premiums received less the sum of the following:

1. Premiums returned on policies canceled or not taken;

2. Premiums paid for reinsurances where the same are paid to companies duly licensed to do business in the District; and

3. Dividends paid in cash or used by policyholders in payment of renewal premiums or in purchase of paid-up additional insurance.

"Surplus" means the excess of admitted assets over liabilities and capital, in the case of a company with capital stock, and the excess of admitted assets over liabilities in the case of a company without capital stock;

"Liabilities" means all debts, due or to become due, contingent or otherwise, of which the company has knowledge, and includes the reserves required by chapters 3–8 of this title;

"Industrial life insurance" means that form of life insurance, either (a) under which the premiums are payable weekly, or (b) under which the premiums are payable monthly or oftener, if the face amount of insurance provided in the policy is less than $1,000, and the words "industrial policy" are plainly printed upon the policy as a part of the descriptive matter. (June 19, 1934, 48 Stat. 1128, ch. 672, § 2, ch. I.)

Chapter 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

Sec.

35–401. Insurance department—Superintendent of Insurance — Oath — Bond—Assistants—Seal—Sealed instruments as evidence—Annual report—Attendance at conventions—Visits—Expenses.
35–402. Fees and charges.
35–403. Refunds of excess in fees, charges, or taxes.
35–404. Certificate of authority—Effect—Issuance.
35–405. Revocation of certificate of authority—Notice.
35–406. Annual statement forms to be furnished by superintendent.
35–407. Annual statement—Verification—Failure to make.
35–408. Penalty for false statement.
35–409. Deceptive statements prohibited.
35–410. Contents of advertisements—Penalty for violation.
35–411. Defamation of companies—Penalty.
35–412. Superintendent to have power to issue subpoenas—Enforcement.
35–413. Enforcement of superintendent's orders or actions.
35–414. False statements in application for insurance.
35–415. General deposit—Amount—Deposits outside District.
35–416. Custody of general deposits—Collection of income—Substitution of securities—Required securities.
35–417. Withdrawal of general deposits—Notice—Examination—Bond—Reinsurance—Notice.
35–418. Examinations — Reports —Verification — Hearing upon—Publication—Expense.
35–419. Superintendent may take possession of property of company and conduct its business—Conditions precedent—Procedure—Injunction—Resumption of possession by company—Order for liquidation—Appointment of deputies—Expense of liquidation—Bond—Annual report.
35–420. When company to be deemed insolvent.
35–421. Reinsurance by superintendent.
35–422. Valuation of assets—Rule—Discretion of superintendent.
35–423. Appointment of superintendent as attorney for service of process—Superintendent to mail process to company—Acceptance of certificate is appointment—Failure—Penalty.
35–424. Political contributions prohibited—Penalty—Immunity of witnesses.
35–425. General agent, agent, solicitor—License required — Application — Contents — Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.
35–426. Suspension or revocation of license—Grounds for—Notice of—Hearing—Penalty.
35–427. Appeal from rulings of superintendent—Procedure—Costs and supersedeas bond—Liability of superintendent.
35–428. Brokers—License—Application—Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation.
35–429. Premiums paid to agent—Agent trustee—Embezzlement—Penalty.
35–430. Contract of minors for life, health, and accident insurance—Beneficiaries—Surrender and discharge.
35–431. Assessment companies shall not be formed, admitted or licensed.
35–432 Appeal from superintendent to commissioners.

§ 35–401 [5: 217]. Insurance department — Superintendent of Insurance—Oath—Bond—Assistants—Seal—Sealed instruments as evidence—Annual report—Attendance at conventions—Visits—Expenses.

There shall be continued in the District a department charged with the execution of the laws relating to insurance, to be called the "Department of Insurance of the District of Columbia." At the head of such department there shall be a Superintendent of Insurance, who shall devote his entire service to the department. He shall be appointed by and hold his office at the pleasure of the commissioners. The superintendent, during his term of office, shall not be interested in the business of any insurance company except as a policyholder. He shall take and subscribe an oath of office which shall be filed with the commissioners. In said department there shall be also two deputy superintendents and such other personnel as may be necessary within appropriations annually made by Congress for said department. The compensation of the superintendent, deputy superintendents, and other personnel shall be fixed in accordance with the provisions of the Classification Act of 1923, as amended (U. S. C., title 5, § 673).

In case of the absence or inability of the superintendent, or in the event of the removal of the superintendent, and pending the appointment of his successor, one of the deputy superintendents shall perform the duties of the superintendent.

The commissioners shall provide the department with an official seal, which shall be the seal of the District of Columbia surrounded by a border in which shall appear "Department of Insurance of the District of Columbia."

Every certificate and other document or paper executed by such superintendent, or his deputies, in pursuance of any authority conferred upon him by law and sealed with the seal of his office, and all copies of papers certified by him or by his deputies and authenticated by said seal, shall, in all cases, be evidence equally and in like manner as the original thereof and shall have the same force and effect as would the original in any suit or proceeding in any court of this District.

The office of the superintendent shall be a public office, and the records, books, and papers thereof on file therein shall be public records of the District, except as it may be provided otherwise herein.

The superintendent shall report annually to the commissioners his official transactions, and shall include in such report abstracts of the annual statements of the several companies and an exhibit of the financial condition and business transactions of the same as shown by their annual statements. He shall also include therein a statement of the receipts and expenditures of the department for the preceding year and such recommendations relative to insurance and the insurance laws of the District as he shall deem proper.

The superintendent is authorized to attend and participate in the meetings of the national convention of insurance commissioners and of the committees thereof; he is also authorized to visit the insurance departments of the various states when in his judgment such visits are necessary for the proper conduct of his official office; and he may require such of his assistants as he may designate to attend and participate in such meetings, all subject to the prior approval of the commissioners. The actual expense of such attendance by the superintendent and his assistants shall be paid in like manner as other expenses of the District are paid. (June 19, 1934, 48 Stat. 1129, ch. 672, § 1, ch. II.)

COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, ch. VI, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3–8), are hereby repealed."

Section 5, chapter VI, of this act provides as follows: "This act shall become effective immediately upon passage and approval."

CROSS REFERENCES

Application to existing companies, § 35–520.
Other provisions concerning insurance department, § 35–101 et seq.

§ 35–402 [5: 217a]. Fees and charges.

All charges and fees provided for in this section shall be paid to the collector of taxes of the District of Columbia and deposited in the treasury of the United States to the credit of the District.

For filing charter or articles of incorporation or association, or deed of settlement or copy thereof, required by law, $10; for each company certificate of authority, $10; for license of each general agent, $50; for license of each agent or solicitor, $5; for license of each broker, $50. All licenses for brokers, insurance companies, their agents or solicitors, who may apply for permission to do business in the District of Columbia, shall date from the first of the month in which application is made and expire on the 30th day of April following, and payment shall be made in proportion. (June 19, 1934, 48 Stat. 1130, ch. 672, § 2, ch. II.)

COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.

CROSS REFERENCES

Licensing agents, § 35–425 et seq.
Licensing brokers, § 35–428.

§ 35–403 [5: 217b]. Refunds of excess in fees, charges, or taxes.

Whenever it appears to the satisfaction of the superintendent that because of some error, mistake, or erroneous interpretation of a statute, a company has paid fees, charges, or taxes in excess of the amount legally chargeable against it, the superintendent shall, on application of the company, present the matter to the commissioners, with the view of refunding to such company any such excess, or applying the excess or portion thereof toward the payment of fees, charges, or taxes already due from such company. (June 19, 1934, 48 Stat. 1131, ch. 672, § 4, ch. II.)

CROSS REFERENCES

General provisions concerning tax refunds, § 47–1017 et seq.
Refund of fees when license is refused, § 47–1018.

§ 35–404 [5: 217c]. Certificate of authority—Effect—Issuance.

It shall be the duty of the superintendent to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to entitle it to do business therein. In each case the certificate shall be issued under the seal of the superintendent authorizing and empowering the company to transact the kind or kinds of business specified in the certificate. No company shall transact any business of insurance in the District until it shall have received a certificate of authority as herein prescribed and no company shall transact any business of insurance not specified in such certificate of authority. Before a company shall be authorized to transact business within the District the superintendent shall be satisfied by such examination as he may make or such evidence as he may require that such company is duly qualified under the laws of the District to transact business therein. (June 19, 1934, 48 Stat. 1131, ch. 672, § 5, ch. II.)

CROSS REFERENCES

Assessment companies forbidden, § 35–431.
Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.
Revocation of certificate of authority, § 35–405.

§ 35–405 [5: 217d]. Revocation of certificate of authority—Notice.

If the superintendent shall find that a domestic, foreign, or alien company is insolvent, or that it does not have the surplus required by chapters 3–8 of this title and invested as by chapters 3–8 of this title required, or that it does not have the surplus or whose policyholders do not have the contingent assessment liability required by chapters 3–8 of this title; or, if an alien company, that it does not have a surplus required by chapters 3–8 of this title and invested as by chapters 3–8 of this title required in the United States; or, if an alien company, that it does not have the deposit required by chapters 3–8 of this title; or, if he finds that the authorized capital of any domestic, foreign, or alien capital stock company is impaired and the company is not promptly restoring the deficiency or reducing its capital; or, that any domestic, foreign, or alien company has violated or failed to comply with the law or its charter; or, that the company or any of its officers has wilfully refused or failed to submit to examination or to perform any obligation relative thereto, he may revoke the certificate of authority of such company and thereafter no new insurance business shall be transacted by the company or its agents until the superintendent shall issue a new certificate of authority to the company.

The superintendent shall not revoke the certificate of authority of any company until he has given the company not less than thirty days' notice of the proposed revocation and of the grounds alleged therefor and has afforded the company an opportunity to show that its certificate of authority should not be revoked. When the further transaction of business would be hazardous to the policyholders of any company, the superintendent may suspend the certificate of authority without giving notice as above required: *Provided,* That in lieu of revoking the certificate of authority of any company for causes enumerated in this section, after hearing as herein provided, the superintendent may subject such company to a penalty of not more than $200 when in his judgment he finds that public interest would be best served by the continued operation of the company. The amount of any such penalty shall be paid by the company through the office of the superintendent to the collector of taxes of the District of Columbia. (June 19, 1934, 48 Stat. 1131, ch. 672, § 6, ch. II; May 4, 1950, 64 Stat. 103, ch. 157, § 1.)

AMENDMENTS

The act of May 4, 1950, cited to text, added the proviso at the end of the section. Sec. 8 of said act provided as follows: "This Act shall take effect ninety days after the date of enactment."

CROSS REFERENCE

Revocation and suspension of licenses, see notes to § 35–102.

§ 35–406 [5: 217e]. Annual statement forms to be furnished by Superintendent.

The superintendent shall, annually, in the month of December, furnish to each of the companies authorized to do business in the District and required to make an annual statement to the Department two or more blanks in form adapted for such statements, and which shall conform as nearly as may be practicable to the form of statement from time to time adopted by the national convention of insurance commissioners. (June 19, 1934, 48 Stat. 1132, ch. 672, § 7, ch. II.)

COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.

§ 35–407 [5: 217f]. Annual statement — Verification — Failure to make.

Every company doing business in the District shall file with the superintendent before March 1 in each year a financial statement for the year ending December 31, immediately preceding, on forms furnished by the superintendent. Such statement shall be verified by the oaths of the president and secretary of the company, or, in their absence, by two other principal officers. The statement of an alien company shall embrace only its condition and transactions in the United States and shall be verified by the oath of its resident manager or principal representative in the United States. In case a company shall fail to make and file its annual statement within the time herein prescribed its authority to transact business in the District shall thereupon terminate. (June 19, 1934, 48 Stat. 1132, ch. 672, § 8, ch. II.)

COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.

§ 35–408 [5: 217g]. Penalty for false statement.

A director, officer, agent, or employee of any company who wilfully and knowingly subscribes, makes, or concurs in making or publishing any annual or other statement required by law, containing any material statement which is false, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not less than two nor more than ten years. A person who wilfully and knowingly makes oath to any such false statement shall be guilty of perjury. (June 19, 1934, 48 Stat. 1132, ch. 672, § 9, ch. II.)

COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.

§ 35–409 [5: 217h]. Deceptive statements prohibited.

No company doing business in the District or agent thereof shall state or represent by advertisement in any newspaper, periodical, or magazine, or by any sign, circular, card, policy of insurance, or certificate of renewal thereof or otherwise that any funds or assets are in possession of such company which are not actually possessed by it and available for the payment of losses and claims and held for the protection of its policyholders and creditors. (June 19, 1934, 48 Stat. 1132, ch. 672, § 10, ch. II.)

COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.

§ 35–410 [5: 217i]. Contents of advertisements—Penalty for violation.

Every advertisement or public announcement and every sign, circular, or card issued by any domestic,

foreign, or alien company doing business in the District representing its financial standing shall exhibit the amount of the capital stock actually paid up in cash, the assets owned, the liabilities, including therein the premium and loss reserves required by law, and the amount of surplus, and shall correspond to the next preceding verified statement made to the superintendent by such company. Every advertisement or public announcement and every sign, circular, or card issued by an alien company doing business in the District, representing its financial standing shall exhibit as capital stock and assets only the capital stock and assets held by its United States branch, the liabilities, including therein the premium and loss reserves required by law, and the amount of surplus, and shall correspond to the next preceding verified statement made by such company to the superintendent.

Any violation of this section or section 35–409 shall be a misdemeanor, and any person convicted of such violation shall, for the first offense, be liable to a fine of not more than $500, and for each subsequent offense shall be liable to a fine of not more than $1,000. (June 19, 1934, 48 Stat. 1132, ch. 672, § 11, ch. II.)

§ 35–411 [5: 217j]. Defamation of companies—Penalty.

It shall be unlawful for any company now or hereafter doing business in the District, or any officer, director, clerk, employee, general agent, agent, or solicitor thereof, broker or any other person, to make, verbally or otherwise, publish, print, distribute, or circulate, or cause the same to be done, or in any way to aid, abet, or encourage the making, printing, publishing, distributing, or circulating of, any pamphlet, circular, article, literature, or statement of any kind which is defamatory of any company now or hereafter doing business in the District, or which contains any false criticism or false statement calculated to injure such company in its reputation or business; and any officer, director, clerk, employee, general agent, agent, or solicitor of any company, broker or any other person, violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $100. (June 19, 1934, 48 Stat. 1133, ch. 672, § 12, ch. II.)

§ 35–412 [5: 217k]. Superintendent to have power to issue subpœnas—Enforcement.

In the examination of any company as provided for in chapters 3–8 of this title the superintendent shall have power to issue subpœnas in the name of the Chief Justice of the District Court of the United States for the District of Columbia to compel witnesses to appear and testify and/or to produce all books, records, papers, or documents before said superintendent.

If any witness having been personally summoned shall neglect or refuse to obey the subpena issued as herein provided, then and in that event the superintendent may report that fact to the District Court of the United States for the District of Columbia, or one of the justices thereof, and said court, or any justice thereof, hereby is empowered to compel obedience to said subpena to the same extent as witnesses may be compelled to obey the subpenas of that court. (June 19, 1934, 48 Stat. 1133, ch. 672, § 13, ch. II.)

§ 35–413 [5: 217*l*]. Enforcement of superintendent's orders or actions.

The superintendent may, through the corporation counsel of the District, invoke the aid of any court of competent jurisdiction to enforce any order made or action taken by him in pursuance of law. (June 19, 1934, 48 Stat. 1133, ch. 672, § 14, ch. II.)

§ 35–414 [5: 217m]. False statements in application for insurance.

The falsity of a statement in the application for any policy of insurance shall not bar the right to recovery thereunder unless such false statement was made with intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the company. (June 19, 1934, 48 Stat. 1133, ch. 672, § 15, ch. II.)

CROSS REFERENCES

Form and contents of insurance contracts, §§ 35–703 to 35–712.

Special provisions governing industrial policies, § 35–1001 et seq.

NOTES TO DECISIONS

BURDEN OF PROOF

Where insurer charged that insured prior to application for life policy had had duodenal ulcer, abnormal blood pressure, dizziness, loss of consciousness and kidney disease, and that in application he falsely denied their existence, to avoid life policy for material misrepresentation on account of answers, insurer had burden of proving one or more of them false. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

Under this section insurer has burden of proof as to elements indicated in order to avoid life policy. *Metropolitan Life Ins. Co.* v. *Adams* (D. C. Mun. App. 1944, 37 A. 2d 345).

CHANGE OF BENEFICIARY

An erroneous statement in an application for change of beneficiary which does not relate to a material matter and is not made with intent to deceive, does not void a life policy. *Carter* v. *Provident Ins. Co.,* 1941 (122 F. 2d 960, 74 App. D. C. 348).

CONDITIONS PRECEDENT

The effect of this section enacted to prevent innocent and immaterial misrepresentations in application from avoiding insurance cannot be escaped by device of contracting to the contrary or labeling a contractual attempt to do so a condition to the attaching of the risk. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

The purpose of this section regarding effect of false statement in application for insurance was to nullify contractual provisions contrary to its terms, and therefore a so-called condition precedent is invalid to extent that it is more broadly effective than this section allows. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

Where application for life policy contained clause that policy should not take effect until received by insured and full first premium thereon was paid while conditions material to risk represented by statements in application remained same as described therein, and insurer contended that the clause made truth of statements conditions precedent to attaching of risk, the so-called "condition precedent" was invalid to extent that it was more broadly effective than permitted by this section regarding false

statements in application for insurance. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

EVIDENCE

Where evidence was conflicting whether hospitalization of insured and hospital record disclosing diagnosis of duodenal ulcer were genuine or fictitious, excluding evidence that insurance companies generally, and defendant insurer usually declined risk on finding a hospital record disclosing diagnosis of duodenal ulcer, was not error. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

Where insured's wife and companion testified that wife informed insurer's representative of insured's hospitalization not disclosed by application for life policy, refusing to permit insurer to cross-examine the wife and her companion concerning what was said in conversation with the representative as to change in beneficiary was not error, where insurer sought to avoid liability on ground of false statements in application. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

Evidence concerning insured's statements informing his wife, who was beneficiary of life policy, of hospitalization not disclosed by application was not objectionable on ground that statements were "self-serving declarations" and "hearsay", where evidence disclosed facts leading up to the wife's visit to insurer's representative the following day and reason for visit and were admissible to show that full disclosure of facts had been made to insurer's representative. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

Where insurer sought to avoid liability on life policy on ground that insured, prior to application, had had duodenal ulcer, abnormal blood pressure, dizziness, loss of consciousness, kidney disease, and in application falsely denied existence thereof, evidence sustained verdict against insurer. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

In action on life policy defended on ground of misrepresentations in application, objection to testimony of physician who attended insured as to what he treated insured for on ground of privilege was properly sustained. *Metropolitan Life Ins. Co.* v. *Adams* (D. C. Mun. App. 1944, 37 A. 2d 345).

Where insured stated "Don't remember when last ill" in answer to question in application for life policy, and undisputed evidence established that three months previously to applying for policy insured was so sick that he had to be carried out of bathroom and immediately thereafter was treated by two different physicians on not less than six occasions, insured's statement as matter of law constituted a false misrepresentation, preventing recovery on policy. *Metropolitan Life Ins. Co.* v. *Adams* (D. C. Mun. App. 1944, 37 A. 2d 345).

GENERALLY

To avoid life policy under this section, the statement must be both false and made with intent to deceive or material to risk or its acceptance, unless possibly both intent to deceive and materiality are required in addition to falsity. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

A misstatement in application for life policy to be "material to hazard assumed" within this section must be shown in some way to have affected the hazard assumed or contributed to the loss in a substantial manner. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

Where the insured stated in his application that he had not consulted a physician for any ailment or disease not included in his previous answers and that he had not consulted or been treated by a physician within the preceding five years, he was making a misrepresentation. Evidence shows as a matter of law that these misrepresentations materially affected either the acceptance of the risk or the hazard assumed by the company, or both. *Kaitlin* v. *Metropolitan Life Insurance Co.* (D. C. Mun. App. 1949, 65 A. 2d 188).

INSTRUCTIONS

In action on life policy defended on ground of misrepresentations in application which denied knowledge of heart trouble and medical attendance, instructions which submitted only issue as to whether there were misrepresentations as to heart trouble, and which failed to submit issue as to whether there were misrepresentations in regard to medical attendance, were erroneous. *Metropolitan Life Ins. Co.* v. *Adams* (D. C. Mun. App. 1944, 37 A. 2d 345).

NOTICE TO INSURER

Where insured's wife informed insurer's representative of hospitalization of insured not disclosed by application for life policy, in determining question of waiver by insurer, the representative's knowledge was to be considered "notice" to the insurer regardless of provision of policy that the representative had no power to bind the insurer by accepting any information. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

PURPOSE

This section providing that falsity of statement in application shall not bar right to recovery under policy unless statement was made with intent to deceive or unless it materially affected either acceptance of risk or hazard assumed by insurer, was intended to prevent innocent and immaterial misrepresentations in application from avoiding insurance. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

QUESTIONS FOR JURY

Where evidence was conflicting as to whether hospitalization of insured and hospital record disclosing diagnosis of duodenal ulcer were genuine or were fictitious, whether insured's answers in application for life policy which failed to disclose hospitalization and diagnosis were material to acceptance of risk was for jury. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

Where insurer contended that life policy did not take effect because of false statements in application regarding hospitalization and consultation of physician, evidence as to whether hospitalization was genuine or was fictitious for purpose of covering up alleged "social lapse" of insured caused by overdrinking at a wedding party, was for jury. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

Where evidence was conflicting regarding whether insured's hospitalization was genuine or fictitious, whether misstatements in application for life policy regarding hospitalization and consultation of physician were made with intent to deceive, and were material to hazard assumed or false within meaning of this section regarding effect of false statements in application, was for jury. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

VALIDITY OF POLICY

To void a life insurance policy on the ground of false representation, the answer must not only have been untrue, but it must have been with reference to a material matter. *Kaplan* v. *Manhattan Life Ins. Co.* (71 App. D. C. 250, 109 Fed. (2d) 463).

WAIVER

Where insured's wife informed insurer's representative of the fact, time and place of insured's hospitalization that had not been disclosed by application for life policy, and that wife thought insured was going to die, but representative informed wife that policy was not affected and

that she should continue premium payments, the disclosure was adequate to form basis for waiver. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

Where insurer's representative with authority to receive information on insurer's behalf and to forward complaints and controversies concerning matters affecting policy to insurer's home office received knowledge of existence of ground of forfeiture of life policy and failed to communicate it promptly to insurer's home office, insurer became charged with "notice" thereof so that where insurer received premiums and allowed matter to rest for nearly a month until insured's death "waiver" of ground of forfeiture was effectually completed. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

Where insurer's representative having authority to solicit risks and collect premiums was informed by insured's wife of hospitalization of insured not disclosed by application, and thereafter premiums were accepted and insurer and representative stood idle for nearly a month until insured's death, there was a "waiver", precluding insurer from avoiding liability because of insured's failure to disclose the hospitalization, notwithstanding provision of policy prohibiting the representative from waiving any forfeiture. *Prudential Ins. Co. of America* v. *Saxe,* 1943 (134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1132).

§ 35–415 [5: 217n]. General deposit—Amount—Deposits outside District.

Every company desiring to transact business in the District shall, as a prerequisite to the issuance of a certificate of authority, deposit, as herein provided, approved securities of not less than $100,000 market value. In the case of domestic companies, such deposit shall be made in the District as prescribed under section 35–416: *Provided,* That the deposit of every domestic company heretofore organized under the provisions of the laws of the District or other Act of Congress may, in the discretion of the superintendent, be limited (1) for stock companies, to an amount equal to the capital stock outstanding on June 19, 1934; (2) for nonstock companies, to such amount as in the opinion of the superintendent would be required from stock companies of comparable size. In no case shall the deposit of a domestic company be less than $25,000 in value. In the case of foreign or alien companies, the deposit may be made as provided under section 35–416, or may be made with the supervising official of any State, Territory, or insular possession of the United States authorized to accept such deposit, which shall be held for the benefit of all policyholders.

In the case of a deposit made with an official outside the District, a certificate of deposit from said official shall be filed with the superintendent, showing the character of the deposit, before a certificate of authority to transact business in the District may be issued, and, if the securities so deposited are not of the class authorized by chapters 3–8 of this title for investments of companies, the superintendent may require an additional deposit in approved securities. (June 19, 1934, 48 Stat. 1133, ch. 672, § 16, ch. II; May 20, 1940, 54 Stat. 217, ch. 204.)

AMENDMENT

The 1940 amendment substituted all that part of this section before the proviso for "Every company desiring to transact business in the District shall before being licensed, deposit approved securities of not less than $100,000 market value with the superintendent or the supervising official of any State, Territory, or insular possession of the United States authorized to accept such deposit, which shall be held for the benefit of all policyholders:" inserted the words, "in the discretion of the superintendent" in the proviso clause, inserted "in value" after "$25,000" in the third sentence and added the fourth sentence.

In the second paragraph the amendment of 1940 substituted "In the case of a deposit made with an official outside the District" for "If such deposit is made with an official other than the superintendent" and substituted "a certificate of authority" for "a license."

CROSS REFERENCES

Assessment companies forbidden, § 35–431.

Other provision concerning reserves and capital, § 35–201 et seq.

§ 35–416 [5: 217o]. Custody of general deposits—Collection of income—Substitution of securities—Required securities.

When any company is required by chapters 3–8 of this title to make a deposit in the District, such deposit shall be in securities of the class authorized by chapters 3–8 of this title for investments of companies, and shall be delivered by the company to the secretary of the Board of Commissioners of the District and the auditor of the District, who shall receive and hold the same subject to the lawful orders of the superintendent, and who shall be responsible for the safe-keeping of all securities deposited or delivered under the authority of this section. The company shall have the right to collect the income on deposited securities so long as it continues solvent and complies with the laws of the United States and of the District, and it shall have the right to substitute for such securities other securities, provided such substituted securities are of the character, amount, and value required by this section, and are approved by the superintendent: *Provided,* That not less than $25,000 of such deposit shall at all times consist of bonds or other evidences of indebtedness of the United States or of any state of the United States, or of any county or incorporated city of any state of the United States, and that securities of a class different from such bonds or other evidences of indebtedness shall not in any case be accepted for deposit except with the specific approval of and at values determined by the superintendent.

If the value of securities deposited by any company shall decline, the superintendent may require the company to make a further deposit, in order that the amount and value of the deposit required by chapters 3–8 of this title shall at all times be maintained. (June 19, 1934, 48 Stat. 1134, ch. 672, § 17, ch. II; May 20, 1940, 54 Stat. 217, ch. 204.)

AMENDMENT

This section prior to its amendment in 1940 read as follows: "When any company is required by the laws of the District, or of any State or county, or by other competent authority, to make a deposit with an insurance supervising official, or other financial officer, and where said deposit is made by the company in bonds or other evidence of indebtedness of the United States, or of any State of the United States, or of any county or incorporated city of any State of the United States, the said

securities shall be delivered to the Secretary of the Board of Commissioners of the District of Columbia, and the Auditor of the District of Columbia, who shall receive and hold the same, subject to the lawful orders of the Superintendent of Insurance, and who shall be responsible for the safekeeping of all securities deposited or delivered under the authority of this section, so long as the company continues solvent and complies with the laws of the United States and of the District of Columbia, and it may in that event collect the income on such securities. The company shall have the right to substitute therefor other securities, required by this section as lawful investment, provided such substitute securities are of the character, amount, and value called for by this section and are approved by the Superintendent of Insurance. If the value of the securities deposited by any company shall decline below the amounts so required, the company shall make a further deposit and maintain the deposit in the amount and value so required."

CROSS REFERENCES

Investment permitted, §§ 35–535, 35–536.
Other provisions concerning reserves and capital, § 35–201 et seq.

§ 35–417 [5: 217p]. Withdrawal of general deposits—Notice—Examination—Bond—Reinsurance—Notice.

When a company determines to discontinue its business or to cease to do business in the District and desires to withdraw its deposit made in the District pursuant to chapters 3–8 of this title the superintendent shall, upon the application of the company, and at its expense, give notice of such intention in a newspaper of general circulation in the District once a week for three consecutive weeks. After such publication he shall deliver to such company or its assigns the securities so deposited when he is satisfied upon examination and investigation made by him or under his authority and upon the oaths of the president and secretary or other chief officers of the company that all debts and liabilities of every kind due and to become due which the deposit was made to secure are paid and extinguished: *Provided,* That the superintendent may require any company so withdrawing from the District to furnish bond to cover any undisclosed or contingent liabilities.

Upon a company being wholly reinsured the superintendent may deliver to it or to its assigns all securities deposited by it upon compliance with the following condition: The reinsuring company shall assume and agree to discharge all liabilities of every kind due and to become due which the deposit of the reinsured company was made to secure. Such reinsuring company shall have a deposit in the District or with some State official in the United States in securities recognized by this law as lawful investments of the company in an amount and value not less than the deposit required of the reinsured company. The deposit of the reinsuring company shall be such that it will subsist for the security of the obligations of the reinsured company assumed by the reinsuring company. The superintendent shall give notice of such reinsurance agreement and of the application for the deposit once a week for three consecutive weeks in a newspaper of general circulation in the District before the delivery of such securities to the reinsuring company. (June 19, 1934, 48 Stat. 1134, ch. 672, § 18, ch. II.)

CROSS REFERENCE

Other provisions concerning reserves and capital, § 35–201 et seq.

§ 35–418 [5: 217q]. Examinations—Reports—Verification—Hearing upon—Publication—Expense.

The superintendent may examine the books, papers, property, and the affairs of any insurance company organized or doing business in the District and of any company engaged in or professing to be engaged in organizing, promoting, or soliciting stock or capital contributions to or aiding in the formation of an insurance company or of any company which holds the capital stock of an insurance company for the purpose of controlling the management thereof as voting trustees or otherwise. The superintendent, his deputy, or any examiner may examine under oath the officers and agents of such company and all persons deemed to have material information regarding the company's property or business. Every such company, its officers and agents, shall produce at the home office of the company at the time designated by the superintendent, its books of original entry and all records and papers in its or their possession relating to its business or affairs, and any other person may be required to produce any book, record, or paper in his custody relevant to the examination, for the inspection of the superintendent, his deputy or examiners, whenever required; and the officers and agents of such company shall facilitate such examination and aid the examiners in making the same so far as it is in their power to do so. Every such examiner shall make a full and true report of every examination made by him, verified by his oath, which shall comprise only facts appearing upon the books, papers, records, or documents of such company, or ascertained from the sworn testimony of its officers or agents or other persons examined under oath concerning its affairs, and said report so verified shall be presumptive evidence in any action or proceeding in the name of the District against the company, its officers or agents, of the facts therein stated. The superintendent shall grant a hearing to the company examined, or he shall furnish it a copy of his report, in tentative form, requesting that the statements and items therein contained be checked, and the report be returned to the superintendent within the time specified by him, before filing any such report and before making public such report or any matters relating thereto; and may withhold any such report from public inspection for such time as he may deem proper; and may, after so filing, if he deems it for the interest of the public to do so, publish any such report or the result of any such examination as contained therein in one or more newspapers in the District without expense to the company. It shall be the duty of the superintendent to examine every domestic insurance company at least once in three years.

The expense of every such examination, not to include salaries, shall be paid by the company examined, and such company shall pay to the superintendent, his deputies, and/or his examiners the actual expense of such examination upon itemized bills

furnished by the superintendent. (June 19, 1934, 48 Stat. 1135, ch. 672, § 19, ch. II.)

CROSS REFERENCE

Other provisions for inspection and examination of insurance companies, §§ 35–108, 35–201, 35–202, 35–903, 35–1313.

§ 35–419 [5: 217r]. Superintendent may take possession of property of company and conduct its business—Conditions precedent—Procedure—Injunction—Resumption of possession by company—Order for liquidation—Appointment of deputies—Expense of liquidation—Bond—Annual report.

The superintendent may, the corporation counsel of the District representing him, apply to the District Court of the United States for the District of Columbia for a rule directing any company doing business in the District, any company organized under the laws of the District or other Acts of Congress, or any company in course of organization, to show cause why the superintendent should not take possession of its property and conduct its business and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders, or the public may require, whenever any such company (a) is insolvent; or (b) in the case of a stock company, has neglected or refused to observe a lawful order of the superintendent to make good within the time prescribed by law any deficiency of its capital or surplus, or in the case of a mutual company, if its assets have not become equal to its liabilities within ninety days from the date of notification thereof by the superintendent; or (c) has by contract or reinsurance, or otherwise transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business, in the property or business of any other company, association, society, or order, without having first obtained the written approval of the superintendent; or (d) is found, after an examination by the superintendent, his deputy or examiners, to be in such condition that its further transaction of business will be hazardous to its policyholders; or (e) has willfully violated its charter; or (f) is carrying on activities against public policy.

On such application, or any time thereafter, such court may, in its discretion, issue an injunction restraining such company from the transaction of its business or disposition of its property pending further order of the court. On the return of such rule to show cause, the court shall hear, try, and determine the issues forthwith and shall either deny the application or direct the superintendent to take possession of the property and conduct the business of such company, and retain such possession and conduct such business until on the application either of the superintendent, the corporation counsel representing him, or of the company, it shall, after a like hearing, appear to the court that the ground for the order directing the superintendent to take possession has been removed and that the company can properly resume possession of its property and the conduct of its business.

If, on the like application and rule to show cause, and after a hearing, the court shall order the liquidation of the business of such company, such liquidation shall be made by and under the direction of the superintendent, who may deal with the property and business of such company in his own name as superintendent or in the name of the company, as the court may direct, and shall be vested by operation of law with title to all of the property, contracts, and rights of action of such company as of the date of the order so directing him to liquidate. The filing or recording of such order in the office of the recorder of deeds for the District shall impart the same notice that a deed, bill of sale, or other evidence of title duly filed or recorded by such company would have imparted.

For the purpose of this section the superintendent shall have power to appoint under his hand and official seal one or more special deputy superintendents of insurance as his agent or agents, and to employ clerks and assistants as may by him be deemed necessary, and give each of such persons such powers to assist him as he may consider wise. The fair and reasonable compensation of such special deputy superintendents, clerks, and assistants and all expenses of taking possession of and conducting the business of liquidating any such company shall be recommended by the superintendent, subject to the approval of the court, and shall on certificate of the superintendent be paid out of the funds or assets of such company.

For the purpose of this section the superintendent shall have power, subject to the approval of the court, to make and prescribe such rules and regulations as to him shall seem proper.

The superintendent shall transmit to the commissioners, in his annual report, the names of the companies so taken possession of, whether the same have resumed business or have been liquidated, and such other facts as shall acquaint the policyholders, creditors, stockholders, and the public with his proceedings under this section; and, to that end, the special deputy superintendent in charge of any such company shall file annually with the superintendent a report of the affairs of such company similar to that required by section 35–407. The court may require corporate surety bond from the superintendent or any assistant appointed by him, in such amount as it may deem necessary, the cost of which bond shall be paid as other expenses provided under this section. (June 19, 1934, 48 Stat. 1135, ch. 672, § 20, ch. II.)

CROSS REFERENCE

Rules and regulations generally, § 35–102 and notes.

§ 35–420 [5: 217s]. When company to be deemed insolvent.

Every insurance company whose assets and credits are not sufficient to reinsure its outstanding risks in a solvent insurance company, shall be deemed insolvent and may be proceeded against as an insolvent company. (June 19, 1934, 48 Stat. 1137, ch. 672, § 21, ch. II.)

§ 35–421 [5: 217t]. Reinsurance by superintendent.

The superintendent may reinsure all of the policy obligations of any domestic insurance company, of which he is a receiver, in any solvent company au-

thorized to do business in the District, if the assets of the company are sufficient to effect such reinsurance. If such assets are insufficient for that purpose, the superintendent, upon like consent, may reinsure a percentage of each outstanding policy obligation of such company to the extent that its assets may be sufficient for that purpose. No contract of reinsurance shall be entered into by the superintendent, except in pursuance of an order of the court in which he was appointed receiver directing the reinsurance and establishing the general form of the contract for the same. (June 19, 1934, 48 Stat. 1137, ch. 672, § 22, ch. II.)

§ 35–422 [5: 217u]. Valuation of assets—Rule—Discretion of superintendent.

All bonds or other evidences of debt having a fixed term and rate held by any company authorized to do business in the District, if amply secured and if not in default as to principal or interest, shall be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made: *Provided,* That the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase: *Provided further,* That the superintendent shall have full discretion in determining the method of calculating values according to the foregoing rule, and the values found by him in accordance with such method shall be final and binding: *And provided further,* That any such company may return such bonds or other evidences of debt at their market value or their book value, but in no event at an aggregate value exceeding the aggregate of the values calculated according to the foregoing rule. (June 19, 1934, 48 Stat. 1137, ch. 672, § 23, ch. II.)

CROSS REFERENCE

Investments permitted, §§ 35–416, 35–535, 35–536.

§ 35–423 [5: 217v]. Appointment of superintendent as attorney for service of process—Superintendent to mail process to company—Acceptance of certificate is appointment—Failure—Penalty.

Every domestic company not having its home office in the District and every foreign or alien company now or hereafter transacting business in the District, and every foreign or alien company now or hereafter soliciting, selling, or writing insurance on any resident of the District, through the medium of the United States mails, shall file with the superintendent a duly executed instrument appointing and constituting him and his successors the true and lawful attorney of such company upon whom all lawful process in any action or legal proceeding against it may be served and therein shall agree that any lawful process against it which may be served upon its said attorney, as herein provided, shall be of the same force and validity as if served upon the company and the authority thereof shall continue in force irrevocably so long as any liability of the company in the District shall remain outstanding. Such process shall be served by leaving the same with the superintendent or his deputy, and service thereof upon such attorney shall be deemed service upon the principal. The superintendent shall forthwith forward such process by mail to the company, or, in the case of an alien company, to the resident manager or last appointed general agent of the company in the United States. The deposit, by the superintendent or his deputy, of such process sent by registered mail in a sealed envelope, postage prepaid, in the United States mail and service of such process, shall not be effectual until the same has been so mailed and received by the company and registered receipt shall be prima facie evidence of the notice of service to a company, or to the resident manager in the case of an alien company.

Failure of any such company to file such instrument, or failure on the part of any such company to authorize such filing, shall not invalidate any service made by serving the superintendent. By accepting a certificate of authority to transact business in the District, every such company shall be held to have appointed the superintendent its true and lawful attorney. Any such insurance company transacting business or soliciting, selling, or writing insurance on any resident of the District without designating an attorney for service of process, incident to adjustment of claims and kindred matters, shall, upon complaint filed by the superintendent in the District Court of the United States for the District of Columbia, be fined, upon conviction of violating any provision of this section, not to exceed $200 a day for such violation. (June 19, 1934, 48 Stat. 1137, ch. 672, § 24, ch. II.)

§ 35–424 [5: 217w]. Political contributions prohibited—Penalty—Immunity of witnesses.

No company doing business in the District shall directly or indirectly pay or use, or offer, consent, or agree to pay or use any money or property for or in aid of any political party, committee, or organization, or for or in aid of any corporation, joint-stock, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney, or agent of any company which violates any of the provisions of this section, who participates in, aids, abets, or advises, or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section shall be guilty of a misdemeanor and be punished by imprisonment for not more than one year and a fine of not more than $1,000, and any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company for the amount so contributed.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this section, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to

incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided,* That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further,* That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpena gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 19, 1934, 48 Stat. 1138, ch. 672, § 25, ch. II.)

§ 35–425 [5: 217x]. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.

No person shall act within the District for any life-insurance company as a general agent, agent, or solicitor in the solicitation or procurement of applications for insurance unless he has complied with the provisions of this section and has secured a license from the superintendent of insurance. Each applicant for such license shall file with the superintendent of insurance his written application therefor on blanks furnished by the superintendent, which application shall be signed and sworn to by the applicant and shall give his name, age, residence, place of business, and occupation for five years next prior to the date of application and also set forth his qualifications for such license, namely, his familiarity with the life-insurance laws of the District and with the provisions of the contracts to be negotiated; what insurance experience he has had, if any; what insurance instruction he has had or expects to receive; whether he has been refused or has had suspended or revoked a license to solicit insurance by the insurance department or supervising officials of the District of Columbia or of any State; whether any insurance company or any general agent claims such applicant is indebted under any agency contract or otherwise, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto, if any; whether he has had an agency contract canceled, and if so, when, by what company, or general agent and the reason for such action, and such other information as the superintendent may require. The applicant shall be vouched for by an official or a licensed representative of the company for which he proposes to act, who shall certify whether the applicant is personally known to him, whether the applicant has been appointed a general agent, agent, or solicitor to represent such company, and that such company has duly investigated the character and record of such person, and has satisfied itself that he is trustworthy and qualified to act as its general agent, agent, or solicitor and intends to hold himself out in good faith as a life insurance general agent, agent, or solicitor. If, upon the showing made, the superintendent of insurance is reasonably satisfied that the applicant is a trustworthy person he shall promptly issue the license applied for. A general agent, agent, or solicitor licensed to represent any life insurance company doing business in the District shall be entitled to place excess or rejected risks in any other company lawfully doing business in the District, with the knowledge and approval of his own company without additional or separate license. Every license issued under this section shall expire annually on the 30th day of April next after its issue unless prior thereto it is revoked or suspended by the Superintendent of Insurance or the authority of the general agent, agent, or solicitor to act for the company is terminated.

In the absence of a contrary ruling by the superintendent in a given case, license renewals shall be issued from year to year upon the request of the company without further action on the part of the general agent, agent, or solicitor.

No officer or traveling salaried employee of any insurance company not compensated on a commission basis shall be required to obtain a license under this section.

Every life insurance company shall, upon the termination of the employment of any general agent, agent, or solicitor, file with the Superintendent of Insurance a statement of the facts relative to the termination of such employment and the cause thereof. Any information, document, record, statement, or thing required to be made or disclosed to the Superintendent of Insurance by this section, shall be privileged and shall not be used as evidence in any action or proceeding instituted against the company or any representative thereof by or in behalf of any person who has been licensed under the provisions of this section. (June 19, 1934, 48 Stat. 1139, ch. 672, § 26, ch. II.)

CROSS REFERENCES

Brokers, § 35–428.
Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.
License fees, § 35–402.
Other insurance agents, §§ 35–1201, 35–1202.

§ 35–426 [5: 217y]. Suspension or revocation of license—Grounds for—Notice of—Hearing—Penalty.

The Superintendent of Insurance may suspend or revoke the license of any life insurance general agent, agent, solicitor, or broker if, after due investigation, notice and a hearing, either before him or before any salaried employee of the insurance department designated by him whose report he may adopt, he determines that such license has been secured by fraud or misrepresentation; or that the general agent, agent, solicitor, or broker has violated any insurance law of the District; or has made any misleading representations and/or incomplete and/or fraudulent comparison of any policies or companies or concerning any companies to any person for the purpose or with the intention of inducing such person to lapse, forfeit, surrender, or exchange his insurance then in force; or has made any misleading estimate of the dividends or share of surplus to be received on a policy; or has failed or refused to pay or to deliver to the company or to his principal any

money or other property in the hands of said general agent, agent, solicitor, or broker belonging to such company or principal when requested so to do; or has violated any lawful ruling of the insurance department; or has been convicted of a felony; or has otherwise shown himself untrustworthy or incompetent to act as a life insurance general agent, agent, solicitor, or broker. Before the Superintendent of Insurance shall revoke or suspend any such license he shall give to the general agent, agent, solicitor, or broker and to the company which or whom he represents written notice of the charges and of the hearing, not less than twenty days prior to the time set for such hearing. Such notice shall be forwarded by registered mail addressed to the general agent, agent, solicitor, or broker at his last-known address, and to the company at its principal place of business. Full opportunity shall be given at such hearing to the general agent, agent, solicitor, or broker and to the company or principal to appear with counsel and be heard upon such charges. Within thirty days after the revocation or suspension of license or the refusal of the superintendent to grant a license, the general agent, agent, solicitor, or broker, or applicant aggrieved may appeal, from the ruling of the Superintendent of Insurance to the court of competent jurisdiction designated in section 35–427. Appeals may be taken from the judgment of said court as prescribed in section 35–427.

No individual whose license as a general agent, agent, solicitor, or broker is revoked shall be entitled to any license under chapters 3–8 of this title for a period of one year after revocation.

Any person who violates any provision of this section upon conviction shall be fined not exceeding $100 for each and every violation: *Provided,* That in lieu of revoking or suspending the license of any such general agent, agent, solicitor, or broker for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such person to a penalty of not more than $200 when in his judgment he finds that the public interest would be best served by the continuation of the license of such person. The amount of any such penalty shall be paid by such person through the Office of the Superintendent to the Collector of Taxes of the District of Columbia. (June 19, 1934, 48 Stat. 1140, ch. 672, § 27, ch. II; May 4, 1950, 64 Stat. 103, ch. 157, § 2.)

AMENDMENT

The 1950 act, cited to text, added the proviso at the end of the section. For effective date of amendment, see note for § 35–405.

CROSS REFERENCES

Misrepresentations forbidden, § 35–714.

Revocation and suspension of licenses, see notes to § 35–102.

Suspension or revocation of license for violation of Uniform Narcotic Drug Act, § 33–418.

§ 35–427 [5: 217z]. Appeal from rulings of superintendent—Procedure—Costs and supersedeas bond—Liability of superintendent.

Within thirty days after the revocation or suspension of license or the refusal of the superintendent to grant a license, the general agent, agent, solicitor, or broker or applicant aggrieved may appeal from the ruling of the superintendent to the District Court of the United States for the District of Columbia, in equity wherein, upon the relation of the superintendent, by representation of the corporation counsel, the superintendent shall be designated as defendant and the general agent, agent, solicitor, or broker or applicant as plaintiff, and the said cause shall be docketed in said court and tried as an equity case. Appeals may be taken from the judgment of said District Court of the United States for the District of Columbia to the United States Court of Appeals for the District of Columbia as in other equity cases.

In all said proceedings and appeals said superintendent shall not be taxed with any costs, nor shall he be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said superintendent shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any person on any appeal taken by said superintendent in any case, nor shall said superintendent be required in any case to make any deposit for costs or pay for any service to the clerks of any court or to any marshal of the United States. (June 19, 1934, 48 Stat. 1140, ch. 672, § 28, ch. II.)

COMPILER'S NOTE

The Rules of Civil Procedure for the District Courts adopted by the Supreme Court of the United States abolish the distinction between law and equity and provide that there shall be one form of action known as a "civil action."

§ 35–428 [5: 217aa]. Brokers—License — Application — Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation.

Every person desiring to engage in business in the District as a life insurance broker shall apply to the superintendent for a license so to do and in the manner hereinafter prescribed.

The applicant for such license shall file with the superintendent his written application therefor and shall make a sworn statement on blanks to be prepared by the superintendent giving his name, age, residence, place of business, occupation for five years just prior to the date of making his application; and shall state that he intends to hold himself out in good faith as carrying on the business of broker of life insurance, and shall also set out his qualifications, namely, his familiarity with the life insurance laws of the District and with the provisions of the policy contracts to be negotiated; what insurance experience and instruction he has had; his intention with reference to engaging regularly if not exclusively in the business of life insurance broker; whether he has been refused or has had suspended or revoked a license as a broker, general agent, agent, or solicitor of life insurance by the insurance department or the supervising officials of any state; whether any company claims that he is indebted to it under any agency contract or otherwise; if so, what company, the nature of the claim and of his defense if any, whether he has had any agency contract canceled by any company, and if

so, when, by what company, and the reason for such action, and such other information as the superintendent may require.

The applicant shall be vouched for by at least three reputable citizens of the District setting out whether the applicant is personally known to them, what they know of the reputation of the applicant as a man of business integrity, and what they know of the applicant's general fitness to act as a broker of life insurance.

The superintendent may require such applicant for license or renewal thereof to submit to examination as to his fitness or qualifications for the license or licenses applied for. Such examination may be made by the superintendent or by his deputy, which said examination may be waived by the superintendent, upon satisfactory proof of the qualifications of the applicant.

When the superintendent is satisfied from the application or the examination made by him that the applicant is qualified, he shall issue to said applicant a license to engage in the business specified in said applications which shall also be specified in said license.

No individual whose license as a broker is revoked shall be entitled to any license under chapters 3–8 of this title for a period of one year after such revocation, provided, however, that the failure or refusal of the superintendent to license any such applicant shall be subject to review in the same manner as provided in section 35–427.

Licenses shall be renewed annually and every such license shall continue in force until the 30th day of April next following unless in the meantime suspended or revoked; provided any qualified person may be licensed as a broker regardless of place of residence or domicile.

Any person who violates any provision of this section upon conviction shall be fined not exceeding $100 for each and every violation. (June 19, 1934, 48 Stat. 1141, ch. 672, § 29, ch. II.)

CROSS REFERENCES

Insurance agents other than life, §§ 35–1201, 35–1202.
License fees, § 35–402.
Life insurance agents, § 35–425 et seq.
Revocation or suspension of licenses, § 35–426 and notes.

§ 35–429 [5: 217bb]. Premiums paid to agent—Agent trustee—Embezzlement—Penalty.

An insurance agent, solicitor, or broker who acts in negotiating or renewing or continuing a contract of insurance for a company lawfully doing business in the District, and who receives any money or substitute for money as a premium for such a contract from the insured, whether he shall be entitled to an interest in same or otherwise, shall be deemed to hold such premium in trust for the company making the contract. If he fails to pay the same over to the company after written demand made upon him therefor, such failure shall be prima facie evidence that he has used or applied the said premium for a purpose other than paying the same over to the company, and upon conviction thereof he shall be deemed guilty of embezzlement and punished accordingly. (June 19, 1934, 48 Stat. 1142, ch. 672, § 30, ch. II.)

CROSS REFERENCE

Embezzlement, § 22–1201 et seq.

§ 35–430 [5: 217cc]. Contract of minors for life, health, and accident insurance—Beneficiaries—Surrender and discharge.

Any minor of the age of fifteen years or more may, notwithstanding such minority, contract for life, health, and accident insurance on his own life for his or her own benefit or for the benefit of his father, mother, husband, wife, child, brother, sister, or for the benefit of any person who has the care or custody of said minor or with whom said minor makes his or her home, and may exercise all such contractual rights with respect to any such contract of insurance as might be exercised by a person of full legal age and may at any time surrender his or her interest in any such insurance or give a valid discharge for any benefit accruing or money payable thereunder. (June 19, 1934, 48 Stat. 1142, ch. 672, § 31, ch. II.)

§ 35–431 [5: 217dd]. Assessment companies shall not be formed, admitted, or licensed.

Any company which makes insurance or reinsurance the performance of which is not guaranteed by the reserves required by chapters 3–8 of this title, but is contingent upon the payment of assessments or calls made upon its members, shall not be formed, admitted, or licensed in the District. (June 19, 1934, 48 Stat. 1142, ch. 672, § 32, ch. II; May 4, 1950, 64 Stat. 104, ch. 157, § 3.)

AMENDMENT

The 1950 act, cited to text, struck out the word "mainly" which had appeared before the word "contingent." For effective date of amendment, see note to § 35–405.

§ 35–432 [5: 217ee]. Appeal from superintendent to Commissioners.

Any appeals to the commissioners from rulings of the superintendent shall be perfected and filed with the commissioners within twenty days exclusive of Sundays and legal holidays from the date such rulings are communicated to the party at interest. (June 19, 1934, 48 Stat. 1142, ch. 672, § 33, ch. II.)

Chapter 5.—DOMESTIC LIFE COMPANIES

Sec.

35–501. Articles of incorporation.
35–502. Filing articles of incorporation—Notice of intention to form company—Bond of incorporators.
35–503. Articles of incorporation—Submission to corporation counsel—Recording—Corporate powers—Permit as "company in course of organization"—Authority to organize—No policies to be issued—Certificate of authority.
35–504. Authority to solicit subscriptions to capital of company in course of organization.
35–505. Subscription to capital stock—Limitation of expense on sale of capital stock—Disposition of proceeds.
35–506. Examination of company in course of organization—Revocation of permit, authority of agent—Causes—Notice.
35–507. When corporate powers of company in course of organization shall cease.
35–508. Capital-stock requirements.

Sec.
35–509. Amendment of articles of incorporation—Procedure.
35–510. Increase of capital stock—Effect of failure to subscribe and pay in within one year.
35–511. Decrease of capital stock—Conditions—Reissuance of stock certificates.
35–512. Liability of stockholders—Fiduciaries as stockholders—Pledged stock.
35–513. Capital stock must be paid in before doing business—Capital stock payment calls—Forfeiture—Notice.
35–514. Capital stock transfers—Effect of record ownership.
35–515. Capital stock book—Contents—To be kept open—Contents as evidence—Penalty for neglect to make entry or to exhibit.
35–516. Corporations and associations as members of mutual companies—Liability.
35–517. Mutual companies—Requirements before doing business.
35–518. Reincorporation of existing corporations.
35–519. Conversion of a stock life company into a mutual life company—Plan for acquisition of capital stock—Conditions.
35–520. Application of act to corporations formed prior to June 19, 1934.
35–521. Directors — Election — Qualifications—Limitation on proxies.
35–522 By-laws.
35–523. Election of directors.
35–524. Cumulative voting.
35–525. Voting power under policies of group life insurance.
35–526. Liability of directors—Objections to be filed.
35–527. Salaries to be authorized by directors.
35–528. Limitation of dividends to stockholders and policyholders.
35–529. Officers.
35–530. Officers and directors not to be pecuniarily interested in transactions—Appraisement—Loans on policies.
35–531. "Voting-trust agreements" defined and declared unlawful.
35–532. Repealed.
35–533. Classification of risks, payment of dividends, and creation of surplus by mutual companies.
35–534. Mutual company guaranty fund—Mutual company's power to borrow—Approval by Superintendent.
35–535. Investment of funds of domestic companies.
35–536 Repealed.
35–537. Reinsurance by domestic companies in authorized companies.
35–538. Vouchers for disbursements.
35–539. Books, records, accounts, and vouchers of domestic companies.
35–540. Unlawful acquisition by company of its own capital stock.

§ 35–501 [5: 218]. Articles of incorporation.

Any seven or more persons who desire to become incorporated as an insurance company shall make, sign, and acknowledge articles of incorporation before an officer authorized to take acknowledgment of deeds, in which shall be stated:

(a) The proposed corporate name, which shall not be identical with nor so nearly resemble the name of an existing corporation organized under the laws of the District, or authorized to transact business therein, as to mislead the public or cause confusion and, in case of a mutual company, shall contain the word "mutual."

(b) The term of its existence, which may be perpetual.

(c) The place where its principal office shall be located, which shall be the District of Columbia.

(d) The purpose of the company, which shall be restricted to the business of insurance appertaining to persons.

(e) The mode and manner in which the corporate power shall be exercised; the number, terms of office, and manner of electing directors, who shall be stockholders, or, in the case of a mutual company, shall be members or policyholders of the corporation.

(f) The provisions for meeting and votes of stockholders and policyholders. A stock company in which the policyholders do not vote shall provide for cumulative voting in its articles of incorporation. A stock company in which policyholders vote shall provide that each stockholder shall have one vote, in person or by proxy, for each share of stock owned. A company without capital stock shall provide that every policyholder shall be a member and entitled to one or more votes, in person, or by proxy, based on the insurance in force, the number of policies held or the amount of premiums paid as may be provided in the by-laws, and a stock company may provide for votes by policyholders, but in such case each policyholder shall have the same voting power as every other policyholder.

(g) The amount of its capital stock, if any, the number of shares, and the par value of each share.

(h) The number of directors who shall manage the company for the first year and their names.

(i) Such other particulars as may be necessary to manifest and explain the objects and purposes of the company. (June 19, 1934, 48 Stat. 1143, ch. 672, § 1, ch. III.)

COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, ch. VI, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3–8), are hereby repealed."

Section 5, chapter VI, of this act provides as follows: "This act shall become effective immediately upon passage and approval."

CROSS REFERENCES

Amendment of articles, § 35–509.
Application to existing companies, § 35–520.
Assessment companies forbidden, § 35–431.
Conversion of stock into mutual companies, § 35–519.
Health and accident companies, § 35–202.
Increase or decrease of capital stock, §§ 35–510, 35–511.
Liability of stockholders, § 35–512.
Mutual companies, § 35–532 et seq.
Quo warranto proceedings to question right to corporate rights and franchises, § 16–1601 et seq.
Reincorporation of existing companies, § 35–518.

STATUTORY REFERENCE

Sales of securities, U. S. C., title 15, ch. 2a.

§ 35–502 [5: 218a]. Filing articles of incorporation—Notice of intention to form company—Bond of incorporators.

The incorporators shall file such articles with the superintendent and shall publish in a newspaper of general circulation in the District notice of the filing of such articles and of the intention to form such company. Copy of such notice verified by the oath of the publisher of the newspaper, or his agent, copies of proposed bylaws and forms of subscription

for capital stock and of proposed applications for membership and for insurance and of all proposed forms of insurance policies, literature, and advertisements shall be filed with the superintendent. The incorporators shall also file with the superintendent a bond payable to the superintendent and his successors, as trustee, in the sum of $10,000 with approved corporate sureties, and conditioned upon the faithful accounting to the proposed company, on completion of its organization and the receipt of its certificate of authority from the superintendent, or the stockholders, members, applicants for policies, and creditors, or the trustee, receiver, or assignee of the proposed company, duly appointed in any proceedings in any court or department of competent jurisdiction in the District, in accordance with their respective rights in case the organization of the proposed company shall not be completed and a certificate of authority shall not be procured from the superintendent. (June 19, 1934, 48 Stat. 1144, ch. 672, § 2, ch. III.)

§ 35–503 [5: 218b]. Articles of incorporation—Submission to corporation counsel—Recording—Corporate powers—Permit as "company in course of organization"—Authority to organize—No policies to be issued—Certificate of authority.

The superintendent shall submit the proposed articles and other papers so filed with him to the corporation counsel of the District, who shall examine the same, and, if he finds the same in accordance with law, he shall so certify and return the same to the superintendent, who shall cause the articles and the certificate of the corporation counsel to be recorded in the records of the superintendent and issue to the incorporators two certified copies thereof, one of which shall be recorded in the office of the recorder of deeds for the District of Columbia, and thereupon such incorporators and their associates shall become and be a body corporate with power to sue and be sued, contract and be contracted with, adopt a seal, and do such other acts, subject to the provisions of chapters 3–8 of this title, as shall be needful to accomplish the purposes of its organization. If the superintendent shall approve the sureties on the bond so filed, or on any like bond substituted therefor, he shall issue to the corporation a permit, as a "company in course of organization," authorizing it to complete its organization. Said company in course of organization shall have authority under such permit to solicit subscriptions and payments for capital stock, if a stock company, and applications and advance premiums for insurance, and to exercise such powers, subject to the limitations in chapters 3–8 of this title prescribed, as may be necessary and proper in completing its organization and qualifying itself for a certificate of authority from the superintendent to transact the business of insurance appertaining to persons. But such company shall not issue policies or enter into contracts of insurance until it shall have received the certificate of the superintendent authorizing it so to do.

Upon completion of organization in accordance with chapters 3–8 of this title the superintendent shall issue to such company, in course of organization, a certificate of authority as an insurance company. (June 19, 1934, 48 Stat. 1144, ch. 672, § 3, ch. III.)

§ 35–504 [5: 218c]. Authority to solicit subscriptions to capital of company in course of organization.

No person shall solicit subscriptions for the capital stock of or applications for insurance in any such company in course of organization unless he has been duly authorized by the company and a certificate of his authority, duly signed by a principal officer of the company, has been filed with and approved by the superintendent. (June 19, 1934, 48 Stat. 1145, ch. 672, § 4, ch. III.)

§ 35–505 [5: 218d]. Subscription to capital stock—Limitation of expense on sale of capital stock—Disposition of proceeds.

Every subscription to the capital stock of a stock company shall contain the stipulation that no sum shall be used for commission, promotion, or organization expenses in excess of a percentage of the amount paid upon the stock subscriptions, to be named in such stipulation and approved by the superintendent, and the remainder of sums so paid to the company shall be invested in securities in which a life insurance company is authorized to invest, or deposited in a bank or trust company in the District until the company has duly procured a certificate of authority from the superintendent. (June 19, 1934, 48 Stat. 1145, ch. 672, § 5, ch. III.)

§ 35–506 [5: 218e]. Examination of company in course of organization—Revocation of permit, authority of agent—Causes—Notice.

The superintendent shall personally, or through his deputy and assistants, examine into the affairs of any such company in course of organization and inspect its books and papers, and may summon and examine under oath any officer or agent or any person who is or has been connected with or who has knowledge of the affairs of such company, and if he find the company is violating the law, or if the company shall not be qualified for a certificate of authority within two years from date of its permit, he shall revoke its permit; and if he find an agent of such company has violated the law, he shall revoke his authority, and he may for such agent's violation revoke the company's permit. Any revocation shall be after twenty days' notice. The superintendent may, on proper showing, reinstate any company's permit or agent's authority which he has revoked. (June 19, 1934, 48 Stat. 1145, ch. 672, § 6, ch. III.)

CROSS REFERENCE

Revocation or suspension of certificates and licenses, see notes to § 35–102.

§ 35–507 [5: 218f]. When corporate powers of company in course of organization shall cease.

If any domestic life insurance company, in course of organization, shall not commence to issue policies within two years from the date of filing its articles of incorporation in the office of the superintendent, its powers shall thereby cease, and the court, upon petition of the superintendent or of any person interested, may fix by decree the time in which the

superintendent may settle and close its affairs: *Provided, however,* That the superintendent may extend the time for any such company to commence the issuance of policies for a period not exceeding two years if the said company shall show good cause in writing why the same should be done. (June 19, 1934, 48 Stat. 1145, ch. 672, § 7, ch. III.)

§ 35–508 [5: 218g]. Capital-stock requirements.

A domestic capital-stock company organized under chapters 3–8 of this title shall have a paid-up capital stock of not less than $100,000. Each domestic capital-stock company organized under chapters 3–8 of this title, in addition to the paid-up capital stock shall have a surplus paid up equal to at least 50 per centum of such capital stock. Each domestic mutual company organized or doing business under chapters 3–8 of this title shall at all times have a surplus as defined by chapters 3–8 of this title of not less than $150,000. (June 19, 1934, 48 Stat. 1145, ch. 672, § 7, ch. III; May 4, 1950, 64 Stat. 104, ch. 157, § 4.)

AMENDMENT

The 1950 act, cited to text, added the third sentence. For effective date of amendment, see note to § 35–405.

§ 35–509 [5: 218h]. Amendment of articles of incorporation—Procedure.

Any company may amend its articles of incorporation upon publishing notice of such intention, authorized by a majority of its directors, once a week for three consecutive weeks in a newspaper of general circulation in the District, and with the written consent of two-thirds of its stockholders, or two-thirds of its members present in person or by proxy at a meeting called for that purpose if it does not have capital stock, and by observing such other and further requirements in that behalf as may be prescribed in its articles of incorporation. Such amendment shall be signed and acknowledged by the president and secretary or like officers of the company, and, with a copy of the proceedings of the stockholders or members, if any, and of the directors, shall be filed with the superintendent and by him submitted to the corporation counsel, and if he finds the amendment and proceedings in conformity with the law, he shall so certify to the superintendent. The amendment shall not take effect until the superintendent shall deliver to the company his certified copy of the amendment and of the certificate of the corporation counsel. (June 19, 1934, 48 Stat. 1145, ch. 672, § 9, ch. III.)

§ 35–510 [5: 218i]. Increase of capital stock—Effect of failure to subscribe and pay in within 1 year.

If a company amend its articles of incorporation by providing for an increase of its capital stock, such increase shall be subscribed and fully paid up within one year of the date of such amendment, unless the superintendent shall certify his consent to an extension of such time. Failure to have such increase of capital stock paid up within the time provided may be considered grounds for ousting the company from its powers under any such amendment to such articles of incorporation by a court of competent jurisdiction in a proceeding by the superintendent, the corporation counsel representing him, against the company for such judgment. (June 19, 1934, 48 Stat. 1146, ch. 672, § 10, ch. III.)

§ 35–511 [5: 218j]. Decrease of capital stock—Conditions—Reissuance of stock certificates.

A company may, with the approval of the superintendent, amend its articles of incorporation by providing for a decrease of its capital stock and a corresponding increase in surplus to an amount not less than the minimum capital stock and surplus required by chapters 3–8 of this title. The superintendent shall not approve or issue his certified copy of such amendment if he be of the opinion that the interests of policyholders or creditors may be prejudiced thereby. No distribution of the assets of the company shall be made to stockholders upon any such decrease of capital stock which shall reduce the surplus and capital stock to less than the minimum capital stock and surplus required as aforesaid. Upon any such amendment so decreasing the capital stock such company may require each stockholder to return his certificate of stock and accept a new certificate for such proportion of the amount of its original capital stock as the reduced capital stock shall bear to the original capital stock. (June 19, 1934, 48 Stat. 1146, ch. 672, § 11, ch. III.)

CROSS REFERENCE

Decrease, except as herein authorized, unlawful, § 35–540.

§ 35–512 [5: 218k]. Liability of stockholders—Fiduciaries as stockholders—Pledged stock.

All the stockholders of every company incorporated under this chapter shall be severally and individually liable to the policyholders and creditors of the company in which they are stockholders for the unpaid amount due upon the shares of capital stock held by them, respectively, for all debts and contracts made by such company until the whole amount of capital stock fixed and limited by such company shall have been paid in.

No person holding capital stock in such company as executor, administrator, guardian, committee, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, committee, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust would have been if he had been living and competent to act and hold the stock in his own name.

Every such executor, administrator, guardian, committee, or trustee shall represent the capital stock in his hands at all meetings of the company, and may vote accordingly as a stockholder.

No person holding capital stock in such company as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such capital stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and every person who shall pledge his capital stock as collateral security may, nevertheless, represent the same at all meetings and

vote as a stockholder. (June 19, 1934, 48 Stat. 1146, ch. 672, § 12, ch. III.)

§ 35–513 [5: 218*l*]. Capital stock must be paid in before doing business—Capital stock payment calls—Forfeiture—Notice.

No company incorporated under this chapter shall be authorized to transact any business until the authorized capital stock shall have been actually paid in, either in cash or in investments authorized by chapters 3–8 of this title at market value; and it shall be lawful for the directors to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such instalments as the directors shall deem proper, under the penalty of forfeiting the shares of capital stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or a notice requiring such payment shall have been published once a week for three consecutive weeks in a daily newspaper in the District. (June 19, 1934, 48 Stat. 1147, ch. 672, § 13, ch. III.)

§ 35–514 [5: 218m]. Capital stock transfers—Effect of record ownership.

The capital stock of such company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the bylaws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in or the shares shall have been declared forfeited for nonpayment.

A person in whose name shares of capital stock stand on the books of a company shall be deemed the owner thereof as regards the company, but if any such person shall in good faith sell or otherwise dispose of any of his shares of capital stock to another and deliver to him the certificates for such shares, with written authority for the transfer of the same on the books, the title of the former shall vest in the latter so far as may be necessary to effect the purpose of the sale or other disposition, not only as between the parties themselves but also as against the creditors of and subsequent purchasers from the former. (June 19, 1934, 48 Stat. 1147, ch. 672, § 14, ch. III.)

§ 35–515 [5: 218n]. Capital stock book—Contents—To be kept open—Contents as evidence—Penalty for neglect to make entry or to exhibit.

It shall be the duty of the directors of every company formed under this chapter to cause a book to be kept by the treasurer or secretary thereof, containing the names of all persons, alphabetically arranged, who are or shall within six years have been stockholders of such company, and showing their place of residence, the number of shares of capital stock held by them, respectively, the time when they became owners of such shares, and the amount of capital stock actually paid in.

Such book shall, during the usual business hours of the day, on every business day, be open for inspection by policyholders, stockholders, and creditors of the company and their personal representatives at the office or principal place of business of such company in the place where its business operations shall be located, and any policyholder, stockholder, creditor, or representative shall have a right to make extracts from such book.

Such book shall be presumptive evidence of the facts therein stated in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders.

Every officer or agent of any company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as herein provided, shall be deemed guilty of a misdemeanor, and the company shall pay to the party injured a penalty of $50 for any such neglect or refusal, and all damages resulting therefrom.

Every company that shall neglect to keep such book open for inspection, as herein provided, shall forfeit to the District the sum of $50 for every day it shall so neglect, to be sued for and recovered by the superintendent, the corporation counsel representing him, in the District Court of the United States for the District of Columbia. (June 19, 1934, 48 Stat. 1147, ch. 672, § 15, ch. III.)

§ 35–516 [5: 218*o*]. Corporations and associations as members of mutual companies—Liability.

Public or private corporations, boards, or associations of the District or elsewhere, may make applications, enter into agreements for, hold policies in, and become members of mutual companies. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association, or of an estate may be recognized as acting for or on its behalf, but shall not be personally liable by reason of acting in such representative capacity. (June 19, 1934, 48 Stat. 1148, ch. 672, § 16, ch. III.)

§ 35–517 [5: 218p]. Mutual companies—Requirements before doing business.

No domestic mutual company shall transact any business until at least two hundred persons shall have subscribed in the aggregate for at least $200,000 of insurance and shall have paid in full one annual premium in money upon the insurance so subscribed. (June 19, 1934, 48 Stat. 1148, ch. 672, § 17, ch. III.)

CROSS REFERENCE

Assessment companies forbidden, § 35–431.

§ 35–518 [5: 218q]. Reincorporation of existing corporations.

Any domestic insurance corporation existing or doing business on June 19, 1934, may, by a vote of a majority of its directors or trustees, accept the provisions of chapters 3–8 of this title and amend its charter to conform with the same upon obtaining the consent of the superintendent thereto in writing, and filing such consent in the office of the recorder of deeds for the District; and thereafter it shall be deemed to have been incorporated under this chapter, and every such corporation in reincorporating under this provision may for that purpose so adopt in whole or in part a new charter, in conformity herewith, and include therein any and all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of

existing laws which might be so included and enjoyed if it were originally incorporated hereunder, and it shall, upon such adoption of and after obtaining the consent, as in this section before provided, to such charter and filing the same with the superintendent and the record thereof with the recorder of deeds of the District, perpetually enjoy the same as and be such corporation, which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein which shall be continued shall be filled by the respective incumbents for the period and the same general proceedings shall be taken upon the presentation of such amended charter or certificate adopted in relation to such amendment, to the superintendent, as are required by this chapter to be taken with respect to an original charter or certificate, except that no examination of the condition and affairs of such corporation shall be required unless so ordered by the superintendent, and if the amended charter or certificate be approved by the superintendent and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such charter or certificate so amended had been its original charter or certificate of incorporation, but without prejudice to pending action or proceeding or any rights previously accrued.

Upon the reincorporation or upon the amendment of the charter of any corporation having a capital stock in accordance with the provisions of this section it may by a vote of the majority of its directors confer upon its policyholders as may have a prescribed amount of insurance upon their lives the right to vote for all or any less number of the directors in such manner not inconsistent with any provision of chapters 3–8 of this title. (June 19, 1934, 48 Stat. 1148, ch. 672, § 18, ch. III.)

§ 35–519 [5: 218r]. Conversion of a stock life company into a mutual life company—Plan for acquisition of capital stock—Conditions.

Any domestic stock company organized or licensed to do business, whether incorporated under chapters 3–8 of this title, or any previous existing law, or Act of Congress, may become a mutual company, and to that end may carry out a plan for the acquisition of shares of its capital stock: *Provided, however,* That such plan (1) shall have been adopted by a vote of a majority of the directors of such company; (2) shall have been approved by a vote of stockholders representing a majority of the capital stock at a meeting of stockholders called for the purpose; and (3) shall have been approved by a majority vote of the policyholders voting at a meeting, called for the purpose, of policyholders each insured for at least $1,000 and whose insurance shall then be in force and shall have been in force for at least one year prior to such meeting; notice of such meeting shall be given by mailing such notice from the home office of such corporation at least thirty days prior to such meeting, in a sealed envelope, postage prepaid, addressed to such policyholders at their last known post-office addresses, and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such plan: *Provided, however,* That policyholders may vote in person, by proxy, or by mail; that all votes shall be cast by ballot and the superintendent shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the superintendent and to the company the result thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the superintendent; that all necessary expenses incurred by the superintendent shall be paid by the company as certified to by him; and (4) shall have been submitted to the superintendent and shall have been approved by him in writing: *Provided,* That every payment for the acquisition of any shares of the capital stock of such company, the purchase price of which is not fixed by such plan, shall be subject to the approval of the superintendent: *Provided further,* That neither such plan, nor any such payment, shall be approved by the superintendent unless at the time of such approvals, respectively, the company, after deducting the aggregate sum appropriated by such plan for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to separate approval as aforesaid after the approval of such plan, after deducting also the amount of such payment, shall be possessed of assets not less than the entire liabilities of the company, including the net values of its outstanding contracts computed according to the standard adopted by the company under section 35–701, and also all funds, contingent reserves, and surplus save so much of the latter as shall have been appropriated or paid under such plan. (June 19, 1934, 48 Stat. 1149, ch. 672, § 19, ch. III.)

CROSS REFERENCE

Rules and regulations generally, § 35–102 and notes.

§ 35–520 [5: 218s]. Application of act to corporations formed prior to June 19, 1934.

Every company incorporated under the provisions of the laws of the District, or Act of Congress, prior to June 19, 1934, is hereby brought under all the provisions of chapters 3–8 of this title, except that its capital may continue in the amount named in its charter during the existing term thereof, unless it extends its business to other kinds of insurance, and it shall be entitled to all privileges granted by such charter not authorized by this law. (June 19, 1934, 48 Stat. 1149, ch. 672, § 20, ch. III.)

§ 35–521 [5: 218t]. Directors—Election—Qualifications—Limitation on proxies.

The stock, property, and business of every company organized under chapters 3–8 of this title shall be managed by the directors who shall, except for the first year, be annually elected, at such time and place as shall be determined by the bylaws of the

company. Every director of such a stock company shall be a stockholder thereof, and every director of such a mutual company shall be a policyholder thereof. All proxies used in the election of directors of such companies shall be valid for a period not exceeding one year from the election for which they were signed and in which they were authorized to be voted. (June 19, 1934, 48 Stat. 1149, ch. 672, § 21, ch. III.)

CROSS REFERENCE

Quo warranto proceedings to question right to corporate office, § 16–1601 et seq.

§ 35–522 [5: 218u]. By-laws.

The directors of companies organized under chapters 3–8 of this title shall have power to make such by-laws as they deem proper for the management of the business affairs of such company, not inconsistent with the laws of the District and the Constitution of the United States, and prescribing the duties of officers, employees, and servants, that may be employed, for the appointment or election of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (June 19, 1934, 48 Stat. 1150, ch. 672, § 22, ch. III.)

§ 35–523 [5: 218v]. Election of directors.

Notice of the time and place of holding election of directors of a company organized under chapters 3–8 of this title shall be sent to those entitled to vote, and the election shall be made by such of the stockholders and/or policyholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and the persons receiving the greatest number of votes shall be directors. When any vacancy shall happen among the directors it shall be filled for the remainder of the year in such manner as shall be prescribed by the by-laws of the company.

In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for directors in such manner as may be provided in the by-laws, and all acts of directors shall be valid and binding as against said company until their successors shall be elected. (June 19, 1934, 48 Stat. 1150, ch. 672, § 23, ch. III.)

§ 35–524 [5: 218w]. Cumulative voting.

In an election for directors of any stock company in which the policyholders do not vote, each stockholder having a right to vote may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer, that is to say: If the stockholder having a right to vote owns one share of stock, or has one vote, or is entitled to one vote for each of seven directors by virtue thereof, he may give one vote to each of said seven directors, or seven votes for any one thereof, or a less number of votes for any less number of directors, whatever may be the actual number to be elected, and in this manner may distribute or cumulate his votes as he may see fit. (June 19, 1934, 48 Stat. 1150, ch. 672, § 24, ch. III.)

§ 35–525 [5: 218x]. Voting power under policies of group life insurance.

In every group policy issued by a domestic life company the employer shall be deemed to be the policyholder for all purposes, within the meaning of this chapter, and, if entitled to vote at meetings of the company, shall be entitled to one vote thereat. (June 19, 1934, 48 Stat. 1150, ch. 672, § 25, ch. III.)

§ 35–526 [5: 218y]. Liability of directors—Objections to be filed.

The directors of any company organized under the laws of the District shall be personally liable when they have participated in or assented to any act which shall cause injury to policyholders, creditors, or stockholders resulting from (a) ultra vires acts; (b) illegal corporate acts done with their connivance, knowledge, or consent; (c) issuing unpaid or part-paid stock and marking or representing it as paid up in full; (d) dividend payments declared whether negligently or purposely impairing the capital stock and minimum surplus; (e) mismanagement; (f) loaning corporate funds to stockholders or discounting their notes out of corporate moneys; (g) making false notices or reports that deceive the public; or, (h) transferring property to officers or stockholders to defraud policyholders or creditors. If any of the directors shall object to declaring a dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objections in writing with the secretary of the company and with the superintendent, they shall be exempt from the liability prescribed in this section for dividends declared or paid impairing the capital stock and minimum surplus. (June 19, 1934, 48 Stat. 1150, ch. 672, § 26, ch. III.)

§ 35–527 [5: 218z]. Salaries to be authorized by directors.

No domestic company shall pay any salary, compensation, or emolument to any officer, trustee, or director thereof, amounting in any one year to more than $5,000, unless such payment shall be authorized by the board of directors of the company. (June 19, 1934, 48 Stat. 1151, ch. 672, § 27, ch. III.)

§ 35–528 [5: 218aa]. Limitation of dividends to stockholders and policyholders.

No domestic company shall make any payments in form of dividends or otherwise to its stockholders for or on account of any interest in or relation to the company as stockholders unless it possesses assets in the amount of such payment in excess of its liabilities, including its capital stock, and the surplus required by chapters 3–8 of this title; and no domestic company shall make any payments to its policyholders for or an account of any interest in or relation to the company as members or policyholders except for matured claims or other policy obligations and in the purchase of surrender values unless it possesses assets in the amount of such payments in excess of its liabilities, and the capital stock

and surplus required by chapters 3–8 of this title. (June 19, 1934, 48 Stat. 1151, ch. 672, § 28, ch. III.)

§ 35–529 [5: 218bb]. Officers.

There shall be a president, a secretary, and a treasurer of the company, who shall be elected by the directors; and also such subordinate officers as may be elected or appointed, and who may be required to give security for the faithful performance of the duties of their office, as chapters 3–8 of this title and the company by its by-laws may require. (June 19, 1934, 48 Stat. 1151, ch. 672, § 29, ch. III.)

CROSS REFERENCE

Quo warranto proceedings to question right to corporate office, § 16–1601 et seq.

§ 35–530 [5: 218cc]. Officers and directors not to be pecuniarily interested in transactions—Appraisement—Loans on policies.

No director or officer of any company doing business in the District shall receive any money or valuable thing for negotiating, procuring, recommending, or aiding in any purchase by or sale to such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, coprincipal, agent, or beneficiary, in any such purchase, sale, or loan, nor shall the financial obligation of any such director or officer be guaranteed by such company in any capacity: *Provided,* That nothing herein contained shall prevent any such director or officer from receiving a fee for appraising property for said company or for serving on any committee that passes on the investments of said company: *Provided further,* That nothing herein contained shall prevent a life insurance company from making a loan upon a policy held therein by a director not in excess of the net value thereof. Any person violating any provision of this section shall be guilty of a misdemeanor. (June 19, 1934, 48 Stat. 1151, ch. 672, § 30, ch. III.)

§ 35–531 [5: 218dd]. "Voting-trust agreements" defined and declared unlawful.

It shall be unlawful for any stockholder, director, or officer of any company having capital stock to enter into any contract or agreement, commonly known as "voting-trust agreements," whereby the rights, benefits, or liabilities attaching to the capital stock are transferred or assigned, temporarily or otherwise, to any person or group of persons, incorporated or unincorporated, for the purpose of controlling, managing, or directing the company, or voting its stock: *Provided,* That this section shall not prevent the granting of proxies by stockholders authorizing a designated individual to represent them at stockholders' meetings. (June 19, 1934, 48 Stat. 1151, ch. 672, § 31, ch. III.)

§ 35–532 [5:218ee]. Repealed. May 4, 1950, 64 Stat. 104, ch. 157, § 5.

EFFECTIVE DATE OF REPEAL

For effective date of repeal, see note to § 35–405.

CROSS REFERENCE

Separation of insurance and fraternal activities, effect, § 35–922.

§ 35–533 [5: 218ff]. Classification of risks, payment of dividends, and creation of surplus by mutual companies.

A mutual company may, in its articles of incorporation or in its by-laws, provide for the classification of its risks and of its members and for the payment of dividends and for the creation of a surplus. (June 19, 1934, 48 Stat. 1152, ch. 672, § 33, ch. III.)

§ 35–534 [5: 218gg]. Mutual company guaranty fund—Mutual company's power to borrow—Approval by superintendent.

A mutual company organized under chapters 3–8 of this title may borrow or assume a liability for the repayment of a sum of money sufficient to defray the reasonable expenses of its organization or to enable it to comply with any requirement of the law or as a guaranty fund upon agreement, which shall first be submitted to and approved by the superintendent that such loan or advance, with interest at a rate not exceeding six per centum per annum, shall be repaid out of the earnings, or profits of such corporation with the approval of the superintendent whenever in his judgment the financial condition of the company shall warrant; but such approval shall not be withheld if, after such repayment shall be made, the company shall have and be in possession of a surplus equal to 10 per centum or more of its gross annual premiums. Any such loan or advance shall not form a part of the legal liabilities of the company, but until repaid all statements published by such company or filed with the superintendent shall show the amount thereof then remaining unpaid. (June 19, 1934, 48 Stat. 1152, ch. 672, § 34, ch. III.)

§ 35–535 [5: 218hh]. Investment of funds of domestic companies.

A domestic company shall invest its funds only in—

(1) Bonds, notes, or other evidences of indebtedness of the United States, any State, Territory or possession of the United States, the District of Columbia, the Dominion of Canada, any province of the Dominion of Canada, or of any administration, agency, authority, or instrumentality of any of the political units enumerated.

(2) Bonds, notes, or other evidences of indebtedness guaranteed or insured as to principal and interest by the United States, any State, Territory or possession of the United States, the District of Columbia, the Dominion of Canada, any Province of the Dominion of Canada, or by an administration, agency, authority, or instrumentality of any of the political units enumerated.

(3) Bonds, notes, or other evidences of indebtedness issued, guaranteed, or insured as to principal and interest by a city, county, drainage district, road district, school district, tax district, town, township, village or other civil administration, agency, authority, instrumentality or subdivision of a State, Territory or possession of the United States, or the District of Columbia, or of the Dominion of Canada, or any province thereof, provided such obligations are authorized by law and are (a) direct and general obligations of the issuing, guaranteeing,

or insuring governmental unit, administration, agency, authority, district, subdivision, or instrumentality; or (b) payable from designated revenues pledged to the payment of the principal and interest thereof.

(4) Legally authorized bonds, debentures, notes, collateral trust certificates, and other such evidences of indebtedness, and share certificates, which have been or may be issued by (a) the Federal home-loan bank; (b) the Home Owners' Loan Corporation; (c) any Federal savings and loan association; (d) the Reconstruction Finance Corporation; (e) the Federal Farm Loan Board; (f) any Federal land bank; (g) the Federal Intermediate Credit Bank; (h) any housing authority organized under the public housing laws of the District of Columbia or any State of the United States, or in notes, bonds, or loans secured by mortgage or deed of trust insured under the provisions of the National Housing Act, as amended, or guaranteed or insured pursuant to the provisions of title III of an Act of Congress of the United States of June 22, 1944, cited as the "Servicemen's Readjustment Act of 1944", as heretofore or hereafter amended, or by any entity, corporation, or agency which has been or which may be created by or authorized by any Act which has been enacted, or which may hereafter be enacted by the Congress of the United States, or any amendment thereto, which has for its purpose the relief of, refinancing of, or assistance to owners of mortgaged or encumbered homes, farms, or other real estate.

(5) (a) Bonds, notes, or loans secured by first lien on real estate in the United States or Dominion of Canada worth at least 40 per centum more than the amount loaned thereon: *Provided,* That this limitation shall not apply to any of the classes of securities mentioned in subsection (4) of this section, if guaranteed or insured in whole or in part as therein provided; but nothing in this section shall be deemed to prohibit a company from renewing or extending a loan for the original amount where there has been a shrinkage in the value of such real estate nor to prohibit a company from accepting, as part payment for real estate sold by it, a lien thereon for more than the percentage herein specified of the purchase price of such real estate. For the purpose of this section real estate shall not be deemed to be encumbered by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, water, or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls, nor by reason of building restrictions or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

(b) Bonds, notes, or loans secured by first lien on leasehold estates in improved real property located in the United States or Dominion of Canada, where such real property is unencumbered except by rentals to accrue therefrom to the owner of the fee, and where there is no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated or otherwise disturbed, so long as the lessee is not in default, provided the value of such leasehold, with improvements thereon shall be at least 50 per centum more than the amount loaned thereon: *Provided,* That this limitation shall not apply to any of the classes of securities mentioned in subsection (4) of this section, if guaranteed or insured in whole or in part as therein provided. Such loan shall be completely amortized during the unexpired portion of the lease or leasehold estate securing its payment.

(c) Loans or advances by a company for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which real estate or upon a leasehold estate in said real estate such company then holds a first lien to secure a loan previously made: *Provided,* That no such loan or advance shall be made in a sum in excess of $2,000: *And provided further,* That the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the first lien.

(d) Ground rents in the District of Columbia or any State of the United States: *Provided,* That in the case of unexpired redeemable ground rents the premiums paid, if any, shall be amortized over the period between the date of acquisition and earliest redemption date, or charged off at any time prior to redemption date; and in the case of expired redeemable ground rents the premiums paid, if any, shall be charged off at the time of acquisition. Redeemable ground rents purchased at a discount shall be carried at an amount not greater than the cost of acquisition.

(6) Notes, bonds, or equipment trust certificates secured by any transportation equipment leased or sold to a common carrier, domiciled within the United States or the Dominion of Canada, with gross revenues exceeding one million dollars in the fiscal year immediately preceding purchase, which notes, bonds, or equipment trust certificates provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within twenty years from date of issue and also provide (a) for the vesting of title to such equipment, free from encumbrance in a corporate trustee or (b) for the creation of a first lien on such equipment, provided at the date of purchase such notes, bonds, or trust certificates are not in default as to principal or interest.

(7) Bonds and other evidences of indebtedness of any solvent corporation created under the laws of the United States or any State thereof, or the District of Columbia, or the Dominion of Canada or any province thereof: *Provided,* That (1) no company shall invest an amount in excess of 2 per centum of its admitted assets in any one issue of such obligations of any one corporation; (2) the net earnings of the issuing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by such insurance company shall have averaged yearly, and during the last year of said five-year period shall have been not less than one and one-half times its annual fixed charges at the time of the investment, or, if a new issue, as shown by the pro forma statement

of the corporation; and (3) there shall have been no defaults in interest thereon, or on any such obligations of such corporation which are of equal or higher priority with those purchased, during the period of five years next preceding the date of acquisition, or, if outstanding for less than five years, at any time since said obligations were issued. The term "net earnings available for fixed charges", as used herein, shall mean the net income after deducting all operating and maintenance expenses and taxes other than Federal, State, and District of Columbia income taxes, but nonrecurring items of income and expense may be eliminated. The term "fixed charges" as used herein shall include interest on all of the fixed interest-bearing debt of the corporation outstanding and maturing in more than one year, as of the date of acquisition, and in case of investment in contingent interest obligations, said term shall also include maximum annual contingent interest as of said date. The earnings of all predecessor, merged, consolidated, or purchased companies may be included through the use of consolidated or pro forma statements provided the fixed charges of all such companies are also included.

(8) Bank certificates of deposit and bankers' acceptances, and other bills of exchange of the kind and maturities made eligible by law for purchase in the open market by Federal Reserve banks.

(9) Preferred stock of any solvent corporation (other than its own) created under the laws of the United States, or of any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof, where such corporation has not failed in any one of the three fiscal years next preceding such investment, to have earned a sum applicable to dividends on such preferred stock equal at least to three times the amount of dividends due in that year, or where in case of issuance of new preferred stock such earnings applicable to dividends are equal to at least three times the amount of pro forma annual dividend requirements after giving effect to such new financing, and where the bonds and other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of subsection (7) of this section, and where the total investment in any one issue of such preferred stock of any one corporation does not exceed 1 per centum of the investing company's admitted assets.

(10) Common stocks of any solvent corporation (other than its own) created under the laws of the United States, or of any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof, which shall have paid common dividends in cash for not less than five years next preceding the purchase of such stocks, and where the bonds and other evidences of indebtedness, if any, and the preferred stock, if any, of such corporation are eligible as investments under the provisions of subsections (7) and (9), respectively, of this section, and where the total investment in the common stock of any one corporation does not exceed 1 per centum of the investing company's admitted assets.

(11) Loans upon the pledge of any of the securities aforesaid.

(12) A life-insurance company may also purchase for its own benefit any policy of life insurance or other obligation of the company and claims of the holders thereof, and may lend to the holders of its life-insurance policies sums not exceeding in any case the reserve value of the policy at the time the loan is made, and for the payment of any such loan the policy and all amounts payable thereunder shall be pledged.

(13) A company doing business in a foreign country may invest the funds required to meet its obligations in such country and in conformity to the laws thereof in the same kind of securities in such foreign country that such company is allowed by law to invest in the United States.

(14) A life-insurance company may also acquire, hold, and convey real estate for the purposes and in the manner following:

(a) the building in which it has its principal office and the land on which it stands;

(b) such as shall be requisite for its convenient accommodation in the transaction of its business;

(c) such as shall have been acquired for the accommodation of its business;

(d) such as shall have been conveyed to it in satisfaction of debts, previously contracted, in the course of its dealings;

(e) such as it shall have purchased at trustee sale or sales on judgments, decrees, or mortgages obtained or made for such debts; and

(f) such as it may purchase or hold for the production of income. It may improve or otherwise develop in any manner such real estate and the improvements thereon, and may own, maintain, manage, collect, and receive income from, and sell or convey the same. No company shall, in any period of twelve consecutive months, invest in or agree to pay for real estate, including improvements thereon, under the authority of this item (f) an aggregate amount in excess of 2 per centum of its admitted assets as shown in its most recent annual statement; nor shall the total value of real estate and improvements thereon acquired or held by a company for the production of income under the provisions of this item (f) at any time exceed 5 per centum of its said admitted assets. No investment shall be made by any company pursuant to this item (f) if such company then owns real estate having a total value in excess of 10 per centum of its said admitted assets or if such investment will cause such company's aggregate investments in real estate owned by it to exceed 10 per centum of its said admitted assets: *Provided,* That for the purpose of applying said 10 per centum limitation real estate shall include all real estate then owned by the company and such real estate as it may have owned and sold on contract, to the extent of the balance unpaid on such contract of sale; or if the balance unpaid on account of real estate owned and sold by a company is secured by mortgage or other instrument, there shall be included as real estate the amount, if any, by which

the balance unpaid exceeds 75 per centum of the value of such real estate. A company may, subject to the limitations and conditions of this item (f), elect to consider property acquired as specified in items (c), (d), and (e) as real estate for the production of income as defined in this item (f). Such election shall be duly authorized and recorded by the board of directors or by a committee thereof charged with the duty of supervising loans or investments. All such real estate specified in items (c), (d), and (e) of this subsection (14), which shall not be necessary for its accommodation in the convenient transaction of its business, and which it has not elected to hold for the production of income, shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company file with the Superintendent an application for extension of time, supported by such evidence as may be required by the Superintendent, establishing to his satisfaction that an extension would be to the advantage of the company and that the interests of the company would be affected adversely by a forced sale thereof, in which event the time for the sale may be extended to such time as the Superintendent shall direct.

No loan or investment, except loans on the security of life-insurance policies, shall be made by any such company, unless the same shall have been authorized or be approved by the board of directors or by a committee thereof charged with the duty of supervising loans or investments.

No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property; but the disposition of its assets shall at all times be within the control of the company.

Nothing in this chapter shall prohibit a company from accepting in good faith, to protect its interests, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (June 19, 1934, 48 Stat. 1152, ch. 672, § 35, ch. III; Feb. 3, 1938, 52 Stat. 26, ch. 13, § 12; June 19, 1948, 62 Stat. 480, ch. 503.)

AMENDMENT

The 1938 amendment added clause (3a) and the words "and bonds or other evidences of indebtedness of national mortgage associations" to clause (4).

Act June 19, 1948, cited to text, amended section by permitting certain additional investments for domestic life insurance companies.

The catchline has been rewritten.

CROSS REFERENCES

Other provisions concerning investments, § 35–202.
Securities permitted for deposits, § 35–416.
Valuation of securities, § 35–422.

§ 35–536 [5: 218ii]. Repealed, June 19, 1948, 62 Stat. 480, ch. 503.

Section relating to domestic company real estate holdings is now covered by section 35–535.

§ 35–537 [5: 218jj]. Reinsurance by domestic companies in authorized companies.

Any domestic company may reinsure any part of an individual risk in another company having power to make such reinsurance, and with the consent of the superintendent may reinsure any part or all of its risks in another such company. But no credit shall be taken for the reserve for unearned premiums on such reinsurance unless the company accepting the reinsurance is authorized to do business in the District by the superintendent, or in one or more States in the United States, and the superintendent shall have approved the reinsurance. (June 19, 1934, 48 Stat. 1154, ch. 672, § 37, ch. III.)

CROSS REFERENCE

Reinsurance reserves, § 35–201.

§ 35–538 [5: 218kk]. Vouchers for disbursements.

No domestic company shall make any disbursement of $100 or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, or corporation receiving the money and describing the consideration for the payment; and if the expenditure be in connection with any matter pending before any legislative or public body or before any department or officer of any State or government, the voucher shall describe the nature of the matter and the interest of the company therein, or, if such voucher can not be obtained, the expenditure shall be evidenced by affidavit describing its character and object and stating the reasons for not obtaining such voucher. (June 19, 1934, 48 Stat. 1154, ch. 672, § 38, ch. III.)

§ 35–539 [5: 218*ll*]. Books, records, accounts, and vouchers of domestic companies.

Every domestic company shall keep its books, records, accounts, and vouchers in such manner that its financial condition can be ascertained and so that its financial statements filed with the superintendent can be readily verified. (June 19, 1934, 48 Stat. 1154, ch. 672, § 39, ch. III.)

§ 35–540 [5: 218mm]. Unlawful acquisition by company of its own capital stock.

It shall be unlawful for any company to acquire shares of its own capital stock except upon approval of the superintendent where the total outstanding stock is being diminished in accordance with chapters 3–8 of this title. (June 19, 1934, 48 Stat. 1154, ch. 672, § 40, ch. III.)

CROSS REFERENCE

Decrease of capital, § 35–511.

Chapter 6.—FOREIGN AND ALIEN LIFE COMPANIES

Sec.
35–601. Conditions precedent to authority of foreign or alien company to do business in the District.
35–602. Trustees of alien companies.

§ 35–601 [5: 219]. Conditions precedent to authority of foreign or alien company to do business in the District.

A foreign or alien insurance company desiring to transact business in the District shall file with the superintendent:

(a) Its application for certificate of authority, stating the kind or kinds of insurance it proposes to transact.

(b) A copy of its charter, articles of incorporation, or deed or settlement, certified by the official who is required to keep or record the same in the state under whose laws the company is incorporated, or if organized under the laws of a foreign government, province, or state, by the proper official of such government, province, or state.

(c) A copy of its by-laws, or regulations, if any, certified to by the secretary of the company.

(d) Copies of the policies it is issuing or proposes to issue and of the applications therefor.

(e) The instrument authorizing service of process on the superintendent required by chapters 3–8 of this title.

(f) A statement of its financial condition and business, in form as prescribed by law for annual statements, signed and sworn to by the president and secretary or other principal officers of the company. If an alien company, the statement shall comprise only its condition and business in the United States, and shall be signed and sworn to by its United States manager.

(g) It shall satisfy the superintendent that the company is duly organized under the laws of the state, province, or government under whose laws it professes to be organized, and authorized to do the business it is transacting or proposes to transact, and that its name is not identical with, nor so similar to, that of another company organized prior to the organization of the applying company as to lead to confusion.

(h) It shall satisfy the Superintendent that its funds are invested in accordance with the laws of its domicile and in securities or property which afford a degree of financial security substantially equal to that required for similar domestic companies, and, if a stock company, that it has paid-up capital and surplus at least equal to the capital and surplus required of domestic stock companies, or, if a mutual company, that it has a surplus at least equal to that required by this Act for domestic mutual companies. (June 19, 1934, 48 Stat. 1154, ch. 672, § 1, ch. IV; May 4, 1950, 64 Stat. 104, ch. 157, § 6.)

AMENDMENTS

The 1950 act repealed existing subsection (h) and substituted a new subsection therefor. For effective date thereof, see note to § 35–405.

COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, ch. VI, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3–8), are hereby repealed."

Section 5, chapter VI, of the act provides as follows: "This act shall become effective immediately upon passage and approval."

CROSS REFERENCES

Application to existing companies, § 35–520.

Deposits of domestic companies, § 35–415 et seq.

Requirements for domestic companies, see chapter 5 of this title.

§ 35–602 [5: 219a]. Trustees of alien companies.

The directors of an alien company may appoint citizens or corporations of the United States, approved by the superintendent, as its trustees to hold funds and assets in trust for the benefit of the policyholders and creditors of the company in the United States. A certified copy of the record of such appointment and of the deed of trust shall be filed with the superintendent, who may examine such trustees and any officers and agents, books, and papers of the company in the same manner as he may examine officers, agents, books, papers, and affairs of insurance companies. The funds and assets so held by such trustees shall, with the deposits otherwise made by the company and the funds and assets held by the company in the United States for the benefit of its policyholders and creditors in the United States, constitute the assets of the company for the purpose of making its financial statements required by chapters 3–8 of this title. (June 19, 1934, 48 Stat. 1155, ch. 672, § 2, ch. IV.)

Chapter 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

Sec.
35–701. Superintendent to value policies—Legal standard of valuation.
35–702. Separate classes and accounts to be kept for participating and nonparticipating insurance.
35–703. Standard provisions required in life insurance policies.
35–704. Provisions prohibited in life insurance policies.
35–705. Standard provisions required in annuities and pure endowment contracts.
35–705a. Nonforfeiture benefits and cash surrender values.
35–705b. Standard nonforfeiture law.
35–705c. Loan provisions in policies.
35–706. Extension of time for payment of life premiums.
35–707. Interest on policy and premium loans shall be added to principal.
35–708. Life-policy forms to be filed with superintendent—Notice of nonconformity—Review.
35–709. Provisions required by the laws of a company's own State may be included in policies.
35–710. Group life insurance.
35–711. Standard provisions for policies of group life insurance.
35–711a. Notice to individual insured under group life insurance policy.
35–712. Standard provisions for accident and health policies.
35–713. Stock operations and advisory board contracts prohibited.
35–714. Misrepresentations prohibited.
35–715. Discriminations prohibited.
35–716. Rights of creditors and beneficiaries under policies of life insurance.
35–717. Exemption of disability insurance from execution.
35–718. Exemption of group life insurance policies from execution.
35–719. False statements—Misdemeanor.
35–720. Proceeds of certain policies to be held in trust by life company.
35–721. When actual premium for life policy is less than net premium.
35–722. Acceptance of premiums in arrears and recording of payments.
35–723. Standard provisions required in industrial life insurance policies.
35–724. Provisions prohibited in industrial life insurance policies.

§ 35–701 [5: 220]. Superintendent to value policies—Legal standard of valuation.

(a) The Superintendent shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life-insurance policies and annuity and pure endowment contracts of every life-insurance company doing business in the District except that in the case of an alien company such valuation shall be limited to its insurance transactions in the United States, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. All such valuations made by him or by his authority, shall be made upon the net premium basis. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any State or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such State or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the Superintendent when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that State or jurisdiction.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the Superintendent, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(b) This subsection shall apply to only those policies and contracts issued prior to the operative date of section 35–705b (the standard nonforfeiture law) of this chapter.

The legal minimum standard for the valuation of life-insurance contracts issued before January 1, 1935, shall be the method and basis of valuation heretofore applied by the Superintendent in the valuation of such contracts, and for life-insurance contracts issued on and after said date shall be the one-year preliminary term method of valuation, except as hereinafter modified, on the basis of the American Experience Table of Mortality with interest at 3½ per centum per annum: *Provided,* That any life company may, at its option, value its insurance contracts issued on and after January 1, 1935, in accordance with their terms on the basis of the American Men Ultimate Table of Mortality with interest not higher than 3½ per centum per annum by the level net premium method or by the modified preliminary term method hereinafter described.

If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty years from date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment life preliminary term policies of the same company, the reserve thereon at the end of the year, including the first, shall not be less than the reserve on a twenty payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the end of such period of such a twenty payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy. The premium payment period is the period during which premiums are concurrently payable under such twenty payment life preliminary term policy and such limited payment life or endowment policy.

Policies issued on the preliminary term method shall contain a clause specifying that the reserve thereof shall be computed in accordance with the modified preliminary term method of valuation provided for herein.

The legal minimum standard for the valuation of annuities issued on and after January 1, 1935, shall be McClintock's Table of Mortality Among Annuitants, with interest at 4 per centum per annum, but annuities deferred ten or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premium therefor, or upon any higher standard at the option of the company.

The legal minimum standard for the valuation of industrial policies issued after January 1, 1935, shall be the American Experience Table of Mortality with interest at 3½ per centum per annum: *Provided,* That any life company may voluntarily value its industrial policies on the basis of the standard industrial mortality table or the substandard industrial mortality table by the level net premium method or in accordance with their terms by the modified preliminary term method hereinbefore described.

The Superintendent may vary the standards of interest and mortality in the case of alien companies as to contracts issued by such companies in other countries than the United States, and in particular cases of invalid lives and other extra hazards.

Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(c) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 35–705b (the standard nonforfeiture law) of this chapter.

(1) The minimum standard for the valuation of all such policies and contracts shall be the Commissioners reserve valuation method defined in paragraph (2), 3½ per centum interest, and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability

and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table.

(ii) For all industrial life-insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table.

(iii) For annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table.

(iv) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, class (3) Disability Table (1926) which, for active lives, shall be combined with a mortality table permitted for calculating the reserves for life-insurance policies.

(v) For accidental death benefits in or supplementary to policies, the Intercompany Double Indemnity Mortality Table combined with a mortality table permitted for calculating the reserves for life-insurance policies.

(vi) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the Superintendent.

(2) Reserves according to the Commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: *Provided, however,* That such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one-year term premium for such benefits provided for in the first policy year.

Reserves according to the Commissioners reserve valuation method for (i) life-insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) annuity and pure endowment contracts, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life-insurance policies, shall be calculated by a method consistent with the principles of this paragraph (2).

(3) In no event shall a company's aggregate reserves for all life-insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in paragraph (2) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(4) Reserves for any category of policies, contracts, or benefits as established by the Superintendent, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein: *Provided, however,* That reserves for participating life-insurance policies may, with the consent of the Superintendent, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half per centum the company issuing such policies shall file with the Superintendent a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the Superintendent shall approve. (June 19, 1934, 48 Stat. 1156, ch. 672, § 1, ch. V; Feb. 19, 1948, 62 Stat. 27, ch. 66, § 1.)

COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, ch. VI, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3–8), are hereby repealed."

Section 5, chapter VI, of the act provides: "This act shall become effective immediately upon passage and approval."

AMENDMENTS

Act Feb. 19, 1948, cited to text, amended section generally.

CROSS REFERENCES

Actual premium less than net premium, effect, § 35–721.
Application to existing companies, § 35–520.

§ 35–702 [5: 220a]. Separate classes and accounts to be kept for participating and nonparticipating insurance.

Every life company doing business in the District which issues both participating and nonparticipating policies shall keep the two classes of business separate and shall make, and include in the annual statement to be filed with the superintendent each year a separate statement of the gains, losses, and expenses properly attributable to each of such classes and also showing the manner in which any general outlay of expenses of the company has been apportioned to each. No such life company shall be permitted to do business in the District unless it makes such a separation of its business. This section shall not apply to paid-up, temporary, or pure endowment

insurance issued or granted in exchange for lapsed or returned policies. (June 19, 1934, 48 Stat. 1157, ch. 672, § 2, ch. V.)

§ 35–703 [5: 220b]. Standard provisions required in life insurance policies.

No policy of life insurance other than industrial insurance, annuities, and pure endowments with or without return of premiums or of premiums and interest shall be issued or delivered in the District or be issued by a life company organized under the laws of the District after the 1st day of January 1935, unless the same shall contain in substance the following:

(1) A provision that all premiums after the first shall be payable in advance, either at the home office of the company or to an agent of the company, upon delivery of a receipt signed by one or more of the officers who shall be designated in the policy.

(2) A provision that the insured is entitled to a grace period of at least thirty days or of one month within which the payment of any premiums after the first year may be made, subject at the option of the company to an interest charge not in excess of 6 per centum per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in full force, but in case the policy becomes a claim during the said period of grace before the overdue premium or the deferred premiums of the current policy year, if any, are paid, the amount of such premiums, with interest on any overdue premiums, may be deducted from any amount payable under the policy in settlement. Grace shall date from the premium-paying date stated in the policy.

(3) A provision that, except as otherwise expressly provided by law, the policy shall constitute the entire contract between the parties and shall be incontestable after it has been in force during the lifetime of the insured for a period of not more than two years from its date, except for nonpayment of premiums and except for violations of the conditions of the policy relating to naval or military service in time of war, and at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted; that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties; and that no such statement or statements shall be used in defense of a claim under the policy unless contained in a written application and unless a copy of such statement or statements be endorsed upon or attached to the policy when issued: *Provided,* That nothing contained herein shall apply to applications for reinstatement. A reinstated policy shall be contestable on account of fraud or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to the original issue.

(4) A provision that if it shall be found at any time before final settlement under the policy that the age of the insured (or the age of the beneficiary, if considered in determining the premium) has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age, according to the company's rate at date of issue.

(5) A provision that the policy shall participate in the surplus of the company, and any policy containing provisions for participation at the end of the first policy year, and annually thereafter, may also provide that each dividend shall be paid subject to the payment of the premium for the next ensuing year; and the insured under any annual dividend policy shall have the right each year to have the dividend arising from such participation paid in cash; and if the policy shall provide other dividend options, it shall further provide which of said options shall be effective if the insured shall not elect any such other option on or before the expiration of the period of grace allowed for the payment of the premium. This provision shall not apply to any form of paid-up insurance or temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies, or to nonparticipating policies.

(6) A provision that after the policy has been in force three full years the company at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the insured less than the amount required by section 35–705c of this chapter under the conditions specified thereby; and that the company will deduct from such loan value any indebtedness not already deducted in determining such value and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. This provision shall not be required in term insurance, nor shall it apply to temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies. The policy may further provide that if the interest on the loan is not paid when due it shall be added to the existing loan and shall bear interest at the same rate.

(7) A provision for nonforfeiture benefits and cash surrender values in accordance with the requirements of section 35–705a or section 35–705b of this chapter.

(8) A provision specifying the options, if any, to which the policyholder is entitled in the event of default in a premium payment.

(9) A table showing in figures the loan values and the options available under the policy each year upon default in premium payments, during at least the first twenty years of the policy or during the premium paying period if less than twenty years.

(10) A provision that if in event of default in premium payments the value of the policy shall have been applied to the purchase of other insurance as provided for in this section, and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three years from such default, upon evidence of insur-

ability satisfactory to the company and payment of arrears of premiums and the payment or reinstatement of any other indebtedness to the company upon said policy, with interest on said premium and indebtedness at the rate of not exceeding 6 per centum per annum payable annually, and that such reinstated policy shall be contestable, on account of suicide, fraud, or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to the original issue.

(11) A provision that when a policy shall become a claim by the death of the insured settlement shall be made upon receipt of due proof of death.

(12) A table showing the amount of instalments, if any, in which the policy may provide its proceeds may be payable.

(13) Title on the face and on the back of the policy briefly describing its form.

Any of the foregoing provisions or portions thereof not applicable to single premium or nonparticipating or term policies shall, to that extent, not be incorporated therein; and any such policy may be issued or delivered in the District which in the opinion of the superintendent contains provisions on any one or more of the several foregoing requirements more favorable to the policyholder than hereinbefore required. The provisions of this section shall not apply to policies of reinsurance, or to policies issued or granted in exchange for lapsed or surrendered policies, or to group insurance. (June 19, 1934, 48 Stat. 1158, ch. 672, § 3, ch. V; Feb. 19, 1948, 62 Stat. 30, ch. 66, § 2.)

COMPILER'S NOTE

This section largely supersedes § 35–203, which requires application to be attached and that such application and the policy contain the entire contract.

AMENDMENTS

Act Feb. 19, 1948, cited to text, amended paragraphs (6), (7) and (8).

CROSS REFERENCES

Effect of false statements in application, § 35–414.

Special provisions governing industrial policies, § 35–1001 et seq.

Standard provisions for accident and health policies, § 35–712.

Standard provisions for annuity and endowment contracts, § 35–705.

Standard provisions for group life policies, § 35–711.

Valuation of policies, § 35–701.

§ 35–704 [5: 220c]. Provisions prohibited in life insurance policies.

No policy of life insurance other than industrial insurance, annuities, and pure endowments, with or without return of premiums or of premiums and interest, shall be issued or delivered in the District or be issued by a life company organized under the laws of the District after the 1st day of January 1935 if it contains any of the following provisions:

(1) A provision limiting the time within which any action at law or in equity may be commenced to less than three years after the cause of action shall accrue.

(2) A provision by which the policy shall purport to be issued or take effect more than six months before the original application for the insurance was made.

(3) Except for provisions relating to misstatement of age, suicide, aviation, and military or naval service in time of war, a provision for any mode of settlement at maturity, after the expiration of the contestable period of the policy, of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on or secured by the policy, and less any premium that may, by the terms of the policy, be deducted. This paragraph shall not apply to any nonforfeiture provision.

(4) A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan, while the total indebtedness on the policy, including interest, is less than the loan value thereof.

(5) A provision to the effect that the agent soliciting the insurance is the agent of the person insured under said policy, or making the acts or representations of such agent binding upon the person so insured under said policy.

(6) A provision permitting the payment of funeral benefits in merchandise or services, or permitting the payment of any benefits other than in lawful money of the United States.

(7) A provision permitting either contracting to pay, or the payment of, funeral, burial, and other expenses to any designated undertaker or undertaking establishment, or to any particular tradesman or business man, so as to deprive the persons entitled by law to dispose of the body of a deceased, or in any way to control such persons in procuring and purchasing said supplies and services in the open market with the advantage of competition. (June 19, 1934, 48 Stat. 1161, ch. 672, § 4, ch. V; Feb. 19, 1948, 62 Stat. 30, ch. 66, § 3.)

AMENDMENTS

Act Feb. 19, 1948, cited to text, amended paragraph (3) by deleting at the end of the last sentence the words "which employs the cash value less indebtedness, if any, to purchase automatic paid-up or extended insurance."

CROSS REFERENCE

Discrimination prohibited, § 35–715.

NOTES TO DECISIONS

DELIVERY TO AGENT

The mailing of life policy from home office of insurer in Washington, D. C., to soliciting agent in Alabama for delivery in person to insured did not constitute a delivery of policy at Washington, D. C., since agent was agent of insurer rather than of insured, and delivery took place when agent handed policy to insured in Alabama. *United Services Life Ins. Co.* v. *Farr* (D. C., N. Y. 1945, 60 F. Supp. 829).

§ 35–705 [15: 220d]. Standard provisions required in annuities and pure endowment contracts.

On and after January 1, 1935, no annuity or pure endowment contract shall be issued or delivered in the District unless and until a copy of the form thereof has been filed with the superintendent and formally approved by him.

Except in the case of a reversionary annuity, otherwise called a "survivorship annuity," or an annuity contracted by an employer in behalf of his em-

ployees, no annuity or pure endowment contract shall be so issued or delivered in this District unless it contains, in substance, the following provisions:

First. A provision that there shall be a period of grace, either of thirty days or of one month, within which any stipulated payment to the company falling due after the first year may be made, subject, at the option of the company, to an interest charge thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum for the number of days of grace elapsing before such payment, during which period of grace, the contract shall continue in full force; but in case a claim arises under the contract on account of death during the said period of grace before the overdue payment to the company or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

Second. If statements, other than those relating to age and identity, are required, as a condition of issuing the contract, a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or each of the persons as to whom such statements are required, for a period of two years from its date of issue, except where stipulated payments to the company have not been made, and except for violation of the conditions of the contract relating to military or naval service in time of war, and at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant insurance specifically against death by accident, may also be excepted.

Third. A provision that such contract shall constitute the entire contract between the parties, but if the company desires to make the application a part of the contract it may do so, provided a copy of such application shall be endorsed upon or attached to such contract, when issued, and in such case such contract shall contain a provision that it, together with the application therefor, shall constitute the entire contract between the parties.

Fourth. A provision that if the age of the person or persons upon whose life or lives the contract is based, or of any of them, has been misstated, the amount payable under the contract shall be such as the stipulated payments to the company would have purchased at the correct age or ages.

Any overpayment or overpayments by the company, on account of misstatement of age, shall with interest thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum, be charged against the current or next succeeding payment or payments to be made by the company under the contract.

Fifth. If the contract is participating, a provision that the divisible surplus shall be apportioned annually and dividends shall be payable in cash or shall be applicable to any stipulated payment or payments to the company under the contract.

Sixth. A provision that if the contract after having been in force for three full years, shall, by its terms, lapse or become forfeited because any stipulated payment to the company shall not have been made, the reserve on such contract, computed according to the standard adopted by said company in accordance with this chapter, shall, after deducting one-fifth of the said entire reserve, and any indebtedness to the company under the contract, be applied as a net single payment, according to said standard, for the purchase of a paid-up annuity or pure endowment contract, which may be nonparticipating and which shall be payable by the company under the same terms and conditions, except as to amount, as the original contract. A company may provide, in lieu of such paid-up values, for a paid-up annuity or pure endowment contract in an amount bearing the same proportion to the original annuity or pure endowment contract as the number of stipulated payments which shall have been made to the company shall bear to the total number of stipulated payments required to be made to the company under the contract, and if there be any indebtedness to the company under the contract, the amount of such paid-up annuity or pure endowment shall be reduced by an amount bearing the same proportion to such paid-up annuity or pure endowment as such indebtedness bears to the reserve on such paid-up annuity or pure endowment, computed according to the standard adopted by said company in accordance with this chapter.

Seventh. A provision that the contract may be reinstated at any time within one year from the date of default in making stipulated payments to the company, provided that all overdue stipulated payments and any indebtedness to the company on the contract shall be made or paid, with interest thereon at a rate to be specified in the contract but not exceeding 6 per centum per annum, payable annually. In cases where applicable a company may also include a requirement of evidence of insurability satisfactory to the company.

No contract for a reversionary annuity shall be so issued or delivered unless it contains in substance the following provisions:

A. Provisions "First," "Second," "Third," and "Fifth," of this section, except that under provision "First," the company may, at its option, provide for an equitable reduction of the amount of the annuity payments in settlement of any overdue or deferred payments, in lieu of providing for a deduction of such payments from any amount payable upon a settlement under the contract.

B. A provision that, if the age of any of the persons upon whose lives the contract is based has been misstated, the amount payable under the contract shall be such as the stipulated payments to the company would have purchased at the correct ages.

C. A provision that the contract may be reinstated at any time within three years from the date of default in making stipulated payments to the company, upon production of evidence of insurability satisfactory to the company, provided that all overdue payments and any indebtedness to the company on the contract shall be made or paid, with interest thereon at a rate to be specified in the contract, but

not exceeding 6 per centum per annum, payable annually.

Any of the foregoing provisions or portions thereof not applicable to nonparticipating contracts nor to contracts for which a single stipulated payment to the company is made, shall, to that extent, not be incorporated therein; and any such contract may be issued or delivered in this District, which, in the opinion of the superintendent, contains provisions on any one or more of the several foregoing requirements, more favorable to the holder of the contract than hereinbefore required.

Nothing herein contained shall be construed to prevent a life company, which issues life insurance on a participating basis, from issuing annuities, reversionary annuities, or pure endowments on a nonparticipating basis.

Any such contract or any application, endorsement, or rider form used in connection therewith, issued in violation of this section, shall, nevertheless, be held valid, but shall be construed as provided in this section and when any provision in such contract, application, endorsement, or rider is in conflict with any provision of this section or with any other statutory provision, the rights, duties, and obligations of the company, of the holder of the contract and of the beneficiary or annuitant thereunder, shall be governed by the provisions of this section.

The provisions of this section shall not apply to contracts of reinsurance nor to contracts for deferred annuities or reversionary annuities included in life insurance policies.

For the purposes of this section, application forms, rider forms, and endorsement forms for use in connection with any such contract, excepting riders or endorsements relating to the manner of distribution of benefits or to the reservation of rights and benefits under any such contract, and used at the request of the individual holders of such contracts, shall be deemed to be parts of such contract and shall require the approval of the superintendent. No rider and no endorsement, except as stated above, shall be attached to or printed or stamped upon any such contract issued or delivered in the District until the form of such rider or endorsement has been filed with the superintendent and formally approved by him. (June 19, 1934, 48 Stat. 1161, ch. 672, § 5, ch. V.)

COMPILER'S NOTE

This section largely supersedes § 35–203, which requires application to be attached and that the policy and application constitute the entire contract.

CROSS REFERENCES

Effect of false statements in application, § 35–414.
Provision prohibited in life policies, § 35–704.
Special provisions governing industrial policies, § 35–1001 et seq.
Standard provision for accident and health policies, § 35–712.
Standard provisions for group life policies, § 35–711.
Standard provisions for life policies, § 35–703.
Valuation of policies, § 35–701.

§ 35–705a. Nonforfeiture benefits and cash surrender values.

This section shall apply only to policies of life insurance issued prior to the operative date of section 35–705b (the standard nonforfeiture law) of this chapter.

The nonforfeiture benefits referred to in provision (7) of section 35–703 of this chapter shall be available to the insured in event of default in premium payments, after premiums shall have been paid for three years, and shall be a stipulated form of insurance, effective from the due date of the defaulted premium, the net value of which shall be at least equal to the reserve at the date of default on the policy and on dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and on total and permanent disability and additional accidental death benefits (the policy to specify the mortality table and rate of interest adopted for computing such reserve), less a specified percentage (not more than two and one-half) of the amount insured by the policy and of existing dividend additions thereto, if any, and less any existing indebtedness to the company on or secured by the policy: *Provided,* That a company may, in lieu of the provision herein permitted for the deduction from the reserve of a sum not more than 2½ per centum of the amount insured by the policy, and of any dividend additions thereto, insert in the policy a provision that one-fifth of said reserve may be deducted, or may provide therein that a deduction may be made of said 2½ per centum or one-fifth of said reserve, at the option of the company: *Provided further,* That the policy may be surrendered to the company at its home office within one month of the due date of defaulted premium for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance as aforesaid: *And provided further,* That the company may defer payment for not more than six months after the application therefor is made. A provision may also be inserted in the policy that in event of default in a premium payment before such benefit becomes available, the reserve on any dividend additions then in force may at the option of the company be paid in cash or applied as a net premium to the purchase of paid-up term insurance for any amount not in excess of the face of the original policy. This section shall not apply to term insurance of twenty years or less. The net single premium rate employed in computing the term of temporary insurance or the amount of pure endowment insurance granted as a nonforfeiture value under any life-insurance policy may at the option of the company be based upon a table of mortality showing rates of mortality not greater than 130 per centum of those shown by the American Men Ultimate Table of Mortality instead of the table used in computing the reserve on the policy, or in case of substandard policies not greater than 130 per centum of the rates of mortality shown by the table of mortality approved by the Superintendent for computing the reserve on the policy, anything herein to the contrary notwithstanding. (June 19, 1934, ch. 672, § 5a, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4.)

§ 35–705b. Standard nonforfeiture law.

(a) In the case of policies issued on or after the operative date of this section, as defined in subsec-

tion (g) no policy of life insurance, except as stated in subsection (f), shall be issued or delivered in the District of Columbia unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the Superintendent are at least as favorable to the defaulting or surrendering policyholder—

(1) that, in event of default in any premium payment after premiums have been paid one full year in the case of ordinary insurance or three full years in the case of industrial insurance, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified;

(2) that, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit a cash surrender value of such amount as may be hereinafter specified;

(3) that a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default;

(4) that, if the policy shall become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified;

(5) a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy;

(6) a brief and general statement of the method to be used in calculating the cash surrender value and the paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy, with an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

(b) Any cash surrender value available under any policy referred to in subsection (a) in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection (a), shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (i) the then present value of the adjusted premiums as defined in subsection (d), corresponding to premiums which would have fallen due on and after such anniversary, and (ii) the amount of any indebtedness to the company on the policy. Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection (a), shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

(c) Any paid-up nonforfeiture benefit available under any policy referred to in subsection (a), in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(d) The adjusted premiums for any policy referred to in subsection (a) shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) 2 per centum of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) 40 per centum of the adjusted premium for the first policy year; (iv) 25 per centum of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: *Provided, however,* That in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed

4 per centum of the amount of insurance or level amount equivalent thereto.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent level amount thereof for the purpose of this subsection shall be deemed to be the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy.

All adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table for Ordinary Insurance and the 1941 Standard Industrial Mortality Table for Industrial Insurance and the rate of interest, not exceeding 3½ per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: *Provided, however,* That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130 per centum of the rates of mortality according to such applicable table: *Provided, further,* That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent.

(e) Any cash surrender value and any paid-up nonforfeiture benefit, available under any such policy in the event of default in the payment of any premium due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (b), (c), and (d) may be calculated upon the assumption that any death benefit is payable at the end of the policy or contract year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (b), additional benefits payable (i) in the event of death or dismemberment by accident or accidental means, (ii) in the event of total and permanent disability, (iii) as reversionary annuity or deferred reversionary annuity benefits, (iv) as decreasing term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, and (v) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(f) This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen years or less expiring before age sixty-six, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsection (d), is less than the adjusted premium so calculated, on such fifteen-year term policy issued at the same age and for the same initial amount of insurance, nor to any policy or contract which shall be delivered outside the District of Columbia through an agent or other representative of the company issuing the policy.

(g) After February 19, 1948, any company may file with the Superintendent a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1950. After the filing of such notice, then upon such specified date (which shall be the operative date for such company), this section shall become operative with respect to the policies and contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1950. (June 19, 1934, ch. 672, § 5b, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4.)

§ 35–705c. Loan provisions in policies.

(a) In the case of ordinary policies issued prior to the operative date of section 35–705b (the standard nonforfeiture law) of this chapter the loan value referred to in provision (6) of section 35–703 of this chapter shall be the reserve at the end of the current policy year on the policy and on the dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and of total and permanent disability and additional accidental death benefits, less a sum not more than 2½ per centum of the amount insured by the policy and of any dividend additions thereto (the policy to specify the mortality table and rate of interest adopted for computing such reserve). The policy may provide that such loan may be deferred for not exceeding six months after the application therefor is made. A company may, in lieu of the provision hereinabove permitted for the deduction from a loan on the policy of a sum not more than 2½ per centum of the amount insured by the policy and of any dividend additions thereto, insert in the policy a provision that one-fifth of the said reserve may be deducted in case of a loan under the policy, or may provide therein that the deduction may be the said 2½ per centum or the one-fifth of the said reserve at the option of the company.

(b) In the case of ordinary policies issued on or after the operative date of section 35–705b (the standard nonforfeiture law) of this chapter the loan value referred to in provision (6) of section 35–703 of this chapter shall be the cash surrender value at the end of the current policy year as required by section 35–705b of this chapter. The company shall reserve the right to defer such loan, except when made to pay premiums, for six months after application therefor is made. (June 19, 1934, ch. 672, § 5c, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4.)

§ 35–706 [5: 220e]. Extension of time for payment of life premiums.

A life company may enter into subsequent agreements in writing with the insured, which need not be attached to the policy, to extend the time for the payment of any premium, or part thereof, upon condition that failure to comply with the terms of such agreement shall lapse the policy, as provided in said agreement or in the policy. Subject to such lien as may be created to secure any indebtedness contracted by the insured, in consideration of such extension, said agreement shall not impair any right existing under the policy. (June 19, 1934, 48 Stat. 1164, ch. 672, § 6, ch. V.)

§ 35–707 [5: 220f]. Interest on policy and premium loans shall be added to principal.

In ascertaining the indebtedness due upon policy or premium loans the interest, if not paid when due, shall be added to the principal of such loans and shall bear interest at the rate specified in the note or loan agreement. (June 19, 1934, 48 Stat. 1164, ch. 672, § 7, ch. V.)

§ 35–708 [5: 220g]. Life-policy forms to be filed with Superintendent—Notice of nonconformity—Review.

A policy of life insurance shall not be issued or delivered in the District until the form of the same has been filed with the superintendent, nor if the superintendent give written notice, within thirty days of such filing to the company proposing to issue it, showing wherein the form of such policy does not comply with the requirements of the laws of the District, provided that such action of the superintendent shall be subject to review by a court of competent jurisdiction. (June 19, 1934, 48 Stat. 1164, ch. 672, § 8, ch. V.)

NOTES TO DECISIONS

PRIOR LIEN LIABILITY

Where insured was fatally injured when he fell from hotel window in France on October 2, 1945, while serving with occupation forces, the United States was not a country "engaged in war" within life policy provision restricting liability, even though war had not terminated in a political sense. *Stinson* v. *New York Life Ins. Co.* (App. D. C. 1948, 167 F. 2d 233).

PROVISIONS LIMITING LIABILITY

Under life policy limiting liability if death of insured resulted from military or naval service outside the United States in time of war and if death of insured resulted within two years from date of issue of policy from war while insured was outside the United States, where death of insured occurred while he was serving as a naval officer outside of the United States in time of war and more than two years after date of policy, ambiguity between policy provisions would be resolved by applying the two year provision as an affirmation of liability. *Hayes* v. *Home Life Ins. Co.* (App. D. C. 1948, 168 F. 2d 152).

§ 35–709 [5: 220h]. Provisions required by the laws of a company's own State may be included in policies.

The policies of a life company, not organized under the laws of the District, may contain any provisions prescribed by the laws of the state, territory, District, or country, under which the company is organized. The policies of a life company, organized under the laws of the District, may, when issued or delivered in any state, territory, District, or country, contain any provisions required by the laws of the state, territory, District, or country in which the same are issued or delivered, anything in chapters 3–8 of this title to the contrary notwithstanding. (June 14, 1934, 48 Stat. 1164, ch. 672, § 9, ch. V.)

§ 35–710 [5: 220i]. Group life insurance.

No policy of group life insurance shall be delivered in the District unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of such affiliated corporations, proprietors, or partnerships is under common control through stock ownership or contract. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75 per centum of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five employees at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides term insurance on any employee which together with any other term insurance under any group life-insurance policy or policies issued to the employers or any of them or to the trustees of a fund established in whole or in part by the employers or any of them exceeds $20,000.

(2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors, or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75 per centum of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75 per centum of the new entrants become insured.

(d) The amount of insurance on the life of any debtor shall at no time exceed the amount owned by him which is repayable in installments to the creditor, or $5,000, whichever is less.

(e) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(a) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75 per centum of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five members at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. No policy may be issued which provides term insurance on any union member which together with any other term insurance under any group life insurance policies issued to the union exceeds $20,000.

(4) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(a) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the

business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(b) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both. No policy may be issued on which any part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at date of issue at least one hundred persons and not less than an average of five persons per employer unit; and if the fund is established by the members of an association of employers the policy may be issued only if (i) either (a) the participating employers constitute at date of issue at least 60 per centum of those employer members whose employees are not already covered for group life insurance or (b) the total number of persons covered at date of issue exceeds six hundred; and (ii) the policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life-insurance policy or policies issued to the employers, or any of them, or to the trustees of a fund established in whole or in part by the employers, or any of them, exceeds $20,000.

(5) A policy issued to the president of the Board of Commissioners, or to the head of any Federal department or independent Federal bureau, board, commission, or other Federal independent establishment, or to an association of Federal employees, as the case may be, covering not less than fifty employees of the government of the District or of the Federal Government, with or without medical examination, the premium on which is to be paid by the employees and insuring only employees, or any class or classes thereof determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer: *Provided*, That when the benefits of the policy are offered to all eligible employees, not less than 75 per centum of such employees may be so insured. (June 19, 1934, 48 Stat. 1164, ch. 672, § 10, ch. V; July 2, 1940, 54 Stat. 726, ch. 518; July 12, 1950, 64 Stat. 330, ch. 457, § 1.)

AMENDMENTS

The act of July 12, 1950, amended the section generally.

The act of July 2, 1940, amended the above section by adding subdivision (e) thereto.

§ 35–711 [5: 220j]. Standard provisions for policies of group life insurance.

No policy of group life insurance shall be delivered in the District unless it contains in substance the following provisions, or provisions which in the opinion of the superintendent are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder: *Provided, however,* (a) That provisions (6) to (10), inclusive, shall not apply to policies issued to a creditor to insure debtors of such creditor; (b) that the standard provisions required for individual life-insurance policies shall not apply to group life-insurance policies; and (c) that if the group life-insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the superintendent is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life-insurance policies contain the same nonforfeiture provisions as are required for individual life-insurance policies:

(1) A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

(2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him.

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

(5) A provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has

been misstated, such provision to contain a clear statement of the method of adjustment to be used.

(6) A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding $250 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(7) A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rgihts and conditions set forth in (8), (9), and (10) following.

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination: *And provided further,* That—

(a) the individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(b) the individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(c) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

(9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by (8) above, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, and (b) $2,000.

(10) A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with (8) or (9) above and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. (June 19, 1934, 48 Stat. 1165, ch. 672, § 11, ch. V; July 2, 1940, 54 Stat. 726, ch. 518; July 12, 1950, 64 Stat. 333, ch. 457, § 2.)

COMPILER'S NOTE

This section largely supersedes § 35–203, which requires application to be attached and that policy and application constitute the entire contract.

AMENDMENTS

The act of July 12, 1950, amended the section generally.

The act of July 2, 1940, amended paragraph 4 by adding thereto the last sentence.

CROSS REFERENCES

Effect of false statements in application, § 35–414.

Provisions prohibited in life policies, § 35–704.

Standard provisions for accident and health policies, § 35–712.

Standard provisions for annuity and endowment contracts, § 35–705.

Standard provisions for life policies, § 35–703.

Valuation of policies, § 35–701.

§ 35–711a. Notice to individual insured under group life-insurance policy.

If any individual insured under a group life-insurance policy hereafter delivered in the District becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy, and if such individual is not given notice of the existence of such right at least fifteen days prior to the expiration date of such period, then, in such event, the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire fifteen days next after the individual is given such notice but in no event shall such additional period extend beyond sixty days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last-known address of the individual or mailed by the insurer to the last-known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this paragraph.

Except as provided in this chapter it shall be unlawful to make a contract of life insurance for a group in the District. (Added July 12, 1950, 64 Stat. 333, ch. 457, § 2.)

§ 35–712 [5: 220k]. Standard provisions for accident and health policies.

(a) On and after the 1st day of January, 1935, no policy of insurance against loss or damage from sickness, or bodily injury or death of the insured by accident, shall be issued or delivered to any person in the District by any company organized under this, or any other law of the District, or, if a foreign company, authorized to do business in the District, until a copy of the form thereof, and of the classification of risks and the premium rates appertaining thereto, have been filed with the superintendent; nor shall it be so issued or delivered until the expiration of thirty days after it has been so filed, unless the superintendent shall sooner give his written approval thereto. If the superintendent shall give written notice to the company which has filed such form that it does not comply with the requirements of law, specifying the reasons for his opinion, it shall be unlawful thereafter for any such insurer to issue any policy in such form. The action of the superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35–427.

(b) No such policy shall be so issued or delivered (1) unless the entire money and other considerations therefor are expressed in the policy; nor (2) unless the time at which the insurance thereunder takes effect and terminates is stated in a portion of the policy preceding its execution by the company; nor (3) if the policy purports to insure more than one person; (4) nor unless every printed portion thereof and of any endorsement or attached papers shall be plainly printed in type of which the face shall not be smaller than ten point; nor (5) unless a brief description thereof be printed on its first page and on its filing back in type of which the face shall not be smaller than fourteen point; nor (6) unless the exceptions of the policy be printed with the same prominence as the benefits to which they apply: *Provided,* That any portion of such policy which purports, by reason of the circumstances under which a loss is incurred, to reduce any indemnity promised therein to an amount less than that provided for the same loss occurring under ordinary circumstances shall be printed in bold-face type and with greater prominence than any other portion of the text of the policy.

(c) Every such policy so issued shall contain certain standard provisions, which shall be in the words and in the order hereinafter set forth and be preceded in every policy by the caption "Standard provisions." In each standard provision wherever the word "company" is used there shall be substituted therefor "company" or "corporation" or "association" or "society" or such other word as will properly designate the company. Said standard provisions shall be:

(1) A standard provision relative to the contract, which may be in either of the following two forms: Form (A) to be used in policies which do not provide for reduction of indemnity on account of change of occupation, and form (B) to be used in policies which do so provide. If form (B) is used and the policy provides indemnity against loss from sickness, the words "or contracts sickness" may be inserted therein immediately after the words "in the event that the insured is injured":

(A) 1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance. No reduction shall be made in any indemnity herein provided by reason of change in the occupation of the insured or by reason of his doing any act or thing pertaining to any other occupation.

(B) 1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the company's classification of risks and premium rates in the event that the insured is injured after having changed his occupation to one classified by the company as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the company will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the company for such more hazardous occupation.

If the law of the state in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the company in accordance with such law, but if such filing is not required by such law then they shall mean the company's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the company is liable.

(2) A standard provision relative to changes in the contract, which shall be in the following form:

2. No statement made by the applicant for insurance, not included herein, shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the company and such approval be endorsed hereon.

(3) A standard provision relative to reinstatement of policy after lapse which may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident; form (B) to be used in policies which insure only against loss from sickness; and form (C) to be used in policies which insure against loss from both accident and sickness.

(A) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the company or by any

of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

(B) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the company or by any of its duly authorized agents shall reinstate the policy but only to cover such sickness as may begin more than ten days after the date of such acceptance.

(C) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the company or by any of its duly authorized agents shall reinstate the policy but only to cover accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance.

(4) A standard provision relative to time of notice of claim, which may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident; form (B) to be used in policies which insure only against loss from sickness; and form (C) to be used in policies which insure against loss from both accident and sickness. If form (A) or form (C) is used the company may at its option add thereto the following sentence: "In event of accidental death immediate notice thereof must be given to the company."

(A) 4. Written notice of injury on which claim may be based must be given to the company within twenty days after the date of the accident causing such injury.

(B) 4. Written notice of sickness on which claim may be based must be given to the company within ten days after the commencement of the disability from such sickness.

(C) 4. Written notice of injury or of sickness on which claim may be based must be given to the company within twenty days after the date of the accident causing such injury or within ten days after the commencement of disability from such sickness.

(5) A standard provision relative to sufficiency of notice of claim which shall be in the following form and in which the company shall insert in the blank space such office and its location as it may desire to designate for such purpose of notice:

5. Such notice given by, or in behalf of the insured or beneficiary as the case may be, to the company at ————————, or to any authorized agent of
(Full address)
the company, with particulars sufficient to identify the insured, shall be deemed to be notice to the company. Failure to give notice, within the time provided in this policy, shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(6) A standard provision relative to furnishing forms for the convenience of the insured in submitting proof of loss as follows:

6. The company, upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss: If such forms are not so furnished within fifteen days after receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy, as to proof of loss, upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

(7) A standard provision relative to filing proof of loss which shall be in such one of the following forms as may be appropriate to the indemnities provided:

(A) 7. Affirmative proof of loss must be furnished to the company at its said office within ninety days after the date of the loss for which claim is made.

(B) 7. Affirmative proof of loss must be furnished to the company at its said office within ninety days after the termination of the period of disability for which the company is liable.

(C) 7. Affirmative proof of loss must be furnished to the company at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the company is liable, and in case of claim for any other loss, within ninety days after date of such loss.

(8) A standard provision relative to examination of the person of the insured and relative to autopsy which shall be in the following form:

8. The company shall have the right and opportunity to examine the person of the insured, when and so often as it may reasonably require during the pendency of claim hereunder; and also the right and opportunity, in the case of death, to have autopsy performed, where it is not forbidden by law.

(9) A standard provision relative to the time within which payments other than those for loss of time on account of disability shall be made, which provision may be in either of the following two forms and which may be omitted from any policy providing only indemnity for loss of time on account of disability. The company shall insert in the blank space either the word "immediately" or appropriate language to designate such period of time, not more than sixty days, as it may desire, form (A) to be used in policies which do not provide indemnity for loss of time on account of disability and form (B) to be used in policies which do so provide.

(A) 9. All indemnities provided in this policy will be paid ———————— after receipt of due
(Indicate time)
proof.

(B) 9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid ———————— after receipt of
(Indicate time)
due proof.

(10) A standard provision relative to periodical payments of indemnity for loss of time on account of disability, which provisions shall be in the following form, and which may be omitted from any policy not providing for such indemnity. The company shall insert, in the first blank space of the form, appropriate language to designate the proportion of accrued indemnity it may desire to pay, which proportion may be all or any part not less than one-half; and in the second blank space shall insert any period of time not exceeding sixty days.

10. Upon request of the insured and subject to due proof of loss ———————— accrued indem-
(Within time to be inserted)
nity for loss of time on account of disability will be paid at the expiration of each ————————
(Insert time)
during the continuance of the period for which the company is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

(11) A standard provision relative to indemnity payments which may be in either of the two following forms: Form (A) to be used in policies which designate a beneficiary and form (B) to be used in policies which do not designate any beneficiary other than the insured.

(A) 11. Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured.

(B) 11. All the indemnities of this policy are payable to the insured.

(12) A standard provision providing for cancelation of the policy at the instance of the insured which shall be in the following form:

12. If the insured shall at any time change his occupation to one classified by the company as less hazardous than that stated in the policy, the company, upon written request of the insured and surrender of the policy, will cancel the same and will return to the insured the unearned premium.

(13) A standard provision relative to the rights of the beneficiary under the policy which shall be in the following form and which may be omitted from any policy not designating a beneficiary.

13. Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

(14) A standard provision limiting the time within which suit may be brought upon the policy as follows:

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

(15) A standard provision relative to time limitations of the policy as follows:

15. If any time limitation of this policy, with respect to giving notice of claim or furnishing proof of loss, is less than that permitted by the law of the State in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

(d) No such policy shall be so issued or delivered which contains any provision (1) relative to cancelation at the instance of the company; or (2) limiting the amount of indemnity to a sum less than the amount stated in the policy and for which the premium has been paid; or (3) providing for the deduction of any premium from the amount paid in settlement of claim; or (4) relative to other insurance by the same company; or (5) relative to the age limits of the policy; unless such provisions, which are hereby designated as optional standard provisions, shall be in the words and in the order in which they are hereinafter set forth, but the company may at its option omit from the policy any such optional standard provision. Such optional standard provisions if inserted in the policy shall immediately succeed the standard provisions named in subdivision (c) of this section.

(1) An optional standard provision relative to cancelation of the policy at the instance of the company as follows:

16. The company may cancel this policy at any time by written notice delivered to the insured or mailed to his last address, as shown by the records of the company, together with cash or the company's check for the unearned portion of the premiums actually paid by the insured, and such cancelation shall be without prejudice to any claim originating prior thereto.

(2) An optional standard provision relative to reduction of the amount of indemnity to a sum less than that stated in the policy as follows:

17. If the insured shall carry with another company, corporation, association, or society other insurance covering the same loss without giving written notice to the company, then in that case the company shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

(3) An optional standard provision relative to deduction of premium upon settlement of claim as follows:

18. Upon the payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(4) An optional standard provision relative to other insurance by the same company which shall be in such one of the following forms as may be appropriate to the indemnities provided, and in the blank space of which the company shall insert such upward limits of indemnity as are specified by the company's classification of risks, filed as required by this section.

(A) 19. If a like policy or policies, previously issued by the company to the insured, be in force concurrently herewith, making the aggregate indemnity in excess of $————————, the excess insurance shall
(Amount to be inserted)
be void and all premiums paid for such excess shall be returned to the insured.

(B) 19. If a like policy or policies, previously issued by the company to the insured, be in force concurrently herewith, making the aggregate indemnity for loss of time on account of disability in excess of $———————— weekly, the excess insurance shall
(Amount to be inserted)
be void and all premiums paid for such excess shall be returned to the insured.

(C) 19. If a like policy or policies, previously issued by the company to the insured, be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of $———————— or the aggregate
(Amount to be inserted)
indemnity for loss of time on account of disability in excess of $———————— weekly, the excess in-
(Amount to be inserted)
surance of either kind shall be void and all premiums paid for such excess shall be returned to the insured.

(5) An optional standard provision relative to the age limits of the policy which shall be in the following form and in the blank spaces of which the company shall insert such numbers of years as it may elect.

20. The insurance under this policy shall not cover any person under the age of ——— years nor over the age of ——— years. Any premium paid to the company for any period not covered by this policy will be returned upon request.

(e) No such policy shall be so issued or delivered if it contains any provision contradictory, in whole or in part, of any of the provisions hereinbefore in this section designated as "standard provisions" or as "optional standard provisions"; nor shall any endorsements or attached papers vary, alter, extend, be used as a substitute for, or in any way conflict with any of the said "standard provisions" or the said "optional standard provisions"; nor shall such policy be so issued or delivered if it contains any provision purporting to make any portion of the charter, constitution, or by-laws of the company a part of the policy unless such portion of the charter, constitution, or by-laws shall be set forth in full in the policy, but this prohibition shall not be deemed to apply to any statement of rates or classification of risks filed with the superintendent in accordance with the provisions of this section.

(f) The falsity of any statement in the application for any policy covered by this section shall not bar the right to recovery thereunder unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the company.

(g) The acknowledgment by a company of the receipt of notice given under any policy covered by this section, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the company in defense of any claim arising under such policy.

(h) No alteration of any written application for insurance by erasure, insertion, or otherwise shall be made by any person other than the applicant without his written consent, and the making of any such alteration without the consent of the applicant shall be a misdemeanor. If such alteration shall be made by any officer of the company, or by any employee of the company with the company's knowledge or consent, then such act shall be deemed to have been performed by the company thereafter issuing the policy upon such altered application.

(i) A policy issued in violation of this section shall be held valid but shall be construed as provided in this section and when any provision in such a policy is in conflict with any provision of this section the rights, duties, and obligations of the company, the policyholder, and the beneficiary shall be governed by the provisions of this section.

(j) The policies of insurance against accidental bodily injury or sickness issued by a company not organized under the laws of the District may contain, when issued in the District, any provision which the law of the state, territory, or District of the United States under which the company is organized prescribes for insertion in such policies, and the policies of insurance against accidental bodily injury or sickness issued by a company organized under the laws of the District may contain, when issued or delivered in any other state, territory, District, or country, any provision required by the laws of the state, territory, District, or country in which the same are issued, anything in this section to the contrary notwithstanding.

(k) (1) Nothing in this section, however, shall apply to or affect any policy of group accident, group health, or group accident and health insurance.

(2) Nothing in this section shall apply to or in any way affect contracts supplemental to contracts of life or endowment insurance where such supplemental contracts contain no provisions except such as operate to safeguard such insurance against lapse or to provide a special surrender value therefor in the event that the insured shall be totally and permanently disabled by reason of accidental bodily injury or by sickness: *Provided,* That no such supplemental contract shall be issued or delivered to any person in the District unless and until a copy of the form thereof has been submitted to and approved by the superintendent under such reasonable rules and regulations as he shall make concerning the provisions in such contracts and their submission to and approval by him.

(3) The provisions of this section contained in clause (5) of subdivision (b) and clauses (2), (3), and (12) of subdivision (c) may be omitted from railroad-ticket policies sold only at railroad stations, or at railroad-ticket offices by railroad employees.

(*l*) Any company, or other insurer, or any officer or agent thereof, which or who issues or delivers to any person in the District any policy in violation of the provisions of this section, shall be punished, upon conviction, by a fine of not more than $500 for each offense, and the superintendent may revoke the certificate of authority of any company, corporation, association, society, or other insurer of any state or country, or the license of the agent thereof, which or who violates any provisions of this section.

(m) The term "indemnity" as used in this section, means benefits promised. (June 19, 1934, 48 Stat. 1166, ch. 672, § 12, ch. V; July 12, 1950, 64 Stat. 335, ch. 457, § 3.)

AMENDMENTS

The act of July 12, 1950, amended subsection (k) (1) by striking out material previously appearing after the words "any policy of" and inserting in lieu thereof the

words "group accident, group health, or group accident and health insurance."

Cross References

Health and accident companies, §§ 35–202, 35–1301 et seq.

Health and accident policies issued by companies operating under the "Fire and Casualty Act" may be required to comply with this section, § 35–1332.

Standard provisions for annuity and endowment contracts, § 35–705.

Standard provisions for group life policies, § 35–711.

Standard provisions for life policies, § 35–703.

NOTES TO DECISIONS

Burden of Proof

Insurer had burden of proving that right to recovery on hospitalization policy was barred by insured's failure to state in application inquiring as to past medical or surgical treatment that insured's cervix had been cauterized, and such burden could be carried by evidence deduced from insured's own witnesses. *Turner* v. *National Hospitalization* (D. C. Mun. App. 1947, 52 A. 2d 274).

Domestic and Foreign Corporations

Subsection (f) of this section providing that falsity of any statement in application for accident and health policy shall not bar right of recovery thereunder unless made with intent to deceive, or unless materially affecting acceptance of risk or hazard assumed by insurer, was applicable to insurance company issuing hospitalization policy and chartered in District of Columbia and authorized to do business in District, and to Maryland company assuming policy with consent of insured, where insured continued to live in District and claim arose in District. *Turner* v. *National Hospitalization* (D. C. Mun. App. 1947, 52 A. 2d 274).

Intention to Deceive

An insured's failure to state, in hospitalization policy application inquiring as to past medical or surgical treatment, that her cervix had been cauterized, precluded recovery of hospitalization benefits under policy, where failure to disclose such fact was intended to deceive and materially affected acceptance of risk. *Turner* v. *National Hospitalization* (D. C. Mun. App. 1947, 52 A. 2d 274).

§ 35–713 [5: 220*l*]. Stock operations and advisory board contracts prohibited.

No life company doing business in the District shall issue in the District, nor permit its general agents, agents, officers, solicitors, or employees to issue or deliver in the District, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board or other contracts of any kind promising returns and profits as an inducement to insure; and no life company shall be authorized to do business in the District which issues or permits its general agents, agents, officers, solicitors, or employees to issue in the District or in any state or territory agency company stock or other capital stock, or benefit certificates or shares in any common-law corporations, or securities or any special advisory board or other contracts of any kind promising returns and profits as an inducement to insurance; and no corporation or stock company acting as agent of a life company nor any of its general agents, agents, officers, solicitors, or employees shall be permitted to sell, agree, or offer to sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds, or agreement of any form or nature promising returns and profits as an inducement to insurance or in connection therewith. It shall be the duty of the superintendent, upon due proof after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, to revoke the authority of the company or agent so offending: *Provided, however,* That the action of the superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35–427. (June 19, 1934, 48 Stat. 1173, ch. 672, § 13, ch. V.)

§ 35–714 [5: 220m]. Misrepresentations prohibited.

No life company doing business in the District, and no officer, director, general agent, agent, or solicitor thereof, broker, or any other person shall make, issue, or circulate, or cause to be issued or circulated, any estimate, illustration, circular, or statement of any sort misrepresenting the terms of any policy issued or to be issued by it or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. Nor shall any such corporation or officer, director, general agent, agent, or solicitor thereof, broker or any other person, firm, association, or corporation make any misrepresentation to any person insured in any company for the purpose of inducing or tending to induce a policyholder in any company to lapse, forfeit, or surrender his insurance. It shall be the duty of the superintendent, upon due proof after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, to revoke the authority of the company or agent so offending: *Provided, however,* That the action of the superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35–427. (June 19, 1934, 48 Stat. 1174, ch. 672, § 14, ch. V.)

Cross Reference

Revocation or suspension of agent's or broker's license, § 35–426.

§ 35–715 [5: 220n]. Discriminations prohibited.

No life insurance corporation doing business in the District shall make or permit any discriminations between individuals of the same class or of equal expectation of life, in the amount of payment or return of premiums or rates charged for policies of insurance, including endowment policies and annuity contracts, or in the dividends or other benefits payable thereon, or in any of the terms or conditions of the policy; nor shall any such company permit or agent thereof offer to make any contract of insurance, endowment policy, or annuity contract, or agreement as to such contracts other than as plainly expressed in the policy issued thereon, nor shall any such company or officer, agent, solicitor, or representative thereof pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to any person to insure, or give, sell, or purchase, or offer to give, sell, or purchase as such inducement or in connection with such insurance, endowment policy, or annuity contract, any stocks, bonds, or

other securities of any insurance company or other corporation, association, or partnership, or any dividends or profit accruing thereon, or any valuable consideration or inducement whatever not specified in the policy, nor shall any person knowingly receive any such inducement, any rebate of premium, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever, not specified in the policy. No person shall be excused from attending and testifying and producing any books, papers, or other documents before any court or magistrate, upon any investigation, proceeding, or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. Nothing in this section shall be so construed as to forbid a company, transacting industrial life insurance, from returning to policyholders, who have made premium payments for a period of at least one year, directly to the company at its home or distant offices, a percentage of such a premium which the company would have paid for the collection thereof. (June 19, 1934, 48 Stat. 1174, ch. 672, § 15, ch. V.)

CROSS REFERENCE

Provisions prohibited in life policies, § 35–704.

NOTES TO DECISIONS

SPLITTING COMMISSIONS

An insurance broker was not prohibited from splitting commissions with insurance solicitor where arrangement was otherwise valid. *Werber* v. *Wallop* (D. C. Mun. App. 1946, 46 A. 2d 110).

This section prohibiting discrimination, rebates, kickbacks, or other improper manipulating of premiums, did not invalidate agreement between insured and broker that broker would pay half of commissions on issuance of life policies, to insurance solicitor who had handled practically all of insured's insurance business. *Werber* v. *Wallop* (D. C. Mun. App. 1946, 46 A. 2d 110).

§ 35–716 [5: 220*o*]. Rights of creditors and beneficiaries under policies of life insurance.

When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or executors or administrators of such insured or the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting such insurance whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person: *Provided*, That subject to the statute of limitations the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy, but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice by or in behalf of a creditor of a claim to recover for transfer made or premiums paid with intent to defraud creditors with specifications of the amount claimed. (June 19, 1934, 48 Stat. 1175, ch. 672, § 16, ch. V; Aug. 1, 1947, 61 Stat. 711, ch. 427.)

AMENDMENTS

Act of Aug. 1, 1947, cited to text, substituted the words "executors or administrators of such insured or the person so effecting such insurance" in place of "his executors or administrators".

NOTES TO DECISIONS

BENEFICIARY, RIGHTS OF

Under this section providing that the lawful beneficiary other than insured or person effecting insurance or "his" executors or administrators shall be entitled to its proceeds against creditors and representatives of insured the word "beneficiary" is an antecedent of the word "his" and this section means that lawful beneficiary or his executors or administrators shall be entitled to the proceeds against creditors and representatives of insured. *Kindleberger* v. *Lincoln Nat. Bank of Wash.* (App. D. C. 1946, 155 F. 2d 281, 176 A. L. R. 1011, 86 U. S. App. D. C. 101, certiorari denied 67 S. Ct. 495, 329 U. S. 803, 91 L. Ed. 686.)

IMPAIRMENT OF CONTRACT

Where this section was expressly made applicable to policies previously issued, this section was controlling over contrary provision of policy issued before enactment of this section and such application of this section did not impair obligation of contract embodied in the policy. *Kindleberger* v. *Lincoln Natl. Bank of Wash.* (App. D. C. 1946, 155 F. 2d 281, 176 A. L. R. 1011, 86 U. S. App. D. C. 101, certiorari denied 67 S. Ct. 495, 329 U. S. 803, 91 L. Ed. 686.)

REPRESENTATIVES OF DECEASED BENEFICIARY

Under this section, proceeds of life policy were payable to estate of beneficiary who predeceased insured, notwithstanding insured reserved right to change beneficiary and policy, issued before enactment of this section, provided that interest of beneficiary should vest in insured in event of beneficiary's death before insured. *Kindleberger* v. *Lincoln Nat. Bank of Wash.* (App. D. C. 1946, 153 F. 2d 281, 176 A. L. R. 1011, 86 U. S. App. D. C. 101, certiorari denied 67 S. Ct. 495, 329 U. S. 803, 91 L. Ed. 686.)

Where insured reserves right to change beneficiary of life policy, interest of beneficiary may be defeated by insured by expedient of changing beneficiary; but in absence of change, when policy has matured because of insured's death, claim of beneficiary to proceeds cannot be defeated and, if beneficiary has not survived, beneficiary's executors or administrators are entitled under this section to the proceeds against creditors and representatives of insured. *Kindleberger* v. *Lincoln Nat. Bank of Wash.* (App. D. C. 1946, 155 F. 2d 281, 176 A. L. R. 1011, 86 U. S. App. D. C. 101, certiorari denied 67 S. Ct. 495, 329 U. S. 803, 91 L. Ed. 686.)

REPRESENTATIVES OF INSURED

Where life policy provided that proceeds thereof were to be paid to insured's wife, "if living; otherwise to his executors, administrators or assigns", and insured died 15 months after his wife's death without having changed

beneficiary clause, insured's executors, rather than wife's administrators, were entitled to proceeds of policy notwithstanding this section providing that beneficiary's representatives shall be entitled to proceeds of a life policy as against insured's representatives, and though application for policy did not contain the quoted words appearing in policy. *Horning* v. *Lindsay* (C. A., D. C. 1948, 169 F. 2d 963).

§ 35–717 [5: 220p]. Exemption of disability insurance from execution.

No money or other benefit paid, provided, allowed, or agreed to be paid by any company on account of the disability from injury or sickness of any insured person shall be liable to execution, attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such insured person whether such debt or liability was incurred before or after the commencement of such disability, but the provisions of this section shall not affect the assignability of any such disability benefit otherwise assignable, nor shall this section apply to any money income disability benefit in an action to recover for necessaries contracted for after the commencement of the disability covered by the disability clause or contract allowing such money income benefit. (June 19, 1934, 48 Stat. 1175, ch. 672, § 16a, ch. V.)

NOTES TO DECISIONS

ALIMONY

Liability for alimony and support payments to divorced wife is not a "debt or liability" within the meaning of this exemption. *Schlaefer* v. *Schlaefer* (71 App. D. C. 350, 112 Fed. (2d) 177).

Payments of disability insurance are not exempt from liability for alimony and for support of divorced wife. *Schlaefer* v. *Schlaefer* (71 App. D. C. 350, 112 Fed. (2d) 177).

DISPOSITION OF INSURANCE

So far as general creditors are concerned, the purpose of this provision is clear, with the exceptions stated, to make disposition of these funds a matter solely for the insured's judgment. *Schlaefer* v. *Schlaefer* (71 App. D. C. 350, 112 Fed. (2d) 177).

REASON FOR LAW

Congress regarded it better for creditors to go unpaid than to deprive the debtor and his dependents of this means of support when earning capacity would be cut off *Schlaefer* v. *Schlaefer* (71 App. D. C. 350, 112 Fed. (2d) 177).

§ 35–718 [5: 220q]. Exemption of group life insurance policies from execution.

No policy of group life insurance, nor the proceeds thereof when paid to any employee or employees thereunder, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the employee for the payment of his debts. (June 19, 1934, 48 Stat. 1176, ch. 672, § 17, ch. V.)

§ 35–719 [5: 220r]. False statements—Misdemeanor.

Any agent, broker, examining physician, or other person who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for life insurance, or who shall make any such statement for the purpose of obtaining any fee, commission, money, or benefit from or in any company transacting business under chapters 3–8 of this title shall be guilty of a misdemeanor. (June 19, 1934, 48 Stat. 1176, ch. 672, § 18, ch. V.)

§ 35–720 [5: 220s]. Proceeds of certain policies to be held in trust by life company.

Any life company licensed under the laws of the District shall have power to hold the proceeds of any policy issued by it under a trust or other agreement upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors or beneficiaries other than the policyholder as shall have been agreed to in writing by such company and the policyholder. Such insurance company shall not be required to segregate funds so held, but may hold them as a part of its general corporate assets. (June 19, 1934, 48 Stat. 1176, ch. 672, § 19, ch. V.)

§ 35–721 [5: 220t]. When actual premium for life policy is less than net premium.

When the actual premium charged for an insurance policy by any company is less than the net premium on the basis adopted by the company for the valuation of such policy under section 35–701, such company shall be charged as a separate liability with a deficiency reserve equal to the total present value of the future deficiencies in the actual premium calculated according to the table of mortality and rate of interest employed by the company for the valuation of such policy. (June 19, 1934, 48 Stat. 1176, ch. 672, § 20, ch. V.)

§ 35–722. Acceptance of premiums in arrears and recording of payments.

No industrial insurance company or agent thereof shall accept any money in payment of premiums which are in arrears on any industrial life or industrial sick benefit insurance policy which has lapsed and which the insured seeks to reinstate, unless such payment shall amount at least to the total of all premiums in arrears or unless such payment shall, under the regulations of the company, make the policy immediately eligible for reinstatement, subject only to evidence of insurability.

Every current premium shall be correctly recorded by the agent or by the company in the premium receipt book of the insured at the time the premium is paid.

Every advance premium paid by an industrial life or industrial sick-benefit policyholder shall be recorded in the receipt book of the insured in exactly the same manner as current premiums are recorded, and accurate entry thereof shall be made in the record book of the agent: *Provided, however*, That failure so to do shall not invalidate the policy. (May 4, 1950, 64 Stat. 104, ch. 157, § 7.)

EFFECTIVE DATE

For effective date of section, see note to § 35–405.

§ 35–723. Standard provisions required in industrial life insurance policies.

No policy of industrial life insurance shall be delivered or issued for delivery in the District unless it contains in substance the following provisions, or provisions which in the opinion of the Superintendent are more favorable to the policyholders:

(1) A provision that all premiums after the first shall be payable in advance, either at the home office of the company or to an agent of the company.

(2) A provision that the insured is entitled to a grace period of at least twenty-eight days within which the payment of any premiums after the first may be made, and during which period of grace the policy shall continue in full force, but in case the policy becomes a claim during the said period of grace before the overdue premium is paid, the amount of such premium may be deducted from any amount payable under the policy in settlement.

(3) A provision that, except as otherwise expressly provided by law, the policy shall constitute the entire contract between the parties and shall be incontestable after it has been in force during the lifetime of the insured for a period of not more than two years from its date, except for nonpayment of premiums and except for violations of the conditions of the policy relating to naval or military service in time of war, and, at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted; if a copy of the application be attached to the policy, a provision that all statements made by the insured shall in the absence of fraud, be deemed representations and not warranties, and that no such statement or statements shall be used in defense of a claim under the policy unless contained in the attached written application.

(4) A provision that if it shall be found at any time before final settlement under the policy that the age of the insured (or the age of any other person considered in determining the premium) has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age, according to the company's rate at date of issue.

(5) If the policy is a participating policy, a provision indicating the conditions under which the company shall periodically ascertain and apportion any divisible surplus accruing to the policy.

(6) A provision for nonforfeiture benefits and cash surrender values in accordance with the requirements of section 35–705a or section 35–705b of this chapter.

(7) A provision specifying the options, if any, to which the policyholder is entitled in the event of default in a premium payment.

(8) A provision that if in event of default in premium payments the value of the policy shall have been applied to the purchase of other insurance as provided for in this section, and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within two years from such default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums and the payment or reinstatement of any other indebtedness to the company upon said policy, with interest on said premium and indebtedness at the rate of not exceeding 6 percentum per annum payable annually.

(9) A provision that when a policy shall become a claim by the death of the insured settlement shall be made upon receipt of due proof of death.

(10) Title on the face and on the back of the policy briefly describing its form.

Any of the foregoing provisions or portions thereof not applicable to single premium or nonparticipating or term policies shall, to that extent, not be incorporated therein; and any such policy may be issued or delivered in the District which in the opinion of the Superintendent contains provisions on any one or more of the several foregoing requirements more favorable to the policyholder than hereinbefore required. The provisions of this section shall not apply to policies issued or granted in exchange for lapsed or surrendered policies. Nothing contained in subsection (3) hereof shall apply to applications for reinstatement. A reinstated policy shall be contestable on account of fraud or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to the original issue. (May 4, 1950, 64 Stat. 104, ch. 157, § 7.)

EFFECTIVE DATE

For effective date of section, see note to § 35–405.

§ 35–724. Provisions prohibited in industrial life insurance policies.

No policy of industrial life insurance shall be delivered or issued for delivery, in the District, if it contains any of the following provisions:

(1) A provision limiting the time within which any action at law or in equity may be commenced to less than three years after the cause of action shall accrue.

(2) Except for provisions relating to misstatement of age, suicide, aviation, and military or naval service in time of war, a provision for any mode of settlement at maturity, after the expiration of the contestable period of the policy of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on or secured by the policy, and less any premium that may, by the terms of the policy, be deducted. This paragraph shall not apply to any nonforfeiture provision.

(3) A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan, while the total indebtedness on the policy, including interest, is less than the loan value thereof.

(4) A provision to the effect that the agent soliciting the insurance is the agent of the person

insured under said policy, or making the acts or representations of such agent binding upon the person so insured under said policy.

(5) A provision permitting the payment of funeral benefits in merchandise or services, or permitting the payment of any benefits other than in lawful money of the United States.

(6) A provision whereby the benefits or any part thereof accruing under such policy upon the death of a person insured may be paid to any designated undertaker or undertaking firm or corporation or to any person or persons engaged in or connected with such business, without the written consent of the person or persons to whom such benefits would otherwise be paid, or so as in any way to deprive the personal representative or family of the deceased of the advantages of competition in procuring and purchasing supplies and services in connection with the burial of the person insured.

(7) A provision that the liability of the company by reason of the insured's death shall be limited to less than the face amount of the policy if the death of the insured results from a specified kind or character of disease. (May 8, 1950, 64 Stat. 104, ch. 157, § 7.)

EFFECTIVE DATE

For effective date of section, see note to § 35–405.

Chapter 8.—LIFE INSURANCE ACT—PENALTIES—CONSTITUTIONALITY

Sec.

35–801. Penalties.
35–802. Testimony—Production of books—Immunity of witness.
35–803. Constitutionality.

§ 35–801 [5: 221]. Penalties.

Any person, partnership, or company who violates any of the provisions of chapters 3–8 of this title, or fails to comply with any duty imposed upon him or it by any provision of chapters 3–8 of this title, for which violation or failure no penalty is elsewhere provided by the laws of the District, shall be fined not exceeding $500 for each and every violation. (June 19, 1934, 48 Stat. 1176, ch. 672, § 1, ch. VI.)

COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, ch. VI, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3–8), are hereby repealed."

Section 5 of chapter VI of the act provided as follows: "This act shall become effective immediately upon passage and approval."

CROSS REFERENCE

Application to existing companies, § 35–520.

§ 35–802 [5: 221a]. Testimony—Production of books—Immunity of witness.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of chapters 3–8 of this title, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided,* That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further,* That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 19, 1934, 48 Stat. 1176, ch. 672, § 2, ch. VI.)

§ 35–803 [5: 221b]. Constitutionality.

Should any section or provision of chapters 3–8 of this title be decided by the courts to be unconstitutional or invalid, the validity of chapters 3–8 of this title as a whole or of any part thereof other than the part decided to be unconstitutional shall not be affected. (June 19, 1934, 48 Stat. 1177, ch. 672, § 3, ch. VI.)

Chapter 9.—FRATERNAL BENEFIT ASSOCIATIONS

Sec.

35–901. Definition—When disability payable—Reserves—To whom benefits payable—Exemption from general insurance laws.
35–902. Existing associations.
35–903. Nonresident associations—Conditions precedent to doing business in District—Right of superintendent to examine.
35–904. Annual reports.
35–905. Nonresident associations to name superintendent attorney upon whom process may be served—Sufficiency—Notice by mail—Fee—Record.
35–906. Permit to do business from Superintendent of Insurance—Fee.
35–907. Organization—Procedure—Certificate of declaration—Recording—Corporate powers—Trustees, directors, or managers—Election—Quorum.
35–908. Reincorporation of associations existing prior to January 1, 1902.
35–909. Incorporation of subordinate bodies—Procedure.
35–910. Contract invalid if beneficiary to pay assessments.
35–911. Benefits exempt from attachment.
35–912. Meetings.
35–913. Fraudulent representations—Penalty.
35–914. Neglect to report—Effect—Injunction—Penalty for violating injunction.
35–915. Acting without authority—Misdemeanor—"Transact business"—"Doing business" defined.
35–916. This law not to apply to associations for profit.
35–917. This law not to apply to associations or individuals using name of previously existing corporation.

JUVENILE FRATERNAL ACT

35–918. Fraternal benefit society may issue insurance and annuities upon lives of children—Branches for children.
35–919. Contributions—How computed.
35–920. Reserves.
35–921. Enforcement of payment of contributions—Rules and regulations.

SEPARATION OF INSURANCE AND FRATERNAL ACTIVITIES

35–922. Separation of insurance and fraternal activities authorized.
35–923. Certificate to be filed with Superintendent of Insurance—Contents.
35–924. Approval and certificate of superintendent—Recordation.
35–925. Division of activities and property—Directors of insurance activities—Number and selection—Policies as evidence.

Sec.
35–926. Original corporation not dissolved—Subject to supervision as mutual legal reserve life insurance corporation.
35–927. Contracts not impaired—Right of repeal and amendment reserved.
35–928. Insurance laws of States and District applicable.

§ 35–901 [5: 141]. Definition—When disability payable—Reserves—To whom benefits payable—Exemption from general insurance laws.

A fraternal beneficial association is hereby declared to be a corporation, society, order, or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, having a lodge system with ritualistic form of work and representative form of government, making provision for the payment of benefits in case of death. Each such association may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident, or old age: *Provided,* That the period in life at which physical disability benefits on account of old age commences shall not be under seventy years, or the age of expectancy from the time of entering, subject to their compliance with its laws. Any such association may create and maintain a reserve, emergency, or benefit fund in accordance with its laws. Any such association having a reserve, emergency, or benefit fund may, in addition to the benefits hereinbefore named, pay withdrawal benefits, not exceeding the contributions of such member, to a member unable or unwilling to continue membership, provided such membership shall continue not less than three successive years. Such association may also, after ten years of membership, apply its funds and accumulations as its laws provide or the association and members agree. The fund from which the payments of such benefits shall be made and the fund from which the expenses of such association shall be defrayed shall be derived from assessments, dues, and other payments collected from its members or otherwise. The payment of death benefits shall be to the families, heirs, blood relatives, affianced husband, affianced wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepchildren, stepbrother, stepsister, children or parents by legal adoption, member's estate, a charitable, benevolent, educational, or eleemosynary institution, or to persons dependent upon the member or upon whom the member is dependent. Such association shall be governed by sections 35–901 to 35–917, and shall be exempt from the provisions of insurance laws of the United States relating to the District of Columbia, and no law hereafter passed shall apply to them unless they be expressly designated therein: *Provided, however,* That the fact that any such association has outstanding agreements with its members for the payment of benefits other than those herein specified, if it is making no new contracts of that character and is retiring those already existing, shall not exclude such association from the operation of sections 35–901 to 35–917. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 749; Dec. 20, 1928, 45 Stat. 1055, ch. 40, § 1.)

98772°—52—vol. 2——21

COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, provided as follows: "All laws or parts of laws in so far as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, Chapters 3–8 of this title), are hereby repealed."

Any provisions of this chapter in conflict with the "Fire and Casualty Act" (act of Oct. 9, 1940, 54 Stat. 1063, ch. 792), chapter 13 of this title, have been repealed. Section 46 of said act provided as follows: "All laws or parts of laws, insofar as they relate to business affected hereby, and are in conflict with any of the provisions of this act, are hereby repealed."

AMENDMENT

The 1928 amendment added in the seventh sentence relating to the persons entitled to death benefits "father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepchildren, stepbrother, stepsister, children or parents by legal adoption, member's estate, a charitable, benevolent, educational, or eleemosynary institution," and "or upon whom the member is dependent."

The amending act also provided in section 2 "all acts or parts of acts inconsistent with the provisions of this act are hereby repealed."

CROSS REFERENCES

Application of act, §§ 35–916, 35–917.
Juvenile Fraternal Act, §§ 35–918 to 35–921.
Separation of insurance and fraternal activities, § 35–922 et seq.

NOTES TO DECISIONS

AMENDMENTS OF CHARTER

The amendment of the charter of a fraternal benefit association, which originally had been a joint-stock company, from depriving certificate holders of the right formerly had of designating beneficiaries, will not affect existing insurance contracts in the absence of anything in the charter showing that it was intended to have a retrospective effect. *Brown* v. *Grand Fountain* (28 App. D. C. 200).

AMENDMENTS TO CONSTITUTION

A committee appointed by a fraternal beneficial association to revise the laws and constitution does not have authority to originate and propose methods without the notice as required for amendments generally, as to abolition of both constitution and laws. *National Council Junior Order United American Mechanics* v. *State Council* (27 App. D. C. 1).

BENEFICIARIES

This section permitted as beneficiaries only families, heirs, blood relatives, affianced husband, affianced wife, or dependents. Certificate in favor of woman who had been living with the insured, knowing that he had a legal wife living, was void. *Electrical Workers Ben. Assn.* v. *Brown* (58 App. D. C. 203, 26 Fed. (2d) 981).

Police Relief Association could not authorize payment of benefit certificates to persons other than those designated by statute as eligible beneficiaries. *Simpkins* v. *McDermott* (65 App. D. C. 123, 81 Fed. (2d) 257), cert. den. (297 U. S. 715, 80 L. Ed. 1001, 56 Sup. Ct. 592).

BY-LAWS

When by-laws of fraternal beneficial association imposes upon the officers of local councils the duty of receiving and transmitting all assessments and dues to the central committee, a provision in such by-laws that the officers of each local council shall be agents solely of such council and its members, is not consistent with duty and agency imposed by central governing body, and it cannot defeat claim upon certificate of insurance issued by the association. *Prudent Patricians of Pompeii* v. *Marr* (20 App. D. C. 363).

PAYMENT OF DUES

Courts will ordinarily not concern themselves with questions of the good standing of members of such organizations, but when good standing depends solely on payment of dues the civil courts will not hesitate to take cognizance.

Prudent Patricians of Pompeii v. *Marr* (20 App. D. C. 363). See also *Berkley* v. *Harper* (3 App. D. C. 308); *Moss* v. *Littleton* (6 App. D. C. 201); *Drum V. Benton* (13 App. D. C. 245).

REINSTATEMENT

Right of reinstatement is personal to the member of a fraternal beneficial association, and it does not survive to the personal representatives or beneficiaries, and if member dies within specified 30 days as stipulated in by-laws, there can be no recovery. *Supreme Commandery of United Order of Golden Cross* v. *Bernard* (26 App. D. C. 169, 6 Ann. Cas. 694).

§ 35–902 [5: 142]. Existing associations.

All such associations coming within the description as set forth in section 35–901, organized under the laws of the United States relating to said District, or of any state, country, province, or territory, and doing business in said District on January 1, 1902, may continue such business: *Provided*, That they comply with the provisions of sections 35–901 to 35–917 regulating annual reports and the designation of the Superintendent of Insurance of said District, provided for in section 35–101 et seq., as the person upon whom process may be served as hereinafter provided. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 750.)

§ 35–903 [5: 143]. Nonresident associations — Conditions precedent to doing business in District— Right of superintendent to examine.

Any such association coming within the description as set forth in section 35–901, organized under the laws of any state, country, province, or territory, and not doing business in said District on January 1, 1902, shall be admitted to do business within said District when it shall have filed with the Superintendent of Insurance a duly certified copy of its charter and articles of association and a copy of its by-laws certified to by its secretary or corresponding officer, together with an appointment of the said superintendent as the person upon whom process may be served as hereinafter provided: *Provided*, That such association shall be shown to be authorized to do business in the state, country, province, or territory in which it is incorporated or organized, in case the laws of such state, country, province, or territory shall provide for such authorization; and in case the laws of such state, country, province, or territory do not provide for any formal authorization to do business on the part of any such association, then such association shall be shown to be conducting its business in accordance with the provisions of sections 35–901 to 35–917; for which purpose the said superintendent may personally, or by some person to be designated by him, examine into the condition, affairs, character, and business methods, accounts, books, and investments of such association at its home office, which examination shall be at the expense of such association and shall be made within thirty days after demand therefor, and the expense of such examination shall be limited to fifty dollars. Any association doing business under the provisions of sections 35–901 to 35–917 shall be permitted to do business upon filing annually with the Superintendent of Insurance the certificate of authority of the insurance department of the state, province, or territory in which it is incorporated or organized: *Provided, however*, That in case of failure to file said certificate by any such association, or in case the Superintendent of Insurance shall deem it necessary, he shall have power, either personally or by some person designated by him, to examine into the condition, affairs, character, business methods, accounts, books, and investments of such association, at its home office, which examination shall be at the expense of the association. The amount of such expense shall not exceed one hundred dollars for associations which have no reserve or emergency fund and two hundred dollars for associations with a reserve or emergency fund. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 751.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Other provisions concerning inspection and examination of insurance companies, §§ 35–108, 35–201, 35–202, 35–418, 35–1313.

§ 35–904 [5: 144]. Annual reports.

Every such association doing business in said District shall, on or before the first day of March of each year, make and file with the said superintendent a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding, which annual report shall be in lieu of all other reports required by any other law. Such report shall be upon blank forms to be provided by the said superintendent, or may be printed in pamphlet form, and shall be verified under oath by the duly authorized officers of such association, and shall be published, or the substance thereof, in the annual report of the said superintendent under a separate part entitled "Fraternal Beneficial Associations," and shall contain answers to the following questions:

First. Number of certificates issued during the year or members admitted.

Second. Amount of indemnity effected thereby.

Third. Number of losses or benefit liabilities incurred.

Fourth. Number of losses or benefit liabilities paid.

Fifth. The amount received from each assessment for the year.

Sixth. Total amount paid members, beneficiaries, legal representatives, or heirs.

Seventh. Number and kind of claims for which assessments have been made.

Eighth. Number and kind of claims compromised or resisted, and brief statement of reasons.

Ninth. Does the association charge annual or other periodical dues or admission fees?

Tenth. If so, how much on each one thousand dollars, annually or per capita, as the case may be?

Eleventh. Total amount r e c e i v e d, from what source, and the disposition thereof.

Twelfth. Total amount of salaries paid to officers.

Thirteenth. Does the association guarantee in its certificate fixed amounts to be paid regardless of amount realized from assessments, dues, admission fees, and donations?

Fourteenth. If so, state amount guaranteed and the security of such guaranty.

Fifteenth. Has the association a reserve or emergency fund?

Sixteenth. If so, how is it created, and for what purpose, the amount thereof, and how invested?

Seventeenth. Has the association more than one class?

Eighteenth. If so, how many; and the amount of indemnity in each case.

Nineteenth. Number of members in each class.

Twentieth. If voluntary, so state; and give date of organization.

Twenty-first. If organized under the laws of said District, under what law and at what time, giving chapter and year, and date of passage of the act.

Twenty-second. If organized under the laws of any state, country, province, or territory, state such fact and the date of organization, giving chapter and year, and date of passage of the act.

Twenty-third. Number of certificates of beneficial membership lapsed during the year.

Twenty-fourth. Number in force at beginning and end of year; if more than one class, number in each class.

Twenty-fifth. Names and addresses of its president, secretary, and treasurer, or corresponding officers. (Mar. 3, 1901, 31 Stat. 1311, ch. 854, § 752.)

§ 35–905 [5: 145]. Nonresident associations to name superintendent attorney upon whom process may be served—Sufficiency—Notice by mail—Fee—Record.

Each such association doing business on January 1, 1902, or thereafter admitted to do business within said District, and not having its principal office within said District, and not being organized under the laws of the United States relating to said District, shall appoint, in writing, the said superintendent and his successors in office to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in said District. Copies of said certificate certified by said superintendent shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such attorney shall be deemed sufficient service upon such association. When legal process against such association is served upon said superintendent he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and shall, within two days after such service, forward in the same manner a copy of the process served on him to such officer. The plaintiff in such process so served shall pay to the said superintendent at the time of such service a fee of three dollars which shall be recovered by him as a part of the taxable costs if he prevails in his suit. The said superintendent shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made. (Mar. 3, 1901, 31 Stat. 1312, ch. 854, § 753.)

§ 35–906 [5 : 146]. Permit to do business from Superintendent of Insurance—Fee.

The said superintendent shall, upon the application of any association having the right to do business within said District, as provided by sections 35–901 to 35–917, issue to such association a permit in writing authorizing such association to do business within said District, for which certificate and all proceedings in connection therewith such association shall pay the said superintendent the fee of five dollars. (Mar. 3, 1901, 31 Stat. 1312, ch. 854, § 754.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Fraternal benefit associations exempted from provision of general law governing taxes and license fees for insurance companies, § 47–1808.

NOTES TO DECISIONS

ESTOPPEL AS AFFECTING ISSUE

A corporation which did not question finding that it was not qualified under this chapter to do insurance business as a fraternal beneficial association had no "legal right" to a license and could not invoke an estoppel to obtain a license forbidden by statute. *National Hospital Service Soc.* v. *Jordan,* 1942 (128 F. 2d 460, 76 U. S. App. D. C. 23, certiorari denied 63 S. Ct. 65, 317 U. S. 664, 87 L. Ed. 534).

MANDATORY INJUNCTION TO COMPEL ISSUE

Plaintiff was not entitled to a mandatory injunction requiring superintendent of insurance to renew its permit to do insurance business as a fraternal beneficial association, even though it was not qualified under this chapter, on ground that persons in control of plaintiff had acted in reliance on expired permits which were issued by superintendent's predecessors in office and that superintendent was "estopped" from refusing to renew permit. *National Hospital Service Soc.* v. *Jordan,* 1942 (128 F. 2d 460, 76 U. S. App. D. C. 23, certiorari denied 63 S. Ct. 65, 317 U. S. 664, 87 L. Ed. 534).

§ 35–907 [5: 147]. Organization — Procedure — Certificate of declaration—Recording—Corporate powers—Trustees, directors, or managers—Election—Quorum.

Any nine or more persons, at least one-third of whom shall be residents of the District of Columbia, being desirous of forming a fraternal beneficial association for the purposes set forth in section 35–901 may associate themselves together and effect such organization as hereinafter prescribed, and not otherwise. Such persons shall make, sign, and acknowledge before any officer authorized to take the acknowledgment of deeds in this District and file in the office of the recorder of deeds of said District a certificate of declaration in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated the name or title by which said association shall be known to law; the mode and manner in which the corporate powers granted by sections 35–901 to 35–917 are to be exercised; the name or official title of the officers, trustees, representatives, or other persons by whatever name or title designated, who are to have and exercise the general control and management of its

affairs; the place of doing business defined; the limit as to age of applicants for beneficial membership, which shall not exceed fifty-five years, and that medical examinations are required of applicants for life benefits, together with the sworn statement by three of said corporators that at least one hundred persons eligible under the proposed laws of such association to membership therein have in good faith made application in writing for membership. The recorder of deeds, upon the filing of said declaration, shall deliver to such association a certified copy of the papers so filed and recorded in his office, together with a certificate to such association, stating that the provisions in sections 35–901 to 35–917 relative to incorporation have been complied with and that said association becomes thereby authorized to carry on the work of a fraternal beneficial association. Upon filing the certificate or declaration as aforesaid, the persons who shall have signed and acknowledged the same, and their successors and associates, shall, by the provisions of sections 35–901 to 35–917, be a body politic and corporate by the name and style stated in the certificate, and by that name and style shall have perpetual succession, and by said name may sue and be sued, and may have and use a common seal, and the same may alter and change at pleasure, and may make and alter, at times or from time to time, such laws, not inconsistent with the Constitution of the United States or the laws in force in said District, as they may deem necessary for the government of said association. And they and their successors, by their corporate name, shall in law be capable of creating, maintaining, and disbursing a reserve or emergency fund in accordance with its laws and the provisions of sections 35–901 to 35–917, and of taking, receiving, purchasing, and holding real and personal estate necessary for the purpose of such association, and may let, place out at interest, or sell and convey the same as may seem most beneficial for said association. The association shall elect from its members trustees, directors, or managers, by whatever title known in its laws, at such time and place and in such manner as may be specified in its laws, who shall have the control and management of the affairs and funds of said association, a majority of whom shall be a quorum for the transaction of business; and whenever any vacancy shall happen among such trustees, directors, or managers, by death, resignation, or otherwise, such vacancy shall be filled in such manner as shall be provided by the laws of said association. (Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 755.)

§ 35–908. [5: 148]. Reincorporation of associations existing prior to January 1, 1902.

The officers, trustees, directors, or governing body of any fraternal beneficial association existing on January 1, 1902, may, by conforming to the requirements of the several provisions of sections 35–901 to 35–917, reincorporate themselves or continue their existing corporate powers under sections 35–901 to 35–917, or change their name, stating in their certificate the original name of such corporation as well as their new name assumed, and all the property and effects of such existing corporation shall vest in and belong to the corporation so reincorporated or continued. (Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 756.)

COMPILER'S NOTE

The Code of the Laws of the District of Columbia enacted March 3, 1901, 31 Stat. 1189, ch. 854, by its preamble provided that it should become effective January 1, 1902.

§ 35–909 [5: 149]. Incorporation of subordinate bodies—Procedure.

Any subordinate body of any fraternal beneficial association incorporated under the provisions of sections 35–901 to 35–917 or of such association doing business in this District under sections 35–901 to 35–917, where the laws of the governing body of said association do not prohibit the incorporation of their subordinate bodies, may become a body corporate in the manner following: At some regular meeting of such subordinate body a resolution expressing the desire of such subordinate body to be incorporated, and directing its officers to perfect such incorporation, shall be submitted to a vote of the members present, and if two-thirds of the members present vote therefor the president and secretary of such subordinate body, or the officers holding relative offices therein, shall prepare articles of association, under their hands and the seal of such subordinate body, setting forth, first, the number of members of such subordinate body then in good standing; second, the name by which said subordinate body is known; third, the date of its organization and the period for which it is to be incorporated, not exceeding thirty years. A copy of such articles of association shall be filed with the recorder of deeds, and shall by him be recorded, together with the affidavit hereafter named, in a book to be kept for that purpose. On the execution of said articles of association and before the filing thereof with the recorder the secretary of such subordinate body shall annex thereto his affidavit, stating that he is a member in good standing in such subordinate body and occupies the position of secretary, or the office corresponding therewith, and that the resolution, a copy of which shall be set forth at length, was regularly passed at a regular meeting of said subordinate body and received the vote of two-thirds of the members present and voting, and that, to the best of his knowledge and belief, the statements made in the articles of association are true, and that such subordinate body is organized and acting under the laws of its respective association, giving the name by which such association is known. When the foregoing requirements are complied with such subordinate body shall be a body corporate by the name expressed in such articles, and by that name shall be a person in law, capable of suing and being sued in the courts, and taking and holding property of every kind the same as natural persons, and a copy of said articles of association, duly certified to by the recorder of deeds, shall be prima facie evidence in all courts and places of the existence and the due incorporation of such subordinate body. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 757.)

§ 35–910 [5: 150]. Contract invalid if beneficiary to pay assessments.

No contract with any such association shall be valid when there is a contract, agreement, or understanding between the member and the beneficiary prior to or at the time of becoming a member of the association that the beneficiary, or any person for him, shall pay such member's assessments and dues, or either of them. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 758.)

NOTES TO DECISIONS

WAIVER OF REQUIREMENTS

Quaere: Whether beneficial order can waive provisions of this section. *Columbian Fraternal Assn.* v. *Smith* (54 App. D. C. 308, 297 Fed. 887).

The provisions of the section are not waived when order has no knowledge of agreement between insured and beneficiary whereby latter pays the assessment. *Columbian Fraternal Assn.* v. *Smith* (54 App. D. C. 308, 297 Fed. 887).

§ 35–911 [5: 151]. Benefits exempt from attachment.

The money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any association authorized to do business under sections 35–901 to 35–917 shall not be liable to attachment, garnishment, or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process, or by operation of law to pay any debt or liability of a certificate holder or of any beneficiary named in the certificate, or any person who may have any right thereunder. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 759.)

§ 35–912 [5: 152]. Meetings.

Any such association organized under the laws of said District may provide for the meetings of its legislative or governing body in any state, country, province, or territory wherein such association shall have subordinate bodies, and all business transacted at such meetings shall be valid in all respects as if such meetings were held within said District; and where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any state, country, province, or territory shall be valid as if cast within said District. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 760.)

§ 35–913 [5: 153]. Fraudulent representations — Penalty.

Any person, officer, member, or examining physician who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership or for restoration to membership or for the purpose of obtaining any money or benefit in any association transacting business under sections 35–901 to 35–917 shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the United States jail in said District for not less than thirty days nor more than one year, or both, in the discretion of the court; and any person who shall wilfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report or declaration under oath required or authorized by sections 35–901 to 35–917, shall be guilty of perjury. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 761; June 30, 1902, 32 Stat. 534, ch. 1329, § 761.)

AMENDMENT

The 1902 amendment inserted following the word "membership," the first time said word appears, the words "or for restoration to membership."

§ 35–914 [5: 154]. Neglect to report—Effect—Injunction—Penalty for violating injunction.

Any such association refusing or neglecting to make the report as provided in sections 35–901 to 35–917 shall be excluded from doing business within the District. The superintendent of insurance must, within sixty days after failure to make such report, or in case any such association shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of sections 35–901 to 35–917, give notice in writing to the attorney for said District, who shall immediately commence an action against such association to enjoin the same from carrying on any business. An injunction against any such association may be granted on application by the commissioners of said District at the request of the said superintendent. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violation complained of shall have been corrected, nor until the costs of such action be paid by it (provided, the court shall find that such association was in default, as charged), whereupon the Superintendent of Insurance shall reinstate such association, and not until then shall such association be allowed again to do business in said District. Any officer, agent, or person acting for any association or subordinate body thereof, within said District, while such association shall be so enjoined or prohibited from doing business pursuant to sections 35–901 to 35–917, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in said jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 762.)

CROSS REFERENCE

Quo warranto proceedings to question right to corporate rights and franchises, § 16–1601 et seq.

§ 35–915 [5: 155]. Acting without authority—Misdemeanor—"Transact business"—"Doing business" defined.

Any person who shall act within said District as an officer, agent, or otherwise, for any association which shall have failed, neglected, or refused to comply with, or shall have violated any of the provisions of sections 35–901 to 35–917, or shall have failed or

neglected to procure from the said superintendent a proper certificate of authority to transact business as provided for in sections 35–901 to 35–917, shall be subject to the penalty provided in section 35–914 for the misdemeanor therein specified. To "transact business" or "doing business" under sections 35–901 to 35–917 means the writing of applications and the soliciting of new members so far as the penalty of sections 35–901 to 35–917 applies thereto. It shall not be unlawful for any organization under section 35–901 to continue the operation of its lodges or branches except in securing new members. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 763.)

§ 35–916 [5: 156]. This law not to apply to associations for profit.

Nothing in sections 35–901 to 35–917 shall be construed to apply to any corporation, society, order, or association carrying on the business of life, health, casualty, or accident insurance for profit or gain, and it shall only apply to fraternal beneficial associations as defined by section 35–901, and nothing in sections 35–901 to 35–917 contained shall be construed to affect any grand or subordinate lodge or branch of any such fraternal beneficial societies, orders, or associations which limits its certificate holders to a particular religious denomination or to the employees of a particular town or city, designated firm, business house, or corporation, or department or branch of the United States government, nor the grand or subordinate lodges of the Independent Order of Odd Fellows, nor any grand or subordinate lodge, or other body of Free and Accepted Masons, nor the grand or any subordinate lodge of the Knights of Pythias, nor the National Council or any subordinate council of the Junior Order United American Mechanics, nor the national council or any subordinate council of the Daughters of America, nor the supreme council of the Knights of Columbus or any subordinate council thereof, or similar orders, associations, or societies that do not have as their principal object the issuance of benefit certificates of membership in case of death or the payment of sick, funeral, or death benefits exceeding in amount one hundred dollars. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 764; Dec. 12, 1928, 45 Stat. 1021, ch. 24.)

AMENDMENT

The act of 1928 added "nor the National Council or any subordinate council of the Junior Order United American Mechanics, nor the national council or any subordinate council of the Daughters of America, nor the supreme council of the Knights of Columbus or any subordinate council thereof."

§ 35–917 [5: 157]. This law not to apply to associations or individuals using name of previously existing corporation.

The provisions of sections 35–901 to 35–917 shall not extend to nor apply to any association or individual who shall, in the certificate filed with the recorder of deeds, use or specify a name or style the same as that of any previously existing incorporated fraternal beneficial association in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 765.)

JUVENILE FRATERNAL ACT

§ 35–918 [5: 161]. Fraternal benefit society may issue insurance and annuities upon lives of children—Branches for children.

Any fraternal benefit society authorized to do business in the District of Columbia may provide in its laws, in addition to other benefits provided for therein, for insurance and/or annuities upon the lives of children, at any age, upon the application of some adult person, as the laws of such society may provide. Any such society may, at its option, organize and operate branches for such children, and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. (May 29, 1928, 45 Stat. 953, ch. 862, § 2.)

COMPILER'S NOTES

Act May 29, 1928, 45 Stat. 953, ch. 862, § 1, provides: "That this act (§§ 35–918 to 35–921) shall be known as the Juvenile Fraternal Act."

Section 6 of that act provides: "All acts or parts of acts inconsistent with the provisions of this act are hereby repealed."

§ 35–919 [5: 162]. Contributions—How computed.

Contributions to be made upon such certificates shall be based upon the Standard Industrial Mortality Table or the English Life Table Numbered 6, or the society may use a table based upon its own juvenile experience of at least ten years and covering not less than one hundred thousand lives with a rate of interest not greater than 4 per centum per annum, or upon a higher standard. (May 29, 1928, 45 Stat. 953, ch. 862, § 3.)

§ 35–920 [5: 163]. Reserves.

Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in section 35–919. (May 29, 1928, 45 Stat. 953, ch. 862, § 4.)

§ 35–921 [5: 164]. Enforcement of payment of contributions—Rules and regulations.

Any society shall have full power to provide for means of enforcing payment of contributions, designation of beneficiaries, and changing such designations, and in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith, not at variance with the provisions of sections 35–918 to 35–921. (May 29, 1928, 45 Stat. 953, ch. 862, § 5.)

SEPARATION OF INSURANCE AND FRATERNAL ACTIVITIES

§ 35–922 [5: 165]. Separation of insurance and fraternal activities authorized.

Any corporation heretofore (April 12, 1930) organized by a special Act of Congress and vested with the powers, rights, and privileges of fraternal and benevolent corporations under the laws of the District of Columbia and engaged in carrying on fraternal activities and fraternal beneficial insurance

activities in which are maintained reserves not lower than the reserves required by the American Experience Table of Mortality with 3½ per centum interest per annum, is authorized and empowered, by a majority vote of its supreme legislative body and with the approval of the Superintendent of Insurance of the District of Columbia as hereinafter provided, to divide and separate such activities and continue the same as separate and distinct corporations in the manner set forth in sections 35–923 to 35–928. (Apr. 12, 1930, 46 Stat. 158, ch. 135, § 1.)

§ 35–923 [5: 166]. Certificate to be filed with Superintendent of Insurance—Contents.

A certificate under the seal of said corporation shall be filed in the office of the Superintendent of Insurance of the District of Columbia and which certificate shall set forth the facts as follows:

(a) That said corporation is organized under special Act of Congress giving appropriate reference thereto.

(b) That said corporation is engaged in carrying on fraternal activities and fraternal beneficial-insurance activities, with appropriate detailed information touching each of such activities, including the name of the corporation, its officers, numbers, and classes of membership, benefits carried, and other similar appropriate information.

(c) That the fraternal beneficial-insurance activities of said corporation maintain reserves not lower than the reserves required by the American Experience Table of Mortality with 3½ per centum interest per annum.

(d) That the supreme legislative body, at a regular or duly called special convention thereof, had, by a majority vote, authorized the division and separation of its activities and the amendment of its charter, under sections 35–922 to 35–928.

(e) That the name under which the fraternal activities of such corporation shall be carried on shall be "_____."

(f) That the name under which the insurance activities of such corporation shall be carried on shall be "_____."

(g) That until otherwise designated by its directors, its principal office shall be at _____.

(h) That until otherwise provided the number of its directors shall be nine, and that until their successors shall be elected the names of such directors shall be _____. (Apr. 12, 1930, 46 Stat. 158, ch. 135. § 2.)

§ 35–924 [5: 167]. Approval and certificate of superintendent—Recordation.

The Superintendent of Insurance of the District of Columbia shall examine such certificate, and if satisfied of the truth of the matters set forth in such certificate the Superintendent of Insurance may approve the same and may issue his certificates showing compliance herewith, which certificates shall be recorded in the office of the recorder of deeds for the District of Columbia, and such certificates when so issued shall be conclusive evidence that such corporation has complied with all of the requirements of sections 35–922 to 35–928 as conditions precedent to the separation and division of its activities as herein provided. (Apr. 12, 1930, 46 Stat. 159, ch. 135, § 3.)

Cross Reference

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

§ 35–925 [5: 168]. Division of activities and property—Directors of insurance activities—Number and selection—Policies as evidence.

From and after the issuance of such certificates by the Superintendent of Insurance the fraternal activities and the fraternal beneficial insurance activities of such corporation shall be divided and separated; and

(a) All of the fraternal activities of said corporation shall continue unchanged under the name chosen therefor in such certificate, which may be the name of the original corporation or any other name chosen therefor, and in it shall remain vested, without the necessity for any further act or deed, all of the fraternal powers, activities, and functions, as well as the title, ownership, possession, and control of all property, both real and personal, and all rights, claims, contracts, and privileges connected with and belonging to such fraternal activities; and it shall be subject to and assume, carry out, fulfill, and pay all liabilities, obligations, responsibilities, and contracts connected therewith.

(b) All of the insurance activities of said corporation shall continue, under the name chosen therefor in such certificate, as a mutual legal reserve life insurance corporation, and in it shall remain vested without the necessity for any further act or deed all of the fraternal beneficial insurance powers, activities, and functions thereof, as well as the title, ownership, possession, and control of all property, both real and personal, and all rights, claims, contracts, and privileges connected with and belonging to such insurance activities; it shall be absolved and relieved from any and all responsibility, obligations, and liabilities connected with the fraternal activities of the mother corporation, and shall be subject to and assume, carry out, fulfill, and pay all liabilities, obligations, responsibilities, and contracts connected with and arising from such insurance activities; it shall have authority to make all and every insurance and reinsurance appertaining to or connected with life, accident, health, and disability risks of whatever kind or nature and to grant, purchase, or dispose of annuities and to furnish any aid or service to promote the health or safety of its members or their beneficiaries; such activities to be carried on and conducted for the mutual benefit of its members and their beneficiaries and not for profit, subject to the supervisions imposed by the law of the District of Columbia relating to mutual legal reserve life insurance corporations; that the number of directors shall be fixed by the by-laws and shall be at least nine, who shall be elected by the insured members; the terms of the directors shall be three years from the date of their election, and such directors may be classified so that their terms shall not all expire at the same time; the election shall be held annually, and such directors shall elect the president and other

officers and shall have power to make and promulgate such by-laws, rules, and regulations as may be deemed necessary and proper for the elections herein provided and for the disposition and management of the business, funds, property, and effects of said corporation and shall be vested with the control and supervision of all of the business affairs of said corporation; and said corporation shall have all the powers, rights, and privileges on or after April 12, 1930 held and exercised by mutual legal reserve life insurance companies within the District of Columbia; in any action or suit by or against such corporation the policies, certificates, and other evidences of insurance obligation issued and executed by the mother corporation shall be admissible in evidence without further proof, and shall constitute prima facie evidence of the same obligations against said corporation as against such mother corporation. (Apr. 12, 1930, 46 Stat. 159, ch. 135, § 4.)

§ 35–926 [5: 169]. Original corporation not dissolved—Subject to supervision as mutual legal reserve life insurance corporation.

The proceedings in sections 35–922 to 35–928 provided, including the amendment of the charter, the issuance of the certificates by the Superintendent of Insurance, the division of assets and liabilities or any other act done under said sections, shall not be or constitute a dissolution of the original corporation, but the resulting corporation shall, so separated and divided, be continuations thereof and under the names as herein authorized, be separate legal entities, and the insurance corporation herein provided for shall be subject to supervision, regulation, and control as a mutual legal reserve life-insurance corporation. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 5.)

§ 35–927 [5: 170]. Contracts not impaired—Right of repeal and amendment reserved.

Nothing contained in sections 35–922 to 35–928 and nothing done under said sections shall impair or operate to impair the obligations of any contract; and said sections and any certificate issued thereunder shall be subject to the power of Congress to alter, amend, or repeal at will. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 6.)

§ 35–928 [5: 170a]. Insurance laws of States and District applicable.

Such corporation shall be subject to all the laws of the respective states, including the District of Columbia, with respect to similar mutual legal reserve life-insurance corporations. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 7.)

Chapter 10.—INDUSTRIAL LIFE INSURANCE

Sec.

35–1001. Conditions of policies.
35–1002. Validity of policy—Good faith of insured material element—Unsound health as defense.
35–1003. Incontestability of policy.
35–1004. Assignment of policy.
35–1005. Beneficiary.

§ 35–1001 [5: 181a]. Conditions of policies.

Policies of industrial weekly payment life insurance after June 4, 1934, issued or delivered in the District of Columbia shall be subject to the following conditions, in addition to any others prescribed by law and not inconsistent with the provisions of this chapter. (June 4, 1934, 48 Stat. 834, ch. 373, § 1.)

COMPILER'S NOTE

The act of June 19, 1934, 48 Stat. 1177, ch. 672, § 4, provided as follows: "All laws or parts of laws insofar as they relate to life-insurance companies and the conduct of life-insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3–8 of this title), are hereby repealed."

§ 35–1002 [5: 181b]. Validity of policy—Good faith of insured material element—Unsound health as defense.

If payment of such a policy shall be refused because of unsound health at or prior to the date of the policy, the good faith of both applicant and insured shall constitute a material element in determining the validity of the policy; and it shall not be held invalid because of unsound health unless the insurer shall prove that, at or before the date of issue of the policy, the insured or applicant had knowledge of, or reason to know, the facts on which the defense is based, or shall prove that the insurance was procured by the insured or applicant in bad faith or with intent to defraud the company, any provision, agreement, condition, warranty, or clause contained in said policy, or endorsed thereon, or added or attached thereto, to the contrary notwithstanding. Proof by the insurer of fraud, intent to deceive, unsound health, bad faith, breach or (of) warranty or condition precedent, or other matter of defense, shall be subject to the provisions of section 35–203. (June 4, 1934, 48 Stat. 834, ch. 373, § 2.)

CROSS REFERENCE

General provisions concerning formal requisites of insurance policies, § 35–703 et seq.

NOTES TO DECISIONS

BURDEN OF PROOF

Where forfeiture clause invoked in action on industrial life policy was conditioned on proof that insured had been hospitalized, had undergone an operation, or had been attended by a physician for a serious disease or injury, and had failed to disclose the facts, effect of this section was to shift the burden of proof and to make insured's good faith concerning representations on which policy issued the test and by its terms to impose on insurer the burden of proving the contrary. *Eureka-Maryland Assur. Co.* v. *Gray*, 1941 (121 F. 2d 104, 74 App. D. C. 191, certiorari denied 62 S. Ct. 114, 314 U. S. 613, 86 L. Ed. 494).

This section regarding burden of proof where payment of policy is refused because of unsound health of insured, casts the burden of proof on insurer and requires that it establish that the ailment was serious and that the insured knew, or had reason to know, the facts on which the defense is based. *Washington Nat. Ins. Co.* v. *Stanton* (D. C. 1943, 31 A. 2d 680).

EVIDENCE

In action on industrial life policy where insurer defended on ground that insured was suffering from serious disease of arthritis at time of issuance of policy but testimony of insured's physician directly rebutted insurer's contention that insured had either real or imputed knowledge of alleged seriousness of her condition and insured's physician testified that the ailment was serious only in sense that it temporarily restricted motion of certain parts of the body, evidence was sufficient for jury. *Washington Nat. Ins. Co.* v. *Stanton* (D. C. 1943, 31 A. 2d 680).

PURPOSE

The design of this section is to make its terms applicable in all cases in which the defense is that the insured had suffered, before issuance of policy, a serious injury or disease, and had concealed the truth from the insurer. *Eureka-Maryland Assur. Co.* v. *Gray,* 1941 (121 F. 2d 104, 74 App. D. C. 191, certiorari denied 62 S. Ct. 114, 314 U. S. 613, 86 L. Ed. 494).

QUESTIONS FOR COURT

Where insurer defends action on insurance policy on ground of unsound health of insured at or prior to date of policy, and there is no conflict in evidence or no contradiction of showing of existence of serious disease, the trial judge must take the case from the jury and rule as a matter of law in favor of insurer. *Washington Nat. Ins. Co.* v. *Stanton* (D. C. 1943, 31 A. 2d 680).

In an action for the reinstatement of an industrial life insurance policy, a liberal view prevails in favor of holders of such policies. But it is equally well established that the rules of liberal construction have no application where the contract is clear and definite. *Capital City Life Insurance Company* v. *Saunders* (D. C. Mun. App. 1949, 65 A. 2d 588).

QUESTIONS FOR JURY

Where insurer defends action on insurance policy on ground of unsound health of insured at time or prior to date of policy and plaintiff creates a substantial issue of fact on question of unsound health, it becomes a question for the jury and not for the court. *Washington Nat. Ins. Co.* v. *Stanton* (D. C. 1943, 31 A. 2d 680).

§ 35–1003 [5: 181c]. Incontestability of policy.

Every such policy shall be incontestable upon any ground relating to health after two years from its date of issue (notwithstanding a longer period may be named therein), provided the insured shall be alive at the end of said period. If the policy by its terms shall be incontestable after a shorter period than herein provided the terms of the policy with regard to such period of limitation shall govern. (June 4, 1934, 48 Stat. 834, ch. 373, § 3.)

CROSS REFERENCE

General provisions governing formal requisites of insurance policies, § 35–703 et seq.

NOTES TO DECISIONS

IMMEDIATE FULL BENEFIT

The words "immediate full benefit", as used in industrial life policy, did not make the policy incontestable or require that amount thereof be paid regardless of cause of death, but meant nothing more than that full amount of policy would be paid immediately upon death. *Walker* v. *Superior Life Ins. Co.* (D. C. Mun. App. 1948, 62 A. 2d 192).

LIMITATION OF LIABILITY

The words "immediate full benefit", appearing on cover page of industrial life policy, did not preclude insurer from rejecting claim upon the policy for insured's death five days after policy had been issued as result of heart attack under provision in limitation of liability clause, excluding heart disease and other enumerated diseases contracted in any time before or within first year from date of policy, where limitation of liability clause appeared inside the policy in the boldest type of any text matter therein. *Walker v. Superior Life Ins. Co.* (D. C. Mun. App. 1948, 62 A. 2d 192).

§ 35–1004 [5: 181d]. Assignment of policy.

Nothing contained in the terms of any such policy shall operate to prevent its valid assignment by the insured; but the company issuing the policy so assigned shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice of such assignment. (June 4, 1934, 48 Stat. 835, ch. 373, § 4.)

§ 35–1005 [5: 181e]. Beneficiary.

Any individual designated with the consent of the insurer, evidenced by the signature of its president or secretary, or designated upon a form furnished by and filed with the insurer, as beneficiary of such a policy shall be entitled to the proceeds of such policy after the death of the insured in priority to all other claimants, and may sue in his own name for such proceeds if payment is refused by the insurer: *Provided,* That upon the expiration of fifteen days after the death of the insured, unless proof of claim in the manner and form required by the policy, accompanied by the policy for surrender, has theretofore been made by or on behalf of such designated beneficiary, the insurer may pay to any other claimant permitted by the policy. A person specified as one to whom the insured desires payment made, but not formally designated as beneficiary, shall be deemed a beneficiary for the purposes of this section, provided such designation be made in writing and filed with the company during the lifetime of the insured. (June 4, 1934, 48 Stat. 835, ch. 373, § 5.)

Chapter 11.—MARINE INSURANCE

Sec.
35–1101. Definitions.
35–1102. Powers of Superintendent of Insurance and general insurance laws applicable to marine insurance companies.
35–1103. Kinds of insurance that may be written—Capital stock and surplus requirements—Reinsurance companies—Companies excluded.
35–1104. Domestic mutual companies—Licensing, amount of advance premium required—Surplus.
35–1105. Foreign corporation—Requirements before doing business in District.
35–1106. Reinsurance.
35–1107. Unearned premium reserve.
35–1108. Taxes—Underwriting profits—Computation of premiums earned on marine insurance contracts.
35–1109. Statements for taxation purposes—Computation of tax by Superintendent of Insurance—Statement of taxes to be mailed.
35–1110. Taxation on earning on reserves for unpaid loss and unexpired insurance.
35–1111. Taxes on investment income from funds representing capital stock and surplus.
35–1112. Report to include all items necessary to enable superintendent of insurance to compute tax—Notification of amount of tax.
35–1113. Taxation in lieu of license fees.
35–1114. Report upon cessation of marine insurance business—Taxes and license fees to be paid after such cessation.
35–1115. Penalty for failure to report or pay taxes.
35–1116. Syndicate "B" exempt from taxes and fees.
35–1117. Insurance companies not exempt from payment of Federal income tax.
35–1118. Investment of assets of domestic companies.
35–1119. Domestic company may acquire, hold, and convey real estate for certain purposes—Disposition.
35–1120. Merger of companies.
35–1121. Establishment of foreign connections.
35–1122. Corporations engaged exclusively in writing insurance in foreign countries may organize in District of Columbia.

Sec.
35–1123. Prohibition of unauthorized insurance—Licensing of brokers in certain cases.
35–1124. Superintendent of Insurance may issue license to agent or broker to solicit marine insurance.
35–1125. Holder of license to maintain office in District of Columbia and to keep book of records—Contents—Superintendent of Insurance may inspect such record—Data secured by superintendent to be confidential.
35–1126. Licensee to furnish bond.
35–1127. Keeping of classified records.
35–1128. Penalties.
35–1129. Production of incriminating evidence compellable—Immunity of witness.
35–1130. Clerical assistance and departmental expenses.
35–1131. Unconstitutionality of part of act not to affect the remainder.
35–1132. Right to amend or repeal reserved.
35–1133. Wagering policies, illegal.

§ 35–1101 [5: 184]. Definitions.

Whenever used in sections 35–1101 to 35–1132—

"Marine insurance" means insurance against any and all kinds of loss of or damage to vessels, craft, cars, aircraft, automobiles, and other vehicles, whether operated on or under water, land, or in the air, in any place or situation, and whether complete or in process of or awaiting construction; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, including money loaned on bottomry or respondentia, valuable papers, and all other kinds of property and interests therein, including liabilities and liens of every description, in respect to any and all risks and perils while in course of navigation, transit, travel, or transportation on or under any seas or other waters, on land or in the air or while in preparation for or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including builders' risks, war risks, and for loss of or damage to property or injury or death of any person, whether legal liability results therefrom or not, during, awaiting, or arising out of navigation, transit, travel, or transportation, or the construction or repair of vessels;

"Marine insurance company" means any persons, companies, or associations authorized by sections 35–1101 to 35–1132 to write marine insurance within the District;

"Insurance company" or "company" means any insurer, incorporated or otherwise;

"Domestic company" means an insurance company organized under the laws of the District of Columbia;

"District" means the District of Columbia;

"Superintendent" means the Superintendent of Insurance of the District of Columbia. (Mar. 4, 1922, 42 Stat. 401, ch. 93, title I, § 1.)

Compiler's Notes

Any provisions of this chapter in conflict with the "Act to provide for the regulation of the business of fire, marine, and casualty insurance, and for other purposes" (act of Oct. 9, 1940, 54 Stat. 1063, ch. 792), chapter 13 of this title, have been repealed. Section 46 of said act provided as follows: "All laws or parts of laws, insofar as they relate to business affected hereby, and are in conflict with any of the provisions of this act, are hereby repealed."

This sectionmay be partially superseded by § 35–1303.

Cross References

Liability policy or bond for motor carriers, § 44–301.

Motor-vehicle liability policies, § 40–412.

Other definitions concerning fire, casualty, and marine insurance, § 35–1303, and notes.

Rates, schedules, and classification of workmen's compensation insurance, § 35–205.

Taxation, § 35–1108 et seq.

§ 35–1102 [5: 185]. Powers of Superintendent of Insurance and general insurance laws applicable to marine insurance companies.

Unless the context of any section under sections 35–1101 to 35–1132 expressly indicate otherwise, the laws of the District relating to the powers and duties of the superintendent, making of examinations, filing of financial and other statements, legal process, organization and licensing of companies, certification and supervision of agents, deposit of assets, impairment and liquidation proceedings, and other requirements pertaining to insurance in general, shall, in so far as they are made applicable by the terms of such laws, or by the terms of sections 35–1101 to 35–1132, apply to all marine insurance companies transacting business within the District: *Provided,* That, with respect to the filing of statements, the superintendent shall accept a photographic copy of a single original, or a certified copy from the insurance department of the state where the company is organized or has its principal office. (Mar. 4, 1922, 42 Stat. 402, ch. 93, title I, § 2.)

Compiler's Note

This section may be superseded by § 35–1304. See compiler's note to § 35–1101.

Cross References

General provisions concerning insurance companies, see chapters 1 and 2 of this title.

Other provisions concerning powers and duties of the insurance department with respect to fire, casualty, and marine insurance, § 35–1304, and notes.

§ 35–1103 [5: 186]. Kinds of insurance that may be written—Capital stock and surplus requirements—Reinsurance companies—Companies excluded.

A marine, fire-marine, or fire insurance company may be formed, admitted, or licensed to write any or all insurance and reinsurance comprised in any one or more of the following numbered subdivisions:

First. On marine risks as described in section 35–1101 under the definition of "marine insurance."

Second. On property and rents and use and occupancy, against loss or damage by fire, lightning, tempest, earthquake, hail, frost, snow, explosion (other than explosion of steam boilers or flywheels), breakage or leakage of sprinklers or other apparatus erected for extinguishing fires, and on such apparatus against accidental injury; and against liability of the insured for such loss or damage; and on automobiles against loss or damage from collision or theft, and against liability of the owner or user for injury to person or property caused by his automobile.

Third. Against bodily injury or death by accident, and against disablement resulting from sickness, and every insurance appertaining thereto, including quarantine and identification.

Fourth. Against liability of the insured for the death or disability of another.

Fifth. Against loss of or damage to property resulting from causes other than fire, marine and inland navigation hazards, and against liability of the insured for such loss or damage, and on motor vehicles against fire, marine and inland navigation hazards, and against personal injury and death, and liability of the insured therefor, from explosions of steam boilers and engines, pipes and machinery connected therewith, and breakage of flywheels or machinery, and to make and certify inspections thereof; and against loss of use and occupancy from any cause; against loss by burglary, theft, and forgery.

Sixth. Against loss or damage from failure of debtors to pay their obligations to the insured.

Seventh. Against loss from encumbrances on or defects in titles.

Eighth. Against loss or damage by theft, injury, sickness, or death of animals, and to furnish veterinary services.

Ninth. Against any loss or liability arising from any other casualty or hazard not contrary to public policy, other than that appertaining to or connected with (1) life insurance (including the granting of endowments and annuities), and (2) fidelity and surety bonding.

An insurance company organized for the transaction of one or more of the kinds of insurance permitted under subdivisions three to nine, inclusive, of this section, shall also, if complying with sections 35–1101 to 35–1132, be admitted or licensed to write any or all insurance and reinsurance comprised in any one or more of the other subdivisions of this section: *Provided,* That nothing in this section shall be construed as preventing any insurance company, formed, admitted, or licensed to transact insurance in the District on March 4, 1922, from continuing the writing of those kinds of insurance which it may have been authorized to write on March 4, 1922.

Every company formed, admitted, or licensed to transact in the District any of the kinds of insurance permitted by the several numbered subdivisions of this section shall maintain separate and distinct reserves for each kind of insurance so written, and if a stock company shall not transact the business of insurance in the District unless—

(a) It has a capital stock actually paid in, in cash or invested as provided by law, of at least $100,000 for the insurance specified in any one subdivision of this section, nor unless it has a surplus of money or other lawful assets over its authorized capital and all other liabilities of at least $50,000;

(b) With an additional $50,000 of capital stock and $25,000 of surplus for the insurance authorized by any other subdivision of this section and which may be transacted by such company;

(c) That every company writing more than one class of insurance, as authorized in the several subdivisions of this section, shall keep a separate account of all receipts in respect to each class of insurance, as directed by the superintendent, and the receipts in respect to each class of insurance shall be carried to and form a separate insurance fund with an appropriate name, which fund, exclusive of the capital stock and general surplus of the company, shall be as absolutely the security of the policyholders of that class as though it belonged to a company writing no other business than the insurance business of that class, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of insurance of that class, and shall not be applied, directly or indirectly, for any purposes other than those of the class of insurance to which the fund is applicable: *Provided,* That nothing in this subsection shall require the investments of any such fund to be kept separate from the investments of any other fund: *Provided further,* That nothing in this subsection shall be construed as preventing a company, at the end of each calendar year, from declaring dividends out of profits earned in any particular class of insurance, or from allocating such profits, either in part or in whole, to its general surplus: *And provided further,* That nothing in this section shall be applicable to companies operating in the District known as life, health, and accident companies under section 35–202.

Corporations for the sole purpose of reinsuring risks insured by other companies may be organized, or admitted, within the District in the same manner as prescribed for other companies. Such reinsurance companies may transact business with any other insurer or reinsurer, and such reinsurance may include all classes of insurance that may be lawfully written: *Provided,* That any reinsurance company, organized or admitted to reinsure one or more of the enumerated classes of insurance, shall be required to have an aggregate capital and surplus equal to the capital and surplus provided by this section for the direct writing of each class of insurance, and shall be required to hold reserves in the same amount and manner as required of other companies for each such class of insurance which, by the provisions of its charter, it is authorized to transact. Such reinsurance companies shall comply with sections 35–1101 to 35–1132, and with any other law of the District, regulating direct-writing companies, in so far as the same may be applicable. (Mar. 4, 1922, 42 Stat. 402, ch. 93, title 2, § 3.)

COMPILER'S NOTES

This section may be superseded by §§ 35–1314, 35–1316.

This section is probably superseded in so far as formation of health and accident insurance is concerned by the Life Insurance Act, see §§ 35–501, 35–712.

CROSS REFERENCES

Capital and surplus required of foreign and alien companies, § 35–1326.

Fire insurance companies may become perpetual, § 29–237.

Health and accident companies, § 35–202.

Other provisions concerning capital and surplus of fire, casualty, and marine insurance companies, § 35–1316.

Other provisions concerning kinds of insurance which may be written by fire, casualty, and marine insurance companies, § 35–1314.

Surplus required for operation under Lloyd's plan, § 35–1324.

Title insurance companies, § 26–301.

Title insurance excepted from operation of Fire, Casualty, and Marine Insurance Act, § 35–1302.

Wagering policies forbidden, § 35–1133.

§ 35–1104 [5: 187]. Domestic mutual companies—Licensing, amount of advance premium required—Surplus.

No domestic mutual company shall be organized or licensed within the District unless it has applications from at least two hundred persons for each class of insurance (as enumerated under the several subdivisions of section 35–1103) it may be authorized to write aggregating not less than $500,000, the maximum amount of insurance applied for in any application on any risk not exceeding one-half of 1 per centum of the aggregate amount, nor three times the average amount of insurance applied for in the several applications. No such mutual company shall be so licensed for any of the classes of insurance as allowed under the several subdivisions of section 35–1103 unless it has received in cash, with respect to each such class of insurance written, at least one advanced periodical premium on each such application, aggregating at least $10,000; but if the applications are for employers' liability or workmen's compensation insurance, the premiums on such applications shall aggregate at least $25,000, and each employer shall be considered a separate risk; nor unless it has a surplus of $10,000 in money or other lawful investments above its liabilities, including the liability equal to the aggregate amount of premiums so advanced. (Mar. 4, 1922, 42 Stat. 404, ch. 93, title 2, § 4.)

COMPILER'S NOTE

This section may be superseded by §§ 35–1305, 35–1316.

CROSS REFERENCES

Other provisions concerning capital and surplus requirements, § 35–1316.

Other provisions for licensing of fire, casualty, and marine insurance companies, § 35–1305.

Rates, schedules, classifications of workmen's compensation insurance, § 35–205.

NOTES TO DECISIONS

AUTHORITY OF SUPERINTENDENT

There is neither express nor implied authority in the Superintendent of Insurance of the District to amend, add to, or alter insurance law by regulations or to apply the drastic provisions of those rules solely to mutual companies. Without such authority, the limit of his power is to make rules consistent with the provisions of the law. *Hutchins Mut. Ins. Co.* v. *Hazen* (70 App. D. C. 174, 105 Fed. (2d) 53).

§ 35–1105 [5: 188]. Foreign corporation—Requirements before doing business in District.

An insurance company organized under laws other than the laws of the District and desiring to transact business in the District shall satisfy the superintendent that it has, if a capital stock company, a paid-up capital and a surplus of assets, invested in accordance with the laws of the State under which it is organized, over its entire authorized capital and all other liabilities, at least equal to the capital and surplus prescribed under section 35–1103 for the writing of various kinds of insurance; and, if a company without capital stock or an interinsurance exchange, that it has a surplus of assets, invested according to the laws of the State under which it is organized, over all its liabilities, of $100,000; or if a mutual company other than a life insurance company that it has a surplus over liabilities amounting to $100,000, or in lieu thereof a surplus amounting to $10,000 and an additional contingent liability of its policyholders equal to not less than the cash premium expressed in the policies in force; or if a company organized under a foreign Government, Province, or State, that it has a surplus of assets invested according to the laws of the District or of the State in the United States where it has its deposit, held in the United States in trust for the benefit and security of all its policyholders in the United States, over all its liabilities in the United States, of at least $150,000, and, if writing more than one class of insurance as enumerated and allowed under section 35–1103, an additional $75,000 for each such additional kind of insurance written; and such company so organized under the laws of a foreign Government or State shall also either deposit with the superintendent securities of the amount and value of $150,000 (or such larger amount as may be required by this section if the company writes more than one class of insurance) and of the classes in which insurance companies are permitted by sections 35–1101 to 35–1132 to make investments, or with the official of a State of the United States, authorized by the law of such State to accept such deposit, securities of the amount and value of $150,000 (or such larger amount as may be required by this section if the company writes more than one class of insurance), of the classes in which life insurance companies of such States are permitted to make their investments, and such deposits shall be made for the benefit and security of all the policyholders of such company in the United States, and the company shall file with the superintendent the certificate of such official of any such deposit with such official of any such State. (Mar. 4, 1922, 42 Stat. 404, ch. 93, title 2, § 5.)

COMPILER'S NOTE

This section may be superseded by §§ 35–1323 to 35–1326.

CROSS REFERENCE

Other provisions concerning admission of foreign and alien companies, §§ 35–1323 to 35–1327.

§ 35–1106 [5: 189]. Reinsurance.

Every insurance or reinsurance company, authorized to transact insurance or reinsurance within the District, may reinsure any part of an individual risk in another company having power to make such reinsurance, and with the consent of the superintendent may reinsure all of its risks, within any class of insurance as enumerated under the several subdivisions of section 35–1103, in another company. But no credit shall be taken for the reserve or unearned premium liability on such reinsurance unless the company accepting the reinsurance is licensed by the superintendent, or unless it is licensed in one or more States in the United States and shows the same standards of solvency as would be required if it were at the time of such reinsurance authorized in the District to insure risks of the same kind as those reinsured.

In case such reinsurance is effected with an insurer so authorized, or so recognized for reinsurance in this District, the ceding insurer shall thereafter be charged on the gross premium basis with an un-

earned premium liability representing the proportion of each obligation retained by it, and the insurer to which the business is ceded shall be charged with an unearned premium liability representing the proportion of such obligation ceded to it calculated in the same way. The two parties to the transaction shall together carry the same reserve which the ceding insurer would have carried had it retained the risk.

The superintendent shall require schedules of reinsurance to be filed by every insurer at the time of making the annual report and at such other times as he may direct. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 3, § 6.)

CROSS REFERENCE

Deducting reinsured risks in determining limitation of risks, § 35–1315.

§ 35–1107 [5: 190]. Unearned premium reserve.

With respect to marine insurance risks, the unearned premium shall be found by computing 50 per centum of the amount of premiums received and receivable on unexpired risks on time policies running one year or less from date of policy, and 100 per centum of the amount of premiums on all unterminated voyage and transit risks. As a basis for unearned premium reserves, unterminated voyage or transit risks shall be deemed to expire within thirty days on the average. Every insurance company shall so compute such unearned premium in its annual and other financial statements. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 4, § 7.)

CROSS REFERENCE

Computation of reserves, § 35–1330.

§ 35–1108 [5: 191]. Taxes—Underwriting profits—Computation of premiums earned on marine insurance contracts.

With the exception of license fees, real estate and personal property taxes, and a tax on investment income derived from funds representing reserves, capital stock and surplus as defined by sections 35–1101 to 35–1132, every insurance company organized, admitted, or licensed to transact business within the District shall, with respect to marine insurance written by it within the District, be taxed only on that proportion of the total underwriting profit of the company from marine insurance written within the United States which the net premiums of the company from marine insurance written within the District bear to the total net marine premiums of the company written within the United States. The term "underwriting profit," as used herein, shall be arrived at by deducting from the premiums earned on marine insurance contracts written within the United States during the calendar year (1) the losses incurred and (2) expenses incurred, including all taxes, in connection with such business.

Premiums earned on marine insurance contracts written during the calendar year shall be arrived at as follows:

(1) Gross premiums on marine insurance contracts written during the calendar year, less return premiums and premiums paid for reinsurance.

(2) Add unearned premiums on outstanding marine business at the end of the preceding calendar year.

(3) Deduct unearned premiums on outstanding marine business at the end of the current calendar year.

Losses incurred, as used herein, shall mean gross losses incurred during the calendar year under marine insurance contracts written within the United States, less reinsurance claims collected or collectible and salvages or recoveries collected or collectible from any source applicable to aforesaid losses.

Expenses incurred shall include—

(1) Specific expenses incurred, consisting of all agency commissions, agency expenses, taxes, licenses, fees, loss-adjustment expenses, and all other expenses incurred directly and specifically for the purpose of doing a marine insurance business.

(2) General expenses incurred, consisting of that proportion of general or overhead expenses, such as salaries of officers and employees, printing and stationery, all Federal Government taxes, and all other expenses not chargeable specifically to a particular class of insurance which the net premiums received from marine insurance bear to the total net premiums received by the company from all classes of insurance written during the current calendar year. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 5, § 8.)

CROSS REFERENCES

Excepted from operation of general statutes for taxation of insurance companies, § 47–1806.

Syndicate "B" exempted from taxation, § 35–1116.

Taxation upon business written for unauthorized companies, § 35–1344.

§ 35–1109 [5: 192]. Statements for taxation purposes—Computation of tax by Superintendent of Insurance—Statement of taxes to be mailed.

Every company transacting marine insurance in the District shall set forth in its annual statement to the superintendent, and in the form prescribed by him, all the items pertaining to its insurance business as enumerated and prescribed in section 35–1108. To determine the basis of the tax on underwriting profit, every company which has been writing marine insurance for five years shall furnish the superintendent a statement of all of the aforementioned items, in the form prescribed by him, for each of the preceding five calendar years. A company which has not been writing marine insurance for five years shall furnish to the superintendent a statement of all of the aforementioned items for each of the calendar years during which it has written marine insurance.

If the superintendent finds the report of the company reporting correct, he shall, if the company has transacted marine insurance for five years, (1) ascertain the total average annual underwriting profit, as hereinbefore defined, derived by the company from its marine insurance business written within the United States during the last preceding five calendar years, (2) ascertain the proportion which the average net annual premiums of the company from marine insurance written by it in the District during the last preceding five calendar years bear to the

average total net marine premiums of the company during the same five years, (3) compute an amount of 5 per centum on this proportion of the aforementioned average annual underwriting profit of the company from marine insurance, and (4) charge the amount of tax thus computed to such company as a tax upon the marine insurance written by it in the District during the current calendar year. Thereafter the superintendent shall each year compute the tax, according to the method described in this section, upon the average annual underwriting profit of such company from marine insurance during the preceding five years, including the current calendar year; namely, at the expiration of each current calendar year, the profit or loss on the marine insurance business of that year is to be added or deducted, and the profit or loss upon the marine insurance business of the first calendar year of the preceding five-year period is to be dropped, so that the computation of underwriting profit for purposes of taxation under sections 35–1101 to 35–1132 will always be on a five-year average: *Provided, however,* That a company which has not been writing marine insurance in the District for five years shall, until it has transacted such business in the District for that number of years, be taxed on the basis of the annual average underwriting profit on marine insurance written within the United States during the preceding five years as averaged for all companies reporting to the superintendent for the current calendar year and which have been transacting marine insurance in the District for the past five years: *Provided further,* That, if at any time none of the companies reporting to the superintendent shall have written marine insurance in the District for five years, a company which has not been writing marine insurance in the District for five years shall be taxed on the basis of an annual average underwriting profit as averaged for all companies reporting to the superintendent for the number of years during which they have written marine insurance in the District, subject, however, to an adjustment in the tax as soon as the superintendent, in accordance with the provisions of this section, is enabled to compute the tax on the aforementioned five-year basis: *And provided further,* That in the case of mutual companies the superintendent shall not include in underwriting profit, when computing the tax prescribed by this section, the amounts refunded by such companies on account of premiums previously paid by their policyholders.

When the superintendent has computed the tax on a company's underwriting profit, he shall forthwith mail to the last-known address of the principal office of such company a statement of the amount so charged against it, which amount the company shall pay to the collector of taxes within thirty days after receipt of such notice from the superintendent, and no further tax, except the taxes on investment income from funds representing reserves, capital stock, and surplus as prescribed by sections 35–1110, 35–1111 and the license fee prescribed by section 35–1113 shall be imposed by the District upon such company, or the agents thereof, for the privilege of transacting the business of marine insurance in the District. (Mar. 4, 1922, 42 Stat. 406, ch. 93, title 5, § 9.)

CROSS REFERENCES

Excepted from operation of general tax laws, § 47–1906. Other provisions concerning annual statement, § 35–1311.

§ 35–1110 [5: 193]. Taxation on earning on reserves for unpaid loss and unexpired insurance.

In addition to the tax on underwriting profit as prescribed under sections 35–1108, 35–1109, every insurance company transacting business within the District shall, with respect to marine insurance written by it within the District, be taxed annually at the rate of 5 per centum on its average earnings on reserves for unpaid losses and unexpired premiums. The reserve for unpaid losses and unexpired premiums shall be arrived at by adding the unpaid loss and unexpired premium reserves on marine insurance risks, written within the District, at the beginning and end of the calendar year, and striking an average. Should any company not carry its unpaid loss and unexpired premium reserves separately for the District, then the tax provided under this section shall be applied to such proportion of the company's total unpaid loss and unexpired premium reserves as the net premiums of the company from marine insurance written within the District during the calendar year bear to the total net marine premiums of the company. Average earnings on reserves for unpaid losses and unexpired premiums shall be deemed, for the purpose of taxation under this section, to mean not more than 2 per centum of these reserves. (Mar. 4, 1922, 42 Stat. 407, ch. 93, title 5, § 10.)

CROSS REFERENCE

Excepted from operation of general tax laws, § 47–1806.

§ 35–1111 [5: 194]. Taxes on investment income from funds representing capital stock and surplus.

In addition to the taxes, as prescribed under sections 35–1108 to 35–1110, every company organized under the laws of the District and transacting marine insurance therein shall, with respect to marine insurance written in the District, pay a tax of 2 per centum on its investment income from funds representing capital stock and surplus as shown by the company's annual statement. Such investment income shall, for purposes of taxation under sections 35–1101 to 35–1132, be arrived at as follows: Add the gross assets at the beginning and end of the calendar year and strike an average. Add capital stock and surplus at the beginning and end of the year and strike an average. Ascertain the proportion which the average capital stock and surplus bears to average gross assets. Credit to investment income on capital stock and surplus such proportion of all income, except income taxed under section 35–1110, derived from interest, dividends, rents, and profits on sales or redemption of assets. Charge against investment income on capital stock and surplus such proportion of all losses on sales or redemption of assets.

Should a company subject to this tax be writing other classes of insurance, and the capital stock and

surplus referred to herein relate to all the classes of insurance written without being specifically allocated to the several classes of insurance written, then such proportion of the investment income from funds representing capital stock and surplus, computed according to the method prescribed in the preceding paragraph of this section, shall be applicable to marine insurance for purposes of taxation under this section as the net premiums from marine insurance during the calendar year bear to the net premiums of the company from all the classes of insurance written. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 11.)

Cross Reference

Excepted from operation of general tax laws, § 47–1806.

§ 35–1112 [5: 195]. Report to include all items necessary to enable Superintendent of Insurance to compute tax—Notification of amount of tax.

Every company writing marine insurance in the District shall set forth in its annual statement to the superintendent, and in the form prescribed by him, all the items necessary to compute the taxes as prescribed under sections 35–1110, 35–1111. If the superintendent finds the report of such company correct he shall compute the taxes as prescribed and charge the same to such company. Notification to companies by the superintendent of the amount of tax charged to them and the time and place of payment by the companies shall be the same as is required under section 35–1109, relating to taxation of underwriting profit. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 12.)

Cross References

Excepted from operation of general tax laws, § 47–1806.
Other provisions concerning annual statements, § 35–1311.

§ 35–1113 [5: 196]. Taxation in lieu of license fees.

In lieu of all other license fees every company writing marine insurance in the District shall pay a single annual fee equal to $100 if the assets of the company aggregate $1,000,000 or under, to $150 if the assets aggregate over $1,000,000 and do not exceed $5,000,000, and to $200 if the assets exceed $5,000,000. The manner and time of paying this single fee and its remittance to the collector of taxes shall be the same as prescribed under section 35–1109 for the payment of taxes on underwriting profit. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 13.)

Cross References

Excepted from operation of general tax laws, § 47–1806.
Refund of fees when license refused, § 47–1018.

§ 35–1114 [5: 197]. Report upon cessation of marine insurance business—Taxes and license fees to be paid after such cessation.

If a company cease to do a marine insurance business in the District, it shall thereupon make report to the superintendent of the items pertaining to its marine insurance business, as enumerated and described by sections 35–1108 to 35–1113, to the date of its ceasing to do business and not theretofore reported, and forthwith pay to the superintendent the taxes and annual license fee thereon, computed according to sections 35–1101 to 35–1132. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 14.)

Compiler's Note

This section may be superseded by § 35–1307.

Cross References

Excepted from operation of general tax laws, § 47–1806.
Payment of taxes upon ceasing business, § 35–1307.

§ 35–1115 [5: 198]. Penalty for failure to report or pay taxes.

If a company refuses to make any report for taxation or license fee purposes, or to pay taxes or license fees imposed upon it as required by sections 35–1101 to 35–1132, it shall be liable to the United States for the amount thereof and a penalty of not more than $200 per month for each month it has failed after demand therefor. Service of process in any action to recover such tax or penalty shall be made according to the requirements of the District law relating to actions brought against insurance companies by policyholders thereof. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 15.)

Cross Reference

Excepted from operation of general tax laws, § 47–1806.

§ 35–1116 [5: 199]. Syndicate "B" exempt from taxes and fees.

None of the taxes or fees prescribed under sections 35–1108 to 35–1113, shall be imposed upon business written within the District by "Syndicate B," a marine insurance syndicate created by agreement between the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation and a number of subscribing American marine insurance companies, under date of June 28, 1920, for the purpose of insuring all American steel steamships which the United States Shipping Board or United States Shipping Board Emergency Fleet Corporation may hereafter sell to others, to the full extent of the unpaid purchase price thereof, and also such other American steel steamships heretofore sold by said Shipping Board or by said corporation as are acceptable for insurance to the Syndicate B subscribers. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 5, § 16.)

Compiler's Notes

The United States Shipping Board was abolished and its functions transferred to the Department of Commerce by Executive Order No. 6166 of June 10, 1933. Act of June 29, 1936, 49 Stat. 1986, ch. 858, title II, § 202 (U. S. C., title 46, § 1112) later provided for the transfer of all property and interests formerly held by such board to the United States Maritime Commission.

The name of the United States Shipping Board Emergency Fleet Corporation was changed to United States Shipping Board Merchant Fleet Corporation by act of February 11, 1927, 44 Stat. 1083, ch. 104, § 1 (U. S. C., title 46, § 810a). This corporation was dissolved by act of June 29, 1936, 49 Stat. 1987, ch. 858, title II, § 203 (U. S. C., title 46, § 1113) which provided that all its records and property should be taken over by the United States Maritime Commission.

§ 35–1117 [5: 200]. Insurance companies not exempt from payment of Federal income tax.

Nothing in sections 35–1101 to 35–1132 shall be construed so as to relieve any corporation organized or doing business under the provisions of sections 35–1101 to 35–1132 from the payment of taxes on its income under the revenue laws of the United States. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 5, § 17.)

§ 35–1118 [5: 201]. Investment of assets of domestic companies.

The cash capital of every domestic corporation transacting marine insurance in the District, required to have a capital, to the extent of the minimum capital required by sections 35–1101 to 35–1132 shall be invested and kept invested in—

(1) Stocks or bonds of the United States, or of any state or of the District, or of any county, township, school, or other district or municipality in the United States, or federal farm-loan bonds, not estimated above their par value or their current market value.

(2) Bonds or notes secured by mortgages or deeds of trust of improved unencumbered real estate, or perpetual leases thereof, in the United States, worth not less than 50 per centum more than the amount loaned thereon. Where improvements on land constitute part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgagee in amount not less than the difference between two-thirds the value of the land and the amount of the loan.

(3) Mortgage bonds of railroad companies in the United States and on which default in payment of interest has not occurred within five years prior to the purchase by the company.

(4) Loans upon the pledge of such securities.

The cash capital of every insurance corporation not organized under the laws of the District and transacting marine insurance in the District to the extent of the minimum capital required of a like domestic corporation shall be invested and kept invested in the same classes of securities specified in the preceding paragraph of this section for domestic insurance corporations, except that like securities of the home state or foreign country shall be recognized as legal investments for the amount of the minimum capital required. The residue of the capital and the surplus money and funds of every domestic insurance corporation over and above its capital, and the deposit that it may be required to make with the superintendent, may be invested in or loaned on the pledge of any of the securities specified in the preceding paragraph of this section; or in the stocks, bonds, or other evidence of indebtedness of any solvent institution incorporated under the laws of the United States, or of any state thereof, or of the District; or in such real estate as it is authorized by sections 35–1101 to 35–1132 to hold.

The assets of every domestic mutual insurance corporation transacting marine insurance in the District to the extent of an amount equal to the minimum capital required of a like domestic stock corporation shall be invested and kept invested in the same class of securities specified for the investment of the minimum capital of like domestic stock insurance corporations. The residue of the assets of every domestic mutual insurance corporation, over and above said amount, may be invested in or loaned on the pledge of the same classes of securities or property as specified in sections 35–1118, 35–1119 for the investment or loan of the residue of the capital and the surplus money and funds of like domestic stock insurance corporations.

A company doing business in a foreign country may invest the funds required to meet its obligations in such country in conformity to the laws thereof in the same kinds of securities in such foreign country as such company is allowed by law to invest in the United States.

Nothing in sections 35–1101 to 35–1132 shall prohibit a company from accepting in good faith, in order to prevent losses and to protect its interests, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 6, § 18.)

COMPILER'S NOTE

This section may be superseded by § 35–1321.

CROSS REFERENCES

Investments of insurance companies, § 35–202 and notes.
Other provisions concerning investments for marine companies, § 35–1321.

§ 35–1119 [5: 202]. Domestic company may acquire, hold, and convey real estate for certain purposes—Disposition.

A domestic company may acquire, hold, and convey real estate only for the purpose and in the manner following:

(1) The building in which it has its principal office and the land on which it stands.

(2) Such as shall be requisite for branch office or other business facilities necessary for its convenient accommodation in the transaction of its business.

(3) Such as shall have been acquired for the accommodation of its business.

(4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

(5) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

All such real estate specified in subdivisions (3), (4), (5), and (6) of this section which shall not be necessary for its accommodation in the convenient transaction of its business shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procure the certificate of the superintendent that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the superintendent shall direct in such certificate. (Mar. 4, 1922, 42 Stat. 410, ch. 93, title 6, § 19.)

COMPILER'S NOTE

This section may be superseded by § 35–1319.

CROSS REFERENCES

Conveyance of real estate, formal requisites, § 45–302.
Other provisions concerning holding real estate, § 35–1319.

§ 35–1120 [5: 203]. Merger of companies.

Any two or more corporations organized under the laws of the District, and transacting the business of

marine insurance, may merge or consolidate into one corporation under the name of any title approved by the superintendent, but no mutual corporation or company shall be merged with a stock corporation or company. The corporations may enter into and make an agreement for such merger or consolidation, prescribing its terms and conditions, the amount of its capital, which shall not be larger in amount than the aggregate amount of capital of the merged or consolidated corporations, and the number of shares into which it is to be divided. Such agreement must be assented to by a vote of the majority of the number of directors of each corporation prescribed in its charter and must be approved by the votes of stockholders owning at least two-thirds of the stock of each corporation represented and voted upon in person or by proxy at a meeting, called separately for that purpose, upon a notice stating the time, place, and object of the meeting served at least thirty days previously upon each personally or mailed to him at his last known post-office address, and also published at least once a week for four weeks successively in some newspaper printed in the District. Every such agreement must have the approval of the superintendent before the details of said agreement may be carried into effect as provided therein.

The new corporation may require the return of the original certificates of stock held by each stockholder in each of the corporations to be merged or consolidated and issue in lieu thereof new certificates for such number of shares of its own stock as such stockholder may be entitled to receive. Upon such merger or consolidation all rights and property of the several companies shall become the property of the corporation composed of such companies, and the new corporation shall succeed to all the obligations and liabilities of the old corporations in the same manner as if they had been incurred or contracted by it. The stockholders of the old corporations shall continue subject to all the liabilities, claims, and demands existing against them at or before such merger or consolidation. No action or proceeding pending at the time of the consolidation, in which any or all of the old corporations may be a party, shall abate or discontinue by reason of the merger or consolidation, but the same may be prosecuted to final judgment in the same manner as if the merger or consolidation had not taken place, or the new corporation may be substituted in place of any corporation so merged or consolidated by order of the court in which the action or proceeding may be pending. (Mar. 4, 1922, 42 Stat. 410, ch. 93, title 7, § 20.)

§ 35–1121 [5: 204]. Establishment of foreign connections.

Any domestic company authorized to write insurance or reinsurance within the District may establish and maintain one or more agencies beyond the United States for the transaction of its lawful business upon such terms and conditions as it may prescribe and may omit from its annual report the transactions by any such agency, if beyond the North American Continent, for six months previous to the time when the report is made, but such omitted transactions shall be included in the next annual report. If such company is required by the foreign nation within which it transacts business to make a deposit in the securities of its own Government, or otherwise, the excess of such deposit over the local reserve liability, computed according to the terms of sections 35–1101 to 35–1132, shall be allowed as an asset in the company's home statement. The company shall also be allowed to include in its admitted assets all agents' balances in foreign countries which are collectible and which are not more than one hundred and eighty days past due. (Mar. 4, 1922, 42 Stat. 411, ch. 93, title 8, § 21.)

§ 35–1122 [5: 205]. Corporations engaged exclusively in writing insurance in foreign countries may organize in District of Columbia.

Corporations engaged exclusively in the writing of insurance in foreign countries may be organized within the District in the same manner and under the same conditions as prescribed by sections 35–1101 to 35–1132 for companies writing risks within the United States. The capital stock of such insurance corporations may be owned by American corporations engaged in the same kind of insurance, and the holding companies shall be given credit for the stock thus owned as admitted assets when rendering their financial statements to the superintendent. Any corporation organized under this section shall pay taxes and fees as provided under sections 35–1108 to 35–1117 and shall comply with and receive the benefit of sections 35–1101 to 35–1132 so far as the same may be applicable. (Mar. 4, 1922, 42 Stat. 411, ch. 93, title 8, § 22.)

§ 35–1123 [5: 206]. Prohibition of unauthorized insurance—Licensing of brokers in certain cases.

Any insurance agent or broker, incorporated or unincorporated, or any other person, partnership, or corporation, who or which, with or without compensation, shall, in or from the District, act for or with, or aid, in any manner, either directly or indirectly, any other person, association, partnership, or corporation in soliciting, procuring, or transacting marine insurance with or from any corporation, partnership, association, Lloyd's, individual underwriters, or reinsurers not authorized by license of the superintendent to transact the business of insurance therein, and whether the subject-matter of the insurance or reinsurance is or may be within or without the District, except as provided in sections 35–1124 to 35–1126, shall be guilty of a misdemeanor and shall forfeit to the District the sum of not less than $100 nor more than $1,000 for each offense: *Provided,* That for the purposes of sections 35–1123 to 35–1126 any office outside of the United States of an insurer organized under the laws of any foreign country, whether said insurer be licensed to do business in the United States or not, shall be deemed and held to be an insurer not authorized to transact the business of insurance in the District. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 23.)

COMPILER'S NOTE

Sections 35–1123 to 35–1126 may be superseded by §§ 35–1334 to 35–1345.

CROSS REFERENCES

Other provisions concerning agents for marine insurance, §§ 35–1334 to 35–1345.

Representation of unauthorized companies prohibited except in certain cases, §§ 35–1341, 35–1343, 35–1344.

§ 35–1124 [5: 207]. Superintendent of insurance may issue license to agent or broker to solicit marine insurance.

The superintendent, in consideration of the yearly payment of $100, shall issue to any person or corporation who is trustworthy and is competent to transact a marine insurance business in such manner as to safeguard the interests of the insured and who maintains in this District a regular office for the transaction of an insurance brokerage business a license, revocable for cause by the superintendent, permitting the party named in such license to act within the District as agent for the assured or broker to solicit or negotiate or place contracts of marine insurance with corporations, partnerships, associations, Lloyd's, individual underwriters, and interinsurers, which are not authorized to transact the business of insurance in this District, and shall renew the same annually, unless revoked for cause: *Provided,* That with respect to insurers organized under the laws of any foreign country and duly licensed to transact the business of insurance in any State or Territory of the United States and with respect to insurers organized under the laws of any State or Territory of the United States, said license shall not issue unless the superintendent shall be satisfied that said insurers show within the United States the same standards of solvency as would be required if said insurers were licensed at the time of issue of said license to transact the business of marine insurance in the District. Said license shall provide and the licensee thereunder shall agree that it may be revoked by the superintendent in his discretion in the event that said licensee does not comply with the terms and conditions of said license and of this chapter: *Provided,* That if a branch, associate, agent, correspondent, or head office of any broker so licensed by the superintendent, or such broker, shall, outside of this District, do or perform any of the acts or things forbidden to an unlicensed broker in this District the superintendent may, in his discretion, cancel and revoke the license of such licensee: *Provided, however,* That nothing herein contained shall authorize any person or corporation so licensed to act as insurer or guarantee the performance of any agreement, instrument, or policy of insurance or reinsurance as aforesaid or countersign or issue in the District any agreement, policy, or other instrument of such insurance unless such person or corporation so licensed shall have complied with the provisions of sections 35–1101 to 35–1132. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 24.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Insurance agents generally, § 35–1201 and notes.

Other provisions regulating agents for marine insurance, §§ 35–1334, 35–1345.

Refund of fees when license refused, § 47–1018.

Revocation or suspension of licenses for violation of Uniform Narcotic Drug Act, § 33–418.

Revocation of licenses generally, see notes to § 35–102.

§ 35–1125 [5: 208]. Holder of license to maintain office in District of Columbia and to keep book of records—Contents — Superintendent of Insurance may inspect such record—Data secured by Superintendent to be confidential.

Any person or corporation holding such license from the superintendent who shall do or perform any or all of the aforesaid acts in connection with marine insurance with any corporation, person, partnership, association, Lloyd's, individual underwriters, or interinsurers, which are not authorized by license of the superintendent to transact such business in the District, shall (1) maintain in good faith an office in the District, (2) keep in said office a complete book of record of the marine insurance transacted by, through, or with his or its assistance with unauthorized insurers, showing (a) a brief description or identification of the subject-matter and kind of the insurance, (b) the voyage insured, or, if for time, the date of such insurance going into effect and the date of its termination, (c) the name of the beneficial insured, (d) the amount insured with unauthorized insurers, (e) the rate of premium, (f) the gross premium payable therefor. Such book of record shall also contain statements in the same details of all such insurances canceled or on which premiums have been increased or reduced (including laying-up returns) and the amounts of additional or of return premiums thereon; (3) keep in said office such additional record of the insurance, including the names of the corporations, partnerships, associations, persons, Lloyd's, underwriters, or interinsurers and the amount insured by each. The books of record and all supplementing records shall be open at all times to the inspection of and examination by the superintendent of insurance or anyone appointed by him for said purpose. The data as herein outlined shall be furnished to the superintendent within one month following his request therefor and upon the form furnished by him. Such classified records of any licensee reporting shall be regarded by the superintendent as intended solely for the information of the District and federal governments and shall not be revealed to any person not authorized by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to any person or corporation not legally authorized to receive the same shall be guilty of a misdemeanor and subject, upon conviction, to a fine of $2,000 or imprisonment for one year, or to both such fine and imprisonment. Any licensee under sections 35–1123 to 35–1126 failing to report such classified records within the time limit prescribed by this section shall forfeit to the District $200 per month for each month he has failed. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 25.)

CROSS REFERENCE

See notes to §§ 35–101, 35–1123, 35–1124.

§ 35–1126 [5: 209]. Licensee to furnish bond.

Each person or corporation to whom such a license as broker shall be issued shall, before transacting business thereunder, execute and deliver to the superintendent a bond in the penal sum of not less than $5,000, with such surety or sureties as the superintendent shall require and approve, conditioned that the said broker will faithfully comply with all the requirements of sections 35–1123 to 35–1126. (Mar. 4, 1922, 42 Stat. 413, ch. 93, title 9, § 26.)

CROSS REFERENCE

See notes to §§ 35–1123, 35–1124.

§ 35–1127 [5: 210]. Keeping of classified records.

Every insurance company organized or admitted to write marine insurance within the District shall keep a classified record of all its marine insurance transactions in the United States, setting forth for each calendar year the volume of risks and the premiums involved with respect to (1) hull and time freight insurance; (2) cargo and voyage freight insurance and other voyage interests; (3) builders' risk insurance; (4) reinsurance ceded to American companies; (5) reinsurance ceded to American branch offices of alien admitted companies; (6) reinsurance ceded to any foreign office of alien admitted companies and reinsurance ceded to nonadmitted alien insurers; (7) reinsurance received from American companies; (8) reinsurance received from any foreign office of admitted alien companies and reinsurance received from alien nonadmitted insurers. The data as herein outlined shall be furnished to the superintendent within two months following his request therefor and upon the form furnished by him. Such classified records of any individual company reporting shall be regarded by the superintendent as intended solely for the information of the District and federal governments, and shall not be revealed to any person not authorized by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to a competitor shall be guilty of a misdemeanor and subject upon conviction to a fine of $2,000, or imprisonment for one year, or to both such fine and imprisonment. Any company or admitted branch office failing to report such classified records within the time limit prescribed by this section shall forfeit to the District $200 per month for each month it has failed. (Mar. 4, 1922, 42 Stat. 413, ch. 93, title 10, § 27.)

§ 35–1128 [5: 211]. Penalties.

Any person, corporation, association, or partnership who violates any of the provisions of sections 35–1101 to 35–1132, or fails to comply with any duty imposed upon him or it by any provision of said sections for which violation or failure no penalty is elsewhere provided by said sections or by the laws of the District, shall upon conviction thereof be fined not exceeding $500. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 11, § 28.)

§ 35–1129 [5: 212]. Production of incriminating evidence compellable—Immunity of witness.

No person shall be excused from attending and testifying or producing any books, papers, or other documents before any court or magistrate upon any investigation, proceeding, or trial for a violation of any of the provisions of sections 35–1101 to 35–1132 upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced by him shall be used against him upon any criminal investigation, proceeding, or trial. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 11, § 29.)

COMPILER'S NOTE

This section may be superseded by § 35–1346.

CROSS REFERENCE

Other provisions concerning testimony and the production of books and papers, § 35–1346.

§ 35–1130 [5: 213]. Clerical assistance and departmental expenses.

For the purpose of carrying out the provisions of sections 35–1101 to 35–1132 the superintendent of insurance is authorized to appoint, in addition to the present force, an examiner, a clerk-stenographer and to increase the contingent expenses of the insurance department in the sum of $800. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 12, § 30.)

COMPILER'S NOTES

The law as enacted provided for a salary of $3,000 per annum for the examiner and a salary of $1,800 per annum for the clerk-stenographer.

The salary pay is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

CROSS REFERENCE

Receivership expenses, § 35–1308.

§ 35–1131 [5: 214]. Unconstitutionality of part of act not to affect the remainder.

Should any of sections 35–1101 to 35–1132 be held unconstitutional or invalid the constitutionality or validity of said sections as a whole or of any part thereof, other than the part so held unconstitutional or invalid, shall not be affected. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 13, § 31.)

COMPILER'S NOTE

This section as enacted also contains at the beginning the sentence "That this act shall supersede the provisions of any other law of the District in conflict therewith."

§ 35–1132 [5: 215]. Right to amend or repeal reserved.

The right to alter, amend, or repeal sections 35–1101 to 35–1132 is hereby reserved. (Mar. 4, 1922, 42 Stat. 414, ch. 93. title 13, § 32.)

§ 35–1133 [5: 182]. Wagering policies, illegal.

No insurance shall be made by any person or persons, bodies politic or corporate, on any ship or ships, or on any goods, merchandise, or effects laden or to be laden on board of any ship or ships, interest or no interest, or without further proof of interest

than the policy, or by way of gaming or wagering or without benefit of salvage to the insurer; and every such insurance shall be null and void to all intents and purposes. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 656.)

Chapter 12.—INSURANCE AGENTS OTHER THAN LIFE

Sec.

35–1201. Insurance agents to secure licenses—Commissions to unlicensed agents prohibited—Penalties.

35–1202. Fraternal associations exempt under this chapter—Employment of solicitors and license fees therefor—Industrial insurance may be carried on—Industrial insurance license—Penalty for soliciting without license.

§ 35–1201 [5: 180]. Insurance agents to secure licenses—Commissions to unlicensed agents prohibited—Penalties.

No person, firm, or corporation shall act as agent for any insurance company or association, or act as insurance broker or agent for procuring or placing insurance for commissions, compensation, gain, or profit, without first having obtained a license as an insurance agent or broker from the Superintendent of Insurance of the District. Every such license certificate shall have printed conspicuously upon its face the words "General insurance license," and for such license the sum of fifty dollars shall be paid annually in the month of March to the collector of taxes of said District. All licenses for insurance companies, their agents, or solicitors, who may apply for permission to do business in the District of Columbia shall date from the first of the month in which application is made and expire on the thirtieth day of April following, and payment shall be made in proportion. No person, firm, or corporation, or association shall allow or pay any commission, rebate, or compensation whatever, directly or indirectly, to, for, or in behalf of any person, firm, or corporation doing business in the District of Columbia not licensed as herein provided. Except as provided in section 35–1123, any violation of this section shall be a misdemeanor and, on conviction in the police court of said District, be subject to the penalties provided in section 35–201 for the misdemeanors therein described: *Provided,* That licenses to firms, corporations, or associations shall be held to extend only to the bona fide copartners, not exceeding two in one firm, and to the secretary and one assistant secretary of each corporation or association so licensed, any one of whom may be held and dealt with on behalf of such firm, corporation, or association for any violation of the provisions hereof. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 654.)

Compiler's Notes

The words "Except as provided in section 35–1123" in the fifth sentence were inserted by the compilers.

As enacted this section contains at the end thereof "*And provided further,* That all moneys paid as fines under the provisions hereof shall be turned over to the proper custodian of the relief or pension fund of the fire department of the District, to be used and accounted for agreeably to the then existing rules for the use of such relief or pension fund." Act of Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12, provides that the "Police relief fund" and the "Fireman's relief fund" should be known as the "Policemen and firemen's relief fund, District of Columbia," and prescribes the moneys of which such fund shall consist (§ 4–503 in this code).

The act of 1934, 48 Stat. 1177, ch. 672, § 4, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3–8 of this title), are hereby repealed."

Cross References

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Fire, casualty, and marine insurance agents, §§ 35–1334 to 35–1345.

Life insurance agents, § 35–425 et seq.

Life insurance brokers, § 35–428.

Marine insurance agents, § 35–1124.

Refund of fees when license refused, § 47–1018.

Revocation and suspension of licenses, see notes to § 35–102.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.

Transacting business for unauthorized company, § 35–1123.

See notes to § 35–101.

NOTES TO DECISIONS

Licensed Agents

Broker licensed under this section may act as agent for any company authorized to do business in the District. *Drake* v. *United States ex rel. Bates* (30 App. D. C. 312).

An agent licensed to represent one company is entitled to apply for and receive another license to represent another company. *United States ex rel. Kreh* v. *Ingram* (38 App. D. C. 379).

Licensed Corporations

"All insurance companies are compelled to comply with the provisions of the several sections relating to them before they can carry on business. * * * The companies are under no obligation to apply for licenses for their agents or brokers. They must apply for their own licenses." *Drake* v. *United States ex rel. Bates* (30 App. D. C. 312).

Injunction

Superintendent of Insurance of the District has no statutory authority to issue license to mutual insurance companies writing taxicab insurance, and injunction may be issued to restrain him from doing so. *Hutchins Mut. Ins. Co.* v. *Hazen* (70 App. D. C. 174, 105 Fed. (2d) 53).

Mandamus

The issuance of a license to represent another company may be compelled by mandamus. *United States ex rel. Kreh* v. *Ingram* (38 App. D. C. 379).

Regulations

Superintendent of Insurance does not have power "to make regulations for the classification of persons required to take out a 'general insurance license' by the provisions of 1901 Code, § 654 (§ 35–1201)." *Drake* v. *United States ex rel. Bates* (30 App. D. C. 312).

§ 35–1202 [5: 181]. Fraternal associations exempt under this chapter—Employment of solicitors and license fees therefor—Industrial insurance may be carried on—Industrial insurance license—Penalty for soliciting without license.

Nothing contained in sections 35–101 to 35–108, 35–201 to 35–205, 35–1201, 35–1202 shall be held to interfere with or abridge the rights of, or apply to, any fraternal beneficial societies, orders, or associations under sections 35–901 to 35–917: *Provided,* That any insurance company or agent licensed to do business in the District of Columbia may employ solicitors, and the license fee to be paid for each

solicitor so employed shall be five dollars per year, payable in the month of March, and such license shall have printed on its face the words "Insurance solicitor's license," and shall contain the name of the company for which such solicitor is employed, and no other: *Provided,* That nothing herein contained shall be held to prevent any life or fire insurance company from carrying on the business commonly known as industrial insurance, and the license fee to be paid for solicitors for such industrial insurance shall be two dollars for every such solicitor, to be paid in the month of March in each year. Such license certificate shall have conspicuously printed on its face "Industrial insurance license," and shall also express upon its face the name of the company for which such solicitor is employed; and any certificate of license granted under this section or the next preceding section may be assigned, upon application to the Superintendent of Insurance, by canceling the old certificate and issuing a new one of like tenor to the assignee for the unexpired term, for which assignment a fee of twenty-five cents shall be paid to the collector of taxes; and any person who shall act as solicitor for any such insurance company, without having first procured such license therefor, or shall solicit for any company other than the one named in such license, shall be guilty of a misdemeanor and, on conviction thereof in the police court of said District, be punished by a fine of not less than ten dollars nor more than fifty dollars, and in default of payment of such fine by imprisonment in the jail of said District for a term of not less than ten days nor more than thirty days, at the discretion of the court: *Provided,* That nothing in sections 35–101 to 35–108, 35–201 to 35–205, 35–1133, 35–1201, 35–1202 shall be held to prevent any life insurance company organized in the District of Columbia under special act of Congress, but which has discontinued writing new insurance, from collecting premiums or dues upon any undetermined policies under which such company has liabilities, provided such company has sufficient assets and reserves to safely meet such liabilities. (Mar. 3, 1901, 31 Stat. 1293, ch. 854, § 655.)

CROSS REFERENCE

See notes to § 35–1201.

Chapter 13.—FIRE, CASUALTY, AND MARINE INSURANCE

Sec.

35–1301. Short title.
35–1302. Application of act—Life, title, fidelity, and surety companies and pension plans excepted.
35–1303. Definitions.
35–1304. Records of insurance department—Power to make rules.
35–1305. Certificate of authority—Necessity for—Expiration—Requirements.
35–1306. Revocation and suspension of certificate of authority—Grounds for—Notice and hearing.
35–1307. Taxes, report and payment upon ceasing business—Penalties.
35–1308. Receivership—Grounds for—Injunction—Hearing—Liquidation by superintendent—Title to property—Notice to be recorded in office of recorder of deeds—Appointment and compensation of clerks and special deputies—Expenses—Bond of receiver.
35–1309. "Insolvency" defined.
35–1310. "Impairment of capital or surplus" defined.
35–1311. Annual statement—Time for filing—Extension of time—Verification—Blanks to be furnished—Form and modification of blanks—Publication of statement.
35–1312. False statements—Penalties.
35–1313. Examinations—Production of books and papers—Expenses—False statements, reports, or entries—Penalties—Foreign or alien companies, acceptance of examinations made by other authorities.
35–1314. Classification of insurance—Fire and marine—Casualty—Risks insurable—Fidelity and surety risks excepted.
35–1315. Limitation of risk—Reinsured risks excluded from computations—Workmen's compensation, employers' liability, marine or inland marine risks excluded.
35–1316. Capital and surplus, minimum requirements.
35–1317. Existing companies, application of act—Capital and surplus requirements.
35–1318. Formation of domestic companies—Filing articles of incorporation, by-laws, charter and policy forms—Issuance of certificate of authority to do business.
35–1319. Real estate which may be held by domestic companies—Sale of certain real estate within five years after acquisition—Extension of time for sale.
35–1320. Borrowing money, mutual company may borrow to create surplus fund, comply with law, or defray expenses of organization—Approval of superintendent—Interest rate—Repayment—Obligation of company.
35–1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.
35–1322. Agency contracts, exclusive—Approval of superintendent required—Prohibited provisions.
35–1323. Foreign or alien companies, admission—Certificate of authority required.
35–1324. Lloyd's organizations—Requirements—Limitation of risk—Surplus—Filing copy of power of attorney—Annual statement—Verification.
35–1325. Certificate of authority, application by foreign or alien companies—Form and execution.
35–1326. Application for certificate of authority, foreign or alien companies—Delivery of instruments concerning company to superintendent—Service of process—Deceptive names prohibited—Capital and surplus—Investments—Examination by superintendent.
35–1327. Process, service upon foreign or alien companies by service on superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.
35–1328. Names of mutual or reciprocal companies—Requirements—Exceptions.
35–1329. Premiums of mutual companies—Maximum required to be stated—Contingent premiums.
35–1330. Reserves, computation.
35–1331. Policy forms filed with the superintendent—Power to disapprove.
35–1332. Accident and health policies, required provisions.
35–1333. Discriminations prohibited.
35–1334. Agents and brokers—Policies to be executed by licensed and authorized agents—All agreements contained in policy—Rebates prohibited—List of agents to be filed—Payment of premium to broker—Soliciting agent may not sign policy—Life, title, and ocean marine agents excepted.

Sec.
35–1335. Commissions to unlicensed persons prohibited.
35–1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited.
35–1337. Effective dates of licenses and proration of fees.
35–1338. Temporary transfer of licenses—Renewal.
35–1339. Renewal of licenses.
35–1340. Revocation and suspension of licenses—Grounds for—Notice and hearing—Evidence.
35–1341. Unauthorized solicitation or representation.
35–1342. Exemption from license—Common carriers—Travel bureaus—Life, fraternal benefit, and ocean marine agents.
35–1343. Agents prohibited from representing unauthorized companies—"Companies" defined—Penalties—Civil liability—Exceptions—Prosecution.
35–1344. License to write policy in unauthorized company when no authorized company available—Taxation—Reports, form and contents—Revocation or refusal.
35–1345. License fees.
35–1346. Testimony—Production of books—No refusal because of self-incrimination—Exemption from punishment except for perjury.
35–1347. Penalties not otherwise prescribed.
35–1348. Appeal from superintendent to Commissioners—Time for—Hearing on appeal—Effect of Commissioners' decision.
35–1349. Court proceedings—Superintendent not liable for costs, damages, or to give supersedeas bond.
35–1350. Constitutionality.

§ 35–1301. Short title.

This chapter shall be known as the "Fire and Casualty Act." (Oct. 9, 1940, 54 Stat. 1063, ch. 792, § 1, ch. I.)

REPEAL

Section 46 of the act of Oct. 9, 1940, 54 Stat. 1083, ch. 792, part II, provided as follows: "All laws or parts of laws, insofar as they relate to business affected hereby and are in conflict with any provisions of this act (§§ 35–1301 to 35–1350), are hereby repealed."

CROSS REFERENCES

General provisions concerning insurance companies, see chapters 1 and 2 of this title.

Other provisions concerning marine insurance companies, see chapter 11 of this title.

§ 35–1302. Application of act—Life, title, fidelity, and surety companies and pension plans excepted.

All fire, marine, and casualty insurance companies now or hereafter incorporated or formed in the District, or authorized to do business in the District, all brokers and all agents and other representatives of such companies, shall, to the extent hereinafter provided, be subject to this chapter: *Provided,* That this chapter shall not affect the business of life and title insurance, and shall not affect the right or authority of any solvent company to make contracts of fidelity or surety, and shall not affect a plan under which any person provides pension benefits to his employees. (Oct. 9, 1940, 54 Stat. 1064, ch. 792, § 2, ch. I.)

CROSS REFERENCES

Effect on existing companies, § 35–1317.

See notes to § 35–1301.

Regulation of fire insurance rates, see §§ 35–1401 to 35–1409.

§ 35–1303. Definitions.

In this chapter, unless the context otherwise requires—

"District" means District of Columbia.

"Commissioners" means the commissioners of the District of Columbia.

"Superintendent" means the Superintendent of Insurance of the District of Columbia.

"Department" means the Department of Insurance of the District of Columbia.

"Company" means an insurance, surety, or indemnity company, and shall be deemed to include a corporation, company, partnership, association, individual, or aggregation of individuals engaging in or proposing or attempting to engage in any kind of insurance, surety, or indemnity business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.

"Authorized company" means a company which has authority from the Superintendent to do business in the District as provided under section 35–1305.

"Unauthorized company" means a company which does not have authority from the Superintendent to do business in the District as provided under section 35–1305.

"Domestic company" means a company incorporated or organized under the laws of the District.

"Foreign company" means a company incorporated or organized under the laws of any State of the United States.

"Alien company" means a company incorporated or organized under the laws of any country other than the United States.

"Reciprocal" includes interinsurance exchange.

"Person" includes individuals, corporations, associations, exchanges, and partnerships.

Personal pronouns include all genders; the singular includes the plural and the plural includes the singular.

"Policy" means an insurance policy or contract, including contracts of fidelity and surety, and includes any contract wherein one party called the "company," for a consideration, undertakes to pay money or its equivalent, or to do an act valuable to any other party upon the happening of the hazard or peril insured against whereby the party insured suffers loss or injury or is subjected to legal liability.

"Officer," when used to refer to officer of the company, includes an attorney-in-fact.

"Policy writing agent" means any person who is not a salaried employee of a company, and whose residence or principal place of business is located in the District, and who is authorized in writing by any company authorized to transact business in the District to countersign policies and to solicit, negotiate, or effect contracts of insurance, surety, or indemnity for such company in the District.

"Soliciting agent" means any person who is not a salaried employee of a company and whose residence or principal place of business is located in the District, and who is authorized by a company having authority to transact business in the District, or by

a policy-writing agent, to solicit in the District contracts of insurance, surety, or indemnity in behalf of such company or agent.

"Broker" means any person who for a consideration acts or aids in any manner in the solicitation or negotiation on behalf of the assured of contracts of insurance, surety, or indemnity.

"Salaried company employee" means any person regularly employed by an authorized company, and who is paid a regular wage or salary to perform certain duties and functions authorized by such company. For the purposes of this chapter the term "salaried company employee" shall not include employees engaged solely in office duties or in the inspection, rating, or classifying of risks or in the supervision of agents, or any employee not engaged in the solicitation or writing of policies, or officers of companies or associations engaged in the performance of their usual and customary executive duties.

"Surplus" means the excess of admitted assets over liabilities and capital in the case of a company with capital stock, and the excess of admitted assets over liabilities in the case of a company without capital stock.

"Liabilities" means all debts due or to become due, contingent or otherwise, of which the company has knowledge, and includes the reserves required by this chapter.

"Admitted assets" includes the investments authorized or permitted by this chapter, and in addition thereto only the following:

(1) Cash in a company's principal or branch offices or in possession of a company or in transit, and cash deposited with the officers of any state or subdivision thereof, or the Dominion of Canada, when such deposit is necessitated by the laws of such state or subdivision thereof, or by the laws of the Dominion of Canada.

(2) Cash deposited in sound banks and trust companies.

(3) The amount fairly estimated as recoverable on cash deposited in closed banks and trust companies.

(4) Bills and accounts receivable collateralized by securities of the kind in which the company is authorized to invest.

(5) Bills receivable not past due for risks taken by companies authorized to transact fire and marine business described in section 35–1313 that are not in excess of the unearned premiums thereon.

(6) Gross premiums or premium deposits in course of collection not more than ninety days past due, less commissions due thereon to agents.

(7) Amounts fairly estimated as recoverable from advances made on contracts under surety bonds.

(8) Amounts due from solvent insurance companies, bureaus, or company associations, and amounts fairly estimated as recoverable from insolvent insurance companies.

(9) The interest accrued during the twelve months immediately preceding on mortgage loans other than those upon which the company is proceeding for the enforcement of security.

(10) The rents accrued on the company's property during the twelve months immediately preceding.

(11) Interest due and accrued on bonds conforming to this chapter and not in default.

(12) Amounts due and accrued on dividends declared on shares of stock conforming to this chapter.

(13) Interest due and accrued on collateral loans which is not in excess of the value of the collateral over the amount loaned thereon.

(14) Interest due and accrued on deposits in sound banks and trust companies.

(15) Interest accrued on tax-anticipation warrants.

(16) Amounts due for tax refunds allowed but unpaid from the United States or any state. (Oct. 9, 1940, 54 Stat. 1064, ch. 792, § 3, ch. I.)

COMPILER'S NOTE

This section may partially supersede § 35–1101.

CROSS REFERENCES

Additional definition of "company," § 35–1343.
"Encumbrances on real estate" defined, § 35–1321.
"Impairment of capital or surplus" defined, § 35–1310.
"Insolvency" defined, § 35–1309.
Other definitions concerning marine insurance, § 35–1101.

§ 35–1304. Records of Insurance Department—Power to make rules.

The office of the superintendent shall be a public office, and the records, books, and papers thereof on file therein shall be public records of the District, except as the superintendent for good reason may decide otherwise, or except as it may be provided otherwise herein.

The superintendent shall have authority to make and enforce such reasonable rules and regulations as may be necessary in making effective the provisions of this chapter, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this chapter. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, § 1, ch. II.)

COMPILER'S NOTE

This section may supersede § 35–1102.

CROSS REFERENCES

Other provisions concerning power and duties of insurance department with respect to marine insurance, § 35–1102.
Other provisions concerning the insurance department, § 35–101 et seq.
Power of Superintendent to prescribe and alter forms for annual statements, § 35–1311.
Power to disapprove inequitable policy forms, § 35–1331.
Power to prescribe form of application of foreign and alien companies to do business in the District, § 35–1325.
Rules and regulations generally, § 35–102 and notes.
Rules and regulations governing liability policies or bonds for motor carriers, § 44–301.

§ 35–1305. Certificate of authority—Necessity for—Expiration—Requirements.

It shall be the duty of the superintendent to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to be entitled to do business therein. The superintendent may, however, satisfy himself by such investigation as he may deem proper or

necessary that such company is duly qualified under the laws of the District to transact business therein, and may refuse to issue or renew any such certificate to a company if the issuance or renewal of such certificate would adversely affect the public interest. In each case the certificate shall be issued under the seal of the superintendent authorizing and empowering the company to transact the kind or kinds of business specified in the certificate, and each such certificate shall be made to expire on the 30th day of April next succeeding the date of its issuance. No company shall transact any business in or from the District until it shall have received a certificate of authority as authorized by this section, and no company shall transact any business not specified in such certificate of authority. No domestic mutual company shall transact any business in the District until it has bona fide applications for insurance covering not less than two hundred separate risks in not less than twenty policies to be issued to not less than twenty members, and has received the cash premium therefor, and has a surplus of not less than the amount provided under sections 35–1315, 35–1316. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, § 2, ch. II.)

COMPILER'S NOTE

This section may supersede, § 35–1104.

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

General penalties for violation of the insurance laws, § 35–1347.

Issuance of certificate, § 35–1318.

Other provisions for licensing health and accident business, § 35–201.

Other provisions for licensing marine insurance companies, § 35–1104.

§ 35–1306. Revocation and suspension of certificate of authority—Grounds for—Notice and hearing.

The superintendent shall have power to revoke or suspend the certificate of authority to transact business in the District of any company which has failed or refused to comply with any provision or requirement of this chapter, or which—

(a) Is impaired in capital or surplus;

(b) Is insolvent;

(c) Is in such a condition that its further transaction of business in the District would be hazardous to its policyholders or creditors in the District, or to the public;

(d) Has refused or neglected to pay a valid final judgment against such company within thirty days after such judgment shall have become final either by expiration without appeal within the time when such appeal might have been perfected, or by final affirmance on appeal;

(e) Has violated any law of the District or has in the District violated its charter or exceeded its corporate powers;

(f) Has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the superintendent, his deputies, or duly appointed examiners;

(g) Has an officer who has refused upon reasonable demand to be examined under oath touching its affairs;

(h) Fails to file with the superintendent a copy of an amendment to its charter or articles of association within thirty days after the effective date of such amendment;

(i) Has had its corporate existence dissolved or its certificate of authority revoked in the State in which it was organized; or

(j) Has had all its risks reinsured in their entirety in another company, without prior approval of the superintendent.

The Superintendent shall not revoke or suspend the certificate of authority of any company until he has given the company not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded the company an opportunity for a full hearing: *Provided, however,* That if the Superintendent shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policy holders or creditors of the company in the District, he may suspend such authority without giving notice as herein required: *Provided further,* That, in lieu of revoking or suspending the certificate of authority of any company for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such company to a penalty of not more than $200 when in his judgment he finds that public interest would be best served by the continued operation of the company. The amount of any such penalty shall be paid by the company through the office of the Superintendent to the collector of taxes, District of Columbia. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, § 3, ch. II; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 1.)

AMENDMENTS

The act of April 22, 1944, cited to text, amended section by adding proviso at the end thereof.

CROSS REFERENCES

Examination of companies, § 35–1313.

General penalties for violation of the insurance laws, § 35–1347.

Receivership proceedings, § 35–1308.

Revocation of licenses, certificates, and permits in general, § 35–102 and notes.

§ 35–1307. Taxes, report and payment upon ceasing business—Penalties.

If a company shall cease to do business in the District, it shall thereupon make report to the superintendent of the taxable premiums collected which have not been reported prior to the date of the cessation of business, and shall forthwith pay to the collector of taxes of the District, through the superintendent, a tax thereon computed according to law. If a company fails or refuses to make such a report or to pay the tax imposed upon it as required by law, it shall be liable to the District for the amount of such taxes, plus a penalty of 8 per centum per month for each month or part thereof during which such taxes remain unpaid. (Oct. 9, 1940, 54 Stat. 1067, ch. 792, § 4, ch. II.)

COMPILER'S NOTE

This section may supersede § 35–1114.

Cross References

Marine insurance excepted from operation of General Tax Laws, § 47–1806.

Other provisions concerning payment of taxes upon ceasing business, § 35–1114.

Taxation of insurance companies, §§ 35–1108 to 35–1117, 47–1806 et seq.

§ 35–1308. Receivership — Grounds for — Injunction—Hearing—Liquidation by Superintendent—Title to property—Notice to be recorded in office of recorder of deeds—Appointment and compensation of clerks and special deputies—Expenses—Bond of receiver.

The superintendent may, through the corporation counsel of the District, apply to the District Court of the United States for the District for a rule directing any company organized under the laws of the District or any company in the course of organization to show why the superintendent should not take possession of its property and conduct its business as the nature of the case and the interests of the policyholders, creditors, stockholders, or the public may require, whenever any such company is—

(a) Insolvent; or

(b) Has neglected or refused to observe a lawful order of the superintendent to make good any deficiency in its capital or surplus; or

(c) Has by contract of reinsurance or otherwise transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction, the effect of which is to merge substantially its entire property or business in the property or business of any other company, without having first obtained the written approval of the superintendent; or

(d) Is found after an examination by the superintendent to be in such condition that its further transaction of business would be hazardous to its policyholders; or

(e) Has violated its charter; or

(f) Is carrying on activities against public policy.

Upon such application, such court may, in its discretion, issue an injunction restraining such company from the transaction of its business or disposition of its property pending further order of the court. On the return of such rule to show cause, the court shall hear, try, and determine the issues forthwith, and shall either deny the application or direct the superintendent to take possession of the property and conduct the business of such company and retain such possession and conduct such business until on the application either of the superintendent, the corporation counsel representing him, or the company, it shall, after a like hearing, appear to the court that the ground for the order directing the superintendent to take possession has been removed, and that the company can properly resume the possession of its property, and the conduct of its business. If on the like application and rule to show cause, and after a hearing, the court shall order the liquidation of the business of such company, such liquidation shall be made by and under the direction of the superintendent, who may deal with the property and business of such company in his own name as superintendent, or in the name of the company, as the court may direct, and shall be vested by operation of law with title to all of the property, contracts, and rights of action of such company as of the date of the order so directing him to liquidate. The filing or recording of such order in the office of the recorder of deeds for the District shall impart the same notice that a deed, bill of sale, or other evidence of title duly filed or recorded by such company would have imparted. For the purpose of this section, the superintendent shall have power to appoint under his hand and official seal one or more special deputy superintendents, and to employ clerks and assistants as may by him be deemed necessary. The fair and reasonable compensation of such special deputies, clerks, and assistants, and all the expenses of taking possession of and conducting the business of any such company shall, subject to the approval of the court, be paid out of the funds or assets of such company. The court may require a corporate surety bond or bonds from the superintendent in such amount as it may deem necessary. (Oct. 9, 1940, 54 Stat. 1067, ch. 792, §5, ch. II.)

Cross References

General provisions concerning expenses of regulating marine insurance companies, § 35–1130.

Revocation or suspension of certificate of authority, § 35–1306.

§ 35–1309. "Insolvency" defined.

Any insurance company whose assets are not sufficient to reinsure its outstanding risks in a solvent insurance company shall be deemed insolvent, and may be proceeded against as provided in this chapter. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, §6, ch. II.)

Cross References

Definitions, § 35–1303 and notes.

Power of Superintendent to examine and determine solvency of health and accident companies, §§ 35–201, 35–202.

§ 35–1310. "Impairment of capital or surplus" defined.

Any company whose capital has been reduced to an amount less than that required by this chapter, or whose surplus of admitted assets in excess of all liabilities is less than the amount required by this chapter, shall be deemed to be impaired in capital or surplus, and may be proceeded against as provided in this chapter. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, § 7, ch. II.)

Cross References

Provisions for Superintendent to examine and determine whether or not capital or surplus of health and accident companies is impaired, §§ 35–201, 35–202.

"Surplus" defined, other definitions, § 35–1303 and notes.

§ 35–1311. Annual statement—Time for filing—Extension of time—Verification—Blanks to be furnished—Form and modification of blanks—Publication of statement.

Every company doing business in the District shall file with the superintendent before March 1 in each year a financial statement for the year ending December 31 immediately preceding on forms furnished by the superintendent. The superintendent shall have authority to extend the time for filing such statement by any company for reasons which he

shall deem good and sufficient. Such statement shall be verified by the oath of the president and secretary of the company, or, in their absence, by two other principal officers. The superintendent shall annually in the month of December furnish to each of the companies authorized to do business in the District blanks necessary for the filing of the statement herein required. Such blanks shall conform substantially to the form of statement adopted by the National Association of Insurance Commissioners. The superintendent shall have power to make such modifications and additions in said blank forms of statement as he may deem desirable and necessary to ascertain the condition and affairs of the company. The superintendent shall also have power to require that at least once in the month of March in each year a summary of such annual statement shall be published by the company in a daily newspaper published in the District. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, § 8, ch. II.)

CROSS REFERENCES

Annual statement for tax purposes, §§ 35–1109, 35–1112.

Annual statement of companies operating upon Lloyd's plan, § 35–1324.

General power of Superintendent to make rules and regulations, § 35–1304 and notes.

Other provisions concerning annual statements, §§ 35–103, 47–1801 et seq.

Other provisions for annual statements by health and accident companies, § 35–202.

Provisions concerning taxation of health and accident companies, § 35–202.

Refund of taxes erroneously or unlawfully collected, § 47–1017 et seq.

Taxation of business transacted by unauthorized company, § 35–1344.

§ 35–1312. False statements—Penalties.

Any director, officer, agent, or employee of any company who subscribes to, makes or concurs in making or publishing any annual or other statement required by law, knowing the same to contain any material statement which is false, shall be fined not more than $5,000 or imprisoned for not more than five years, or both. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, § 9, ch. II.)

CROSS REFERENCE

General penalties, § 35–1347.

§ 35–1313. Examinations—Production of books and papers—Expenses—False statements, reports, or entries—Penalties—Foreign or alien companies, acceptance of examinations made by other authorities.

The superintendent may examine the books, papers, property, and affairs of any agent or company organized or doing business in the District, and of any company engaged in or professing to be engaged in organizing, promoting, or soliciting stock or capital contributions to or aiding in the formation of any company, or any company which holds the capital stock of another company for the purpose of controlling the management thereof as voting trustee or otherwise. The superintendent, his deputy, or any examiner designated by the superintendent, may examine under oath the officers and agents of such company, and all persons deemed to have material information regarding the company's property or business. Every such company, its officers, and agents shall produce at the home office of the company at the time designated by the superintendent its books of original entry, and all records and papers in its or their possession relating to its or their business or affairs. The officers and agents of such company shall facilitate such examination insofar as it is in their power to do so. The expense of such examination shall be paid by the company examined. Any officer, director, agent, or employee of any company who makes or causes to be made any false entry in any book, report, or statement of such company with intent to injure or defraud such company or any other company or person, or to deceive any officer of such company, or the superintendent, and any person who with like intent aids or abets any officer, director, agent, or employee in any violation of this chapter shall be fined not more than $1,000, or shall be imprisoned for not more than five years, or both. The superintendent may, in lieu of such examination of a foreign or alien company, accept the report on the examination of such company made by the insurance department or other insurance supervising official in any other state or any government outside the United States. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, § 10, ch. II.)

CROSS REFERENCES

General penalties, § 35–1347.

General provisions for examination of insurance companies, § 35–108 and notes.

Other provisions for inspection and examination of insurance companies, §§ 35–108, 35–201, 35–202, 35–903.

Provisions giving superintendent right to examine health and accident companies to determine solvency, §§ 35–201, 35–202.

Revocation or suspension of certificate of authority for failure to comply with this section, § 35–1306.

§ 35–1314. Classification of insurance—Fire and marine—Casualty—Risks insurable—Fidelity and surety risks excepted.

Any company authorized to do business in the District may, when empowered by its charter, make all or any one or more of the kinds of insurance and reinsurance comprised in either or both of the following classes, subject to and in accordance with the provisions of this chapter:

(1) *Fire and marine.*—On houses, buildings, and all other kinds of property against loss, damage, or damages by fire, lightning, or storm; to insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers or water pipes; and to make all kinds of insurance against loss of or damage to goods, merchandise, or other property caused by fire, risks of transportation, or navigation, the action of the elements or adverse manifestations of nature, as well as all and every risk or peril to which the subject of insurance may be exposed, against which it is not contrary to public policy to insure, including every insurable interest therein or in the use thereof, or profit or income therefrom, or legal liability therefor, but not to include injury to the person nor loss caused by breach of trust.

(2) *Casualty.*—(a) Upon the health of persons, or against injury, disablement, or death of persons re-

sulting from traveling or general accidents by land or water, and against liability of the assured for injuries to employees or other persons; (b) against liability of the assured for loss or destruction of or damage to property; (c) upon the lives of domestic animals; (d) against loss of or damage to glass and its appurtenances; (e) against loss of or damage to any property resulting from the explosion of or injury to any boiler, heater, unfired pressure vessel, pipes, or containers connected therewith, any engine, turbine, compressor, pump, or wheel or any apparatus generating, transmitting or using electricity, or any other machine or apparatus connected with or operated by any of the previously named boilers, vessels, or machines; and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise; (f) against loss by burglary or theft, or both, and against loss of or damage to moneys and securities; (g) to guarantee and indemnify merchants, traders, and those engaged in business and giving credit, from loss and damage by reason of giving and extending credit to their customers and those dealing with them; (h) against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of sprinklers or water-pipes; (i) to insure against any other casualty risk which may lawfully be the subject of insurance, and which it is not contrary to public policy to insure: *Provided,* That this section shall not be construed as having any effect whatever upon the right or authority of any solvent company to make contracts of fidelity or surety. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, § 11, ch. II.)

COMPILER'S NOTE

This section may supersede § 35–1103.

CROSS REFERENCES

Insurance under Employers' Compensation Act, § 35–205.
Liability policy or bond for motor carriers, § 44–301.
Motor vehicle liability policies, powers of department, form and requisites of policies, § 40–412.
Other provisions concerning kinds of insurance which may be written by marine insurance companies, § 35–1103.
Wagering policies prohibited, § 35–1133.

§ 35–1315. Limitation of risk—Reinsured risks excluded from computations—Workmen's compensation, employers' liability, marine or inland marine risks excluded.

No company other than a mutual or reciprocal company doing business in the District shall expose itself to any loss on any one risk or hazard in the District to an amount exceeding ten per centum of the sum of its capital stock and surplus without the written prior consent of the superintendent. No mutual or reciprocal company shall expose itself to any loss on any one risk or hazard in the District to an amount exceeding ten per centum of its surplus without written prior consent of the superintendent. No portion of any such risk or hazard which shall have been reinsured in a company authorized to do business in the District shall be included in determining limitation of risk: *Provided,* That the provisions of this section shall not apply to the insurance of workmen's compensation, employers' liability, marine, or inland marine risks. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, § 12, ch. II.)

CROSS REFERENCES

Limitation of risk for companies operating on Lloyd's plan, § 35–1324.
Reinsurance of risks, § 35–1106.

§ 35–1316. Capital and surplus, minimum requirements.

Every stock company authorized to do business in the District shall have and shall at all times maintain a paid-up capital stock of not less than $150,000, and a surplus of not less than $150,000. Every domestic mutual company and every domestic reciprocal company shall have and shall at all times maintain a surplus of not less than $150,000, and every foreign or alien mutual company and every foreign or alien reciprocal company shall have and shall at all times maintain a surplus of not less than $200,000. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, § 13, ch. II.)

COMPILER'S NOTE

This section may supersede §§ 35–1103, 35–1104.

CROSS REFERENCES

Capital and surplus required of foreign and alien companies, § 35–1326.
Other provisions concerning amount of capital and surplus required of marine insurance companies, §§ 35–1103, 35–1104.
Other provisions concerning capital and surplus of health and accident companies, §§ 35–201, 35–202.
Surplus required for operation under Lloyd's plan, § 35–1324.

§ 35–1317. Existing companies, application of act—Capital and surplus requirements.

No company shall be exempt from the provisions of this chapter by reason of its having been incorporated in the District or elsewhere prior to the effective date of this chapter, except that, in the case of companies authorized in the District on the date of approval of this chapter, and continuously authorized thereafter without any increase of authority, the minimum capital and surplus required of a stock company, and the minimum surplus required of a mutual or reciprocal company, or of a Lloyd's organization by the laws of the District heretofore applicable shall not be increased by this chapter, and provided also that in the case of such continuously authorized companies the provisions of section 35–1327 relating to the names of companies, and the provisions of section 35–1328 relating to the amount of surplus necessary to the issuance of policies having no provision for contingent liability, shall not be applicable. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, § 14, ch. II.)

CROSS REFERENCE

Other provisions concerning application of act, exemptions, § 35–1317.

§ 35–1318. Formation of domestic companies—Filing articles of incorporation, bylaws, charter and policy forms—Issuance of certificate of authority to do business.

Any domestic stock, mutual, or reciprocal company desiring to transact business in the District shall, after complying with the general laws of the District governing the formation of companies or corporations, file with the Superintendent copies of

its articles or incorporation, by-laws, charter, proposed forms of policies, and such other information as may be necessary to manifest and explain the organization, objects, and purposes of the company, and to satisfy the Superintendent that such company has complied with the laws of the District regarding the formation of companies. Thereafter, upon application made to the Superintendent upon such forms as the Superintendent shall prescribe, the Superintendent, subject to the provisions of section 35–1305, shall issue to the company a certificate of authority to transact business in the District. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, § 15, ch. II.)

§ 35–1319. Real estate which may be held by domestic companies—Sale of certain real estate within 5 years after acquisition—Extension of time for sale.

A domestic company may acquire, hold, and convey real estate for the purpose and in the manner only following:

(1) The building in which it has its principal office and the land on which it stands.

(2) Such as shall be requisite for its convenient accommodation in the transaction of its business.

(3) Such as shall have been acquired for the accommodation of its business.

(4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

(5) Such as shall have been conveyed to it in satisfaction of debts, previously contracted, in the course of its dealings.

(6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

All such real estate specified in paragraphs (3), (4), (5), and (6) of this section, which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procure the certificate of the Superintendent that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the Superintendent shall direct in such certificate. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, § 16, ch. II.)

COMPILER'S NOTE

This section may supersede § 35–1119.

CROSS REFERENCE

Other provisions concerning holding real estate, § 35–1119.

§ 35–1320. Borrowing money, mutual company may borrow to create surplus fund, comply with law, or defray expenses of organization—Approval of superintendent—Interest rate—Repayment—Obligation of company.

A domestic mutual company may borrow or assume liability for the repayment of a sum of money sufficient to defray the reasonable expenses of its organization or to enable it to comply with any requirement of law or as a surplus fund upon agreement which shall first be submitted to and approved by the superintendent that such loan or advance with interest at a rate not exceeding six per centum per annum shall be repaid only with the approval of the superintendent whenever in his judgment the company shall be in possession of sufficient surplus in excess of a surplus equal to the amount required by this chapter. Any such loan or advance shall not form a part of the legal liabilities of the company, but until such loan or advance has been repaid all statements published by such company or filed with the superintendent shall show the amount thereof then remaining unpaid. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, § 17, ch. II.)

§ 35–1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.

A domestic company shall invest its funds only in—

(1) Bonds or other evidences of indebtedness of the United States, or of any State; or of the Dominion of Canada, or of any Province thereof.

(2) Bonds or other evidences of indebtedness of any county, city, town, village, school district, or other municipal district within the United States or the Dominion of Canada which shall be a direct obligation of the county, city, town, village, or district issuing the same.

(3) Bonds or notes secured by mortgages or deeds of trust on unencumbered real estate or perpetual leases thereon in the United States or Dominion of Canada worth not less than fifty per centum more than the amount loaned thereon. Where improvements on the land constitute a part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgage in an amount not less than the difference between two-thirds of the value of the land and the amount of the loan: *Provided,* That for the purposes of this section real estate shall not be deemed to be encumbered within the meaning of this section by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls, nor by reason of building restrictions or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

(4) Bonds or notes secured by mortgages insured by the Federal Housing Administrator and in debentures issued by the Federal Housing Administrator: *Provided,* That the restrictions in subparagraph (3) of this section in regard to the ratio of the loan to the value of the property shall not apply to such insured mortgages.

(5) Bonds or other evidences of indebtedness of the farm-loan banks authorized under the Federal Farm Loan Act or Acts amendatory thereof or supplementary thereto, and bonds or other evidences of indebtedness of national mortgage associations.

(6) Stock or bonds and other evidences of indebtedness of any solvent corporation of any State or Territory of the United States or of the District or of any Province of the Dominion of Canada, excepting stock in its own corporation: *Provided*, That no such investment shall be made in or loan made upon the security of any such stocks upon which dividends in cash during the period of five years next preceding such purchase in each fiscal year for said five years shall not have been paid, and upon which bonds any regular interest payment shall have been defaulted any time within five years prior to such purchase or loan.

(7) Loans upon the pledge of any of the securities aforesaid.

(8) A company doing business in a foreign country may invest the funds required to meet its obligations in such country and in conformity to the laws thereof in the same kind of securities in such foreign country that such company is allowed by law to invest in the United States.

(9) The bonds of the Home Owners' Loan Corporation, a corporation organized under and pursuant to the authority of sections 1461–1468 of title 12 of the Code of Laws of the United States of America.

No loan or investment shall be made by any such company, unless the same shall have been authorized by the board of directors or by a committee thereof charged with the duty of supervising loans or investments.

No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said company, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property; but the disposition of its assets shall at all times be within the control of the company.

Nothing in this chapter shall prohibit a company from accepting in good faith, to protect its interest, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (Oct. 9, 1940, 54 Stat. 1072, ch. 792, § 18, ch. II.)

COMPILER'S NOTE

This section may supersede § 35–1118.

CROSS REFERENCES

Definitions, § 35–1303 and notes.
Other provisions concerning investments of health and accident companies, § 35–202.
Other provisions concerning investments of marine companies, § 35–1118.

§ 35–1322. Agency contracts, exclusive—Approval of Superintendent required—Prohibited provisions.

No domestic company authorized to do an insurance business in the District shall have or make any contract with any person whereby such person is granted the exclusive right or privilege to solicit, procure, write, produce, or manage the entire insurance business of such company, or to collect premiums therefor, unless such contract is filed with and approved in writing by the Superintendent. The Superintendent shall not approve any such contract which—

(a) Subjects the company to excessive charges for expenses or commissions; or

(b) Gives to such person the right to manage any of the affairs of such company or the exclusive right to solicit, procure, write, or produce the entire insurance business for such company, or to collect the premiums therefor for such unreasonable period as may jeopardize the interests or security of the company's policyholders. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, § 19, ch. II.)

CROSS REFERENCE

Licensing of agents, §§ 35–1334 to 35–1345.

§ 35–1323. Foreign or alien companies, admission—Certificate of authority required.

Upon complying with the provisions of this chapter, a foreign or alien company organized as a stock, mutual, or reciprocal company, or as a Lloyd's organization, but not otherwise, may be authorized by certificate of authority to transact in the District the kind or kinds of business which a domestic company similarly organized may be authorized to transact under this chapter. Such certificate of authority shall be issued as provided under section 35–1305. The issuance of a certificate of authority to a Lloyd's organization shall be subject to the provisions of section 35–1324. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, § 20, ch. II.)

COMPILER'S NOTE

This section may supersede § 35–1105.

CROSS REFERENCES

Definitions, § 35–1303 and notes.
Establishment of foreign branches, §§ 35–1121, 35–1122.
Other provisions for the admission of foreign and alien companies, § 35–1105.

§ 35–1324. Lloyd's organizations—Requirements—Limitation of risk—Surplus—Filing copy of power of attorney—Annual statement—Verification.

Individuals and aggregations of individuals transacting an insurance business upon the plan known as Lloyd's whereby the individual underwriters become liable severally for specified proportions of the whole amount insured by a policy, heretofore organized under the laws of a State of the United States, or of a foreign government, may be authorized to transact business in the District, upon the following conditions:

1. They shall comply with and be subject to the same terms, conditions, and provisions as are imposed by this chapter upon foreign stock insurance companies, except as provided in the next succeeding paragraph and except that the maximum amount of insurance to be assumed by an individual underwriter upon any single risk for each kind of insurance shall not exceed 10 per centum of the value of the cash and securities deposited in trust by such underwriter, plus the share of admitted assets other than underwriter's deposits of such Lloyd's belonging to such underwriter, less the share of liabilities and reserves of such Lloyd's allocable to such underwriter, but in no event shall it exceed 10 per centum of the value of cash or securities deposited in trust by such underwriter;

2. They shall have and shall at all times maintain surpluses of not less than $300,000 in the aggregate and shall at all times have on deposit with an insurance department of a State of the United States, or with a bank or trust company designated by such insurance department, for the benefit of all policyholders within the United States the sum of at least $350,000 in cash or in securities such as are required for the investment of the assets of insurance companies authorized to do business in the District: *Provided,* That they shall not be required to establish or maintain such a deposit if they have on deposit in the hands of a bank or trust company in the United States as trustee cash deposits or securities issued by the United States worth not less than $2,000,000 in the aggregate and held in trust for the benefit of all policyholders in the United States;

3. They shall file with the superintendent an authenticated copy of their powers of attorney and an authenticated copy of the trust agreement, or other agreement under which deposits made by underwriters are held:

4. They shall notify the superintendent forthwith of any amendments to their powers of attorney, deposit agreement, or other documents underlying their organization, by filing with the superintendent an authenticated copy of such document as amended.

5. They shall notify the superintendent forthwith of any change in their names or change of attorney in-fact, or change of address of their attorney-in-fact;

6. In the case of an alien Lloyd's, their annual statement shall embrace only their condition and transactions in the United States, and may be verified by the oath of their resident manager or other person or persons having proper authority;

7. There shall be filed with the superintendent by the attorney-in-fact at the time of filing the annual statement, or more often if the superintendent requires, a statement verified by the appropriate official of such Lloyd's, setting forth—

(a) the names and addresses of all the underwriters of such Lloyd's;

(b) a description of the cash and securities deposited in trust by each underwriter;

(c) the maximum amount of insurance assumed by each underwriter upon any single risk or each kind of insurance;

(d) that the maximum amount of insurance assumed upon any single risk for each kind of insurance by any individual underwriter does not exceed the limitation provided for in paragraph one of this section. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, § 20a, ch. II.)

COMPILER'S NOTE

This section may supersede § 35–1105.

CROSS REFERENCES

Capital and surplus requirements, general provisions, § 35–1316.

Limitation of risk, § 35–1315.

Other provisions concerning annual statements, § 35–1311 and notes.

Other provisions for the admission of foreign and alien companies, § 35–1105.

§ 35–1325. Certificate of authority, application by foreign or alien companies—Form and execution.

A foreign or alien company, in order to procure a certificate of authority to transact business in the District shall make application therefor to the superintendent on forms prescribed and furnished by the superintendent. Such forms shall be executed for the company, by its president or vice-president, or executive officer corresponding thereto, and verified by such officer, and if a corporation the corporate seal shall be thereto affixed, attested by its secretary or other proper officer. (Oct. 9, 1940, 54 Stat. 1074, ch. 792, § 21, ch. II.)

COMPILER'S NOTE

This section may supersede § 35–1105.

CROSS REFERENCES

Other provisions for the admission of foreign and alien companies, § 35–1105.

Powers and duties of Superintendent, § 35–1304 and notes.

§ 35–1326. Application for certificate of authority, foreign or alien companies—Delivery of instruments concerning company to Superintendent—Service of process—Deceptive names prohibited—Capital and surplus—Investments—Examination by Superintendent.

A foreign or alien company shall deliver to the superintendent (a) application of the company for a certificate of authority; (b) a copy of its articles of incorporation or articles of association and amendments thereto, duly certified by the proper officer of the state or country under whose laws the company is organized or incorporated, or if reciprocal, the power of attorney of the attorney-in-fact; (c) if an alien company, a copy of the appointment and authority of its United States manager, certified by a proper officer of the company; (d) a copy of its by-laws and regulations; (e) forms of contracts and policies it proposes to issue in the District, and forms of the applications therefor, if any; (f) the instrument authorizing service of process on the superintendent required by section 35–1327; (g) a statement of its financial condition and business as of the end of the preceding calendar year, complying as to form and verification with the requirements of this chapter for annual statements, or financial statement as of such later date as the superintendent may require; (h) a copy of the last report of examination, certified to by an insurance commissioner or other proper supervisory official; (i) a certificate from the proper official of the state or country wherein it is incorporated or organized, that it is duly incorporated or organized and is authorized to write the kind or kinds of insurance which it proposes to write in the District. Before a certificate of authority to transact business in the District is issued to a foreign or alien company, such company shall satisfy the superintendent that (a) the company is duly organized under the laws of the state or country under whose laws it professes to be organized and is authorized to do the business it is transacting or proposes to transact; (b) its name is not the same as, or so deceptively similar to, the name of any domestic company, or the name of any department of the federal government or existing

corporation authorized to transact business in the District as to mislead the public or cause confusion; (c) if a stock company, it has a paid-up capital and surplus at least equal to the capital and surplus required by this chapter, or, if a mutual company or reciprocal, it has a surplus and provision for contingent liability of policyholders at least equal to the surplus and provision for contingent liability of policyholders required by this chapter; (d) its funds are invested in accordance with the laws of its domicil, and in securities or property which afford a degree of financial security substantially equal to that required for similar domestic companies. Before issuing a certificate of authority to a foreign or alien company, the superintendent may cause an examination to be made of the condition and affairs of such company. (Oct. 9, 1940, 54 Stat. 1074, ch. 792, § 22, ch. II.)

COMPILER'S NOTE

This section may supersede § 35–1105.

CROSS REFERENCES

Capital and surplus requirements, general provisions, § 35–1316.

Other provisions for admission of foreign and alien companies, § 35–1105.

§ 35–1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.

(a) *Service of process upon unauthorized company.*—(1) The issuance or delivery of a policy or contract of insurance in this District, to a citizen or resident thereof, by a foreign or alien company transacting business in this District without a certificate of authority, shall be deemed equivalent to an appointment by such company of the superintendent and his successor or successors in office to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it, arising out of such policy or contract of insurance, and said issuance or delivery shall be a signification of its agreement that any such process against it which is so served shall be of the same legal force and validity as if served upon the company.

(2) Service of such process upon the superintendent, and the responsibility of the superintendent in regard thereto, shall be in accordance with the provisions for service of process upon authorized companies as provided in subsection (b).

(b) *Attorney for services of process.*—Every foreign or alien company now or hereafter authorized to transact business in the District shall file with the superintendent a duly executed instrument appointing and constituting him and his successors true and lawful attorney for such company, upon whom all lawful process in any action or legal proceeding against it in the District may be served, and therein shall agree that any lawful process against it, which may be served upon its said attorney as herein provided, shall be of the same force and validity as if served upon the company, and that the authority thereof shall continue in force irrevocably so long as any liability of the company in the District shall remain outstanding. Such process shall be served by delivering to and leaving the same with the superintendent or his deputy, and service thereof upon such attorney shall be deemed service upon the company. The superintendent shall forthwith forward such process by prepaid registered mail to the company, or, in the case of an alien company, to the United States manager or last-appointed United States general agent of the company. The registry receipt evidencing the deposit by the superintendent, or his deputy, of such process, in the United States mails in the manner herein prescribed, shall be prima facie evidence of the completion of such service. Failure of any such company to file such an instrument, or failure on the part of any such company to authorize such filing, shall not invalidate any service made by serving the superintendent. By accepting a certificate of authority to transact business in the District, every such company shall be held to have appointed the superintendent its true and lawful attorney. Any such company transacting business in the District without designating an attorney for service of process as herein provided shall, upon information filed by the corporation counsel of the District in the police court of the District, be fined upon conviction not less than $10 nor more than $500 for each day during which the company shall have operated in violation of this section. (Oct. 9, 1940, 54 Stat. 1075, ch. 792, § 23, ch. II.)

CROSS REFERENCE

General penalties, § 35–1347.

§ 35–1328. Names of mutual or reciprocal companies—Requirements—Exceptions.

Except as otherwise provided in section 35–1317, no mutual company shall be authorized to transact business in the District unless the name of such company shall include the word "mutual," and no reciprocal or interinsurance exchange shall be authorized to transact business in the District unless the name or designation under which reciprocal or interinsurance contracts are to be exchanged shall include the words "reciprocal" or "interinsurance exchange," or be supplemented by the following words immediately below the name or designation under which such contracts are exchanged: "A reciprocal" or "an interinsurance exchange." (Oct. 9, 1940, 54 Stat. 1076, ch. 792, § 24, ch. II.)

§ 35–1329. Premiums of mutual companies—Maximum required to be stated—Contingent premiums.

The maximum premium shall be expressed in the policy of a mutual company, and it may be solely a cash premium, or may be a cash premium and an additional contingent premium, which contingent premium shall be not less than the cash premium, but no mutual company, except as otherwise provided in section 35–1317, shall issue any policy for a cash premium without an additional contingent premium until and unless it possesses a surplus of not less than $300,000. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, § 25, ch. II.)

§ 35–1330. Reserves, computation.

In determining the financial condition of companies authorized under this chapter, allowance shall be made for proper and adequate reserves for liabilities, including reserves for—

(a) Unpaid losses and the expenses of the adjustment thereof;

(b) Unearned premiums;

(c) Commissions, taxes, and all other legal obligations, contingent or otherwise, of which the company has knowledge.

The computation of such reserves shall be in accordance with the provisions of the form of annual statement required under section 35–1311, and every authorized company shall maintain such reserves at all times. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, § 26, ch. II.)

CROSS REFERENCE

Computation of unearned premium reserves, § 35–1107.

§ 35–1331. Policy forms filed with the superintendent—Power to disapprove.

The superintendent may require that all policy forms used by every authorized company covering risks in the District be filed with the superintendent. The superintendent shall have authority to disapprove the use in the District of any policy form which is inequitable, or does not comply with the requirements of the law of the District. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, § 27, ch. II.)

CROSS REFERENCE

General powers of superintendent, § 35–1304 and notes.

NOTES TO DECISIONS

CONSTRUCTION OF POLICIES

Words used in automobile insurance policy should be given their common, ordinary, or "popular" meaning, rather than meaning of lexicographers or those skilled in niceties of language. *Unkelsbee* v. *Homestead Fire Ins. Co. of Baltimore* (D. C. Mun. App. 1945, 41 A. 2d 168).

The maxim "expressio unius est exclusio alterius" as applied to an automobile insurance policy is an aid to construction of policy and not a rule of law, and is not to be arbitrarily applied. *Unkelsbee* v. *Homestead Fire Ins. Co. of Baltimore* (D. C. Mun. App. 1945, 41 A. 2d 168).

§ 35–1332. Accident and health policies, required provisions.

The Superintendent may require that the provisions and conditions contained in any policy of insurance against loss or damage from sickness or bodily injury or death of the insured by accident issued by any company authorized by this chapter to transact business in the District be made to conform to the requirements prescribed under section 35–712. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, § 28, ch. II.)

CROSS REFERENCES

Benefits from health and accident insurance are not subject to claims of creditors, § 35–717.

Minors may contract for health and accident insurance, § 35–430.

§ 35–1333. Discriminations prohibited.

Discrimination between individual risks of the same class or hazard in the amount of premiums or rates charged for any policy, or in the benefits or amount of insurance payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited, and the superintendent is empowered after investigation to order removed at such time and in such manner as he shall specify any such discrimination which his investigation may reveal. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, § 29, ch. II.)

§ 35–1334. Agents and brokers—Policies to be executed by licensed and authorized agents—All agreements contained in policy—Rebates prohibited—List of agents to be filed—Payment of premium to broker—Soliciting agent may not sign policy—Life, title, and ocean marine agents excepted.

No company authorized to do business in the District shall, by its representatives or otherwise, make, write, issue, or deliver any contract of insurance, surety, or indemnity, except life, title, and ocean marine insurance, on any person, property, business activity, or insurable interest within the District except through regularly constituted policy writing agents or authorized salaried employees licensed in the District as provided in this chapter.

No such contract covering persons, property, business activities, or insurable interests in the District, except contracts of life, title, and ocean marine insurance, shall be written, issued, or delivered by any authorized company or by any of its representatives unless such contract is duly countersigned in writing by a person who is licensed as provided in this chapter to countersign such contracts, and no salaried officer, manager, or other salaried employee of any authorized company, unless he be licensed as provided in this chapter, shall write, issue, or countersign any such contract.

No company, agent, or salaried company employee shall make any agreement as to a policy other than that which is plainly expressed in the policy issued.

No company, agent, salaried company employee, or broker shall pay or offer to pay or allow as an inducement to any person to insure any rebate of premium or any special favor or advantage whatever in the dividends to accrue thereon, or any inducement whatever not specified in the policy.

Every company authorized by this chapter to do business in the District shall file annually with the Superintendent on or before the 15th day of April, and at such other times as they may be appointed, a list of agents and salaried employees of said company who are authorized to solicit, write, effect, issue, or deliver policies for such company in the District, except that the names of soliciting agents may be filed either by the company or by the policy-writing agent.

Any policy-writing agent or salaried company employee authorized by any company to solicit, negotiate, bind, write, or issue policies or applications therefor shall, in any controversy between the insured or his representative and the said company, be held to be the agent of the company which issued or effected the policy solicited or so applied for, anything in the application or policy to the contrary notwithstanding.

Any payment made by or on behalf of the insured to any broker for policies issued to such broker for delivery to the insured or issued directly to the

insured on the order of such broker, shall, in controversies between the insured and the company, be deemed to have been paid to the company.

No soliciting agent shall have any authority to countersign any policy. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, § 30, ch. II.)

COMPILER'S NOTE

Sections 35–1334 to 35–1345 may supersede §§ 35–1123 to 35–1126.

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Definitions, § 35–1303 and notes.

Exclusive agency contracts must be approved by Superintendent, § 35–1322.

General provisions concerning agents, §§ 35–1201, 35–1202.

Other provisions concerning agents for marine insurance, §§ 35–1123 to 35–1126.

§ 35–1335. Commissions to unlicensed persons prohibited.

No company, policy-writing agent, soliciting agent, broker, or salaried employee shall pay any money or commission or brokerage or give or allow any valuable consideration to any person for or because of service in the District in negotiating or effecting a policy on any person, property, business activity, or insurable interest in the District, unless said person is duly licensed in conformity with this chapter as a broker or as an agent or salaried employee of the company issuing the policy. This section shall not apply to contracts of reinsurance, and shall not apply to persons and kinds of insurance exempted under section 35–1342. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, § 31, ch. II.)

CROSS REFERENCE

See notes to § 35–1334.

§ 35–1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited.

Any person hereafter desiring to engage in business in the District as a policy-writing agent, soliciting agent, broker, or salaried company employee, as defined by this chapter, shall, before engaging in such business, secure from the Superintendent a license authorizing him to engage in such business. The person to whom the license may be issued shall file sworn answers to such interrogatories as the Superintendent may require on forms furnished by the Superintendent. Before the Superintendent shall issue a license to any policy-writing agent, soliciting agent, or salaried company employee, he shall require the company or policy-writing agent desiring the appointment of such person to certify—

(a) That the person to be appointed, if not a salaried company employee, is a resident of this District, or that his principal office for the conduct of such business is in or will be maintained in the District;

(b) That he is personally known to the person making the certification;

(c) That he has had experience or instructions necessary to the proper conduct of the kind or kinds of business to which the license is to extend;

(d) That he has a good business reputation, is trustworthy, and is worthy of a license.

Resident and nonresident brokers shall, as a prerequisite to the issuance of a license, file with the Superintendent a corporate surety bond in an amount not less than $1,000 for the benefit of any person who may suffer loss resulting from fraud or dishonesty on the part of said resident or nonresident broker. Before the Superintendent shall issue a license to any policy-writing agent, soliciting agent, salaried company employee, or resident broker, he shall personally, or through his deputy or any person regularly employed in the department, within a reasonable time, and in a designated place within the District, subject each such person to a personal written examination relating to such person's knowledge of the kind or kinds of business to which the license may extend and his competency to act as such policy-writing agent, soliciting agent, broker, or salaried company employee. The Superintendent may in his discretion limit the scope of such examination to such particular kind or kinds of business in which the person to be licensed is to be principally engaged. Following such examination the Superintendent shall issue such license as may be applied for when he is satisfied that the person to be licensed is (a) competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for, and that not more than 25 per centum of his commission income from business to which the license applies will result from policies the premiums on which are paid or are to be paid in the manner set forth in paragraph (f) of section 35–1340; and (b) that he has a good business reputation and has had experience, training, or education, or is otherwise qualified in the line or lines of business in which the license would entitle him to engage, and, except in the case of a nonresident broker or salaried company employee, is a resident of the District, or maintains his principal office for the conduct of such business in the District; and (c) is reasonably familiar with the insurance laws of the District, and with the provisions, terms, and conditions of the policies he is proposing to solicit, negotiate, or effect, and is worthy of a license. In the case of a nonresident applying for a broker's license, the Superintendent may waive the examination requirement and accept in lieu thereof evidence that the applicant holds a license as broker or agent in the State where his principal business is conducted. The Superintendent may also waive the examination requirement in the case of any person who has been licensed in the District prior to the effective date of this chapter. Licenses may be issued in the names of individuals, or in the names of firms, partnerships, or corporations, including banks, trust companies, real-estate offices, and building and loan associations: *Provided,* That on such licenses there shall be listed the name of every member or officer of such firm, partnership, or corporation who solicits insurance or who counter-

signs policies: *And provided further,* That such named persons shall be subject to all requirements of this chapter, and that no officer or employee of such organizations other than those specifically named in such license shall be required to comply with this section, unless the duties of such officers or employees include soliciting or the countersigning of policies. No person shall be licensed as agent, broker, or salaried company employee when it appears to the Superintendent that said license is sought primarily for the purpose of obtaining commissions on policies on which he on his own account pays or is to pay the premiums, or on which the premiums are paid or are to be paid by any person who receives or is to receive any benefit, direct or indirect, from the commissions obtained, or on which the premiums are paid or are to be paid by any partnership, association, or corporation of which he is a member. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, § 32, ch. II; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 3.)

AMENDMENTS

The act of Apr. 22, 1944, cited to text, amended section by deleting "$5,000" and inserting in lieu thereof "$1,000" in first sentence of last paragraph.

CROSS REFERENCE

See notes to § 35–1334.

§ 35–1337. Effective dates of licenses and proration of fees.

All licenses issued under this chapter shall date from the first of the month in which the application for license is made, and shall expire on the 30th day of April next succeeding, and payment of the fees for such licenses shall be prorated accordingly. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, § 33, ch. II.)

CROSS REFERENCES

License fees, § 35–1345.
See notes to § 35–1334.

§ 35–1338. Temporary transfer of licenses—Renewal.

In the event of the death or disability of any person licensed as a policy-writing agent, soliciting agent, or salaried company employee, the Superintendent may transfer such license to another person without the payment of an additional fee, and may renew such license: *Provided, however,* That no person shall act as policy-writing agent, soliciting agent, or salaried company employee under any transferred license or renewal thereof for a period in excess of six consecutive months. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, § 34, ch. II.)

CROSS REFERENCE

See notes to § 35–1334.

§ 35–1339. Renewal of licenses.

Renewal of all expiring licenses shall be issued by the Superintendent upon application in writing by the applicant for any such license, subject to the conditions of section 35–1340, and subject also to the provisions for examination as set forth in section 35–1336, upon payment of the applicable fee prescribed in section 35–1345. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, § 35, ch. II.)

CROSS REFERENCE

See notes to § 35–1334.

§ 35–1340. Revocation and suspension of licenses—Grounds for—Notice and hearing—Evidence.

The Superintendent may revoke, suspend, or refuse to renew the license of any policy-writing agent, soliciting agent, broker, or salaried company employee when and if, after investigation, it appears conclusively to the Superintendent that any license issued to such person was obtained by fraud or misrepresentation, or that such person has—

(a) Violated any of the provisions of the insurance laws of the District; or

(b) Has failed within a reasonable time to remit to any company all moneys which he has collected, and to which the company is entitled; or

(c) Has been guilty of rebating or has misrepresented the provisions of the policies which he is selling, or the policies of other companies; or

(d) Has countersigned policies in blank; or that

(e) More than 25 per centum of his commission income from business to which the license applies results from policies the premiums on which are paid or are to be paid in the manner set forth in paragraph (f) of this section; or that

(f) Said license is being used primarily for the purpose of obtaining commissions on policies on which he, on his own account, pays or is to pay the premiums, or on which the premiums are paid or are to be paid by any person who receives or is to receive any benefit, direct or indirect, from the commissions obtained, or on which the premiums are paid or are to be paid by any partnership, association, or corporation of which he is a member.

Before the superintendent shall revoke or suspend the license of any such person he shall give to such person an opportunity to be fully heard, and to introduce evidence in his behalf: *Provided,* That, in lieu of revoking or suspending the license of any policy-writing agent, soliciting agent, broker, or salaried company employee for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such person to a penalty of not more than $200 when in his judgment he finds that public interest would be best served by the continued operation of such person. The amount of any such penalty shall be paid by such person through the office of the Superintendent to the collector of taxes, District of Columbia. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, § 36, ch. II; Apr. 22, 1944, 58 Stat. 182, ch. 173, § 2.)

AMENDMENTS

The act of Apr. 22, 1944, cited to text, amended section by adding proviso to last paragraph.

CROSS REFERENCES

General penal provisions, § 35–1347.
Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.
Revocation or suspension of licenses, certificates, and permits in general, § 35–102 and notes.
See notes to § 35–1334.

§ 35–1341. Unauthorized solicitation or representation.

It shall be unlawful for any person, without conforming to the provisions of this chapter, directly or indirectly to represent himself as having authority to solicit, negotiate, effect, procure, receive, or for-

ward directly or indirectly any policy or renewal thereof, or to attempt to effect insurance, surety, or indemnity contracts covering any person or insurable interest in the District, or to countersign any policy or renewal thereof. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, § 37, ch. II.)

CROSS REFERENCES

Other provisions prohibiting representation of unauthorized companies, § 35–1123.
See notes to § 35–1334.

§ 35–1342. Exemption from license—Common carriers—Travel bureaus—Life, fraternal benefit, and ocean marine agents.

The provisions of this chapter relating to the licensing of policy-writing agents, soliciting agents, salaried company employees, and brokers shall not apply to the sale of personal accident insurance in the ticket offices of railroad companies or other common carriers, or in the offices of travel bureaus, nor to the business of life insurance, fraternal benefit societies, or ocean marine insurance, nor to insurance covering the property of railroad companies and other common carriers engaged in interstate commerce. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, § 38, ch. II.)

§ 35–1343. Agents prohibited from representing unauthorized companies—"Companies" defined—Penalties—Civil liability—Exceptions—Prosecution.

Except as provided in section 35–1344, no person shall act as agent in the District for any company which is not authorized to do business in the District, nor shall any person directly or indirectly negotiate for or solicit applications for policies of, or for membership in, any company which is not authorized to do business in the District. The term "company" as used in this section shall include any association, society, company, corporation, joint-stock company, individual, partnership, trustee, or receiver engaged in the business of assuming risks of insurance, surety, or indemnity, and any Lloyd's organization, assessment, or cooperative fire company, or any reciprocal or interinsurance exchange, fraternal beneficial association, order, or society, and any company, association, or society, whether organized for profit or not, conducting a business, including any of the principles or features of insurance, surety, or indemnity. Any person who violates any provision of this section upon conviction shall be fined not less than $100 nor more than $1,000 for each offense, or be imprisoned for not more than twelve months, or both, and any such person shall be personally liable to any resident of the District having claim against any such unauthorized company under any policy which said person has solicited or negotiated, or has aided in soliciting or negotiating: *Provided,* That the provisions of this section shall not apply to any person who negotiates with an unauthorized company for life insurance, or for policies covering his own property or interests, nor shall the provisions of this section apply to the officers, agents, or representatives of any company which is in process of organization under the laws of the District, and which is authorized temporarily to solicit or secure memberships or applications for policies for the purpose of completing such organization. Prosecutions for violations of this section shall be upon information filed in the police court by the corporation counsel or any of his assistants. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, § 39, ch. II.)

CROSS REFERENCES

Definitions generally, § 35–1303.
General penalties, § 35–1347.
See notes to § 35–1334.

NOTES TO DECISIONS

DEFENSES

Accused charged with soliciting insurance for company unauthorized to do business in District of Columbia could not defend on ground that company had been granted permits to do business where such permits were not perpetual. *Stover* v. *District of Columbia* (D. C. 1943, 32 A. 2d 536).

EVIDENCE

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, evidence which had a direct bearing on solicitation was properly admitted. *Stover* v. *District of Columbia* (D. C. 1943, 32 A. 2d 536).

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, evidence that company once had permit to do business as a fraternal organization was properly excluded as immaterial in view of inclusion of fraternal organizations in section 35–1342 on which prosecution was based. *Stover* v. *District of Columbia* (D. C. 1943, 32 A. 2d 536).

INSTRUCTIONS

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, instruction to acquit if accused did not personally solicit was properly refused, since Congress never intended that liability should be limited to those who personally solicit. *Stover* v. *District of Columbia* (D. C. 1943, 32 A. 2d 536.)

PROSECUTION, PENDING PROCEEDINGS AS BAR

The trial judge properly refused to continue prosecution for soliciting insurance business for an unauthorized company, pending trial of suit by company to enjoin officials from interfering with its business. *Stover* v. *District of Columbia* (D. C. 1943, 32 A. 2d 536).

QUESTIONS FOR JURY

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, accused's guilt was for jury. *Stover* v. *District of Columbia* (D. C. 1943, 32 A. 2d 536).

§ 35–1344. License to write policy in unauthorized company when no authorized company available—Taxation—Reports, form, and contents—Revocation or refusal.

Any agent or broker licensed in the District may, upon payment of a license fee, as provided under section 35–1345, be licensed to procure policies from companies which are not authorized to do business in the District where such person is, after diligent effort, unable to procure policies to cover the kind or kinds of business required from companies duly authorized to transact business in the District. Each agent or broker so licensed shall pay to the collector of taxes, through the superintendent, on February 1 and August 1 of each year, a sum equal to 2 per centum of the amount of the gross premiums upon all kinds of policies procured by him during the immediately preceding six months' period ending December 31 and June 30, respectively, and, in default of such payment, the superintendent, through the corporation counsel, may bring suit to recover the same. Each agent or

broker so licensed to procure policies from unauthorized companies shall execute and file with the department on or before the 10th day of each month an affidavit covering the transactions of the previous calendar month, setting forth (1) the description and location of the insured property or risk, and the name of the assured; (2) the amount insured in the policy or contract; (3) the gross premiums charged thereon; (4) the name of the company whose policy or contract is issued, and the kind or kinds of business effected; and (5) that said agent or broker after diligent effort was unable to procure the policies or contracts required to protect the property or risk described in the affidavit from companies duly authorized to transact business in the District.

Each agent or broker so licensed to procure policies from unauthorized companies shall keep a separate account of the business transacted thereunder, which shall be open at all times to the inspection of the superintendent. The license provided for in this section may be revoked or renewal thereof refused for failure to pay the tax or to file the affidavit specified herein, or if the agent or broker procured policies from unauthorized companies without exercising diligent effort to secure the required business in duly authorized companies, or if the agent or broker procured policies from unauthorized companies whose standards of solvency and management do not meet the requirements necessary for the protection of the policyholders, or if the agent or broker has placed with any unauthorized company any risk which could be placed with an authorized company except for abnormal provisions of the policy, or if the agent or broker has procured from an unauthorized company any policy which covers a risk of a class generally covered in the District by authorized companies and which authorized companies would cover at a rate not higher than that charged by authorized companies on other District risks of the same class. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, § 40, ch. II; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 4.)

AMENDMENTS

The act of Apr. 22, 1944, cited to text, amended section by adding proviso to last paragraph.

CROSS REFERENCES

Taxation of insurance companies, see notes to § 35–1311.
See notes to § 35–1334.

§ 35–1345. License fees.

Annual fees to be paid through the superintendent to the collector of taxes for licenses issued under this chapter shall be as follows:

(a) For policy-writing agent or for firms, partnerships, or corporations licensed as such, $50, without regard to the number of companies represented: *Provided,* That, in the case of firms, partnerships, and corporations, an additional fee of $5 shall be charged for each person in excess of two who is named in such license as required under section 35–1336.

(b) For soliciting agent, $5 for each company represented by such soliciting agent, or for each company represented by any policy-writing agent through which such soliciting agent solicits: *Provided,* That no soliciting agent shall be required to pay for soliciting agents' licenses a sum in excess of $15 for any one licensing year.

(c) For salaried company employee authorized to sign policies and to solicit insurance, $50, without regard to the number of companies represented by such salaried company employee.

(d) For salaried company employee authorized to solicit but not authorized to sign policies, $5 for each company represented by said employee: *Provided,* That the aggregation of such fees shall not exceed $15 for any one license year.

(e) For nonresident or resident brokers, $25, except that the fee shall be $5 in case the applicant for a resident broker's license is subject also to the fee prescribed under paragraphs (a) or (c) hereof.

(f) For license to procure lines in unauthorized companies, $15.

(g) Under the license issued to any policy-writing agent or salaried company employee, or in the name of any firm, partnership, or corporation as provided under section 35–1336, and for which license a fee has been paid in accordance with paragraphs (a) or (c) hereof, there may be added names of persons who are employed in or who actively function through the District office of the policy-writing agent, salaried company employee, or firm, partnership, or corporation, and who have company authority to sign but not to solicit policies. For such persons there shall be charged a fee of $1 per year for each company whose policies such person is authorized to sign.

(h) Broker's licenses may be issued in the names of individuals, firms, partnerships, or corporations. In the case of firms, partnerships, or corporations, the authority to solicit shall extend only to the individuals who are designated in the license and in the application therefor as having authority to solicit, and there shall be charged for each such individual in excess of two an additional fee of $5.

(i) Licenses to procure lines in unauthorized companies shall be issued in the names of individuals only. (Oct. 9, 1940, 54 Stat. 1081, ch. 792, § 41, ch. II.)

CROSS REFERENCES

Effective date of license, proration of fees, § 35–1337.
Refund of fees when license refused, § 47–1018.
Refund of license fees erroneously or unlawfully collected, § 47–1017 et seq.
See notes to § 35–1334.

§ 35–1346. Testimony—Production of books—No refusal because of self-incrimination—Exemption from punishment except for perjury.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this chapter, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing

concerning which he may have testified or produced any documentary evidence: *Provided,* That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further,* That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, § 42, ch. II.)

COMPILER'S NOTE

This section may supersede § 35–1129.

CROSS REFERENCES

Other provisions concerning testimony and the production of books and papers, § 35–1129.

§ 35–1347. Penalties not otherwise prescribed.

Any person who violates any of the provisions of this chapter, or fails to comply with any duty imposed upon such person by any of the provisions of this chapter, for which violation or failure no penalty is elsewhere provided by this chapter, or by the laws of the District, shall, upon conviction thereof, be fined for each offense not exceeding $1,000 or be imprisoned for not more than twelve months, or both. Prosecutions authorized by this section shall be upon information filed in the police court by the corporation counsel or any of his assistants. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, § 43, ch. II.)

CROSS REFERENCES

False statements or reports, §§ 35–1312, 35–1313.

Penalty against agent for representing unauthorized company, § 35–1343.

Penalty upon foreign or alien companies for transacting business before designating attorney to receive service of process, § 35–1327.

Revocation or suspension of agent's license, § 35–1340.

Revocation or suspension of certificate of authority, § 35–1306.

§ 35–1348. Appeal from Superintendent to Commissioners—Time for—Hearing on appeal—Effect of Commissioners' decision.

Any person aggrieved by any action of the superintendent may, within twenty days after such action was taken, appeal in writing from such action to the commissioners. The hearings on said appeal may be either orally or in writing at the discretion of the commissioners, and they shall not be required to take evidence on such appeal. The decision of the commissioners on any question of fact on such appeal shall be final and conclusive, except the appeal provided for herein shall not affect the right to proceed under the provisions of section 35–1349. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, § 44, ch. II.)

CROSS REFERENCE

Other provisions concerning appeals, § 35–202.

§ 35–1349. Court proceedings—Superintendent not liable for costs, damages, or to give supersedeas bond.

Any person affected by an order, ruling, proceeding, or action of the superintendent, or any person acting in his behalf and at his instance, may contest the validity of the same in any court of competent jurisdiction by appeal or through any other appropriate proceedings. In said proceedings and appeals said superintendent shall not be taxed with any costs, nor shall he be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said superintendent shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any person on any appeal taken by said superintendent in any case, nor shall said superintendent be required in any case to make any deposit for costs or pay for any service to the clerks of any court or to any marshal of the United States. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, § 45, ch. II.)

COMPILER'S NOTE

Section 46 of the 1940 act cited to the text provides as follows: "All laws or parts of laws, insofar as they relate to business affected hereby, and are in conflict with any of the provisions of this act are hereby repealed."

§ 35–1350. Constitutionality.

Should any section or provision of this chapter be held unconstitutional or invalid, the validity of the chapter as a whole, or of any part thereof, other than the part decided to be unconstitutional or invalid, shall not be affected. (Oct. 9, 1940, 54 Stat. 1083, ch. 792, § 47, ch. II.)

Chapter 14.—REGULATION OF FIRE INSURANCE RATES

Sec.

35–1401. Definitions.
35–1402. Rates included in and excluded from regulation.
35–1403. Adjustment of rates—Powers and duties of Superintendent — Removal of discriminations—Appeal from Superintendent's rulings.
35–1404. Organization of rating bureau—Membership—Powers and duties—Apportionment of expenses.
35–1405. Standard provisions required in policies—Deviations—Duration of deviation—Rate in excess of standard.
35–1406. Rating bureau records—Agency records.
35–1407. Examination by Superintendent—Consolidated reports of classified experience by rating bureau.
35–1408. Effectiveness of rates, rating methods, rules, policy forms, etc., dependent upon filing with and approval of Superintendent.
35–1409. Penalties.

§ 35–1401. Definitions.

In this chapter, unless the context otherwise requires—

"District" means the District of Columbia;

"Superintendent" means the superintendent of insurance of the District of Columbia;

"Company" means any insurer, whether stock, mutual, reciprocal, interinsurer, Lloyd's, or any other form or group of insurers;

"Agent" means and shall include any individual, co-partnership, or corporation acting in the capacity of or licensed as a "policy-writing agent", "soliciting agent", or "salaried company employee", as defined under section 35–1303; and

"Broker" means any person who for a consideration acts or aids in any manner in the solicitation or negotiation on behalf of the assured of contracts of insurance. (June 1, 1944, 58 Stat. 267, ch. 224, § 1.)

REPEALS

Section 10 of the act of June 1, 1944, cited to text, provided: "All laws or parts of laws, insofar as they relate

to business affected hereby and in conflict with any of the provisions of this Act [chapter], are hereby repealed."

SAVINGS CLAUSE

Section 11 of the act of June 1, 1944, cited to text, provided: "Should any section or provision of this Act [chapter] be decided by the courts to be unconstitutional or invalid, the validity of the Act [chapter] as a whole, or of any part thereof, other than the part decided to be unconstitutional, shall not be affected."

§ 35–1402. Rates included in and excluded from regulation.

The provisions of this chapter shall apply to insurance in the District of Columbia against loss of or damage to property or any valuable interest therein by or as a consequence of fire, lightning, tornado, windstorm, and explosion, or any one or more of such hazards, including all supplemental, additional, or extended forms of coverage written in connection with fire insurance, and including any policy which insures property, while it is at a permanent location, against the hazard of fire, lightning, tornado, windstorm, or explosion; but this chapter shall not apply to ocean marine, transportation, boiler and machinery, or motor-vehicle insurance, nor to insurance covering the property of interstate common carriers, nor to any form of insurance designated by the Superintendent as inland marine insurance. (June 1, 1944, 58 Stat. 267, ch. 224, § 2.)

§ 35–1403. Adjustment of rates—Powers and duties of Superintendent—Removal of discriminations—Appeal from Superintendent's rulings.

The Superintendent is empowered to investigate the necessity for an adjustment of the rates on any or all risks or classes of risks within the scope of this chapter, and to order an adjustment of such rates whenever he determines, after investigation of the experience showing premiums and losses for a period of not less than five years next preceding such investigation, that the rates for any one or more classes of risks are excessive, inadequate, or unreasonable. In determining the necessity for an adjustment of rates, the Superintendent shall give consideration to all factors reasonably attributable to the risks, to the conflagration or catastrophe hazard, both within and without the District, and to a reasonable profit. The Superintendent is also empowered, after investigation, to order removed, at such time and in such manner as he shall specify, any unfair discrimination existing between individual risks or classes of risks.

Any person, firm, or corporation aggrieved by any order, ruling, proceeding, or action of the Superintendent, or any person acting in his behalf and at his instance, may appeal to the Commissioners of the District, or contest the validity of such order, ruling, proceeding, or action in any court of competent jurisdiction by appeal or through any other appropriate proceedings, as provided under sections 35–1348 and 35–1349. (June 1, 1944, 58 Stat. 267, ch. 224, § 3.)

NOTES TO DECISIONS

APPROPRIATE PROCEEDINGS

Under this section provision that any person aggrieved may contest validity of superintendent's order fixing insurance rates in any court of competent jurisdiction by appeal or through any other "appropriate proceeding", a civil action for injunction is an appropriate proceeding. *Jordan* v. *American Eagle Fire Ins. Co.* (C. A., D. C. 1948, 169 F. 2d 281).

BURDEN OF PROOF

In order to sustain the burden of proof that fire insurance rates as reduced by order of Superintendent of Insurance of District of Columbia were confiscatory, it was incumbent upon individual insurance companies complaining of Superintendent's order to demonstrate that the result would be confiscatory as to them. *American Eagle Fire Ins. Co.* v. *Jordan* (D. C., D. C. 1946, 67 F. Supp. 76, reversed 169 F. 2d 281).

CONFISCATORY ORDERS

A conjectural calculation as to effect of order of Superintendent of Insurance of District of Columbia reducing fire insurance rates based on average of the several insurance companies complaining of Superintendent's order, without showing the effect of the order on the various companies individually, was not sufficient to demonstrate that the result would be confiscatory as to them. *American Eagle Fire Ins. Co.* v. *Jordan* (D. C., D. C. 1946, 67 F. Supp. 76, reversed 169 F. 2d 281).

CONTEST VALIDITY

Under this section providing that any person aggrieved may "contest validity" of superintendent's order fixing insurance rates in any court of competent jurisdiction by appeal or through any other appropriate proceedings, the quoted clause means to test validity in every or any respect in which order might be invalid and includes right to present evidence and to explore evidence on which superintendent acted and the reasons and calculations upon which he reached his conclusions. *Jordan* v. *American Eagle Fire Ins. Co.* (C. A., D. C. 1948, 169 F. 2d 281).

Under this section requiring that insurance superintendent must find that existing insurance rates are excessive, inadequate, or unreasonable before adjusting rates and that he must give consideration to all factors reasonably attributable to conflagration or catastrophe hazards, and to reasonable profit and permitting aggrieved person to contest order in any court of competent jurisdiction, the superintendent's findings as to such factors can be tested. *Jordan* v. *American Eagle Fire Ins. Co.* (C. A., D. C. 1948, 169 F. 2d 281).

DUE PROCESS

Where insurance companies had right under this section to file bill in equity court, to seek therein an enjoinder of enforcement of order fixing insurance rates and as a necessary incident to such procedure to have, upon proper preliminary showing, a stay of enforcement of order pendente lite, to participate in trial de novo on issue of validity of order and to have court decide that issue, if such statutory rights were satisfied, the insurance companies could not claim procedural contravention of the due process clause. *Jordan* v. *American Eagle Fire Ins. Co.* (C. A., D. C. 1948, 169 F. 2d 281).

FUNCTION OF DISTRICT COURT

Under this section authorizing any person aggrieved by insurance superintendent's rate order to contest validity of order in any court of competent jurisdiction, function of District Court is not that of a federal court acting on a state-made order, but is one of the functions which it possesses as local court of general jurisdiction. *Jordan* v. *American Eagle Fire Ins. Co.* (C. A., D. C. 1948, 169 F. 2d 281).

The congressional plan for determination of local insurance rates in District of Columbia can include the District Court as part of the procedure. *Jordan* v. *American Eagle Fire Ins. Co.* (C. A., D. C. 1948, 169 F. 2d 281).

HEARINGS

This section authorizing insurance superintendent to adjust insurance rates whenever he determines after "investigation" that rates are excessive, inadequate, or unreasonable, does not require that a quasi-judicial hearing be conducted. *Jordan* v. *American Eagle Fire Ins. Co.* (C. A., D. C. 1948, 169 F. 2d 281).

Even if requirement of this section that there be an investigation before establishment of insurance rates by superintendent could not be satisfied in absence of hearing, such requirement as an element of investigation, without more, was satisfied by hearing at which insurance companies were given an opportunity to state and support their objections to report and rate order, already issued. *Jordan* v. *American Eagle Fire Ins. Co.* (C. A., D. C. 1948, 169 F. 2d 281).

This section providing that any person aggrieved by insurance superintendent's order adjusting rates may contest validity of order in any court of competent jurisdiction gives complete right to full hearing de novo upon which court will determine validity of order in all respects in which it is contested, and, therefore, mere lack of quasi-judicial hearing before superintendent is not fatal. *Jordan* v. *American Eagle Fire Ins. Co.* (C. A., D. C. 1948, 169 F. 2d 281).

INJUNCTION

An order of Superintendent of Insurance of District of Columbia reducing fire insurance rates, based on an ex parte informal investigation and Superintendent's own personal knowledge, without according interested insurance companies an opportunity for a formal hearing, was not authorized by this section, and enforcement of such order would be enjoined. *American Eagle Fire Ins. Co.* v. *Jordan* (D. C., D. C. 1946, 67 F. Supp. 76, reversed 169 F. 2d 281).

INVESTIGATION

The word "investigation", as used in this section, means a proceeding in which a full and fair hearing is accorded to all interested parties, evidence is taken, a record is made, and findings of facts are reached on the basis of the record. *American Eagle Fire Ins. Co.* v. *Jordan* (D. C., D. C. 1946, 67 F. Supp. 76, reversed 169 F. 2d 281).

REMAND

In action to enjoin enforcement of insurance superintendent's order fixing insurance rates, where trial court in opinion stated that court reached conclusion that insurance companies had not sustained their contention that rates fixed by superintendent were confiscatory but findings of fact and conclusions of law were silent on that issue, the trial court had not determined such issue, so that, where trial court was in error in view on which it rested judgment, that order was invalid, case would be remanded in order that complete determination of issues might be made. *Jordan* v. *American Eagle Fire Ins. Co.* (C. A., D. C. 1948, 169 F. 2d 281).

§ 35–1404. Organization of rating bureau—Membership—Powers and duties—Apportionment of expenses.

Within one hundred and twenty days after June 1, 1944, and under the supervision of the Superintendent, the insurance companies authorized to effect insurance in the District against the risk of loss or damage by hazards within the scope of this chapter shall organize a rating bureau for the purpose of administering rates for such insurance, and all such companies now or hereafter authorized to transact such business in the District shall be members of such bureau. The government of the rating bureau shall be vested in its members and it shall not be subject to the direction or control of any other bureau, association, corporation, company, individual, or group of individuals. The rating bureau shall have power to establish reasonable agreements and bylaws for its governance, and shall be permitted to adopt reasonable rules and regulations necessary to carry out its functions, but such agreements, bylaws, rules, and regulations shall not be inconsistent with the provisions of this chapter, and the same and amendments thereto shall be approved by the Superintendent before becoming effective. The rating bureau, subject to the approval of the Superintendent, shall apportion the expenses of its operation among its members in proportion to the premium income on risks in the District. (June 1, 1944, 58 Stat. 268, ch. 224, § 4.)

§ 35–1405. Standard provisions required in policies—Deviations—Duration of deviation—Rate in excess of standard.

No company, agent, or broker shall issue or deliver, or offer to issue or deliver, or knowingly permit the issuance or delivery of, any policy of insurance in the District which does not conform to the requirements approved by the Superintendent: *Provided, however,* That a company may deviate from such requirements if the company has filed with the rating bureau and with the Superintendent the deviation to be applied, and provided such deviation is approved by the Superintendent. If approved, the deviation shall remain in force for a period of one year from the date of approval by the Superintendent, unless such approval is withdrawn by the Superintendent for cause after notice to the insurer, or withdrawn by the insurer with the approval of the Superintendent.

It is further provided that a rate in excess of that promulgated by the rating bureau may be charged, provided such higher rate is charged with the knowledge and written consent of the insured and the Superintendent. (June 1, 1944, 58 Stat. 268, ch. 224, § 5.)

§ 35–1406. Rating bureau records—Agency records.

The rating bureau shall keep a record of all rates, schedules, and proceedings. Every agent shall keep a record of every policy contract issued by or through his agency (June 1, 1944, 58 Stat. 268, ch. 224, § 6.)

§ 35–1407. Examination by Superintendent—Consolidated reports of classified experience by rating bureau.

The Superintendent, his deputy, or duly authorized examiner, is authorized and empowered to examine all records of the rating bureau, companies, and agents, and to require every company to furnish statistical reports of premiums and losses in such form and according to such classifications as the Superintendent shall prescribe and any other information which the Superintendent may deem necessary for the administration of this chapter. The Superintendent may require the rating bureau to consolidate the reports of classified experience. (June 1, 1944, 58 Stat. 269, ch. 224, § 7.)

§ 35–1408. Effectiveness of rates, rating methods, rules, policy forms, etc., dependent upon filing with and approval of Superintendent.

No rate, premium, schedule, rating method, rule, bylaw, agreement, or regulation shall become effective or be charged, applied, or enforced in the District by the rating bureau, or by any company, agent, or broker governed by the provisions of this chapter, until it shall have been first filed with and approved by the Superintendent: *Provided,* That a rate or premium used or charged in accordance with a schedule, rating method, or rule previously approved

by the Superintendent need not be specifically approved by the Superintendent. No company, agent, or broker shall issue any form of policy, clause, warranty, rider, or endorsement until such form shall have been filed with and approved by the Superintendent. (June 1, 1944, 58 Stat. 269, ch. 224, § 8.)

§ 35–1409. Penalties.

Any company or any agent or broker guilty of violating any of the provisions of this chapter shall be subject to the provisions of sections 35–1306 and 35–1340. (June 1, 1944, 58 Stat. 269, ch. 224, § 9.)

Chapter 15.—REGULATION OF CASUALTY AND OTHER INSURANCE RATES

Sec.
35–1501. Definitions.
35–1502. Scope of chapter.
35–1503. Making of rates.
35–1504. Supervision of rates.
35–1505. Cooperative and concerted action authorized.
35–1506. Cooperative and concerted action regulated.
35–1507. Information to be furnished by companies.
35–1508. Authority and duty of superintendent.
35–1509. Penalties.
35–1510. Judicial review.

§ 35–1501. Definitions.

In this chapter, unless the context otherwise requires—

"District" means the District of Columbia.

"Superintendent" means the Superintendent of Insurance of the District of Columbia.

"Insurance" includes (but is not limited to) fidelity, surety, and guaranty bonds.

"Company" means any insurer, whether stock, mutual, reciprocal, interinsurer, Lloyd's, or any other form or group of insurers.

"Policy" means an insurance policy or contract as defined by chapter 13 of this title.

"Agent" means and shall include any individual, copartnership, or corporation acting in the capacity of or licensed as a "policy-writing agent", "soliciting agent", or "salaried company employee" as defined by chapter 13 of this title. (May 20, 1948, 62 Stat. 242, ch. 324, § 1.)

REPEAL OF OTHER LAWS

Section 11 of Act May 20, 1948, cited to text, provided: "SEC. 11. *Repeals.*—All laws or parts of laws, insofar as they relate to business affected hereby and are in conflict with any of the provisions of this Act [§§ 35–1501 to 35–1510], are hereby repealed: *Provided,* That this Act shall not be construed as repealing or amending the Act entitled 'An Act to amend an Act entitled "An Act to provide that all cabs for hire in the District of Columbia be compelled to carry insurance for the protection of passengers, and for other purposes", approved June 29, 1938', approved December 15, 1942 [§ 44–301]."

UNCONSTITUTIONALITY

Section 12 of Act May 20, 1948, cited to text, provided: "SEC. 12. *Unconstitutionality.*—If any section or provision of this Act is held unconstitutional or invalid, the validity of the Act as a whole or of any part thereof, other than the part decided to be unconstitutional or invalid, shall not be affected."

EFFECTIVE DATE

Section 13 of Act May 20, 1948, cited to text, provided: "This act [§§ 35–1501 to 35–1510] shall become effective thirty days after approval."

§ 35–1502. Scope of chapter.

This chapter shall apply to all forms of casualty, motor vehicle, explosion, sprinkler leakage, and inland marine insurance in the District and to all forms of insurance within the scope of chapter 13 of this title, except those forms of insurance not enumerated herein which are within the scope of chapter 14 of this title: *Provided,* That this chapter shall not apply to reinsurance other than joint reinsurance to the extent provided in this chapter, and shall not apply to:

(a) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies; (b) title insurance; (c) accident and health insurance; (d) insurance against loss of or damage to aircraft or to liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft; (e) to insurance issued to self-insurers and insuring against loss in excess of at least $10,000 resulting from any one accident or event, except when rates therefor are made by a rating organization. (May 20, 1948, 62 Stat. 242, ch. 324, § 2.)

EFFECTIVE DATE

See note following § 35–1501.

§ 35–1503. Making of rates.

(a) Rates for insurance within the scope of this chapter shall not be excessive, inadequate, or unfairly discriminatory.

(b) Due consideration shall be given to past and prospective loss experience within and outside the District, to physical hazards, to safety and loss prevention factors, to underwriting practice and judgment, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by companies to their policyholders, members, or subscribers; to past and prospective expenses both country-wide and those specially applicable to the District; to whether classification rates exist generally for the risks under consideration; to the rarity or peculiar characteristics of the risks; and to all other relevant factors within and outside the District.

(c) Nothing in this section shall be taken to prohibit as unfairly discriminatory the establishment of classifications or modifications of classifications of risks based upon the size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations attributable to such risks provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions.

(d) Nothing in this chapter shall be construed to require uniformity in insurance rates, classifications, rating plans, or practices.

(e) Nothing in this chapter shall abridge or restrict the freedom of contract of companies, agents, brokers, or employees with reference to the commissions or salaries to be paid to such agents, brokers, or employees by companies.

(f) Rates may become effective immediately upon filing or at such future time as the company or rating organization making them may specify. They shall thereafter remain in effect unless and until changed by the company or rating organization making them, or adjusted by order of the Superintendent in accordance with the provisions of this chapter. Rates for contracts or policies described in the last sentence of subsection (c) of section 35–1504 may become effective when made and filing thereof shall be made promptly thereafter.

(g) No company, agent, or broker shall make, issue, or deliver, or knowingly permit the making, issuance, or delivery of any policy of insurance within the scope of this chapter contrary to pertinent filings which are in effect for the company as provided in this chapter, except that upon the written application of the insured stating his reasons therefor, filed with and approved by the Superintendent, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk. (May 20, 1948, 62 Stat. 243, ch. 324, § 3.)

EFFECTIVE DATE

See note following § 35–1501.

§ 35–1504. Supervision of rates.

(a) On and after July 1, 1948, every company shall file with the Superintendent, either directly or through a licensed rating organization of which it is a member or subscriber, except as to rates on inland marine risks which are not made by a rating organization and which by general custom of the business are not written according to manual rates or rating plans, all rates and rating plans, rules, and classifications which it uses or proposes to use in the District.

(b) Whenever it shall be made to appear to the Superintendent, either from his own information or from complaint of any party alleging to be aggrieved thereby, that there are reasonable grounds to believe that the rates on any or on all risks or classes of risks or kinds of insurance within the scope of this chapter are not in accordance with the terms of this chapter, it shall be his duty, and he shall have the full power and authority, to investigate the necessity for an adjustment of any or all such rates.

(c) After such an investigation of any such rates, the Superintendent shall, before ordering any appropriate adjustment thereof, hold a hearing upon not less than ten days' written notice specifying the matters to be considered at such hearing, to every company and rating organization which filed such rates, provided the Superintendent need not hold such hearing in the event he is advised by every such company and rating organization that they do not desire such hearing. If after such hearing the Superintendent determines that any or all of such rates are excessive or inadequate, he shall order appropriate adjustment thereof. Pending such investigation and order of the Superintendent, rates shall be deemed to have been made in accordance with the terms of this chapter. No order of adjustment shall affect any contract or policy made or issued prior to the effective date of such order unless (i) the adjustment to be effected is substantial and exceeds the cost to the companies of making the adjustment and (ii) the order is made after the prescribed investigation and hearing and within thirty days after the filing of rates affected. In no event shall an order of adjustment affect an existing contract or policy other than one of workmen's compensation or automobile liability insurance required by law, order, rule, or regulation of a public authority, or a contract or policy of any type as to which the rates are not, by general custom of the business or because of rarity and peculiar characteristics, written according to normal classification or rating procedure.

(d) In determining the necessity for an adjustment of rates, the Superintendent shall be bound by all of the provisions of section 35–1503.

(e) The Superintendent is further empowered to investigate and to order removed at such time and in such manner as he shall specify any unfair discrimination existing between individual risks or classes of risks. (May 20, 1948, 62 Stat. 243, ch. 324, § 4.)

EFFECTIVE DATE

See note following § 35–1501.

§ 35–1505. Cooperative and concerted action authorized.

Subject to the provisions of this chapter, two or more companies may cooperate or act in concert with each other—

(a) as a rating organization, for the purpose of making rates, rating plans, or rating systems. No company shall be deemed to be a rating organization;

(b) as an advisory organization, for the purpose of preparing policy forms, making underwriting rules, surveys, or inspections incident to but not including the making of rates, rating plans or rating systems, or collecting and furnishing to companies or rating organizations loss or expense statistics or other statistical data, and acting in an advisory as distinguished from a rate making capacity;

(c) as a group or fleet of companies operating under the same general management and control, for the purpose of conducting a complete insurance service;

(d) as a group, association, or other organization for the purpose of joint underwriting or joint reinsurance, or of equitable apportionment and proper rating of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods.

No company shall be required by this chapter to be a member or subscriber of any rating organization. (May 20, 1948, 62 Stat. 244, ch. 324, § 5.)

EFFECTIVE DATE

See note following § 35–1501.

§ 35–1506. Cooperative and concerted action regulated.

(a) Every group, association, or other organization of companies authorized to act as such under the terms of this chapter, except groups or fleets

described in subsection (c) of section 35–1505, shall file with the Superintendent (1) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation, and of its bylaws, rules, and regulations governing the conduct of its business; (2) a list of its members and subscribers, if any; (3) the name and address of a resident of the District upon whom notices or orders of the Superintendent or process affecting it may be served; and shall notify the Superintendent promptly of any change in the foregoing.

(b) No group, association, or organization shall engage in any unfair or unreasonable practice in the conduct of its business.

(c) No rating organization shall conduct its business with respect to insurance on risks located within the District without a license from the Superintendent. To obtain such a license, a rating organization shall, in addition to the matters specified in subsection (a) of this section, supply to the Superintendent a statement relating to its qualifications as a rating organization and its ability adequately to administer the rates, rules, and regulations which it may make in behalf of its members and subscribers.

If the Superintendent finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization, he shall forthwith issue a license specifying the kinds of insurance and subdivisions thereof for which the applicant is authorized to act as a rating organization, but, if the Superintendent does not so find within thirty days after he has received such application, he shall, at the request of the applicant, give the applicant a full hearing.

Licenses issued pursuant to this section shall remain in effect until suspended or revoked by the Superintendent unless voluntarily surrendered by the rating organization. The fee for said license shall be $250 and shall be paid by the applicant through the Superintendent to Collector of Taxes, District of Columbia. Licenses issued pursuant to this section may, at the request of the rating organization, be amended by the Superintendent so as to include authority with respect to additional kinds of insurance and subdivisions thereof, provided the rating organization satisfies the Superintendent that such amendment would not in any way be contrary to or inconsistent with the provisions of this chapter: *Provided,* That an additional fee in the amount of $50 shall be charged for such amendment.

The license of any rating organization may be suspended or revoked by the Superintendent for failure to comply with this chapter or for incompetence or untrustworthiness. The Superintendent shall not revoke or suspend the license of any rating organization until he has given it not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor and has afforded the rating organization an opportunity to be heard. In lieu of revoking or suspending the license of any rating organization after hearing and for the causes named herein, the Superintendent may subject such rating organization to a penalty of not more than $250 when in his judgment he finds that the public interest would be best served by the continued operation of the rating organization. The amount of any such penalty shall be paid by the rating organization through the Superintendent to Collector of Taxes, District of Columbia.

(d) Every licensed rating organization shall, subject to reasonable rules and regulations, permit any company not a member to be a subscriber to its rating services for any kind of insurance or subdivision thereof for which it is authorized to act; shall give notice of changes in such rules and regulations to its subscribers; and shall furnish its rating service without discrimination to its members and subscribers.

(e) No licensed rating organization shall adopt any rule, effect any agreement, or take any action contrary to or inconsistent with the provisions of this chapter or which would have the effect of prohibiting, restricting, or regulating the payment or allowance by any of its members or subscribers of dividends, savings, or unabsorbed premium deposits; nor practice or sanction any plan or act of boycott, coercion, or intimidation; nor enter into or sanction any contract or act by which any person is restrained from lawfully engaging in the business of insurance.

(f) Every member of or subscriber to a licensed rating organization shall adhere to the filings made on its behalf by such organization except that any such member or subscriber may deviate from such filings if it has filed with the rating organization and with the Superintendent the deviation to be applied and information necessary to justify the deviation and provided such deviation is approved by the Superintendent. If approved, the deviation shall remain in force until such approval is withdrawn by the Superintendent after notice to the company or withdrawn by the company with the approval of the Superintendent. The Superintendent shall approve any such deviation unless he finds that the deviation to be applied would not be uniform in its application or would be inconsistent with the provisions of this chapter, but unless he approves the deviation within thirty days he shall, within a reasonable time, grant a hearing to the applicant at the applicant's request. (May 20, 1948, 62 Stat. 245, ch. 324, § 6.)

EFFECTIVE DATE

See note following § 35–1501.

§ 35–1507. Information to be furnished by companies.

(a) Every rating organization and every company which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(b) Every rating organization and every company which makes it own rates shall provide within the District reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to revise the manner in which such rating system has been applied in connection with the insurance afforded him. If the

rating organization or company fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such company on such request may, within thirty days after written notice of such action, appeal to the Superintendent, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or company, may affirm or reverse such action.

(c) No company, agent, broker, or rating organization may willfully withhold required information from or give false or misleading information to the Superintendent.

(d) No company, agent, or broker shall fail to furnish to an insured any policy or comparable evidence of insurance to which the insured is entitled. (May 20, 1948, 62 Stat. 246, ch. 324, § 7.)

EFFECTIVE DATE

See note following § 35–1501.

§ 35–1508. Authority and duty of superintendent.

In addition to any powers hereinbefore expressly enumerated in this chapter, the Superintendent shall have full power and authority, and it shall be his duty, to enforce by regulations, orders, or otherwise all and singular, the provisions of this chapter, and the full intent thereof. In particular he shall have the authority and power—

(a) to examine all records of companies and rating organizations and to require any or every company, agent, broker, and rating organization to furnish under oath such information as he may deem necessary for the administration of this chapter. The expense of such examination shall be paid by the company or rating organization examined. In lieu of such examination the Superintendent may, in his discretion, accept a report of examination made by any other insurance supervisory authority;

(b) to make and enforce such reasonable orders, rules, and regulations as may be necessary in making this chapter effective, but such orders, rules, and regulations shall not be contrary to or inconsistent with the provisions of this chapter;

(c) to issue an order, after a full hearing to all parties in interest requiring any group, association, or organization of companies and the members thereof to cease and desist from any unfair or unreasonable practice;

(d) The Superintendent may designate one or more rating organizations or other agencies to assist him in gathering statistical data and in making such compilations thereof as may be necessary for the proper administration of this chapter. Such compilations shall be made available, subject to reasonable rules promulgated by the Superintendent, to companies and rating organizations.

The Superintendent shall have no authority at any hearing to compel the attendance of witnesses and he shall not be required to adhere to formal rules of pleading or evidence. At the request of a party or parties in interest made prior to any hearing, he shall administer oaths to witnesses and shall permit such party or parties, at the cost and expense of one who so requests, to have made a record of the hearing, which record upon request of such party or parties the Superintendent shall certify. (May 20, 1948, 62 Stat. 246, ch. 324, § 8.)

EFFECTIVE DATE

See note following § 35–1501.

§ 35–1509. Penalties.

Any company, broker, or agent guilty of violating any of the provisions of this chapter or any order, rule, or regulation issued pursuant to this chapter, shall be subject to the provisions of sections 35–1306 and 35–1340, respectively. (May 20, 1948, 62 Stat. 247, ch. 324, § 9.)

EFFECTIVE DATE

See note following § 35–1501.

§ 35–1510. Judicial review.

Any person, firm or corporation aggrieved by any order, ruling, proceeding, or action of the Superintendent may contest the validity of such order, ruling, proceeding, or action in any court of competent jurisdiction by appeal or through any other appropriate proceedings, as provided under section 35–1349. (May 20, 1948, 62 Stat. 247, ch. 324, § 10.)

EFFECTIVE DATE

See note following § 35–1501.

TITLE 36.—LABOR

Chap.		Sec.
1.	Apprentices	36–101
1A.	Voluntary apprentices	36–121
2.	Child labor and work permits	36–201
3.	Employment of women	36–301
4.	Minimum Wage Law	36–401
5.	Workmen's compensation	36–501

Chapter 1.—APPRENTICES

Sec.
36–101 to 36–111. Repealed.

§§ 36–101 to 36–111. Repealed. Apr. 22, 1944, 58 Stat. 195, ch. 174, § 10, May 21, 1946, 60 Stat. 207, ch. 267, § 13.

EFFECTIVE DATE

Section 11 of act Apr. 22, 1944, cited to text, provided: "This Act [§§ 32–781 to 32–789] shall become effective four months after date of the approval of this Act [April 22, 1944], except section 3 hereof [§ 32–783], which shall become effective on the date of the approval of this Act [April 22, 1944]."

CROSS REFERENCES

Placing of children in family homes, see §§ 32–781 to 32–789.

Voluntary apprentices, see sections 36–121 to 36–133.

Chapter 1A.—VOLUNTARY APPRENTICES

Sec.
36–121. Purposes of chapter.
36–122. Apprenticeship Council — Membership—Term—Compensation.
36–123. Director of Apprenticeship—Assistance furnished.
36–124. Meetings of Apprenticeship Council—Rules and regulations—Reports.
36–125. Administration of chapter—Responsibility of Board of Education.
36–126. Apprenticeship committees.
36–127. "Apprentice" defined.
36–128. Apprenticeship agreements—Contents.
36–129. Registration and approval of agreements—Agreements extending into majority of apprentice.
36–130. Violations of agreements—Hearings—Determinations—Appeals.
36–131. Application of chapter.
36–132. "Secretary of Labor" defined.
36–133. Saving clause.

§ 36–121. Purposes of chapter.

It is the purpose of this chapter to open to young people in the District of Columbia the opportunity to obtain training that will equip them for profitable employment and citizenship; to set up, as a means to this end, a program of voluntary apprenticeship under approved apprenticeship agreements providing facilities for their training and guidance in the arts and crafts of industry and trade, with parallel instruction in related and supplementary education; to promote employment opportunities for young people under conditions providing adequate training and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish an apprenticeship council; to provide for the establishment of local joint trade apprenticeship committees to assist in effectuating the purposes of this chapter; to provide for a director of apprenticeship within the District of Columbia; to provide for reports to the Congress and to the public regarding the status of apprenticeship in the District of Columbia; to establish a procedure for the determination of apprenticeship agreement controversies; and to accomplish related ends. (May 21, 1946, 60 Stat. 204, ch. 267, § 1.)

REPEALS

Sec. 13 of the act of May 21, 1946, cited to text, provided: "Sections 13, 14, 15, 17, 18, 20, and 21, chapter 2 of title 15 [§§ 36–103, 36–104, 36–105, 36–107, 36–108, 36–110 and 36–111] of the Code of Laws of the District of Columbia are hereby repealed".

§ 36–122. Apprenticeship council—Membership—Term—Compensation.

Without regard for any other provision of law with respect to the appointment of officers and employees of the United States or the District of Columbia, the Commissioners of the District of Columbia shall appoint an Apprenticeship Council, composed of three representatives each from employer and employee organizations, respectively. The Superintendent of Schools in the District of Columbia or, if he shall so designate, his representative in charge of trade and industrial education, and the Director of the District of Columbia Employment Center shall, ex officio, be members of said council, without vote. The terms of office of the members of the Apprenticeship Council first appointed by the Commissioners shall expire as designated by them at the time of making the appointment: One representative each of employers and employees being appointed for one year; one representative each of employers and employees being appointed for two years; and one representative each of employers and employees for three years. Thereafter, each member shall be appointed for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of said term. The compensation of each member may be fixed without regard to the provisions of the Classification Act of 1923, as amended, and each member of the council, not otherwise compensated by public money, shall be paid not more than $10 per day for each day spent in attendance at meetings of the Apprenticeship Council. (May 21, 1946, 60 Stat. 204, ch. 267, § 2.)

§ 36–123. Director of Apprenticeship—Assistance furnished.

The Secretary of Labor shall appoint a Director of Apprenticeship who shall serve without compensation and who shall have no vote. Without regard for the provisions of any other law with respect to the appointment of officers and employees of the United States or the District of Columbia, the Director of Apprenticeship shall be chosen from among the employees of the Apprentice-Training Service

actually engaged in formulating and promoting standards of apprenticeship under the provisions of Public Law Numbered 308. The Apprentice-Training Service is further authorized to supply the Director or the council with such clerical, technical, and professional assistance as shall be deemed by said Service to be essential to effectuate the purposes of this chapter. (May 21, 1946, 60 Stat. 204, ch. 267, § 3.)

§ 36–124. Meetings of Apprenticeship Council—Rules and regulations—Reports.

The Apprenticeship Council shall meet at the call of the Director, or the chairman thereof, and shall aid in formulating policies for the effective administration of this chapter. Subject to the approval of the Secretary of Labor, the Apprenticeship Council shall establish standards for apprenticeship agreements in accordance with those prescribed by this chapter, shall issue such rules and regulations as may be necessary to carry out the intent and purposes of said chapter, and shall perform such other functions as are necessary to carry out the intent of this chapter. Not less than once every two years the Apprenticeship Council shall make a report through the Commissioners of its activities and findings to the Congress and to the public. (May 21, 1946, 60 Stat. 205, ch. 267, § 4.)

§ 36–125. Administration of chapter—Responsibility of Board of Education.

The Director, under the supervision of the Secretary of Labor and with the advice and guidance of the Apprenticeship Council, is authorized to administer the provisions of this chapter in cooperation with the Apprenticeship Council and local joint trade apprenticeship committees, to set up conditions and training standards for apprentices, which conditions or standards shall in no case be lower than those prescribed by this chapter; to act as secretary of the Apprenticeship Council and of joint trade apprenticeship committees; to approve, if, in his opinion, approval is for the best interest of the apprentice, any apprentice agreement which meets the standards established by or in accordance with this chapter; to terminate or cancel any apprenticeship agreement in accordance with the provisions of such agreement; and to perform such other duties as are necessary to carry out the intent of this chapter: *Provided,* That the administration and supervision of related and supplemental instruction for apprentices, coordination of the instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of the District Board of Education. (May 21, 1946, 60 Stat. 205, ch. 267, § 5.)

§ 36–126. Apprenticeship committees.

Local joint trade apprenticeship committees in any trade or group of trades may be approved by the Apprenticeship Council. Such apprenticeship committees shall be composed of an equal number of employer and employee representatives appointed by the groups or organizations they represent, or the committee may consist of the employer and not less than two representatives from the recognized bargaining agency. In a trade or group of trades in which there is no bona fide employee organization, the Apprenticeship Council may appoint a joint trade apprenticeship committee from persons known to represent the interests of employers and of employees, or the council may act itself as such joint committee. Subject to the review of the council, and in accordance with standards established by or under authority of this chapter, joint trade apprenticeship committees may set up standards to govern the training of apprentices and give such aid as may be necessary in effectuating such standards. (May 21, 1946, 60 Stat. 205, ch. 267, § 6.)

§ 36–127. "Apprentice" defined.

The term "apprentice", as used herein, shall mean a person at least sixteen years of age who has entered into a written agreement, hereinafter called an apprenticeship agreement, with an employer, an association of employers, or an organization of employees, which apprenticeship agreement provides for not less than four thousand hours of reasonably continuous employment for such person and for his participation in an approved program of training through employment and through education in related and supplemental subjects. (May 21, 1946, 60 Stat. 205, ch. 267, § 7.)

§ 36–128. Apprenticeship agreements—Contents.

Every apprenticeship agreement entered into under this Act shall contain—

(1) the names and signatures of the contracting parties, including the apprentice's parent or guardian if he be a minor;

(2) the date of birth of the apprentice;

(3) a statement of the trade, craft, or business which the apprentice is to be taught and the time at which the apprenticeship will begin and end;

(4) a statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than one hundred and forty-four hours per year;

(5) a statement setting forth a schedule of the processes in the trade or industry divisions in which the apprentice is to be taught and the approximate time to be spent at each process;

(6) a statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated;

(7) a statement providing for a period of probation during which time the apprenticeship agreement shall be terminated by the Director at the request in writing of either party, and providing that after such probationary period the apprenticeship agreement may be terminated by the Director by mutual agreement of all parties thereto, or canceled by the Director for good and sufficient reasons;

(8) a provision that all controversies or differences concerning the apprenticeship agreement which cannot be adjusted by conference between the apprentice and the employer or under the terms of the apprenticeship standard shall be submitted to the Director for determination as provided for in section 36–129;

(9) a provision that an employer who is unable to fulfill his obligation under the apprenticeship agreement may, with the approval of the Director or under the direction of the joint trade apprenticeship committee, transfer such contract to any other employer: *Provided,* That the apprentice consents and that such other employer agrees to assume the obligations of said apprenticeship agreement;

(10) such additional terms and conditions as may be prescribed or approved by the council not inconsistent with the provisions of this chapter. (May 21, 1946, 60 Stat. 206, ch. 267, § 8.)

§ 36–129. Registration and approval of agreements—Agreements extending into majority of apprentice.

No apprenticeship agreement shall be registered or approved by the Director under the provisions of this chapter unless it conforms with the standards established by or in accordance with this chapter and is in the best interests of the apprentice. Where a minor enters into an agreement for a period of training extending into his majority, and such agreement has been approved by the Director, then such apprenticeship agreement shall, if the parties therein so provide, have the same force and effect during the period covered by the majority of such minor as if such agreement were entered into during the majority of such minor. (May 21, 1946, 60 Stat. 206, ch. 267, § 9.)

§ 36–130. Violations of agreements—Hearings—Determinations—Appeals.

(a) Upon the complaint of any interested person or upon his own initiative, the Director may investigate to determine if there has been a violation of the terms of an apprenticeship agreement made under this Act, and he may hold hearings, inquiries, and other proceedings necessary to such investigation and determination. The parties to such an agreement shall be given a fair and impartial hearing after reasonable notice thereof. All such hearings, investigations, and determinations shall be made under authority of reasonable rules and procedures prescribed by the Apprenticeship Council, subject to the approval of the Secretary of Labor.

(b) The determination of the Director shall be filed with the council. If no appeal therefrom is filed with the council within ten days after the date thereof, as herein provided, such determination shall become the order of the council. Any person aggrieved by any determination or action of the Director may appeal therefrom to the council, which shall hold a hearing thereon after due notice to the interested parties. Any person aggrieved or affected by any determination or order of the council may appeal therefrom to the District Court of the United States for the District of Columbia at any time within thirty days after the date of such order, by service of a written notice of appeal on the Director. Upon service of said notice of appeal, said council, by its secretary, shall forthwith file, with the clerk of said district court to which said appeal is taken, a certified copy of the order appealed from, together with findings of fact on which the same is based. The person serving such notice of appeal shall, within five days after the service thereof, file a copy of the same, with proof of service, with the clerk of the court to which such appeal is taken; and thereupon said district court shall have jurisdiction over said appeal, and the same shall be entered upon the records of said district court and shall be tried therein de novo according to the rules relating to the trial of civil actions, so far as the same are applicable. Any person aggrieved or affected by any determination, order, or decision of the district court may appeal therefrom to the Court of Appeals for the District of Columbia in the same manner as provided by law for the appeal of civil action. (May 21, 1946, 60 Stat. 206, ch. 267, § 10.)

§ 36–131. Application of chapter.

The provisions of this chapter shall apply to any person, firm, corporation, or craft in the District of Columbia which has voluntarily elected to conform with its provisions. (May 21, 1946, 60 Stat. 207, ch. 267, § 11.)

§ 36–132. "Secretary of Labor" defined.

As used or referred to in this chapter the term "the Secretary of Labor" shall mean the administrator of that Department or agency of the United States Government authorized to administer the provisions of Public Law Numbered 308. (May 21, 1946, 60 Stat. 207, ch. 267, § 12.)

§ 36–133. Saving clause.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. (May 21, 1946, 60 Stat. 207, ch. 267, § 14.)

Chapter 2.—CHILD LABOR AND WORK PERMITS

Sec.

36–201. Regulation of child labor—Employment of children under fourteen years of age—Distribution of newspapers permitted.
36–202. Employment of children under eighteen years of age—Hours of employment—Notice to be posted in place of employment—List of minors employed.
36–203. Employment dangerous or prejudicial to life prohibited—Board of Education to prohibit such employment by general or special order.
36–204. Employment of minors under sixteen years of age prohibited in certain occupations.
36–205. Employment of minors under eighteen years of age prohibited in certain occupations—Employment of females under eighteen in certain occupations.
36–206. Employment as messenger between ages of eighteen and twenty-one years prohibited during certain hours.
36–207. Employment or exhibition of minor under sixteen years of age as performer.
36–207a. Work permits for minors between ages of 14 and 18 authorized for stage appearances—Regulations.
36–208. Work or vacation permit—To be procured by employer.
36–209. Permit issued by director of school attendance and work permits—Contents—Record of applicants to be kept—List of permits granted or refused to be sent weekly to schools.

Sec.
36–210. Application for permit—Evidence required to be furnished—Physician's certificate—School record.
36–211. Evidence of age.
36–212. Vacation permits.
36–213. Employer to notify department at commencement and termination of employment of minor—Issuance of new certificates.
36–214. Employer to furnish, on demand, proof of age of employee.
36–215. Penalties.
36–216. Director of department of school attendance and work permits to enforce law—Inspection of places in which minors are employed.
36–217. Limitations on employment in stuffing of newspapers—Sale of newspapers in streets—Distribution of papers on fixed routes.
36–218. Hours of employment—Work permit to be secured.
36–219. Badge to be obtained.
36–220. Street-trades badges—Evidence upon which issued.
36–221. Information to be contained on—Record to be kept—Badges not transferable—Principal of schools to keep list—Revocation if detrimental to minor—Badges to expire annually.
36–222. Penalties for violations of sections 36–217 to 36–224—Commitments to Board of Public Welfare—Probationary supervision—Revocation of badge.
36–223. Persons selling merchandise to minor under sixteen years of age for resale or distribution in public place to ascertain that minor wears badge—Penalties for violation—Penalties for custodian of minor permitting violation.
36–224. Loitering around salesrooms of newspapers prohibited during school hours.
36–225. Board of Education to appoint inspectors—Appointments, how made.
36–226. Invalidity of portion of law not to affect remainder.
36–227. Board of Education to supervise and have appellate jurisdiction over agents and employees.

§ 36–201 [7: 111]. Regulation of child labor—Employment of children under 14 years of age—Distribution of newspapers permitted.

No child under fourteen years of age shall be employed, permitted, or suffered to work in the District of Columbia, in, about, or in connection with any gainful occupation, with the exemption of housework performed outside of school hours in the home of the child's parent or legal guardian or agricultural work performed outside of school hours in connection with the child's own home and directly for the child's parent or legal guardian: *Provided,* That boys ten years of age and over may be employed outside of school hours in the distribution or sale of newspapers, subject to the provisions of sections 36–217 to 36–224. (May 29, 1928, 45 Stat. 998, ch. 908, § 1.)

CROSS REFERENCES

Compulsory school attendance and work permits; department created; school census, § 31–201 et seq.
Power and duties of Board of Public Welfare, § 36–222.
Wages of minors, § 36–408 et seq.

STATUTORY REFERENCE

Federal Wage and Hour Law, child labor provisions, U. S. C., title 29, § 212.

§ 36–202 [7: 112]. Employment of children under 18 years of age—Hours of employment—Notice to be posted in place of employment—List of minors employed.

No minor under eighteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work, or housework, or in the distribution or sale of newspapers, as prescribed in section 36–201, and except in newspaper stuffing, subject to the provisions of section 36–217, more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than eight hours in any one day, nor shall any girl under eighteen years of age or boy under sixteen years of age be so employed, permitted, or suffered to work before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening of any day, nor shall any boy between sixteen and eighteen years of age be so employed before the hour of six o'clock in the morning or after the hour of ten o'clock in the evening of any day. Every employer shall post and keep conspicuously posted in the establishment, in or about which any minor is employed, permitted, or suffered to work, a printed notice, furnished by the official authorized to enforce this chapter, setting forth the legal regulations governing the employment and hours of work of minors and occupations prohibited to minors in such establishments, and, in addition, shall keep accessible in the place of employment a list of minors under eighteen employed, permitted, or suffered to work, and an accurate time record showing the hours of beginning and ending work each day and the hours when the time allowed for meals begins and ends for said minors. The presence of any such minor in the place of work for a longer time in the day or week than stated in the printed regulation hours shall be prima facie evidence of a violation of the provisions of this section. (May 29, 1928, 45 Stat. 999, ch. 908, § 2.)

§ 36–203 [7: 113]. Employment dangerous or prejudicial to life prohibited—Board of Education to prohibit such employment by general or special order.

No minor shall be employed, permitted, or suffered to work in any place of employment, or at any employment, dangerous or prejudicial to the life, health, safety or welfare of such minor. It shall be the duty of the Board of Education of the District of Columbia, and the said board shall have power, jurisdiction, and authority, after hearing duly held, to issue general or special orders prohibiting the employment of such minors in any employment or at any place of employment dangerous or prejudicial to the life, health, safety, or welfare of such minors: *Provided,* That no such order shall permit the employment of any minor at any employment specified in sections 36–204 to 36–207 at a lower age than the age therein specified. (May 29, 1928, 45 Stat. 999, ch. 908, § 3.)

§ 36–204 [7: 114]. Employment of minors under 16 years of age prohibited in certain occupations.

No minor under sixteen years of age shall be employed, permitted, or suffered to work at any of the following occupations: (1) In the operation of any machinery operated by power other than hand or foot power; or (2) in oiling, wiping, or cleaning machinery or assisting therein. (May 29, 1928, 45 Stat. 999, ch. 908, § 4.)

§ 36–205 [7: 115]. Employment of minors under 18 years of age prohibited in certain occupations—Employment of females under 18 in certain occupations.

No minor under eighteen years of age shall be employed, permitted, or suffered to work (1) at operating any freight or passenger elevator, or (2) in any quarry, tunnel, or excavation, or (3) in any tobacco warehouse or cigar or other factory or place where tobacco is manufactured or prepared. No girl under the age of eighteen years shall be employed, permitted, or suffered to work in any retail cigar or tobacco store, or in any hotel or for any apartment-house, or as an usher, attendant, or ticket seller in any theater or place of amusement, or as a messenger in the distribution or delivery of goods or messages for any person, firm, or corporation engaged in the business of transmitting or delivering messages. (May 29, 1928, 45 Stat. 999, ch. 908, § 5.)

§ 36–206 [7: 116]. Employment as messenger between ages of 18 and 21 years prohibited during certain hours.

No male between the ages of eighteen and twenty-one shall be employed, permitted, or suffered to work as a messenger for any person, firm, or corporation engaged in the business of transmitting or delivering messages before five o'clock in the morning or after twelve o'clock midnight of any day nor shall any female between the ages of eighteen and twenty-one be so employed before the hour of six o'clock in the morning, or after the hour of seven o'clock in the evening of any day. (May 29, 1928, 45 Stat. 1000, ch. 908, § 6.)

§ 36–207 [7: 117]. Employment or exhibition of minor under 16 years of age as performer.

No person having in his custody or control a minor under the age of sixteen years shall employ, exhibit, apprentice, sell, give away, or in any way dispose of such minor with a view to such minor being employed as an acrobat, or a gymnast, or a contortionist, or ropewalker, or in any exhibition of like character, or as a beggar, or street singer, or street musician, or cause or procure such minor to be so engaged. (May 29, 1928, 45 Stat. 1000, ch. 908, § 7; Dec. 26, 1941, 55 Stat. 863, ch. 632, § 1.)

AMENDMENT

The Act of Dec. 26, 1941, cited to text, added the word "street" before the word "musician."

Sec. 3, of the Act of Dec. 26, 1941, cited to text, provided: "SEC. 3. Nothing in this Act shall be construed as amending, altering, or repealing the provisions of Section 7 of the Act of May 29, 1928."

§ 36–207a. Work permits for minors between ages of 14 and 18 years authorized for stage appearances—Regulations.

The Board of Education of the District of Columbia, or a duly authorized agent thereof, is authorized to issue a work permit to any minor under eighteen years of age, said permit authorizing and permitting the appearance of such minor on the stage of a duly licensed legitimate or vaudeville theater within the District of Columbia, in any professional traveling theatrical production, or act, or in a musical recital or concert: *Provided,* That such minor is at least fourteen years of age and has completed eight grades of elementary instruction or a course of study deemed by the Board of Education equivalent thereto: *And provided further,* That such minor shall not appear on said stage in more than two performances in any one day, nor more than three hours in any one day, nor more than six days in any week, nor more than twelve hours in any week, and shall not appear on said stage after the hour of 11 post-meridian. Application for such permit should be made by the parent or guardian of such minor to the Board of Education of the District of Columbia or a duly authorized agent thereof, at least fourteen days in advance of such appearance. The Board or its agent may issue a permit if satisfied that the parent or guardian of such minor has made adequate provision for the educational instruction of such minor and for safeguarding his health and for the proper supervision of such minor.

The Board is authorized to promulgate such rules and regulations as may be necessary to protect properly the health, morals, and safety of minors coming within the purview of this chapter. (May 29, 1928, ch. 908, § 7a, as added Dec. 26, 1941, 55 Stat. 863, ch. 632, § 2.)

§ 36–208 [7: 118]. Work or vacation permit—To be procured by employer.

No minor between fourteen and eighteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work or housework as specified in section 36–201, unless his employer procures and keeps on file and accessible to any attendance officer, inspector, or other person authorized to enforce this chapter a work or vacation permit issued as hereinafter prescribed, except that children between fourteen and eighteen years of age may be employed without a permit outside of school hours in irregular or casual work usual to the home of the employer: *Provided,* That such employment shall not be in connection with nor form a part of the business, trade, profession, or occupation of the employer: *And provided further,* That such employment shall not be specifically prohibited by any provision of this chapter or by any order issued under the authority of section 36–203. (May 29, 1928, 45 Stat. 1000, ch. 908, § 8.)

§ 36–209 [7: 119]. Permit issued by director of school attendance and work permits—Contents—Record of applicants to be kept—List of permits granted or refused to be sent weekly to schools.

The work or vacation permit required by this chapter shall be issued only by the director of the department of school attendance and work permits created under the board of education according to the provisions of sections 31–211 to 31–213, or by any person duly authorized by said director, and shall state the name, sex, color, date, and place of birth, and place of residence of the minor, the grade last completed by said minor, and the kind of evidence of age accepted, and such other details as may be necessary for the identification of the minor. It shall certify that all the requirements for issuing a work or vacation permit under the provisions of

this chapter have been fulfilled and shall be signed by the person issuing it. It shall state the name and address of the employer for whom and the nature of the specific occupation in which the work permit authorizes the minor to be employed, and no permit shall be valid except for the employer so named and for the occupation so designated. It shall bear a number, shall show the date of its issue, and shall be signed by the minor for whom it is issued in the presence of the person issuing it, and shall be mailed to the employer by the issuing officer, and in no case given to the minor. A record giving in full for each applicant the facts with reference to his sex, color, date, and place of birth, name and address of parent, guardian, or custodian, name and address of employer, and nature of the specific occupation in which the minor is to be employed, grade and school last attended, evidence of age, and date of issuance or date of refusal of certificate, with reason, shall be kept in the department of school attendance and work permits, together with the physician's certificate of physical fitness, the school record, and the employer's statement of intention to employ the child. Lists shall be sent weekly to each school during the school term giving the names and addresses of all children from that school to whom permits have been issued or refused. (May 29, 1928, 45 Stat. 1000, ch. 908, § 9.)

§ 36–210 [7: 120]. Application for permit—Evidence required to be furnished—Physician's certificate—School record.

The officer authorized in section 36–209 to issue work or vacation permits shall issue such permits only upon the application in person of the minor desiring employment, accompanied, if said minor is under sixteen years of age, by his parent, guardian, or custodian, and after having received, examined, and approved and filed the following papers, namely:

(a) A statement signed by the prospective employer or by some one duly authorized on his behalf, stating that he expects to give such minor present employment, setting forth the specific nature of the occupation in which he intends to employ such minor, and the number of hours per day and of days per week which said minor shall be employed, and agreeing to send the notice of the commencement of employment, and to return the permit according to the provisions of this chapter.

(b) Evidence of age as provided in section 36–211, showing that the minor is at least fourteen years of age.

(c) A certificate of physical fitness, if such minor is under sixteen years of age; otherwise no such certificate of physical fitness shall be required. Such certificate of physical fitness shall be signed by a medical inspector of the public schools of the District of Columbia, assigned by the Board of Health for such purpose. It shall show the height and weight of the minor and shall state that the said minor has been thoroughly examined by the said physician at the time of his application for a permit, has attained the normal development of a minor of his age and is in sound health, and is physically qualified for the employment specified in the statement submitted in accordance with the requirements of this chapter.

(d) A school record, if such minor is under sixteen years of age; otherwise no such record shall be required. Such school record shall be filled out and signed by the teacher of the class last attended by the minor and countersigned by the principal of the school, public, private, or parochial, which the minor has last attended or by some one duly authorized by him: *Provided,* That the signature of the teacher shall not be required in the case of a school record filled out during the summer vacation period of the public schools. It shall certify that the said minor is able to read and write correctly sentences in the English language, has satisfactorily completed the eighth grade of the elementary school course prescribed for the public schools in the District of Columbia, or has regularly received in a private or parochial school instruction deemed equivalent by the Board of Education to that prescribed for the completion of the eighth grade in the public schools. Such school record shall give also the full name, date of birth, grade last completed, and residence of the minor as shown on the records of the school. (May 29, 1928, 45 Stat. 1001, ch. 908, § 10.)

§ 36–211 [7: 121]. Evidence of age.

The evidence of age required by this chapter shall consist of one of the following proofs of age, which shall be required in the order herein designated:

(a) A birth certificate or attested transcript issued by a registrar of vital statistics or other officer charged with the duty of recording births.

(b) A baptismal record or duly certified transcript thereof showing the date of birth and place of baptism of the minor.

(c) A bona fide contemporary record of the date and place of the child's birth kept in the Bible in which the records of the births in the family of the child are preserved, or other documentary evidence satisfactory to the director of the department of school attendance and work permits, such as a passport showing the age of the child, a certificate of arrival in the United States issued by the United States immigration officers and showing the age of the child, or a life-insurance policy: *Provided,* That such other satisfactory documentary evidence has been in existence at least one year prior to the time it is offered in evidence: *And provided further,* That a school record or a parent's, guardian's, or custodian's affidavit, certificate, or other written statement of age shall not be accepted except as specified in paragraph (d).

(d) A certificate of physical age, signed by a medical inspector of the public schools assigned by the Board of Health for such purposes and based upon a physical examination, which shall state the height and weight of such minor and other evidence upon which the opinion as to the age of such minor is founded. A parent's, guardian's, or custodian's affidavit of age, and a record of the age as given in the register of the school first attended by the minor, if obtainable, or in the earliest available school census, shall accompany the physician's certificate

of age. And no work or vacation permit shall be issued if any of the above possible sources shows the minor to be under the age of fourteen.

The proof of age specified in subdivision (a) shall be accepted in preference to that specified in any subsequent subdivision, and no proof of age permitted by any subsequent subdivision shall be accepted unless there be received and filed substantial evidence that the proof required by the preceding subdivisions can not be obtained. Should such preferred proof of age be later procured, or if subsequent proof of age shall be procured and shall conclusively establish the falsity of the proof previously accepted, the director of the department of school attendance and work permits shall cancel the permit and issue or refuse a new one according to the age thus established. (May 29, 1928, 45 Stat. 1001, ch. 908, § 11.)

§ 36–212 [7: 122]. Vacation permits.

The director of the department of school attendance and work permits, or any person duly authorized by him, shall have authority to issue a vacation permit to a minor between the age of fourteen and sixteen years, permitting employment during the regular summer vacation period of the public schools, or during the school term at such time as the public schools are not in session, if the age of such minor has been proved according to section 36–211, and such minor has in all other respects, except as to completion of the eighth grade, fulfilled the requirements for a work permit specified in sections 36–201 to 36–227. These permits shall be different in color from the work permit allowing employment while school is in session and shall state the periods during which its use is valid. (May 29, 1928, 45 Stat. 1002, ch. 908, § 12.)

§ 36–213 [7: 123]. Employer to notify department at commencement and termination of employment of minor—Issuance of new certificates.

Every employer receiving a work or vacation permit shall notify the department in writing within three days of the time of the commencement of the employment of such minor, and within three days after termination of the employment shall return said permit to the department. Failure to so notify shall be cause for the cancellation of the permit; and failure to so return it shall be cause for the refusal of further permits upon the application of such employer. Returned permits shall be filed and the proper school authorities notified. A new certificate shall not be issued to any minor except upon presentation of a new promise of employment and a new certificate of physical fitness. (May 29, 1928, 45 Stat. 1002, ch. 908, § 13.)

§ 36–214 [7: 124]. Employer to furnish, on demand, proof of age of employee.

Whenever any person authorized to enforce this chapter shall have reason to doubt that any minor employed in any occupation for which a permit is required by this chapter, and for whom a work permit or vacation permit is not on file, has reached the age of eighteen years, such person may make demand on such minor's employer that such employer shall either furnish him within ten days the evidence required for a work permit showing that the minor is in fact eighteen years of age, or shall refuse to employ or permit or suffer such child to work. In case such evidence is not furnished to such person within ten days after such demand, the employer shall not thereafter continue to employ such minor or permit or suffer such minor to work in such establishment. Proof of the making of such demand and of failure to deliver such proof of age shall be prima facie evidence, in any prosecution brought for violation of this chapter, that such minor is under eighteen years of age and is unlawfully employed. (May 29, 1928, 45 Stat. 1002, ch. 908, § 14.)

§ 36–215 [7: 125]. Penalties.

Whoever employs or permits or suffers any minor to be employed or to work in violation of any of the provisions of sections 36–201 to 36–214, or of any order issued under the provisions of section 36–203, or interferes with, obstructs, or hinders the department enforcing the child labor law, its officers or agents, or any other person authorized to inspect places of employment under this chapter and whoever, having under his control or custody any minor, permits or suffers him to be employed or to work in violation of any of the provisions of sections 36–201 to 36–214, shall for a first offense be punished by a fine of not less than $25 nor more than $100, or by imprisonment not less than ten days nor more than thirty days, or in the discretion of the court by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than $50 nor more than $200, or by imprisonment not less than thirty days nor more than ninety days, or in the discretion of the court by both such fine and imprisonment. Every day during which any violation of this chapter continues shall constitute a separate and distinct offense. (May 29, 1928, 45 Stat. 1003, ch. 908, § 15.)

§ 36–216 [7: 126]. Director of department of school attendance and work permits to enforce law—Inspection of places in which minors are employed.

It shall be the duty of the director of the department of school attendance and work permits organized under the Board of Education of the District of Columbia and of the authorized inspectors and agents of said department to cause all the provisions of this chapter to be enforced, to make complaints against persons violating its provisions, and to prosecute violations of the same. The director of the said department, its inspectors, and agents are empowered and instructed to visit and inspect at any time, and as often as shall be necessary in order effectively to enforce the provisions of this chapter, all places where minors are employed, and shall have authority to enter any place or establishment covered by the terms of this chapter, and to have access to work or vacation permits kept on file by the employer and such other records as may aid in the enforcement of this chapter. All persons authorized to issue certificates of physical fitness and all attendance officers and probation officers are likewise empowered to visit and inspect at all reasonable

hours all places where minors may be employed. (May 29, 1928, 45 Stat. 1003, ch. 908, § 16.)

CROSS REFERENCE

Director of department of school attendance and work permits, §§ 31–211 to 31–213.

§ 36–217 [7: 127]. Limitations on employment in stuffing of newspapers—Sale of newspapers in streets—Distribution of papers on fixed routes.

No boy under sixteen years of age shall be employed in the stuffing of newspapers, nor shall the work of any boy between the ages of sixteen and eighteen so employed exceed forty hours in any one week, nor shall he be employed on more than one night in any one week. No boy under twelve years of age and no girl under eighteen years of age shall distribute, sell, expose, or offer for sale any newspapers, magazines, periodicals, or any other articles or merchandise of any description, or distribute handbills or circulars, in any street or public place, or exercise the trade of bootblack or any other trade, in any street or public place: *Provided,* That the provisions of this chapter shall not apply to boys ten years of age and over engaged in the distribution of newspapers, magazines, or periodicals on fixed routes. (May 29, 1928, 45 Stat. 1003, ch. 908, § 17.)

§ 36–218 [7: 128]. Hours of employment—Work permit to be secured.

No boy under sixteen years of age shall work or shall be employed or permitted or suffered to work at any of the trades or occupations mentioned in section 36–217, in any street or public place after the hour of seven postmeridian or before the hour of six antemeridian, or, unless holding a work permit issued in accordance with the provisions of this chapter, during the hours when the public schools are in session. (May 29, 1928, 45 Stat. 1003, ch. 908, § 18.)

§ 36–219 [7: 129]. Badge to be obtained.

No boy under sixteen years of age shall work at any time, or be employed or permitted or suffered to work at any time, in any of the trades or occupations mentioned in section 36–217, unless he shall have procured and shall carry on his person in plain sight while so working a badge as hereinafter provided, issued by the director of the department of school attendance and work permits, or some person duly authorized by him, and unless he complies with all the legal requirements concerning school attendance. (May 29, 1928, 45 Stat. 1004, ch. 908, § 19.)

§ 36–220 [7: 130]. Street-trades badges—Evidence upon which issued.

The officer authorized by this chapter to issue street-trades badges shall issue such a badge only upon application of the minor desiring it, accompanied by the parent, guardian, or custodian of such minor, and after having received, examined, approved, and filed the following papers: (1) Evidence that the minor is of the age required by section 36–217, which shall consist of the same evidence as is required for a work permit under this chapter; (2) evidence of physical fitness, which shall consist of a certificate of physical fitness issued as required for a work permit under this chapter; (3) a statement signed by the principal of the school and the teacher of the class which the minor is attending, stating that such minor is regularly enrolled in school and showing the grade such minor has attained, and certifying that in their opinion the minor is physically and mentally qualified to undertake the work contemplated without retarding his progress in school: *Provided,* That a work permit issued as required by this chapter may be accepted by the issuing officer in lieu of any other requirements for said badge. (May 29, 1928, 45 Stat. 1004, ch. 908, § 20.)

§ 36–221 [7: 131]. Information to be contained on—Record to be kept—Badges not transferable—Principal of schools to keep list—Revocation if detrimental to minor—Badges to expire annually.

Such badge shall bear a number, and every such badge on its reverse side shall be signed in the presence of the officer issuing the same by the minor in whose name it is issued and shall contain the minor's address and date of birth and such other information as the officer issuing the same shall deem necessary. A complete record of badges issued and refused, and of the facts relating thereto, including the name and address of the parent, guardian, or custodian, the height and weight of the minor, the day, year, and month of birth of the minor, the date of issuance and kind of evidence of age accepted, and school grade and name of school attended, shall be kept in the office of the director of the department of school attendance and work permits. No minor to whom such badge is issued shall give, lend, sell, or otherwise transfer it to any other person, or be engaged in any of the trades or occupations mentioned in this section without having conspicuously on his person such badge, and he shall exhibit the same upon demand to any police or attendance officer, or to any person charged with the duty of enforcing this chapter. Lists shall be sent weekly to each school during the school term, giving the names and addresses of all minors to whom street trades badges have been issued and refused. The principal of each school shall keep a complete list of all minors in his school to whom badges, as herein required, have been issued, and whenever in the opinion of said principal the possession of any such permit and badge is detrimental to the school standing or well-being of any such minor, shall recommend to the officer issuing the same that the badge of such minor be revoked. All such badges shall expire annually on the 1st day of January. The color of the badge shall be changed each calendar year. (May 29, 1928, 45 Stat. 1004, ch. 908, § 21.)

§ 36–222 [7: 132]. Penalties for violations of sections 36–217 to 36–224—Commitments to Board of Public Welfare—Probationary supervision—Revocation of badge.

Any minor who shall engage in any of the trades or occupations mentioned in section 36–217, in violation of any of the provisions of sections 36–217 to 36–224 of this chapter, shall for the first offense be warned by the director of the department of school attendance and work permits and the parent, guardian, or custodian of such minor shall be noti-

fied. For any subsequent violation, while under the care of said parent, guardian, or custodian, and with his or her knowledge or consent, said minor may, in the discretion of the court, be deemed to be lacking in proper parental care and guardianship, and may on petition filed for that purpose, and in the discretion of the court, be committed to the Board of Public Welfare of the District of Columbia until twenty-one years of age or for a shorter period as the court may see fit, the said Board of Public Welfare being hereby expressly authorized and required to receive minors so committed. The court may, instead of immediate commitment, suspend the imposition or execution of judgment of commitment, or may, after partial hearing and instead of proceeding to judgment, suspend further proceedings without judgment, with the consent of the parent, guardian, or custodian of said minor, and in either event may assign a probation officer of the juvenile court to exercise probationary supervision over said minor, said probationary supervision to continue in force and the said minor to remain under the jurisdiction and control of the court as a ward of the court until said minor attains the age of seventeen years, or unless sooner discharged by order of the court or committed to said Board of Public Welfare, the court hereby being given power to withdraw said case from said probationary supervision at any time during said probation period, and after a hearing may commit said minor at once to the said board if, in the opinion of the court, the best interests and welfare of said minor shall so require. Upon the recommendation of the principal or chief executive officer of the school which such minor is attending or upon the complaint of any school attendance officer, or any officer authorized to enforce this chapter, the badge of any minor who violates any provision of this chapter, or who becomes delinquent, or who fails to comply with all the legal requirements concerning school attendance, may be revoked by the director of the department of school attendance and work permits for such period as the said officer may require; and upon revocation said officer shall so notify the parent, guardian, or custodian having such minor in charge, and it shall thereupon become the duty of said parent, guardian, or custodian to surrender or require said minor to surrender said badge to the said officer. After notice to such minor and his parent, guardian, or custodian of revocation of such badge, he shall be deemed to be in the same status as a minor without a badge. The refusal of any such minor to surrender his badge upon such revocation shall be deemed a violation of this chapter. (May 29, 1928, 45 Stat. 1004, ch. 908, § 22.)

CROSS REFERENCE

General provisions concerning Board of Public Welfare, § 3–101 et seq.

§ 36–223 [7: 133]. Persons selling merchandise to minor under 16 years of age for resale or distribution in public place to ascertain that minor wears badge—Penalties for violation—Penalties for custodian of minor permitting violation.

Any person who either for himself or as agent of any other person, or of any firm, corporation, or company, furnishes or sells or offers for sale to any minor under sixteen any article of any description to be used for the purpose of sale or distribution in any public place, shall first ascertain that said minor wears his own badge in plain sight as herein provided, and if said minor has no badge, no article shall be furnished or sold to him. Any person who fails to comply with the foregoing provision, or who furnishes or sells or offers for sale to any minor any article of any description, with the knowledge that he intends to sell or distribute such article in violation of any provision of this chapter, or after having received written notice from any officer charged with the enforcement of this chapter, that such minor is selling such article in violation of any provision of said chapter, or any person who procures any minor to violate any provision of this chapter, shall for a first offense be punished by a fine of not less than $25 nor more than $100, or by imprisonment for not less than ten nor more than thirty days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than $50 nor more than $200, or by imprisonment for not less than thirty nor more than ninety days, or by both such fine and imprisonment. Whoever, having under his control or custody any minor, permits or consents to the violation by such minor of any of the provisions of sections 36–217 to 36–223, shall for a first offense be punished by a fine of not less than $5 nor more than $100, or by imprisonment of not less than five nor more than thirty days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than $10 nor more than $100, or by imprisonment for not less than ten nor more than sixty days, or by both such fine and imprisonment. (May 29, 1928, 45 Stat. 1005, ch. 908, § 23.)

§ 36–224 [7: 134]. Loitering around salesrooms of newspapers prohibited during school hours.

No boy under the age of sixteen years required by law to attend school shall be permitted by any newspaper publisher or printer or person having for sale newspapers or periodicals of any character, to loiter or remain around any salesroom, assembly room, circulation room, or office for the sale of newspapers, between the hours of the opening of school in the forenoon and the close of school in the afternoon, on days when school is in session. Any newspaper publisher, printer, circulation agent, or seller of newspapers shall, upon conviction of permitting newsboys to loiter or remain around any assembly room, circulation room, salesroom, or office where papers are distributed or sold during such hours, be punished by a fine of not less than $25 nor more than $100, or by imprisonment for not less than ten days or more than thirty days. (May 29, 1928, 45 Stat. 1006, ch. 908, § 24.)

§ 36–225 [7: 135]. Board of Education to appoint inspectors—Appointments, how made.

The Board of Education of the District of Columbia is hereby authorized, empowered, and directed to appoint such a number of inspectors, clerks, and other assistants as shall be necessary to carry out the

provisions of this chapter: *Provided,* That at least two inspectors shall be so appointed. Such appointments shall be made from a list of applicants obtained from open competitive examinations conducted by the Boards of Examiners of the Board of Education designed to test the fitness of the applicant for the duties to be performed. (May 29, 1928, 45 Stat. 1006, ch. 908, § 25.)

§ 36–226 [7: 136]. Invalidity of portion of law not to affect remainder.

If any provision of this chapter or the application of such provision to certain circumstances be held invalid, the remainder of this chapter and the application of such provision to circumstances other than those as to which it is held invalid shall not be affected thereby. (May 29, 1928, 45 Stat. 1006, ch. 908, § 28.)

§ 36–227 [7: 137]. Board of Education to supervise and have appellate jurisdiction over agents and employees.

The Board of Education shall exercise general supervision and appellate jurisdiction over the agents and employees of said board engaged in the execution of this chapter. (May 29, 1928, 45 Stat. 1006, ch. 908, § 29.)

Chapter 3.—EMPLOYMENT OF WOMEN

Sec.

36–301. Employment of females—Period of employment.
36–302. Hours of employment.
36–303. Hours of continuous labor restricted.
36–304. Notice to be posted—Allowance for meals.
36–305. Time book to be kept.
36–306. Inspectors—Appointment.
36–307. Inspectors authorized to enter buildings.
36–308. Inspectors to enforce law—Reports.
36–309. Penalties.
36–310. Employers to furnish seats for female employees.
36–311. Penalty.

§ 36–301 [19: 21]. Employment of females—Period of employment.

No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in the District of Columbia more than eight hours in any one day or more than six days or more than forty-eight hours in any one week: *Provided,* That the Minimum Wage and Industrial Safety Board of the District of Columbia, during the period ending June 30, 1946, or such earlier date as the Congress by concurrent resolution may determine, may issue to employers engaged in businesses or occupations specified in this section, upon satisfactory showing to the said Board that such action is essential to the war effort, a temporary permit, for such period of time and in such form as it may deem advisable, to employ females for more than eight hours in any one day, or more than forty-eight hours, but not to exceed fifty-four hours, in any one week: *Provided further,* That in cases where said Board has issued permits under this section the employer shall pay employees working under such permits an additional sum at the rate of time and one-half for the time they are employed in excess of the limitations under existing law. A true and correct copy of all permits issued pursuant to the authority granted herein shall be displayed by the employer in a prominent place, and in such case the employer shall not be required to post the notice required in section 36–304. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 1; June 1, 1943, 57 Stat. 93, ch. 109; Apr. 27, 1945, 59 Stat. 95, ch. 97).

AMENDMENTS

The act of April 27, 1945, cited to text, amended section by substituting "June 30, 1946" for "June 30, 1945" in first proviso.

The act of June 1, 1943, cited to text, amended section by adding both provisos and final sentence and also provided for the termination of said amendment of June 30, 1945.

CROSS REFERENCE

Wages for women, § 36–408 et seq.

STATUTORY REFERENCE

Federal Wage and Hour Law, U. S. C., title 29, §§ 201–219.

§ 36–302 [19: 22]. Hours of employment.

No female under eighteen years of age shall be employed or permitted to work in or in connection with any of the establishments or occupations named in section 36–301 before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening of any one day. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 2.)

NOTES TO DECISIONS

EMPLOYEES OF GOVERNMENT PRINTING OFFICE

This act is not applicable to female employees in Government Printing Office (33 O. A. G. 355).

§ 36–303 [19: 23]. Hours of continuous labor restricted.

No female shall be employed or permitted to work for more than six hours continuously at one time in any establishment or occupation named in section 36–301 in which three or more such females are employed without an interval of at least three-quarters of an hour; except that such female may be so employed for not more than six and one-half hours continuously at one time if such employment ends not later than half past one o'clock in the afternoon and if she is then dismissed for the remainder of the day. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 3.)

§ 36–304 [19: 24]. Notice to be posted—Allowance for meals.

Every employer shall post and keep posted in a conspicuous place in every room in any establishment or occupation named in section 36–301 in which any females are employed a printed notice stating the number of hours such females are required or permitted to work on each day of the week, the hours of beginning and stopping such work, and the hours of beginning and ending the recess allowed for meals. The printed form of such notice shall be furnished by the inspectors authorized by sections 36–301 to 30–309. The employment of any such female for a longer time in any day than that stated in the printed notice shall be deemed a violation of the provisions of this section. Where the nature of the business makes it impracticable to fix the recess allowed for meals at the same time for all females

employed, the inspectors authorized to enforce sections 36–301 to 36–309 may issue a permit dispensing with the posting of the hours when the recess allowed for meals begins and ends, and requiring only the posting of the total number of hours which the females are required or permitted to work on each day of the week and the hours of beginning and stopping such work. Such permit shall be kept by such employer upon such premises and exhibited to all inspectors authorized to enforce sections 36–301 to 36–309. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 4.)

CROSS REFERENCES

Employees engaged in war work, posting of hours not required, see § 36–301.

§ 36–305 [19: 25]. Time book to be kept.

Every employer shall keep a time book or record for every female employed in any establishment or occupation named in section 36–301, stating the wages paid, the number of hours worked by her on each day of the week, the hours of beginning and stopping such work, and the hours of beginning and ending the recess allowed for meals. Such time book or record shall be open at all reasonable hours to the inspection of the officials authorized to enforce sections 36–301 to 36–309. Any employer who fails to keep such record as required by this section, or makes any false statement therein, or refuses to exhibit such time book or record, or makes any false statement to an official authorized to enforce sections 36–301 to 36–309 in reply to any question put in carrying out the provisions of sections 36–301 to 36–309 shall be liable for a violation thereof. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 5.)

§ 36–306 [19: 26]. Inspectors—Appointment.

The commissioners of the District of Columbia are hereby authorized to appoint three inspectors, two of whom shall be women, to carry out the purposes of sections 36–301 to 36–309. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 6.)

COMPILER'S NOTE

As enacted this section carried the words "at a compensation not exceeding $1,200 each per annum." The salary is now governed by the Classification Act of 1923 (42 Stat. 1488; U. S. C., title 5, § 673).

§ 36–307 [19: 27]. Inspectors authorized to enter buildings.

The inspectors authorized by sections 36–301 to 36–309 may in the discharge of their duties enter any place, building, or room where any labor is being performed by females which is affected by the provisions of sections 36–301 to 36–309 whenever such inspectors may have reasonable cause to believe that any such labor is being performed therein. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 7.)

§ 36–308 [19: 28]. Inspectors to enforce law—Reports.

The inspectors authorized by sections 36–301 to 36–309 shall visit and inspect the establishments and places of employment named in section 36–301 as often as practicable, during reasonable hours, and shall cause the provisions of sections 36–301 to 36–309 to be enforced therein and also the provisions of sections 36–310, 36–311. They shall make a daily report to the commissioners of the District of Columbia, and also report any cases of illegal employment contrary to the provisions of sections 36–301 to 36–309 to the corporation counsel of the District of Columbia. (Feb. 24, 1914, 38 Stat. 292, ch. 28, § 8.)

§ 36–309 [19: 29]. Penalties.

Any person who violates or does not comply with any of the provisions of sections 36–301 to 36–309 shall upon conviction be punished for a first offense by a fine of not less than $20 nor more than $50; for a second offense, by a fine of not less than $50 nor more than $200; for a third offense, by a fine of not less than $250. (Feb. 24, 1914, 38 Stat. 292, ch. 28, § 9.)

NOTES TO DECISIONS

ADMISSIBILITY OF EVIDENCE

In prosecution against employer for working employees in violation of this chapter, oral testimony of inspection for Minimum Wage and Industrial Safety Board as to contents of payroll record prepared by employer was inadmissible, where payroll record was the best and only source of knowledge of the violations charged, record was kept pursuant to § 36–305 and was quasi-public in character and open to government inspection and so could have been used by government without violating constitutional prohibition against self-incrimination, and the records were actually in court and immediately accessible to the prosecution. *Anderson* v. *District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 710).

In prosecution against employer for failure to keep proper time records of hours worked by employees in violation of § 36–305, testimony of inspector for Minimum Wage and Industrial Safety Board, based on owner's admission and not on inspection by witness, as to total absence of such records, was admissible without regard to the parole evidence rule. *Anderson* v. *District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 710).

IMPRISONMENT

A defendant convicted for violation of § 36–305 could be sentenced to prison in event of default in payment of fines, notwithstanding that this section provided for fines only, in view of § 11–606 authorizing commitment of defendant in default of payment of fine imposed. *Anderson* v. *District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 710).

INSPECTORS' FAILURE TO REPORT

The failure of inspector who inspected records of employer, to make daily reports to Commissioners of District of Columbia as required by § 36–308, did not preclude prosecution of employer for working employees in violation of this chapter and for failure to keep the time records of hours worked by employees as required by § 36–305. *Anderson* v. *District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 710).

§ 36–310 [19: 30]. Employers to furnish seats for female employees.

All persons who employ females in stores, shops, offices, or manufactories as clerks, assistants, operatives, or helpers in any business, trade, or occupation carried on or operated by them in the District of Columbia, shall be required to procure and provide proper and suitable seats for all such females and shall permit the use of such seats, rests, or stools, as may be necessary, and shall not make any rules, regulations, or orders preventing the use of such stools or seats when any such female employees are not actively employed in their work in such business or employment. (Mar. 2, 1895, 28 Stat. 964, ch. 192, § 1.)

§ 36–311 [19: 31]. Penalty.

If any employer of female help in the District of Columbia, shall neglect or refuse to provide seats, as provided in sections 36–310 and 36–311, or shall make any rules, orders, or regulations in his shop, store, or other place of business, requiring females to remain standing when not necessarily employed in service or labor therein, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be liable to a fine therefor in a sum not to exceed twenty-five dollars, with costs, in the discretion of the court. (Mar. 2, 1895, 28 Stat. 964, ch. 192, § 2.)

Chapter 4.—MINIMUM WAGE LAW

SUBCHAPTER I.—MINIMUM WAGES

Sec.
36–401. Definitions.
36–402. Minimum Wage Board—Members—Quorum.
36–403. Officers—Compensation.
36–404. Authority to take testimony—Subpoenas.
36–405. Regulations.
36–406. Annual report.
36–407. Authority concerning wages of women and minors.
36–408. Standards of wages to be declared.
36–409. Conference on inadequate wages.
36–410. Report of findings and recommendations.
36–411. Action of Board—Public hearings.
36–412. Licenses for less than time-rate standard.
36–413. Determination of minimum wages for minors.
36–414. Separate inquiries.
36–415. Investigations.
36–416. Decisions of fact by board final—Appeals on questions of law.
36–417. Penalties for violations.
36–418. Penalties for discrimination by employer against employee who testifies.
36–419. Employers responsible for acts of agents.
36–420. Jurisdiction of police court.
36–421. Civil action to recover if less than minimum wage paid.
36–422. Title and purpose of chapter.

SUBCHAPTER II.—INDUSTRIAL SAFETY

Sec.
36–431. Purpose of subchapter.
36–432. Definitions.
36–433. Additional duties of Board under this subchapter.
36–434. Rules and regulations—Public hearing—Publication—Effective date.
36–435. Authority to take testimony—Subpoena.
36–436. Variations by employers from regulations.
36–437. Employment of Director of Industrial Safety—Compensation—Duties.
36–438. Employers' duties—Furnish safe place of employment—Furnish required information—Report employees' injury, death, or disease—Record of employees.
36–439. Authority to examine place of employment.
36–440. Office space and supplies for Board.
36–441. Annual report to Commissioners.
36–442. Penalties for violations of subchapter—Jurisdiction of police court.

SUBCHAPTER I.—MINIMUM WAGES

§ 36–401 [19: 211]. Definitions.

Where used in this subchapter—

The term "Board" means the Minimum Wage and Industrial Safety Board created by section 36–402;

The term "commissioners" means the commissioners of the District of Columbia;

The term "woman" includes only a woman of eighteen years of age or over;

The term "minor" means a person of either sex under the age of eighteen years;

The term "occupation" includes a business, industry, trade, or branch thereof, but shall not include domestic service. (Sept. 19, 1918, 40 Stat. 960, ch. 174, title I, § 1; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 1.)

COMPILER'S NOTES

This statute was held unconstitutional in the case of *Atkins* v. *Children's Hosp.* (261 U. S. 525, 67 L. Ed. 785, 43 Sup. Ct. 394, 24 A. L. R. 1238). In 1936 this case was overruled and a law of similar import, enacted by the State of Washington, was declared constitutional, the case of *Morehead* v. *New York ex rel. Tipaldo* (298 U. S. 587, 80 L. Ed. 1347, 56 Sup. Ct. 918, 103 A. L. R. 1445), being distinguished. *West Coast Hotel Co.* v. *Parrish* (300 U. S. 379, 81 L. Ed. 703, 57 Sup. Ct. 578, 108 A. L. R. 1330).

On the theory that the last-mentioned case revitalized the District of Columbia Minimum Wage Law, it is incorporated in this Code.

AMENDMENTS

The act of Oct. 14, 1941, cited to text, amended section by changing name "Minimum Wage Board" to "Minimum Wage and Industrial Safety Board".

STATUTORY REFERENCE

Federal Wage and Hour Law, U. S. C., title 29, §§ 201–219.

§ 36–402 [19: 212]. Minimum Wage and Industrial Safety Board—Members—Quorum.

There is hereby created a board to be known as the "Minimum Wage and Industrial Safety Board," to be composed of three members to be appointed by the commissioners of the District of Columbia. As far as practicable, the members shall be so chosen that one will be representative of employees, one representative of employers, and one representing the public.

The commissioners shall make their first appointments hereunder within thirty days after this subchapter takes effect, and shall designate one of the three members first appointed to hold office until January 1, 1919; one to hold office until January 1, 1920; and one to hold office until January 1, 1921. On or before the first day of January of each year, beginning with the year 1919, the commissioners shall appoint a member to succeed the member whose term expires on such first day of January, and such new appointee shall hold office for the term of three years from such first day of January. Each member shall hold office until his successor is appointed and has qualified; and any vacancy that may occur in the membership of the board shall be filled by appointment by the commissioners for the unexpired portion of the term.

A majority of the members shall constitute a quorum to transact business, and the act or decision of such a majority shall be deemed the act or decision of the board; and no vacancy shall impair the right of the remaining members to exercise all the powers of the board. (Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 2; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 1.)

AMENDMENTS

The act of Oct. 14, 1941, cited to text, amended section by changing name "Minimum Wage Board" to "Minimum Wage and Industrial Safety Board".

§ 36–403 [19: 213]. Officers—Compensation.

The first members appointed shall, within twenty days after their appointment, meet and organize the board by electing one of their number as chairman and by choosing a secretary, who shall not be a member of the board; and on or before the 10th day of January of each year thereafter the board shall elect a chairman and choose a secretary for the ensuing year. The chairman and the secretary shall each hold office until his successor is elected or chosen; but the board may at any time remove the secretary. The secretary shall perform such duties as may be prescribed. The compensation of the secretary and all other employees of the board shall be fixed in accordance with the provisions of the Classification Act of 1923, as amended (U. S. C., title 5, ch. 13). None of the members shall receive any salary as such. The board shall have power to employ agents and such other assistants as may be necessary for the proper performance of its duties: *Provided,* That until further authorization by Congress, the sum which it may expend, including the salary of the secretary, shall not exceed the sum of $5,000. (Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 3; June 16, 1938, 52 Stat. 758, ch. 474.)

AMENDMENT

Act of 1938 amended act of 1918 by striking out the words "and receive such salary, not in excess of $2,500 per annum, as may be fixed by the Board," and inserting in lieu thereof "the compensation of the Secretary and all other employees of the Board shall be fixed in accordance with the provisions of the Classification Act of 1923, as amended."

NOTES TO DECISIONS

CONSTITUTIONALITY

A statute which authorizes a commission, after hearing representatives of employers and employees together with disinterested persons representing the public, to establish such minimum standards of wages and conditions of labor for women and minors as it shall consider reasonable and not detrimental to health and morals and which shall be sufficient for the decent maintenance of women; and to grant special licenses for the employment of apprentices and women who are physically defective or crippled by age or otherwise at less than the prescribed minimum wage is not unconstitutional. *West Coast Hotel Co.* v. *Parrish* (300 U. S. 379, 81 L. Ed. 703, 57 Sup. Ct. 578, 108 A. L. R. 1330).

§ 36–404 [19: 214]. Authority to take testimony—Subpœnas.

At any public hearing held by the board any person interested in the matter being investigated may appear and testify. Any member of the board shall have power to administer oaths and the board may require by subpœna the attendance and testimony of witnesses, the production of all books, registers and other evidence relative to any matters under investigation, at any such public hearing or at any session of any conference held as hereinafter provided. In case of disobedience to a subpœna the board may invoke the aid of the District Court of the United States for the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpœna the court may issue an order requiring appearance before the board, the production of documentary evidence, and the giving of evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 4.)

§ 36–405 [19: 215]. Regulations.

The board is hereby authorized and empowered to make rules and regulations for the carrying into effect of this subchapter, including rules and regulations for the selection of members of the conferences hereinafter provided for and the mode of procedure thereof. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 5.)

CROSS REFERENCE

Rules and regulations generally, § 1–226 and notes.

§ 36–406 [19: 216]. Annual report.

The board shall, on or before the 1st day of January of the year 1919, and of each year thereafter, make a report to the commissioners of its work and the proceedings under this subchapter. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 6.)

COMPILER'S NOTE

§ 7 of the act of 1918 provided an appropriation of $5,000 for the year 1919.

§ 36–407 [19: 218]. Authority concerning wages of women and minors.

The board shall have full power and authority: (1) To investigate and ascertain the wages of women and minors in the different occupations in which they are employed in the District of Columbia; (2) to examine, through any member or authorized representative, any book, pay roll or other record of any employer of women or minors that in any way appertains to or has a bearing upon the question of wages of any such women or minors; and (3) to require from such employer full and true statements of the wages paid to all women and minors in his employment.

Every employer shall keep a register of the names of the women and minors employed by him in any occupation in the District of Columbia, of the hours worked by each, and of all payments made to each, whether paid by the time or by the piece; and shall, on request, permit any member or authorized representative of the Board to examine such register.

To assist the Board in carrying out this chapter the Commissioners shall at all times give it any information or statistics in their possession under sections 36–301 to 36–309. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 8.)

CROSS REFERENCES

Other provisions concerning employment of minors, title 31, ch. 2, and chs. 1, 2 of this title.

Other provisions regulating employment of women, § 36–301 et seq.

Wages of employees employed on governmental projects, § 1–815.

§ 36–408 [19: 219]. Standards of wages to be declared.

The Board is hereby authorized and empowered to ascertain and declare, in the manner hereinafter provided, the following things: (a) Standards of minimum wages for women in any occupation within

the District of Columbia, and what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals; and (b) standards of minimum wages for minors in any occupation within the District of Columbia, and what wages are unreasonably low for any such minor workers. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 9.)

§ 36–409 [19: 220]. Conference on inadequate wages.

If, after investigation, the Board is of opinion that any substantial number of women workers in any occupation are receiving wages inadequate to supply them with the necessary cost of living and maintain them in health and protect their morals, it may call and convene a conference for the purpose and with the powers of considering and inquiring into and reporting on the subject investigated by the Board and submitted by it to such conference. The conference shall be composed of not more than three representatives of the employers in such occupation, of an equal number of representatives of the employees in such occupation, of not more than three disinterested persons representing the public, and of one or more members of the Board. The Board shall name and appoint all the members of the conference and designate the chairman thereof. Two-thirds of the members of the conference shall constitute a quorum, and the decision or recommendation or report of the conference on any subject submitted shall require a vote of not less than a majority of all its members.

The Board shall present to the conference all the information and evidence in its possession or control relating to the subject of the inquiry by the conference, and shall cause to be brought before the conference any witnesses whose testimony the Board deems material. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 10.)

§ 36–410 [19: 221]. Report of findings and recommendations.

After completing its consideration of and inquiry into the subject submitted to it by the Board, the conference shall make and transmit to the Board a report containing its findings and recommendations on such subject, including recommendations as to standards of minimum wages for women workers in the occupation under inquiry and as to what wages are inadequate to supply the necessary cost of living to women workers in such occupation and to maintain them in health and to protect their morals.

In its recommendations on a question of wages the conference (1) shall, where it appears that any substantial number of women workers in the occupation under inquiry are being paid by piece rates as distinguished from time rate, recommend minimum piece rates as well as minimum time rate and recommend such minimum piece rates as will, in its judgment, be adequate to supply the necessary cost of living to women workers in such occupation of average ordinary ability and to maintain them in health and protect their morals; and (2) shall, when it appears proper or necessary, recommend suitable minimum wages for learners and apprentices in such occupation and the maximum length of time any woman worker may be kept at such wages as a learner or apprentice, which wages shall be less than the regular minimum wages recommended for the regular women workers in such occupation. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 11.)

§ 36–411 [19: 222]. Action of Board—Public hearings.

Upon receipt of any report from any conference, the Board shall consider and review the recommendations, and may approve or disapprove any or all of such recommendations, and may resubmit to the same conference, or a new conference, any subject covered by any recommendations so disapproved.

If the Board approves any recommendations contained in any report from any conference, it shall publish a notice, once a week, for four successive weeks in a newspaper of general circulation printed in the District of Columbia, that it will, on a date and at a place named in the notice, hold a public hearing at which all persons in favor of or opposed to such recommendations will be heard.

After such hearing the Board may, in its discretion, make and render such an order as may be proper or necessary to adopt such recommendations and carry them into effect, requiring all employers in the occupation affected thereby to observe and comply with such order. Such order shall become effective sixty days after it is made. After such order becomes effective, and while it is effective, it shall be unlawful for any employer to violate or disregard any of its terms or provisions, or to employ any woman worker in any occupation covered by such order at lower wages than are authorized or permitted therein.

The Board shall, as far as is practicable, mail a copy of such order to every employer affected thereby; and every employer affected by any such order shall keep a copy thereof posted in a conspicuous place in each room in his establishment in which women workers are employed. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 12.)

§ 36–412 [19: 223]. Licenses for less than time-rate standard.

For any occupation in which only a minimum time-rate wage has been established, the board may issue to a woman whose earning capacity has been impaired by age or otherwise, a special license authorizing her employment at such wage less than such minimum time-rate wage as shall be fixed by the Board and stated in the license. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 13.)

§ 36–413 [19: 224]. Determination of minimum wages for minors.

The board may at any time inquire into wages of minors employed in any occupation in the District of Columbia, and determine suitable wages for them. When the board has made such determination it may make such an order as may be proper or necessary to carry such determination into effect. Such order shall become effective sixty days after

it is made; and after such order becomes effective and while it is effective it shall be unlawful for any employer in such occupation to employ a minor at less wages than are specified or required in or by such order. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 14.)

CROSS REFERENCE

See note to § 36–407.

§ 36–414 [19: 225]. Separate inquiries.

Any conference may make a separate inquiry into and report on any branch of any occupation, and the board may make a separate order affecting any branch of any occupation. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 15.)

§ 36–415 [19: 226]. Investigations.

The board shall from time to time investigate and ascertain whether or not employers in the District of Columbia are observing and complying with its orders, and shall report to the corporation counsel of the District of Columbia all violations of this chapter. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 16.)

§ 36–416 [19: 227]. Decisions of fact by board final—Appeals on questions of law.

All questions of fact arising under the foregoing provisions of this subchapter shall, except as otherwise herein provided, be determined by the board, and there shall be no appeal from the decision of the board on any such question of fact; but there shall be a right of appeal from the board to the District Court of the United States for the District of Columbia from any ruling or holding on a question of law included or embodied in any decision or order of the board; and, on the same question of law, from such court to the United States Court of Appeals for the District of Columbia. In all such appeals the corporation counsel shall appear for and represent the board. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 17.)

§ 36–417 [19: 228]. Penalties for violations.

Whoever violates this subchapter, whether an employer or his agent, or the director, officer, or agent of any corporation, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than $25 nor more than $100 or by imprisonment not less than ten days nor more than three months, or by both such fine and imprisonment. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 18.)

§ 36–418 [19: 229]. Penalties for discrimination by employer against employee who testifies.

Any employer and his agent, or the director, officer, or agent of any corporation who discharges or in any other manner discriminates against any employee because such employee has served or is about to serve on any conference or has testified or is about to testify, or because such employer believes that said employee may serve on any conference or may testify in any investigation or proceedings under or relative to this subchapter shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than $25 nor more than $100. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 19.)

§ 36–419 [19: 230]. Employers responsible for acts of agents.

Any act which, if done or omitted to be done by any agent or officer or director acting for such employer, would constitute a violation of this subchapter, shall also be held to be a violation by the employer and subject such employer to the liability provided for by this subchapter. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 20.)

§ 36–420 [19: 231]. Jurisdiction of police court.

Prosecutions for violations of this subchapter shall be on information filed in the police court of the District of Columbia by the corporation counsel. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 21.)

§ 36–421 [19: 232]. Civil action to recover if less than minimum wage paid.

If any woman worker is paid by her employer less than the minimum wage to which she is entitled under or by virtue of an order of the board, she may recover in a civil action the full amount of such minimum wage, less any amount actually paid to her by the employer, together with such reasonable attorney's fees as may be allowed by the court; and any agreement for her to work for less than such minimum wage shall be no defense to such action. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 22.)

§ 36–422 [19: 233]. Title and purpose of chapter.

This chapter shall be known as the "District of Columbia Minimum-Wage Law." The purposes of the chapter are to protect the women and minors of the District from conditions detrimental to their health and morals, resulting from wages which are inadequate to maintain decent standards of living; and the chapter in each of its provisions and in its entirety shall be interpreted to effectuate these purposes. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 23.)

SUBCHAPTER II.—INDUSTRIAL SAFETY

§ 36–431. Purpose of subchapter.

The purpose of this subchapter is to foster, promote, and develop the safety of wage earners of the District of Columbia in relation to their working conditions. (Sept. 19, 1918, ch. 174, title II, § 1, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Section 4 of the act of Oct. 14, 1941, cited to text, provided: "This Act (this subchapter) shall become effective upon its approval by the President (Oct. 14, 1941)."

APPROPRIATIONS

Section 13 of title II of the act of Sept. 19, 1918, as added by section 3 of the act of Oct. 14, 1941, both cited to text, provided: "There is hereby authorized to be appropriated, out of the revenues for the District of Columbia, a sum not to exceed $15,000 per annum, or so much thereof as may be necessary, for the proper administration of this title (this subchapter)."

SEPARABILITY PROVISIONS

Section 14 of title II of the act of Sept. 19, 1918, as added by section 3 of the act of Oct. 14, 1941, both cited

to text, provided: "If any provision of this title (this subchapter), or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this title (this subchapter), or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

NOTES TO DECISIONS

WAGE EARNERS PROTECTED

This chapter creating the Minimum Wage and Industrial Safety Board affects the relationship between employer and employee only, and safety regulations promulgated by Board pursuant to § 36–434 did not apply to plaintiff, a wall paper hanger who was not an employee of defendant operator of wall paper company, who was injured when a rod flew out of a wall paper trimming machine owned by defendant and being used by plaintiff in hanging wall paper purchased by plaintiff from defendant. *Kurtz* v. *Capital Wall Paper Co.* (D. C. Mun. App. 1948, 61 A. 2d 470).

§ 36–432. Definitions.

When used in this subchapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

(a) "Employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative, or foreman, or other persons having control or custody of any industrial employment, place of employment, or of any employee. It shall not include the District of Columbia or any instrumentality thereof, or the United States or any instrumentality thereof.

(b) "Board" means the Minimum Wage and Industrial Safety Board.

(c) "Safe" and "safety" as applied to an employment, a device, or a place of employment, including facilities of sanitation and hygiene, mean such freedom from danger to life or health of employees as circumstances reasonably permit, and shall not be given restrictive interpretation so as to exclude any mitigation or prevention of a specific danger.

(d) "Place of employment" means any place where industrial employment is carried on: *Provided, however,* That such term shall not include the premises of any Federal or District of Columbia establishment, except to include any and all work of whatever nature being performed by an independent contractor for the United States Government or any instrumentality thereof or the District of Columbia or any instrumentality thereof. (Sept. 19, 1918, ch. 174, title II, § 2, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Effective date of section, see note under § 36–431.

§ 36–433. Additional duties of Board under this subchapter.

The Board, in addition to its duties defined in subchapter I shall administer the provisions of this subchapter and shall have power to make such inspections and investigations as it may deem necessary; collect and compile statistical information; require employers to keep their places of employment reasonably safe; require employers to keep such records as it may deem advisable and to furnish the Board with complete, detailed reports relative to all accidents; determine and fix reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment; promulgate general rules and regulations based upon such standards and fix the minimum safety requirements which shall be complied with by employers within the purview of this subchapter. (Sept. 19, 1918, ch. 174, title II, § 3, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Effective date of section, see note under § 36–431.

NOTES TO DECISIONS

CONSTITUTIONALITY

Congress has power to impose on employer in District of Columbia duty to ascertain at his peril whether his equipment, used by employees, complies with set minimum safety standards. *Davis* v. *District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

VALIDITY OF REGULATIONS

A regulation of District of Columbia Industrial Safety Board that general slope of cross grain in wood side rails of portable ladders built to minimum dimensions should not exceed one inch in fifteen inches was not unreasonable, either in general or as applied to employer using or causing his employees to use a ladder having greater slope of grain. *Davis* v. *District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

Unreasonableness of requirement in regulation of District of Columbia Industrial Safety Board as to ladders that wood used in side rails thereof be dried to not more than specified moisture content did not render entire regulation, including provision as to maximum general slope of cross grain in such rails, unreasonable. *Davis* v. *District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

COVERAGE OF REGULATION

A regulation of District of Columbia Industrial Safety Board that general slope of cross grain in side rails of portable ladders should not exceed one inch in fifteen inches was directed to employers using ladders in district rather than ladder manufacturers or retailers who might be located in any part of nation. *Davis* v. *District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

§ 36–434. Rules and regulations—Public hearing—Publication—Effective date.

Before any rules or regulations of the Board shall become effective a public hearing shall be held by the Board for the purpose of investigating reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment, and any person interested in the matter being investigated may appear and testify. If, after investigation, the Board is of the opinion that minimum standards of safety requirements are necessary to protect or safeguard the lives or health of employees covered by this subchapter, it may adopt and promulgate such rules and regulations as it may deem advisable, which shall become effective thirty days after publication of notice at least once in a newspaper of general circulation in the District of Columbia that they have been adopted and copies are available to the public at the office of the Board. (Sept. 19, 1918, ch. 174, title II, § 4, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 4, amended June 14, 1944, 58 Stat. 279, ch. 258.)

AMENDMENTS

The act of June 14, 1944, cited to text, amended section by deleting "they have been published at least once in two of the daily newspapers of general circulation in the

District of Columbia.", and inserting in lieu thereof "publication of notice * * * office of the Board.".

EFFECTIVE DATE

Effective date of section, see note under § 36–431.

§ 36–435. Authority to take testimony—Subpoena.

Any member of the Board shall have power to administer oaths and the Board may require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing, or at any session or any conference held by the Board. In case of disobedience to a subpoena the Board may invoke the aid of the District Court of the United States for the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In the case of contumacy or refusal to obey a subpoena, the court may issue an order requiring appearance before the Board, the production of documentary evidence and the giving of evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Sept. 19, 1918, ch. 174, title II, § 5, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Effective date of section, see note under § 36–431.

§ 36–436. Variations by employers from regulations.

The Board may, upon written application of any employer affected by such rule or regulation, permit variations from any provisions thereof if it shall find that the application of such provision would result in unnecessary hardship or practical difficulty: *Provided, however,* That the Board shall keep a properly indexed record of all variations permitted from any rule or regulation which shall be open to public inspection. (Sept. 19, 1918, ch. 174, title II, § 6, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Effective date of section, see note under § 36–431

§ 36–437. Employment of Director of Industrial Safety—Compensation—Duties.

The Board is hereby authorized to employ a Director of Industrial Safety, who shall not be a member of the Board and whose compensation shall be fixed in accordance with the Classification Act of 1923, as amended (5 U. S. C. §§ 661–663, 664–673, and 674). The Director shall perform such duties as may be prescribed by the Board in administering the provisions of this subchapter. (Sept. 19, 1918, ch. 174, title II, § 7, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Effective date of section, see note under § 36–431.

§ 36–438. Employers' duties—Furnish safe place of employment—Furnish required information—Report employees' injury, death, or disease—Record of employees.

(a) Every employer shall furnish a place of employment which shall be reasonably safe for employees, shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably safe and adequate to render such employment and place of employment reasonably safe.

(b) Every employer shall furnish to the Board any information which the Board is authorized to require and shall make true and specific answers to all questions.

(c) Every employer shall submit to the Board within ten days from the date of any injury or death, or from the date that the employer has knowledge of any disease or infection resulting from any injury, a duplicate copy of the report provided for in section 33–930, as made applicable to the District of Columbia by sections 36–501 and 36–502.

(d) Every employer shall keep an accurate record of every person employed by him so as to be able in case of accident immediately to give an accurate record relative to same. (Sept. 19, 1918, ch. 174, title II, § 8, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Effective date of section, see note under § 36–431.

§ 36–439. Authority to examine place of employment.

(a)[1] The Board, or any officer or employee acting under its authority, shall have the authority, at any reasonable time, to enter any place where an employment covered by this subchapter is being carried on, and to examine any structure, tool, appliance, machinery, or process used in or connected with such employment. No employer or other persons shall refuse to admit any member of the Board or its authorized representative to any such place or to permit any such examination. (Sept. 19, 1918, ch. 174, title II, § 9, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Effective date of section, see note under § 36–431.

§ 36–440. Office space and supplies for Board.

The Commissioners of the District of Columbia shall furnish the Board with such office space, furniture and equipment, stationery, books, books of reference, and other supplies as are necessary for the discharge of its duties under this subchapter. (Sept. 19, 1918, ch. 174, title II, § 10, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Effective date of section, see note under § 36–431.

§ 36–441. Annual report to Commissioners.

The Board shall annually, on or before the 1st day of July, file with the Commissioners of the District of Columbia a report covering its activities under this subchapter. (Sept. 19, 1918, ch. 174, title II, § 11, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Effective date of section, see note under § 36–431.

§ 36–442. Penalties for violations of subchapter—Jurisdiction of police court.

Whoever violates any of the provisions of this subchapter, or any rules or regulations promulgated

[1] So in original. There is no subsec. (b).

hereunder, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not more than $300, or by imprisonment of not exceeding ninety days. Prosecutions for violations of this subchapter shall be in the name of the District of Columbia on information filed in the police court of the District of Columbia by the corporation counsel or one of his assistants. (Sept. 19, 1918, ch. 174, title II, § 12, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Effective date of section, see note under § 36–431.

NOTES TO DECISIONS

BURDEN OF PROOF

The burden is on employer, charged with violation of District of Columbia Industrial Safety Board's regulation, with its general authority, as to slope of cross grain in wood side rails of ladders, to demonstrate clearly that regulation is beyond board's delegated authority or so unreasonable as to be void. *Davis* v. *District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

WITNESSES

One who had been an inspector for industrial safety board of District of Columbia for over five years, had previously been employed as carpenter, iron worker and rigger for large construction company for over thirty years, and was member of carpenters' and iron workers' unions, was qualified to testify as expert that side rail of ladder showed cross grain of one inch in five inches in violation of board's regulation that slope of cross grain should not exceed one inch in fifteen inches. *Davis* v. *District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

Chapter 5.—WORKMEN'S COMPENSATION

Sec.
36–501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.
36–502. Exceptions.

§ 36–501 [19: 11]. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

The provisions of title 33, chapter 18, of the Code of Laws of the United States, including all amendments that may be made thereto after May 17, 1928, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person. (May 17, 1928, 45 Stat. 600, ch. 612, § 1.)

CROSS REFERENCE

Actions for wrongful death generally, § 16–1201 et seq.

NOTES TO DECISIONS

ABATEMENT

Where all matured installments had been paid at the date of compensation claimant's death without dependents the unmatured portion of the award abated. *Turner* v. *Christian Heurich Brewing Co.* (C. A., D. C. 1948, 169 F. 2d 681).

ACCIDENTAL INJURY

The evidence, particularly the testimony of the physician, justified the deputy commissioner in ruling that the paralysis was the natural result of the accidental injury. *Massachusetts Bonding & Ins. Co.* v. *Hoage* (63 App. D. C. 89, 69 Fed. (2d) 575).

"Accidental injury" includes any injury which is unexpected or not designed, and just as much includes injury sustained by an employee subject to physical infirmities as injury to one who is strong and robust. *Commercial Casualty Ins. Co.* v. *Hoage* (64 App. D. C. 158, 75 Fed. (2d) 677).

ACTION AT LAW

An employee who elects to bring action at law against employer who failed to secure payment of compensation as required by 33 U. S. C. § 932 as authorized by § 905 has affirmative duty of showing negligence equally as great as in any other tort action. *Garcia* v. *De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

APPEAL

Fact that evidence taken and certified in disregard of technical rules of procedure does not invalidate it or render it any the less entitled to consideration on an appeal when no request was made for a trial de novo. *Georgia Casualty Co.* v. *Hoage* (61 App. D. C. 195, 59 Fed. (2d) 870).

In workmen's compensation case, function of United States Court of Appeals for the District of Columbia is limited to determining whether the finding of the deputy commissioner is supported by substantial evidence. *Great American Indemnity Co.* v. *Cardillo,* 1943 (135 F. 2d 241, 77 U. S. App. D. C. 306).

In workmen's compensation case, the United States Court of Appeals for District of Columbia cannot sit as reappraisers of the evidence. *Great American Indemnity Co.* v. *Cardillo,* 1943 (135 F. 2d 241, 77 U. S. App. D. C. 306).

APPLICATION OF STATUTE

To bring the case within the terms of the Employers' Liability Act, the defendant must have been at the time of the injury engaged as a common carrier in interstate commerce or commerce solely within the District, and the plaintiff-employee must have been employed by a carrier in such commerce or in work so closely related to it as to be practically a part of it. *Poff* v. *Washington Terminal Co.* (63 App. D. C. 86, 69 Fed. (2d) 572).

There is no substantial reason for denying the District the right to enforce its own law in its own courts, and that in the circumstances the full faith and credit clause does not require that the statutes of Alabama be given effect. *United States Casualty Co.* v. *Hoage* (64 App. D. C. 284, 77 Fed. (2d) 542).

An intent to bar compensation claims before they arise cannot fairly be imputed to Congress. *Potomac Elec. Power Co.* v. *Cardillo* (71 App. D. C. 163, 107 Fed. (2d) 962).

Under the United States Employees' Compensation Act an injured employee of the United States has his sole remedy. *Posey* v. *Tennessee Valley Authority* ((C. C. A. 5), 93 Fed. (2d) 726).

Where salesman's office was in District of Columbia, though his selling contacts were largely outside and his time was nearly equally divided between the two, this section affording him protection for injuries while traveling outside the district in connection with his employment was valid and within power of Congress. *B. F. Goodrich Co.* v. *Britton,* 1944 (139 F. 2d 362, 78 U. S. App. D. C. 221).

Whether employer was at time of injury engaged in business in District of Columbia and whether deceased was an employee within District in carrying on of the business, and when injured was performing services in connection with the employment, were important considerations in determining whether this section was applicable. *B. F. Goodrich Co.* v. *Britton,* 1944 (139 F. 2d 362, 78 U. S. App. D. C. 221).

Generally, employer must compensate workman for consequences of an accident although his previous defects cooperated in producing them, and a statute creating exceptions to that general principle should be narrowly construed. *National Homeopathic Hospital Ass'n of Dist. of Col.* v. *Britton,* 1945 (147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 89 L. Ed. 1977).

New York authorities interpreting New York Compensation Act, McKinney's Workmen's Compensation Law § 1 et seq., are particularly important in construing 33 U. S. C. § 901 et seq., since former Act served as model for latter, which was made applicable to District of Columbia by this section. *Garcia* v. *De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

Where appellant was injured while working in appellee's car barn, he could not recover under § 44–401 of the Code since § 36–501 has become the applicable workman's compensation act for the District and appellee was not a common carrier by railroad and is excepted from the operation of § 36–501. *Keffer* v. *Capital Transit Co.* (C. A. D. C. 1950, 183 F. 2d 808).

ASSUMPTION OF RISK

A ride by employee on running board of dump truck was not so obviously dangerous or risky a method of traveling a few hundred feet that employee assumed risk of injury. *Smoot Sand & Gravel Corp.* v. *Britton* (App. D. C. 1945, 152 F. 2d 17, 80 U. S. App. D. C. 260).

AWARD

Wage-earning capacity of the employee was diminished by reason of the injuries sustained by him in the course of and arising out of his employment. *Hartford Acc. & Indem. Co.* v. *Hoage* (66 App. D. C. 163, 85 Fed. (2d) 420).

Medical and similar benefits which the employer is required to furnish are not to be counted in applying the $7,500 limit of "total compensation" payable for death or injury, and it follows that compensation acts are to be "construed liberally in furtherance of the purpose for which they were enacted." *Cardillo* v. *Liberty Mut. Ins. Co.* (69 App. D. C. 330, 101 Fed. (2d) 254).

When employee had hernia which caused disability, at first apparently temporary but later becoming permanent, this change is sufficient to support the modification of an award. *New Amsterdam Casualty Co.* v. *Cardillo* (71 App. D. C. 172, 108 Fed. (2d) 492).

Where employee fell in course of his work and fractured right kneecap, but previous accidents, none of them connected with any employment, had fractured same kneecap and had led to amputation of left leg and left arm, and the fracture caused by the fall, combined with the previous fracture and amputations, caused permanent total disability, the employee was properly awarded compensation based on permanent total disability and on his earning capacity at time of the fall. *National Homeopathic Hospital Ass'n of Dist. of Col.* v. *Britton,* 1945 (147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 89 L. Ed. 1977).

CHANGE IN PHYSICAL CONDITION

There was, within the meaning of this section, a change in the injured person's physical condition in relation to the injury, since the condition, which was temporary at one time, had become permanent. *New Amsterdam Casualty Co.* v. *Cardillo* (71 App. D. C. 172, 108 Fed. (2d) 492).

COMMISSIONER'S FINDING OF FACT

When evidence sustained the deputy commissioner's finding of suicide as opposed to accident, the court should not have disturbed an order denying compensation. *Del Vecchio* v. *Bowers* (296 U. S. 280, 80 L. Ed. 229, 56 Sup. Ct. 190).

The deputy commissioner's findings of fact, if supported by evidence, are conclusive. *Employers Liability Assur. Corp.* v. *Hoage* (63 App. D. C. 53, 69 Fed. (2d) 227); *Malone* v. *Hoage* (64 App. D. C. 38, 73 Fed. (2d) 855); *Maryland Casualty Co.* v. *Cardillo* (71 App. D. C. 160, 107 Fed. (2d) 959).

Cases in which an order of the Commissioner may be set aside as "not in accordance with law" are only those in which it appears that there is an error of law, or in which the order of the Commissioner is not supported by substantial evidence, as well, of course, in those in which it is arbitrary and unreasonable. *Whitfield* v. *Hoage* (63 App. D. C. 237, 71 Fed. (2d) 690).

As the question is solely the fact of employment, and, as this fact is an essential condition precedent to the right to make the claim, the proceeding in the court below was entirely proper, and Supreme Court will not overrule lower court unless findings are clearly wrong. *Metropolitan Casualty Ins. Co.* v. *Hoage* (63 App. D. C. 307, 72 Fed. (2d) 175).

Deputy commissioner was justified in concluding that the death of the deceased arose at least in substantial part from his employment. *London Guarantee & Acc. Co.* v. *Hoage* (63 App. D. C. 323, 72 Fed. (2d) 191).

Conclusion reached by deputy commissioner upon the facts found by him was contrary to law, and the claim of appellant should have been sustained when he was an employee at the time of the accident, at his place of duty, and engaged in his employment. *Scott* v. *Hoage* (63 App. D. C. 391, 73 Fed. (2d) 114).

Chain of causation, beginning with the inhalation of the gas and ending in his death, as found by the deputy commissioner, is satisfactorily shown by the evidence. *National Casualty* v. *Hoage* (64 App. D. C. 33, 73 Fed. (2d) 850).

Findings of the deputy commissioner upon the facts in compensation case are final and conclusive when supported by competent evidence. The act does not authorize the court to reweigh the evidence when more than one inference can be drawn for the purpose of arriving at a different conclusion from the deputy commissioner. *Fulton* v. *Hoage* (64 App. D. C. 232, 77 Fed. (2d) 110).

Testimony supports the deputy commissioner's finding that the employee was "mentally incompetent" from the time of his injury to the time when his committee was appointed. *Hoage* v. *Terminal Refrigerating & Warehousing Co.* (65 App. D. C. 5, 78 Fed. (2d) 1009).

Deputy commissioner, when passing upon the extent of injured person's vision, should not have excluded from consideration the assistance which he could receive from the use of glasses. *Washington Terminal Co.* v. *Hoage* (65 App. D. C. 33, 79 Fed. (2d) 158).

Deputy commissioner is authorized to award compensation using as the basis for his average annual earnings such sum as shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury, having regard to "the previous earnings of the injured employee and of other employees of the same or most similar class." *Hartford Acc. & Indem. Co.* v. *Hoage* (66 App. D. C. 154, 85 Fed. (2d) 411).

Deputy commissioner and the District Court were within their discretion in finding, in effect, that declarations concerning the injury were corroborated. *Associated General Contractors* v. *Cardillo* (70 App. D. C. 303, 106 Fed. (2d) 327).

To same effect as third paragraph of original annotation, see *Groom* v. *Cardillo,* 1941 (119 F. 2d 697, 73 App. D. C. 358).

In workmen's compensation case, findings of a deputy commissioner, if supported by substantial evidence, are conclusive on court regardless of whether findings result in the grant or denial of a claim to compensation. *Carson* v. *Cardillo,* 1942 (132 F. 2d 604, 77 U. S. App. D. C. 82).

In proceeding under this chapter, deputy commissioner's finding of fact is subject to review and reversal by a court only in a case in which the findings are not supported by substantial evidence. *Gudmundson* v. *Cardillo,* 1942 (126 F. 2d 521, 75 U. S. App. D. C. 230, affirming 35 F. Supp. 527).

Where district court determined that evidence did not support deputy commissioner's finding that at time of employee's death widow was living apart for justifiable cause, failure of district court to remand case to deputy commissioner for possible finding either that widow was dependent for support on employee or that she was living with him was not error where evidence would not have supported either finding. *Weeks* v. *Behrend,* 1943 (135 F. 2d 258, 77 U. S. App. D. C. 341).

To same effect as second paragraph of original annotation, see *London Guarantee & Accident Co.* v. *Britton,* 1944 (138 F. 2d 932, 78 U. S. App. D. C. 195).

In proceeding under this chapter, Deputy Commissioner's findings as to jurisdiction are entitled to great weight and will be rejected only where there is apparent error. *Cardillo* v. *Liberty Mut. Ins. Co.,* 1947 (67 S. Ct. 801, 91 L. Ed. 610).

Finding of Deputy Commissioner that injuries sustained by stenographer, who was struck by taxicab while on way to lunch, did not arise out of and in course of employment, was supported by evidence and was not inconsistent with law. *Wetzel* v. *Britton* (App. D. C. 1948, 170 F. 2d 285).

CONSTITUTIONALITY

This section does not violate constitutional provision for jury trial. *Rowlette* v. *Rothstein Dental Laboratories,* (61 App. D. C. 373, 63 Fed. (2d) 150, Cert. den. 289 U. S. 736, 77 L. Ed. 1484, 53 Sup. Ct. 657).

This chapter, which makes factual decision of deputy commissioner final, does not violate the "due process of law" provision of U. S. Const. Amend. 5. *Gudmundson* v. *Cardillo,* 1942 (126 F. 2d 521, 75 U. S. App. D. C. 230, affirming 35 F. Supp. 527).

This chapter, construed as applying to case where there is some substantial connection between the District and the particular employee-employer relationship regardless of place of work or injury, fully satisfies any constitutional question of due process or full faith and credit. *Cardillo* v. *Liberty Mut. Ins. Co.,* 1947 (67 S. Ct. 801, 91 L. Ed. 610).

CONTRIBUTORY NEGLIGENCE

Contributory negligence of employee is no defense under 33 U. S. C. § 904 (b) and this section. *Smoot Sand & Gravel Corp.* v. *Britton* (App. D. C. 1945, 152 F. 2d 17, 80 U. S. App. D. C. 260).

DEATH IN THE COURSE OF EMPLOYMENT

In determining whether death arose out of employment, when store manager was accidentally killed by gunshot wound, evidence that his possession of pistol was reasonably necessary for performance of his duties was admissible. *Del Vecchio* v. *Bowers* (62 App. D. C. 327, 67 Fed. (2d) 751).

Butcher's death which was caused by the violent wrench suffered by him when handling the calf permitting the escape of colon bacili causing pus, and finally involving the lower lobe of the left lung resulting in pneumonia, was accidental. *Employer's Liability Assur. Corp.* v. *Hoage* (67 App. D. C. 245, 91 Fed. (2d) 318).

This section creates a right of action against employer on account of death of employee arising out of and in course of employment, but it does not create a cause of action for wrongful death against any other person. *Webster* v. *Clodfelter,* 1942 (130 F. 2d 434, 76 U. S. App. D. C. 171, 143 A. L. R. 280, affirming 39 F. Supp. 62, certiorari denied 63 S. Ct. 261, 317 U. S. 689, 87 L. Ed. 552).

Heat stroke causing death of parking lot attendant was compensable as "arising out of and in course of employment." *Davison* v. *Cardillo,* 1944 (143 F. 2d 154, 79 U. S. App. D. C. 121).

Where lease, occupancy permit, and insurance against fire and theft were all in name of operator of parking lot alone, both before and after making of "partnership agreement" with deceased parking lot attendant which contained no provision for distribution of profits, deceased was not a "partner," but an "employee," and his death was compensable. *Davison* v. *Cardillo,* 1944 (143 F. 2d 154, 79 U. S. App. D. C. 121).

Where salesman was fatally injured in automobile accident while on way back to his office in District of Columbia from a business trip in Pennsylvania, the salesman's death was compensable since it "arose out of employment." *B. F. Goodrich Co.* v. *Britton,* 1944 (139 F. 2d 362, 78 U. S. App. D. C. 221).

Where contract between employer and union required employer to furnish transportation for work outside District of Columbia and employer performed its contractual obligation by paying travel costs and allowing employees to select transportation method, Deputy Commissioner's finding that fatal injury, received by employee while driving his automobile homeward after terminating day's work, "arose out of and in course of employment", was justified even though employee was not being paid wages at time of accident. *Cardillo* v. *Liberty Mut. Ins. Co.,* 1947 (67 S. Ct. 801, 91 L. Ed. 610).

"Course of employment" within 33 U. S. C. § 902 (2) may include incidents of social character, the correct criterion being involvement of the incident in the employment. *Hurley* v. *Lowe* (App. D. C. 1948, 168 F. 2d 553, certiorari denied, 68 S. Ct. 1338, 334 U. S. 828, 92 L. Ed. 1756).

"Course of employment" on a specified errand or business trip, ordered by an employer, to a place different from the regular place of employment, includes all the ordinary incidents of the errand, such as the eating of meals in ordinary places at ordinary times which the employer would normally contemplate as occurring in the course of errand. *Hurley* v. *Lowe* (App. D. C. 1948, 168 F. 2d 553, certiorari denied, 68 S. Ct. 1338, 334 U. S. 828, 92 L. Ed. 1756).

Where attorney employed by law firm in District of Columbia was sent by firm on business trip to another city and during course of dinner with his father and mother at restaurant in that city sustained an injury from which he died, conclusion of deputy commissioner that dinner was of a social character and that therefore injury was not sustained in "course of employment" was not "forbidden by law" or without any reasonable legal basis, and hence could not be disturbed by reviewing court, though contrary to court's opinion. *Hurley* v. *Lowe* (App. D. C. 1948, 168 F. 2d 553, certiorari denied, 68 S. Ct. 1338, 334 U. S. 828, 92 L. Ed. 1756).

DEPENDENCY

The term "justifiable cause," in Longshoremen's Compensation Act, 33 U. S. C. § 902 (16), defining widow, is used in its legal sense and ordinarily a wife who lives apart from her husband does so for what is called "justifiable cause" only when she does so because of her husband's matrimonial misconduct. *Weeks* v. *Behrend,* 1943 (135 F. 2d 258, 77 U. S. App. D. C. 341).

Where employee and wife lived apart by mutual consent, so that employee would be eligible for relief, wife made no objection to employee's leaving and no attempt to rejoin him, and employee made no regular contributions to wife's support, the wife was not entitled to compensation under this chapter for death of employee on theory that she was living apart for "justifiable cause." *Weeks* v. *Behrend,* 1943 (135 F. 2d 258, 77 U. S. App. D. C. 341).

Where employee and wife lived apart by mutual consent, employee made no regular contributions to wife's support, and wife testified in effect that she earned a modest living by running a rooming house which she and her brother owned, while her husband was on relief, evidence would not sustain award of compensation under this chapter on theory that the wife was "dependent for support" on the employee or that she was "living with" the employee. *Weeks* v. *Behrend,* 1943 (135 F. 2d 258, 77 U. S. App. D. C. 341).

Partial dependency will sustain an award of compensation under the Longshoremen's Compensation Act, 33 U. S. C. § 901 et seq., but occasional contributions will not sustain a finding of partial dependency unless they are necessary and relied on. *Weeks* v. *Behrend,* 1943 (135 F. 2d 258, 77 U. S. App. D. C. 341).

Compensation benefits rest solely upon statutory authority and the rights of beneficiaries are dependent upon and limited by the terms of 33 U. S. C. § 901 et seq., the purpose of which is to protect a disabled employee and his dependents. *Turner* v. *Christian Heurich Brewing Co.* (C. A., D. C. 1948, 169 F. 2d 681).

DISABILITY, DEFINITION OF

In construing statutory provision that if an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer should provide compensation only for disability caused by the subsequent injury, the relevant parts of the statutory definitions of "disability" and "injury" must be read in the place of the defined word "disability", so that the statutory phrase "combined with a previous disability" becomes "combined with a previous incapacity because of accidental injury arising out of and in course of employment". *National Homeopathic Hospital Ass'n of Dist. of Col.* v. *Britton,* 1945

(147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 89 L. Ed. 1977).

ELECTION OF REMEDIES

Under this chapter, which entitles injured employee to receive from his employer any excess over reimbursement which employer recovers from third party wrongdoer, injured employee's acceptance of compensation operates as an absolute transfer to the employer of substantive rights of injured employee against the wrongdoer and strips the employee of any further right until the employer recovers an amount in excess of his expenditures and only then a new right arises against the employer for the excess. *Moore* v. *Hechinger,* 1942 (127 F. 2d 746, 75 U. S. App. D. C. 391, affirming 39 F. Supp. 427).

The alternative remedy against an employer who fails to secure payment of compensation as required by 33 U. S. C. § 901 et seq. provided by § 905 authorizing an election to claim compensation or to maintain action in law or in admiralty for damages on account of injury or death of employee is elective. *Garcia* v. *De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

Standard workmen's compensation and employers' liability policy obligating insurer to pay promptly any person entitled to payment under the compensation law, and providing that all provisions of the law covered should remain part of policy, secured compensation to minor injured in course of employment while allegedly employed contrary to Child Labor Law, § 36–201 et seq., for any claim properly cognizable under the law, so that minor's remedy for workmen's compensation was exclusive, and minor could not maintain a common-law suit against employer for injuries, notwithstanding provision of policy obligating insurer to indemnify employer against loss by reason of liability imposed on him by law on account of injuries of employees "legally employed". *Mellen* v. *Hirsch* (D. C. Md. 1948, 8 F. R. D. 250, supplemented 8 F. R. D. 248).

EMPLOYEES' DUTIES CONTROLLING

Where main duty of deckhand employed on a stripper dredge was to coal up dredge from scow, and coal was used to fire engine which operated scoop shovel, deckhand was not a "member of a crew," and hence his claim for injuries was covered by the Longshoremen's Compensation Act, 33 U. S. C. § 901 et seq., as made applicable to a District of Columbia employer and not by the Merchant Marine Act, 46 U. S. C. § 688. *Beddoo* v. *Smoot Sand & Gravel Corporation,* 1942 (128 F. 2d 608, 76 U. S. App. D. C. 39).

EMPLOYER—SUBROGATION—PARTY PLAINTIFF

An employer or an insurance carrier who has paid compensation to the only beneficiary or beneficiaries entitled to receive the same and who has a right of subrogation may bring the subrogation action against the third person who caused the death of the employee, and the action need not be brought by the personal representative of the decedent. *Aetna Life Ins. Co.* v. *Moses* (287 U. S. 530, 77 L. Ed. 477, 53 Sup. Ct. 231, revg. 57 Fed. (2d) 443).

In case there is more than one dependent and one only elects to accept workmen's compensation and the other dependent or dependents elect to bring an action under the wrongful death statute, then the employer is not entitled to sue as a subrogee but the action must be brought by the personal representative of the decedent, the employee having the right to demand that such action be brought and that he share in the recovery. *Doleman* v. *Levine* (295 U. S. 221, 79 L. Ed. 1402, 55 Sup. Ct. 741, revg. 73 Fed. (2d) 842).

EMPLOYMENT OUTSIDE STATE

In compensation proceeding under this chapter, evidence that offer of employment was made by employer's foreman in District of Columbia, that workman was not hired until he was put to work in Maryland, and that injury occurred in Maryland sustained deputy commissioner's finding that the employment relationship was created in Maryland and not in the District of Columbia and that the deputy commissioner did not have jurisdiction to make an award. *Gudmundson* v. *Cardillo,* 1942 (126 F. 2d 521, 75 U. S. App. D. C. 230, affirming 35 F. Supp. 527).

EMPLOYMENT RELATIONSHIP

Under this chapter, right to compensation depends on existence of relation of master and servant at time of injury. *Liberty Mut. Ins. Co.* v. *Cardillo* (App. D. C. 1946, 154 F. 2d 529, 81 U. S. App. D. C. 72, certiorari granted 67 S. Ct. 73, 329 U. S. 698, 91 L. Ed. 610 reversed 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

Liability under this chapter is based, not on any act or omission of employer, but upon existence of relationship which employee bears to employment because of and in course of which he has been injured. *Liberty Mut. Ins. Co.* v. *Cardillo* (App. D. C. 1946, 154 F. 2d 529, 81 U. S. App. D. C. 72, certiorari granted 67 S. Ct. 73, 329 U. S. 698, 91 L. Ed. 610 reversed 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

EVIDENCE TO SUSTAIN AWARD

Where an employee within the provisions of this act is found dead and the evidence on the issue of accident or suicide is evenly balanced, the presumption created by § 20 (d) of the Longshoremen's and Harbor Workers' Compensation Act that the death was not suicidal, has not the quality of affirmative evidence. The presumption may be invoked only where there is an entire lack of competent evidence. *Del Vecchio* v. *Bowers* (296 U. S. 280, 80 L. Ed. 229, 56 Sup. Ct. 190).

Evidence showed quite clearly that the possession of the pistol was reasonably necessary in the duty which deceased owed to protect his employer's property and his own life. *Del Vecchio* v. *Bowers* (62 App. D. C. 327, 67 Fed. (2d) 751).

To justify an award there must have been some substantial connection between the alleged accident and the employment. *Hoage* v. *Liberty Mut. Ins. Co.* (64 App. D. C. 395, 78 Fed. (2d) 874).

The weight of the evidence is for the deputy commissioner and not for the courts under the Compensation Act. *Potomac Elec. Power Co.* v. *Cardillo* (71 App. D. C. 163, 107 Fed. (2d) 962).

Where employee sustained toe injury in October which was followed by protracted infection, debility, and lowered resistance, and carbuncle appeared in June following, in workmen's compensation proceeding, fact that expert opinion regarding the links before the carbuncle was not unanimous might have detracted from its weight as evidence, but it did not destroy its substantiality. *Great American Indemnity Co.* v. *Cardillo,* 1943 (135 F. 2d 241, 77 U. S. App. D. C. 306).

Where employee sustained toe injury in October which was followed by protracted infection, debility, and lowered resistance, and carbuncle appeared in June following, and causal relation between carbuncle, subsequent hip injury, osteomyelitis, and osteoporosis, which caused temporary total disability, was admitted, evidence that causal relation existed between the toe injury and the temporary total disability supported an award of compensation. *Great American Indemnity Co.* v. *Cardillo,* 1943 (135 F. 2d 241, 77 U. S. App. D. C. 306).

In workmen's compensation proceeding presenting question whether this section was applicable to injuries sustained in Virginia, evidence sustained finding that employer, which had main office in New York, was engaged in construction work under three separate contracts, two located in the District and one in Virginia, that employer had an office in the District, that injured workmen's contract of employment was made in the District, and that no separate contract of employment was made when he was transferred from one job to another. *Travelers Ins. Co.* v. *Cardillo,* 1944 (141 F. 2d 364, 78 U. S. App. D. C. 394).

Evidence supported finding that claimant, who was injured when brushed from running board of truck, had observed his fellow workers riding on the running board of truck. *Smoot Sand & Gravel Corp.* v. *Britton* (App. D. C. 1945, 152 F. 2d 17, 80 U. S. App. D. C. 260).

Appellant's contention that the act was not applicable since the employer had not obtained insurance covering his injury as required by the act, is clearly contrary to the evidence presented. *Mellen* v. *Hirsch* 1948 (171 F. 2d 127).

INJURIES IN THE COURSE OF EMPLOYMENT

Evidence held sufficient to show that warehouse manager was injured in the course of his employment, when injury occurred while he was on his way to the warehouse on Sunday. *Voehl* v. *Indemnity Ins. Co.* (288 U. S. 162, 77 L. Ed. 676, 53 Sup. Ct. 380, revg. (61 App. D. C. 173, 58 Fed. (2d) 1074).

Garage employee proved by sufficient evidence to be employee and entitled to compensation for injury. *Lumbermens Mut. Casualty Co.* v. *Hoage* (61 App. D. C. 171, 58 Fed. (2d) 1072).

Claim for compensation on ground of relationship of employer and employee. Evidence warranted finding that relation was that of partnership. *Georgia Casualty Co.* v. *Hoage* (61 App. D. C. 195, 59 Fed. (2d) 870).

Newspaper solicitor, when in the course of his employment has to pass along the public streets and thereby sustains an accident by reason of the risks incident to the streets, the accident "arises out of" as well as "in the course of" his employment. *New Amsterdam Casualty Co.* v. *Hoage* (61 App. D. C. 306, 62 Fed. (2d) 468).

An injury "arises out of" the employment within the meaning of the Compensation Act when it occurs in the course of the employment and as the result of a risk involved in or incidental to the employment or to the conditions under which it is required to be performed. The mere fact that the injury is contemporaneous or coincident with the employment is not a sufficient basis for an award. *Speaks* v. *Hoage* (64 App. D. C. 324, 78 Fed. (2d) 208).

Injury suffered by an insurance agent, on the way home, when superior ordered him home, was compensatable as occurring in and arising out of the course of employment. *Proctor* v. *Hoage* (65 App. D. C. 153, 81 Fed. (2d) 555).

Although there were instructions by superior that employee should not touch anything alive, it was not sufficient to prevent action as one "arising out of and in the course of employment," when employee was electrocuted while repairing cylinder on street car. *Capital Transit Co.* v. *Hoage* (65 App. D. C. 382, 84 Fed. (2d) 235).

When a chef was stabbed by a crazed stranger, the injuries "arose out of and in the course of his employment." *Hartford Acc. & Indem. Co.* v. *Hoage* (66 App. D. C. 160, 85 Fed. (2d) 417).

Evidence that claim adjuster handled more than 250 cases a month, being a great many in excess of adjuster's monthly capacity, and as a result suffered a severe spasm of angina pectoris which in turn resulted in coronary thrombosis, it was an accidental injury which is any injury unexpected or not designed. *Hoage* v. *Royal Indem. Co.* (67 App. D. C. 142, 90 Fed. (2d) 387).

An unexpected attack upon a cook in a restaurant who was killed by a bus boy during altercation regarding boy's work "arose out of the employment." *Maryland Casualty Co.* v. *Cardillo* (69 App. D. C. 199, 99 Fed. (2d) 432).

Injury which the employee received was a direct result of the position in which he was placed by the order of his superior and it therefore arose out of his employment. *Williams* v. *American Employers Ins. Co.* (71 App. D. C. 153, 107 Fed. (2d) 953).

Injuries sustained by employee while driving automobile owned and kept by employer for employer's personal use, such driving being under the exclusive supervision and control of employer, were injuries arising out of and in the course of employment. *Williams* v. *American Employers' Ins. Co.* (71 App. D. C. 153, 107 Fed. (2d) 953).

Injury sustained by driver-employee while returning from lunch arose out of and in the course of employment. *Cardillo* v. *Hartford Acc. & Indem. Co.* (71 App. D. C. 153, 109 Fed. (2d) 674).

Where one employed in a produce warehouse was engaged in loading a truck, and a checker, his superior, addressed him repeatedly as "Shorty" which the loader resented and called his superior a vile name, for which the superior assaulted him, inflicting injuries, the employee is entitled to compensation, the injury having arisen out of, and in course of, his employment. *Hartford Acc. & Indem. Co.* v. *Cardillo* (71 App. D. C. 330, 112 Fed. (2d) 11).

To justify an award under the Longshoremen's Compensation Act, 33 U. S. C. § 901 et seq., there must be a direct causal connection between the employment and the injury, whether it is the result of accident or disease. *Groom* v. *Cardillo,* 1941 (119 F. 2d 697, 73 App. D. C. 358).

An injury "arises out of employment" within Longshoremen's Compensation Act, 33 U. S. C. § 901 et seq., if it is caused by the environment, whether inanimate, animal, or human, to which the employment exposes the employee, and it does not matter whether he is struck by a machine, a mule or a man so long at least as he does not provoke the attack, and an assault by a stranger or a fellow employee clearly "arises out of the employment" where the employment provides the motive for the assault. *Penker Const. Co.* v. *Cardillo,* 1941 (118 F. 2d 14, 73 App. D. C. 168).

Where employer arranged to furnish employee transportation to and from work in employer's truck which regularly passed employee's home in lieu of a requested increase in salary and employee was struck by another vehicle while crossing road to where employer's approaching truck would stop, employee's injuries "arose out of and in course of employment" since the risks attendant on employee's crossing the road were incident to transportation in the truck and were assumed for the mutual convenience of the parties. *Ward* v. *Cardillo,* 1943 (135 F. 2d 260, 77 U. S. App. D. C. 343).

The general rule that injuries sustained by employee when going to or returning from regular place of work are not deemed to "arise out of and in course of employment" is subject to exceptions, one of which is where the employer contracts to and does furnish transportation to and from work. *Ward* v. *Cardillo,* 1943 (135 F. 2d 260, 77 U. S. App. D. C. 343).

An injury arises "out of employment" when it occurs in the course of employment and as a result of risk involved in or incidental to the employment or to conditions under which it is required to be performed. *Ackerman* v. *Cardillo,* 1944 (140 F. 2d 348, 78 U. S. App. D. C. 310).

Where employee was an ice technician working at public skating rink and stadium, his duties required that he be on job during the night, and for his and his employer's convenience he slept in small room underneath stadium seats and while in room was assaulted and injured, and where explanations of the injury which were consistent with liability were just as plausible as those which would avoid liability, court would not reverse finding that injury arose out of employment. *Travelers Ins. Co.* v. *Cardillo,* 1944 (140 F. 2d 10, 78 U. S. App. D. C. 255).

Where injuries occurred while employee was on premises in connection with his employment, presumption existed that injuries arose out of his employment, unless contrary was shown. *Travelers Ins. Co.* v. *Cardillo,* 1944 (140 F. 2d 10, 78 U. S. App. D. C. 255).

Where store manager sent employee to get lunch for all three employees to save time on exceptionally busy day, and employee was struck by automobile while carrying out manager's direction, the employee's fatal injury arose "out of and in course of employment." *London Guarantee & Accident Co.* v. *Britton,* 1944 (138 F. 2d 932, 78 U. S. App. D. C. 195).

Where employee stepped on running board of dump truck, intending to hitch a ride on way to exit from employer's premises after work but employee was brushed from running board by a support post and was injured, evidence supported finding that injury arose out of and in course of employment *Smoot Sand & Gravel Corp.* v. *Britton* (App. D. C. 1945, 152 F. 2d 17, 80 U. S. App. D. C. 260).

Generally, injuries sustained by employees when going to or returning from their regular place of work do not "arise out of and in course of employment", but exception exists where employer requires employees to travel on highways, where employer contracts to and does furnish transportation to and from work, where employee is subject to emergency calls, or where employee uses highway to do something incidental to his employment, with knowledge and approval of employer. *Liberty Mut. Ins. Co.* v. *Cardillo* (App. D. C. 1946, 154 F. 2d 529, 81 U. S. App. D. C. 72, certiorari granted 67 S. Ct. 73, 329 U. S. 698, 91 L.

Ed. 610, reversed 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

Where contract between employer and union, requiring employer to furnish transportation for work outside District of Columbia, was modified and employer agreed to pay each employee flat sum of $2 per day as transportation expense and each employee was free to select transportation method, fatal injury received by employee while driving his automobile homeward after terminating day's work did not "arise out of and in course of employment." *Liberty Mut. Ins. Co.* v. *Cardillo* (App. D. C. 1946, 154 F. 2d 529, 81 U. S. App. D. C. 72, certiorari granted 67 S. Ct. 73, 329 U. S. 698, 91 L. Ed. 610 reversed 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

Under this chapter, the presence or absence of control by employer over acts and movements of employee during transportation to or from work is a factor to be considered in determining whether injury during transportation arose out of and in course of employment, but is not decisive. *Cardillo* v. *Liberty Mut. Ins. Co.,* 1947 (67 S. Ct. 801, 91 L. Ed. 610).

Injury sustained while an employee is going to or from lunch does not as a positive rule of law, without reference to particular facts, arise out of and in course of employment within 33 U. S. C. § 902 (2). *Wetzel* v. *Britton* (App. D. C. 1948, 170 F. 2d 285).

Injuries Outside Scope of Employment

Deputy commissioner was right in holding that the injury sustained did not occur in the course of the deceased's employment, when he was not at the time of the occurrence performing any service which he was required to do by virtue of his employment as financial secretary of the lodge. *Morgan* v. *Hoage* (63 App. D. C. 355, 72 Fed. (2d) 727).

When employee went on roof of building during lunch hour for a rest and fresh air, but fell into a ventilator shaft the injury did not arise "out of the employment." *Monahan* v. *Hoage* (67 App. D. C. 174, 90 Fed. (2d) 419).

Injuries sustained by an employee in a personal difficulty with another employee of the same employer, having no relation to the employment itself and in which there is no causal connection between the injury and the employment, are not compensable. *Fazio* v. *Cardillo* (71 App. D. C. 264, 109 Fed. (2d) 835).

The mere fact that an injury is contemporaneous or coincident with the employment is not a sufficient basis for an award under the Longshoremen's Compensation Act, 33 U. S. C. § 901 et seq. *Groom* v. *Cardillo,* 1941 (119 F. 2d 697, 73 App. D. C. 358).

In workmen's compensation proceeding, evidence sustained finding that following removal of last load of freight from railroad box car claimant lifted fellow worker off floor, that in ensuing struggle both fell and that claimant's resulting injury was not sustained in course of employment. *Ackerman* v. *Cardillo,* 1944 (140 F. 2d 348, 78 U. S. App. D. C. 310).

Where following removal of freight from railroad box car claimant lifted coworker from floor and in ensuing struggle both fell to floor with resulting injury to claimant and claimant during same morning and against remonstrances of intended victim had indulged in similar prank, the injury did not "arise out of and in course of employment." *Ackerman* v. *Cardillo,* 1944 (140 F. 2d 348, 78 U. S. App. D. C. 310).

Injury, Definition of

Under provision of 33 U. S. C. § 902 (2) that injury means accidental injury or death arising out of and in course of employment, "injury" comprises alternative events, and it is not necessary that both "accidental injury" and "death" occur in order that "injury" occur. *National Homeopathic Hospital Ass'n of Dist. of Col.* v. *Britton,* 1945 (147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 89 L. Ed. 1977).

Jurisdiction

Under this chapter, Deputy Commissioner had jurisdiction to entertain a claim by widow of an employee who had been a resident of District, who had been employed by a District employer, and who had been subject to work assignments in the District, although employee was assigned to work outside District at time fatal injury was received. *Cardillo* v. *Liberty Mut. Ins. Co.,* 1947 (67 S. Ct. 801, 91 L. Ed. 610).

The District Court had jurisdiction of action by administrator for balance due on compensation award to plaintiff's decedent although amount owing at time of decedent's death was less than $3,000. *Turner* v. *Christian Heurich Brewing Co.* (C. A., D. C. 1948, 169 F. 2d 681).

Legality of Employment

The Longshoremen's and Harbor Workers' Act, 33 U. S. C. § 901 et seq., made applicable in the District of Columbia as a workmen's compensation act, is applicable to illegally employed employees, as well as to legally employed employees. *Mellen* v. *Hirsch* (D. C. Md. 1948, 8 F. R. D. 250, supplemented 8 F. R. D. 248).

Liability for Medical Service

Where physician called defendant's manager and asked if it was all right for him to treat an employee and manager said it was all right if patient would retain him, it constituted sufficient authorization rendering defendant liable for medical services rendered. *Skolnick* v. *Swagart* (D. C. Mun. App. 1949, 66 A. 2d 523).

Limitation of Action

When injured employee elected to sue a third person and obtained judgment against tort-feasor, which was reversed, the employee then tried to proceed without paying costs and not being successful tried in forma pauperis, and then discontinued action, it was held that the employee was not entitled to compensation for the statute of limitations had run and employee failed to pursue the third-party remedy to final judgment. *Chapman* v. *Hoage* (64 App. D. C. 349, 78 Fed. (2d) 233).

Provisions relating to the time within which the claimant shall present and prosecute his claim are essential parts of the procedure. The court accordingly cannot revive a claim when barred by the limitations contained in the act. *Shugard* v. *Hoage* (67 App. D. C. 52, 89 Fed. (2d) 796).

Where a statute gives a right unknown to the common law, and limits the time within which an action shall be brought to assert it, the limitation defines and controls the right. *Young* v. *Hoage* (67 App. D. C. 150, 90 Fed. (2d) 395).

Statute of limitations applicable to this case and action must be brought by the personal representative within one year from the date of the death, or the employer must have vested in him within one year from the date of the death of the employee the right of the personal representative to bring such action. *Chapman* v. *Griffith-Consumers Co.* (71 App. D. C. 64, 107 Fed. (2d) 263).

The limitation does not begin to run until the claim to compensation arises the term "injury" being equivalent to "compensatable injury." *Potomac Elec. Power Co.* v. *Cardillo* (71 App. D. C. 163, 107 Fed. (2d) 962).

Limitation of Action

Where defendant caused death of employee of another under such circumstances that, if death had not ensued, the employee would have been entitled to maintain action against defendant or to recover compensation under this section, death action instituted under U. S. C. section 1201 of Title 16 within one year after appointment of guardian for employee's infant son but more than one year after death was barred by limitation of U. S. C. section 1202 of Title 16, notwithstanding employees' compensation act provision that one year limitation on right to compensation for death should not be applicable to infants until appointment of guardian. *Webster* v. *Clodfelter,* 1942 (130 F. 2d 434, 76 U. S. App. D. C. 171, 143 A. L. R. 280, affirming 39 F. Supp. 62, certiorari denied 63 S. Ct. 261, 317 U. S. 689, 87 L. Ed. 552).

This section does not alter the period of limitations in U. S. C. section 1202 of Title 16. *Webster* v. *Clodfelter,* 1942, 130 F. 2d 434, 76 U. S. App. D. C. 171, 143 A. L. R. 280, affirming 39 F. Supp. 62, certiorari denied 63 S. Ct. 261, 317 U. S. 689, 87 L. Ed. 552).

Where action for wrongful death was not filed within one year after the death as provided by 33 U. S. C. § 913, action was barred notwithstanding that decedent if he had lived would have been entitled to compensation from his employer or his employer's insurance carrier and action was brought within one year after appointment of guardian for decedent's infant son, which was timely under Longshoremen's Compensation Act, since cause of action against third persons was not affected by the compensation act. *Webster* v. *Clodfelter,* 1942 (130 F. 2d 434, 76 U. S. App. D. C. 171, 143 A. L. R. 280, affirming 39 F. Supp. 62, certiorari denied 63 S. Ct. 261, 317 U. S. 689, 87 L. Ed. 552).

PARTIAL DEPENDENCY

A partial dependency falls within the statute as well as a complete or total dependency. *Harris* v. *Hoage* (62 App. D. C. 275, 66 Fed. (2d) 801).

PLACE OF INJURY

As respects liability of employer carrying on any employment in the District of Columbia to injured employee under this section, it was immaterial that injury occurred in Maryland. *Moyer* v. *Cardillo,* 1941 (119 F. 2d 785, 73 App. D. C. 261).

Where employer, with main office in New York, maintained office and store yard in District of Columbia, workman's contract of employment was made in the District, employer was engaged in construction work under three contracts, two located in District and one in Virginia, and injured workman's contract of employment was made in the District but he was transferred from one job to another, injury sustained in Virginia was to an employee of an employer carrying on employment in the District so that this section was applicable even though the work was being performed on a federal job on land owned by the United States. *Travelers Ins. Co.* v. *Cardillo,* 1944 (141 F. 2d 364, 78 U. S. App. D. C. 394).

Where resident of District of Columbia was employed by construction company which had its principal office in the District and at time of injury and prior thereto was engaged in construction work in the District and in immediate vicinity, the employer was carrying on employment in the District and this section was applicable even though work being done at time of injury was on a federal job on property owned by the United States in Maryland. *Travelers Ins. Co.* v. *Cardillo,* 1944 (141 F. 2d 362, 78 U. S. App. D. C. 392).

Even though the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. A. § 901 et seq., was adopted as the Compensation Law of the District of Columbia, section 903 (a) of said Act excluding jurisdiction of injuries compensable under state law, has no place in this section, which expressly extends its provisions to cases of injury or death, irrespective of the place where either occurred. *Travelers Ins. Co.* v. *Cardillo,* 1944 (141 F. 2d 362, 78 U. S. App. D. C. 392).

Where salesman's office was in District of Columbia, though his selling contacts were largely outside and his time was nearly equally divided between the two, and he was fatally injured while traveling in Pennsylvania in connection with his employment, this section was applicable. *B. F. Goodrich Co.* v. *Britton,* 1944 (139 F. 2d 362, 78 U. S. App. D. C. 221).

POWER OF COMMISSION

The Federal Government may confer upon administrative agencies, such as Deputy Commissioner United States Employees' Compensation Commission, created to aid in performance of governmental functions the determination of questions of fact, including existence of master and servant relation, the test being whether the delegation concerns the exercise of judicial power in enforcing constitutional limitations. *Gudmundson* v. *Cardillo,* 1942 (126 F. 2d 521, 75 U. S. App. D. C. 230, affirming 35 F. Supp. 527).

PRESUMPTIONS

Where employee was on his employer's premises and was on his way to an exit within a reasonable time after quitting work, presumption existed that he was in course of his employment and that injury sustained at that time and place arose out of his employment. *Smoot Sand & Gravel Corp.* v. *Britton* (App. D. C. 1945, 152 F. 2d 17, 80 U. S. App. D. C. 260).

Provision of 33 U. S. C. § 901 et seq. that in proceeding thereunder jurisdiction is to be presumed in absence of substantial evidence to contrary applies with equal force to proceedings under this chapter. *Cardillo* v. *Liberty Mut. Ins. Co.,* 1947 (67 S. Ct. 801, 91 L. Ed. 610).

PURPOSE

A prime purpose of this chapter is to provide residents of the District with a practical and expeditious remedy for their industrial accidents and to place on District of Columbia employers a limited and determinate liability. *Cardillo* v. *Liberty Mut. Ins. Co.,* 1947 (67 S. Ct. 801, 91 L. Ed. 610).

QUESTIONS OF LAW

Meaning of "course of employment" within 33 U. S. C. § 902 (2), apart from any particular set of facts, is a question of law. *Hurley* v. *Lowe* (App. D. C. 1948, 168 F. 2d 553, certiorari denied, 68 S. Ct. 1338, 334 U. S. 828, 92 L. Ed. 1756).

REMAND

Where question whether Deputy Commissioner had jurisdiction over claim under this chapter was considered and determined by Deputy Commissioner, who was in turn sustained by District Court, and facts pertinent to that issue were not seriously disputed and matter had been fully briefed and argued before Supreme Court, even though Court of Appeals had not determined that issue, a remand for determination thereof was not required, but Supreme Court could consider the jurisdictional issue. *Cardillo* v. *Liberty Mut. Ins. Co.,* 1947 (67 S. Ct. 801, 91 L. Ed. 610).

RES JUDICATA

Where minor's contention, made in common-law action in the District of Columbia, that minor had right to sue at law rather than make a claim for workmen's compensation because employed contrary to Child Labor Law, § 36–201 et seq., of District of Columbia, was definitely adjudicated against minor, contention was not open to further controversy in subsequent action in federal court in Maryland. *Mellen* v. *Hirsch* (D. C. Md. 1948, 8 F. R. D. 250, supplemented 8 F. R. D. 248).

Decision of court in District of Columbia that minor had no cause of action in a suit at common-law against employer for injuries because compensation law, 33 U. S. C. § 905, provided exclusive remedy, and that such law was not rendered inapplicable because of employer's alleged violation of the Child Labor Law, § 36–201 et seq. was not ineffective as to minor in subsequent common-law suit against employer in Maryland, on ground that the suit in the District of Columbia was dismissed for lack of jurisdiction. *Mellen* v. *Hirsch* (D. C. Md. 1948, 8 F. R. D. 250,

REVIEW

supplemented 8 F. R. D. 248).

Where employer arranged to furnish employee transportation to and from place of work in employer's truck which regularly passed employee's home, and employee was struck by another vehicle while crossing road to where employer's approaching truck would stop, and deputy commissioner concluded that injury did not arise out of and in course of employment, principle that deputy commissioner's findings when supported by substantial evidence are not subject to review was inapplicable since the question presented was a "question of law" not a "question of fact." *Ward* v. *Cardillo,* 1943 (135 F. 2d 260, 77 U. S. App. D. C. 343).

In proceeding under this chapter, even if inference made by Deputy Commissioner involves application of broad statutory term or phrase to specific set of facts and is considered more legal than factual in nature, reviewing court's function is exhausted when it becomes evident that Deputy Commissioner's choice has substantial roots in evidence and is not forbidden by law. *Cardillo* v. *Liberty Mut. Ins. Co.,* 1947 (67 S. Ct. 801, 91 L. Ed. 610).

Court reviewing compensation order must review to determine, not whether principles of law applied by deputy commissioner are correct, but merely whether they are forbidden by law, or without any reasonable legal basis, or are invalidated by some formal principle of law. *Hurley* v. *Lowe* (App. D. C. 1948, 168 F. 2d 553).

Reviewing court is limited to determining whether Deputy Commissioner's conclusion in compensation case is forbidden by law or without any reasonable basis. *Wetzel* v. *Britton* (App. D. C. 1948, 170 F. 2d 285).

RIGHT OF ACTION

Record clearly shows that the agent of the insurance carrier was a privy to all the proceedings leading to the bringing of the damage suit and its settlement, and it would also be inequitable to permit the employer and carrier to change their position to the prejudice of the claimant who had acquiesced in their position. *Metropolitan Casualty Ins. Co.* v. *Hoage* (67 App. D. C. 54, 89 Fed. (2d) 798).

Since claimant was an independent contractor, he is not entitled to claim under the Compensation Act as an employee. *Cardillo* v. *Mockabee* (70 App. D. C. 16, 102 Fed. (2d) 620).

Under 33 U. S. C. § 933 providing that acceptance of compensation under an award shall operate as an assignment to employer of all rights of injured employee to recover damages against third person causing injury, the right to maintain an action against a third person causing injury is in the employee if he does not elect to receive compensation and is in the employer if employee elects to receive compensation, and an employee cannot follow both courses. *Moore* v. *Hechinger* (D. C., D. C. 1941, 39 F. Supp. 427, affirmed 127 F. 2d 746, 75 U. S. App. D. C. 391).

Regardless of whether employer secures payment of compensation either by taking out insurance or providing for paying such compensation directly, employer remains liable, and employee is entitled to institute proceedings for an award before deputy commissioner and then before United States District Court for collection of the award. *Garcia* v. *De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

SICKNESS AND DISEASE

Findings of fact by deputy commissioner that injury to hip of employee was not proximate cause of pulmonary tuberculosis must be accepted as conclusive if supported by evidence. *Powell* v. *Hoage* (61 App. D. C. 99, 57 Fed. (2d) 766).

Death from "injuries in the course of employment" is proved by evidence of an epileptic seizure of employee while using hot water hose, which inflicted burns. *Georgetown College* v. *Stone* (61 App. D. C. 200, 59 Fed. (2d) 875).

Employee not entitled to compensation because contracting tuberculosis while working in a restaurant. *Ayers* v. *Hoage* (61 App. D. C. 388, 63 Fed. (2d) 364).

When there is evidence of a positive nature, and wholly uncontradicted, which definitely and conclusively traces the cause of death and places it wholly at the door of a fatal disease from which the employee was suffering and wholly away from any relation to the work, then, in such a case, the inference must yield to the actual and deputy commissioner's determination must be set aside. *Liberty Mut. Ins. Co.* v. *Hoage* (62 App. D. C. 189, 65 Fed. (2d) 822).

From an examination of the testimony, and the presumption of verity which the law accords the findings of fact by the deputy commissioner, the appellant has failed to establish a claim within the Compensation Act, as pneumonia causing death of taxicab driver was not occupational disease. *Anderson* v. *Hoage* (63 App. D. C. 169, 70 Fed. (2d) 773).

Where employee, on day of death, was engaged in carrying hod up one flight of stairs, and in course of his work he complained of being ill, collapsed, and was taken to hospital where he died because of coronary occlusion, evidence sustained deputy commissioner's denial of compensation on ground that employee did not sustain an injury "arising out of and in course of employment." *Carson* v. *Cardillo,* 1942 (132 F. 2d 604, 77 U. S. App. D. C. 82).

Evidence that pre-existing spinal arthritis was aggravated by back injury sustained by employee in 1930 and that after similar injury in 1935 employee became totally disabled from carrying out any type of gainful occupation justified an award of compensation on ground of "total disability" resulting from 1935 injury. *Great Atlantic & Pacific Tea Co.* v. *Cardillo,* 1942 (127 F. 2d 334, 75 U. S. App. D. C. 342).

That an employee is diseased does not bar his right to recover compensation for an accidental injury. *Great Atlantic & Pacific Tea Co.* v. *Cardillo,* 1942 (127 F. 2d 334, 75 U. S. App. D. C. 342).

SUBSEQUENT INJURY

Provision of 33 U. S. C. § 908 (f) that if an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall provide compensation only for disability caused by the subsequent injury, deals with accidental injury and does not deal with death. *National Homeopathic Hospital Ass'n of Dist. of Col.* v. *Britton,* 1945 (147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 89 L. Ed. 1977).

SUNSTROKE

Death of laborer from sunstroke while working in sunny street was compensable. *Fidelity & Casualty Co.* v. *Burris* (61 App. D. C. 228, 59 Fed. (2d) 1042).

Heat prostration is compensable as accidental injury if suffered while delivering groceries. *Aetna Life Ins. Co.* v. *Hoage* (62 App. D. C. 6, 63 Fed. (2d) 818).

THIRD PARTY, INJURY BY

Where injured employee has accepted compensation under this chapter so that right to recover damages from third party wrongdoer has been transferred to employer, employer's insurer or the employer may bring action in his own name to his own use and to the use of the injured employee. *Moore* v. *Hechinger,* 1942 (127 F. 2d 746, 75 U. S. App. D. C. 391, affirming 39 F. Supp. 427).

Under this chapter, where an injury is sustained through the wrongful act of a third party, the employee must elect between compensation from his employer and suit against the wrongdoer and he cannot have both. *Moore* v. *Hechinger,* 1942 (127 F. 2d 746, 75 U. S. App. D. C. 391, affirming 39 F. Supp. 427).

USUAL COURSE OF BUSINESS

Words "usual course" refer to normal operations constituting the regular business of the employer. *Hoage* v. *Hartford Acc. & Indem. Co.* (64 App. D. C. 258, 77 Fed. (2d) 381).

WIDOW

A woman must be a "widow" as defined by the Longshoremen's Compensation Act, 33 U. S. C. § 902 (16), in order to be entitled to compensation as a "surviving wife" during "widowhood." *Weeks* v. *Behrend,* 1943 (135 F. 2d 258, 77 U. S. App. D. C. 341).

§ 36–502 [19: 12]. Exceptions.

This chapter shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) an employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia; (3) an employee subject to the provisions of chapter 15, Title 5, of the Code of the Law of the United States; and (4) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer; and (5) any secretary, stenographer, or other person performing any services in the office of any Member of Congress or under the direction, employment, or at the request of any Member of Congress, within the scope of the duties performed by secretaries, stenographers, or such employees of Members of Congress. (May 17, 1928, 45 Stat. 600, ch. 612, § 2; June 15, 1938, 52 Stat. 689, ch. 392.)

AMENDMENT

Act of 1938 added clause (5).

STATUTORY REFERENCE

See U. S. C., title 33, ch. 18.

NOTES TO DECISIONS

APPLICATION OF STATUTE

Where appellant was injured while working in appellee's car barn, he could not recover under § 44–401 of the Code since § 36–501 has become the applicable workman's compensation act for the District and appellee was not a common carrier by railroad and is excepted from the operation of § 36–501. *Keffer* v. *Capital Transit Co.* (C. A., D. C. 1950, 183 F. 2d 808).

CASUAL EMPLOYMENT

Death of ornamental ironworker resulting from accident while repairing door in grillwork was while engaged in "casual employment," and not in usual course of employer's business. *Hoage* v. *Hartford Acc. & Indem. Co.* (64 App. D. C. 258, 77 Fed. (2d) 381, Cert. den. 296 U. S. 609, 80 L. Ed. 432, 56 Sup. Ct. 128).

EMPLOYEES' DUTIES CONTROLLING

Where main duty of deckhand employed on a stripper dredge was to coal up dredge from scow, and coal was used to fire engine which operated scoop shovel, deckhand was not a "member of a crew", and hence his claim for injuries was covered by the Longshoremen's Compensation Act, 33 U. S. C. § 901 et seq., as made applicable to a District of Columbia employer and not by the Merchant Marine Act, 46 U. S. C. § 688. *Beddoo* v. *Smoot Sand & Gravel Corporation,* 1942 (128 F. 2d 608, 76 U. S. App. D. C. 38).

SECOND INJURY

Where deputy commissioner originally awarded compensation for temporary total disability, stipulated intermediate order finding temporary partial disability was made subject to deputy's right of review when claimant's condition might change, and compensation was paid after a second injury within less than one year of claim based on total disability, even if original award was suspended during reemployment of claimant, and claimant became only partially disabled, that classification did not prejudice claimant's rights to recover for total disability resulting from second injury. *Great Atlantic & Pacific Tea Co.* v. *Cardillo,* 1942 (127 F. 2d 334, 75 U. S. App. D. C. 342).

TITLE 37.—LIBRARIES

Chap. Sec.

1. Public libraries 37–101

Chapter 1.—PUBLIC LIBRARIES

Sec.

37–101. Public library established—Authority of Commissioners—Acceptance of gifts.
37–102. Branch libraries.
37–103. Persons entitled to use of library—Deposit of fees.
37–104. Board of trustees—Appointment and tenure.
37–105. Duties—Librarian and employees—Annual report.
37–106. Submission of estimates.
37–107. Takoma Park branch—Hours of opening.
37–108. Appropriation for expenditures.
37–109. Transfer of miscellaneous books to District public library.
37–110. Advancement of funds for purchase of books, pamphlets, and periodicals.
37–111. Depository of Government publications.

§ 37–101 [20: 1421]. Public library established—Authority of Commissioners—Acceptance of gifts.

A free public library is hereby established and shall be maintained in the District of Columbia, which shall be the property of the said District and a supplement of the public educational system of said District. Said library shall consist of a central library and such number of branch libraries so located and so supported as to furnish books and other printed matter and information service convenient to the homes and offices of all residents of the said District. All actions relating to such library, or for the recovery of any penalties lawfully established in relation thereto, shall be brought in the name of the District of Columbia, and the commissioners of the said District are authorized on behalf of said District to accept and take title to all gifts, bequests, and devises for the purpose of aiding in the maintenance or endowment of said library; and the commissioners of said District are further authorized to receive, as component parts of said library, collections of books and other publications that may be transferred to them. (June 3, 1896, 29 Stat. 244, ch. 315, § 1; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 1.)

AMENDMENT

The second sentence was added by the act of April 1, 1926.

SUITS AGAINST LIBRARY TRUST FUND BOARD

The board may be sued in the District Court of the United States for the District of Columbia, which is hereby given jurisdiction of such suits, for the purpose of enforcing the provisions of any trust accepted by it. (Mar. 3, 1925, 43 Stat. 1108, ch. 423, § 3; June 25, 1936, 49 Stat. 1921, ch. 804.)

§ 37–102 [20: 1422]. Branch libraries.

In order to make the said library an effective supplement of the public educational system of the said District and to furnish the system of branch libraries provided for in section 37–101, the board of library trustees, hereinafter provided, is authorized to enter into agreements with the Board of Education of the said District for the establishment and maintenance of branch libraries in suitable rooms in such public-school buildings of the said District as will supplement the central library and branch libraries in separate buildings. The board of library trustees, hereinafter provided, is authorized within the limits of appropriations first made therefor, to rent suitable buildings or parts of buildings for use as branch libraries and distributing stations. (June 3, 1896, ch. 315, §2 (new), as added Apr. 1, 1926, 44 Stat. 229, ch. 98, § 2.)

§ 37–103 [20: 1423]. Persons entitled to use of library—Deposit of fees.

All persons who are permanent or temporary residents of the District of Columbia shall be entitled to the privileges of said library, including the use of the books contained therein, as a lending or circulating library, subject to such rules and regulations as may be lawfully established in relation thereto. Persons living outside of the said District, but having regular business or employment or attending school in the said District, shall for the purpose of sections 37–101 to 37–106 be deemed temporary residents. Other persons residing in counties of Maryland and Virginia adjacent to the said District may gain the privilege of withdrawing books from the said library by the payment of fees fixed by the board of library trustees hereinafter provided. All fees shall be paid weekly to the collector of taxes of the District of Columbia for deposit in the Treasury of the United States to the credit of said District of Columbia. (June 3, 1896, 29 Stat. 244, ch. 315, § 2; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 3.)

AMENDMENT

The 1926 amendment added the last three sentences of this section.

§ 37–104 [20: 1424]. Board of trustees—Appointment and tenure.

The said library shall be in charge of a board of library trustees, who shall purchase the books, magazines, and newspapers and procure the necessary appendages for such library. The said board of trustees shall be composed of nine members, each of whom shall be a taxpayer in the District of Columbia, and shall serve without compensation. They shall be appointed by the commissioners of the District of Columbia and shall hold office for six years. Any vacancy occurring in said board shall be filled by the District commissioners. Said board shall have power to provide such regulations for its organization and government as it may deem necessary. (June 3, 1896, 29 Stat. 244, ch. 315, § 3; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 4.)

AMENDMENT

The 1926 amendment omitted a proviso and sentence which originally followed the third sentence: "Provided, That at the first meeting of the said board the members

shall be divided by lot into three classes. The first class, composed of three members, shall hold office for two years; the second class, composed of three members, shall hold office for four years; the third class, composed of three members, shall hold office for six years."

§ 37–105 [20: 1425]. Duties—Librarian and employees—Annual report.

The said board shall have power to provide for the proper care and preservation of said library, to prescribe rules for taking and returning books, to fix, assess, and collect fines and penalties for the loss or injury to books, and for the retention of books beyond the period fixed by library regulations, and to establish all other needful rules and regulations for the management of the library as the said board shall deem proper. All fines and penalties so collected shall after June 30, 1927, be paid weekly to the collector of taxes of the District of Columbia for deposit in the treasury of the United States to the credit of said District of Columbia. The said board of trustees shall appoint a librarian to have the care and superintendence of said library, who shall be responsible to the board of trustees for the impartial enforcement of all rules and regulations lawfully established in relation to said library. The said librarian shall appoint such assistants as the board shall deem necessary to the proper conduct of the library. The said board of library trustees shall make an annual report to the commissioners of the District of Columbia relative to the management of the said library. (June 3, 1896, 29 Stat. 244, ch. 315, § 4; Apr. 1, 1926, 44 Stat. 230, ch. 98, § 5.)

AMENDMENT

The 1926 amendment inserted in the first sentence the words "and for the retention of books beyond the period fixed by library regulations," and added the second sentence.

CROSS REFERENCES

Library Trust Fund Board, suits against, see note to § 37–101.

Monthly advancement to purchase books and periodicals, § 37–110.

Penalty for stealing or injuring books, § 22–3106.

Rules and regulations generally, § 1–226 and notes.

§ 37–106 [20: 1426]. Submission of estimates.

Said commissioners of the said District are authorized to include in their annual estimates for appropriations such sums as they may deem necessary for the proper maintenance of said library, including branches, for the purchase of land for sites for library buildings, and for the erection and enlargement of necessary library buildings. (June 3, 1896, ch. 315, § 6 (new), as added Apr. 1, 1926, 44 Stat. 230, ch. 98, § 6.)

§ 37–107 [20: 1427]. Takoma Park branch—Hours of opening.

The Takoma Park branch shall be kept open at least seven hours per day on the same week days as the free Public Library shall be open to the public. (Mar. 4, 1913, 37 Stat. 943, ch. 150.)

§ 37–108 [20: 1428]. Appropriation for expenditures.

The appropriation for the expenses of the Takoma Park branch of the Public Library shall not exceed in any one year the sum of ten per centum of the total costs of such branch library building. (Apr. 4, 1910, 36 Stat. 290, ch. 141.)

§ 37–109 [20: 1429]. Transfer of miscellaneous books to District public library.

Any books of a miscellaneous character no longer required for the use of any executive department, or bureau, or commission of the government, and not deemed an advisable addition to the Library of Congress, shall, if appropriate to the uses of the free public library of the District of Columbia, be turned over to that library for general use as a part thereof. (Feb. 25, 1903, 32 Stat. 865, ch. 755, § 1.)

STATUTORY REFERENCE

This section is in U. S. C., title 5, § 110.

LIBRARIES

The Librarian of Congress may from time to time transfer to other governmental libraries within the District of Columbia, including the Public Library, books and material in the possession of the Library of Congress in his judgment no longer necessary to its uses, but in the judgment of the custodians of such other collections likely to be useful to them, and may dispose of or destroy such material as has become useless. (Mar. 4, 1909, 35 Stat. 858, ch. 297.)

§ 37–110 [20: 643a]. Advancement of funds for purchase of books, pamphlets, and periodicals.

The disbursing officer of the District of Columbia is authorized to advance to the librarian of the Free Public Library, upon requisition previously approved by the auditor of the District of Columbia, sums of money not exceeding $25 at the first of each month, to be expended for the purchase of certain books, pamphlets, numbers of periodicals or newspapers, or other printed material, and to be accounted for on itemized vouchers. (June 12, 1940, 54 Stat. 313, ch. 333, § 1.)

COMPILER'S NOTE

This section is a part of the appropriation act for the District of Columbia and merely repeats a provision appearing in prior appropriation acts for the District. It appeared in supplements to the 1929 Code as § 643a of title 20, which relates to revenue and taxation, and is retained in that title as § 47–118 herein.

§ 37–111. Depository of Government publications.

The Public Library of the District of Columbia is hereby constituted a designated depository of governmental publications, and the Superintendent of Documents shall supply to such library one copy of each such publication, in the same form as supplied to other designated depositories. (Sept. 28, 1943, 57 Stat. 568, ch. 243.)

TITLE 38.—LIENS

Chap. Sec.

1. Mechanics, materialmen, and contractors__ 38–101
2. Garage keepers and liverymen_____ 38–201
3. Hospitals_____ 38–301

Chapter 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

Sec.

38–101. Mechanic's lien.
38–102. Notice.
38–103. Subcontractor.
38–104. Conditions.
38–105. Notice to owner.
38–106. Owner's duty.
38–107. Subcontractor entitled to know terms of contract.
38–108. Advance payments.
38–109. Priority of lien.
38–110. How lien enforced.
38–111. Decree of sale.
38–112. Subcontractor preferred to contractor.
38–113. Distribution.
38–114. Several buildings.
38–115. When suit to be commenced.
38–116. Extent of ground bound by lien.
38–117. Entry of satisfaction.
38–118. Payment into court and release.
38–119. Undertaking to discharge liens before suit.
38–120. Decree against sureties.
38–121. No action by subcontractor against owner.
38–122. Judgment for deficiency upon a sale.
38–123. Wharves and lots.
38–124. Artisans' lien.
38–125. Enforcement by sale.
38–126. Enforcement by bill in equity.

§ 38–101 [25 : 351]. Mechanic's lien.

Every building erected, improved, added to, or repaired by the owner or his agent, and the lot of ground on which the same is erected, being all the ground used or intended to be used in connection therewith, or necessary to the use and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of such owner, whether owner in fee or of a less estate, or lessee for a term of years, or vendee in possession under a contract of sale, shall be subject to a lien in favor of the contractor with such owner or his duly authorized agent for the contract price agreed upon between them, or, in the absence of an express contract, for the reasonable value of the work and materials furnished for and about the erection, construction, improvement, or repair of or addition to such building, or the placing of any engine, machinery, or other thing therein or in connection therewith so as to become a fixture, though capable of being detached: *Provided,* That the person claiming the lien shall file the notice herein prescribed. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1237.)

Cross References

Artisan's lien, § 38–124 et seq.
Hotel or boarding house-keeper's lien, § 34–103.
Landlord Lien, §§ 45–915, 45–916.
Lien on goods under Uniform Sales Act, §§ 28–1401 to 28–1411.
Lien on lands for funds donated by the United States to purchase such lands for charitable or reformatory purposes upon abandonment of purpose, § 32–1003.
Motor Vehicle Lien Law, §§ 40–701 to 40–715.
Warehouseman's lien, § 28–1921 et seq.

NOTES TO DECISIONS

Decisions Under Prior Law

The provision of the code with respect to mechanic's liens is "fundamentally the same as in the former statute." *Lipscomb* v. *Hough* (52 App. D. C. 313, 286 Fed. 775).

Contract of Lessee

Lessee held to be agent of lessor, in ordering improvements, so as to charge interest of lessor in land. *McLean* v. *Nolan* (44 App. D. C. 1).

"Nor does a covenant in the lease, vesting in the lessor title in the buildings, and improvements erected on the premises at the termination of the lease, create the relation of principal and agent between the lessor and lessee." *Lipscomb* v. *Hough* (52 App. D. C. 313, 286 Fed. 775), citing *Albaugh* v. *Litho-Marble Decorating Co.* (14 App. D. C. 113), *Langley* v. *D'Audigne* (31 App. D. C. 409).

"A builder contracting with the lessee of premises to furnish labor and material thereon, with notice that he is dealing with the lessee and not the owner, is estopped to complain of ignorance of the terms of the lease, where as here, it was a matter of public record." *Lipscomb* v. *Hough* (52 App. D. C. 313, 286 Fed. 775).

Contract of Owner

"In the latter case, the statutes relative to mechanics' liens * * * are reviewed at length with the conclusion that a lien upon the premises can only be imposed where the building is erected or repaired at the instance of the owner or his agent. If the work is done and materials furnished at the instance of a lessee, or tenant for life, or years, or a person having an equitable interest therein, the lien can only extend to the interest of the lessee, tenant, or equitable owner." *Lipscomb* v. *Hough* (52 App. D. C. 313, 286 Fed. 775).

Pleading

Under this section providing that a mechanic's lien may be placed on property not only for work done but also for materials furnished, complaint for removal of lien alleging that contractor did no work on one of 2 lots was insufficient where it failed to allege that no materials were furnished for improvement of such lot. *Clarke* v. *Huff* (App. D. C. 1948, 165 F. 2d 247).

Status of Parties

The status of the parties at the time of the contract determines the question of the right to a lien. *Deming* v. *Wardman Constr. Co.* (59 App. D. C. 254, 39 Fed. (2d) 504).

Statutory Construction

A mechanic's lien is purely a creature of statute. "The performance of the work, or the furnishing of the materials, gives merely a right to acquire a lien. The statute prescribes the steps necessary to perfect it. These requirements relate to the remedy rather than the right." "In determining whether a right to a lien exists, the statute should be strictly construed against one claiming such right, * * * but * * * where the right to a lien clearly appears, and the sole question to be determined is whether the claimant has proceeded properly to acquire and establish his lien, the statute should be liberally construed in his favor." *Fidelity Storage Corp.* v. *Trussed Concrete Steel Co.* (35 App. D. C. 1), citing *James B. Lambie Co.* v. *Bigelow* (34 App. D. C. 49). See also *Columbia Brick Co.* v. *District of Columbia* (1 App. D. C. 351);

Alfred Richards Brick Co. v. *Atkinson* (16 App. D. C. 462); *Alfred Richards Brick Co.* v. *Trott* (23 App. D. C. 284) (holding that a single mechanic's lien should cover no more than a single building, except in a case where there are two or more buildings joined together and owned by a single person).

In determining whether a right to a lien exists, the statute should be strictly construed; but where the right to a lien is clear and the question is whether the claimant has proceeded properly, the statute should be liberally construed in his favor. *Deming* v. *Wardman Constr. Co.* (59 App. D. C. 254, 39 Fed. (2d) 504).

SUBSTANTIAL PERFORMANCE

In a proceeding to foreclose a mechanic's lien, a contractor who intentionally fails to perform the contract according to its terms, and refuses to remedy the defect, is not entitled to the benefit of the doctrine of substantial performance. *Turner* v. *Henning* (49 App. D. C. 183, 262 Fed. 637).

WAIVER

Taking of security generally operates as waiver of right to mechanic's lien, but a mere agreement to take such security, not carried into effect, does not operate as a waiver. *McMurray* v. *Brown* (91 U. S. 257, 23 L. Ed. 321, decided under 11 Stat. 376, ch. 17).

§ 38–102 [25: 352]. Notice.

Any such contractor wishing to avail himself of the provision aforesaid, whether his claim be due or not, shall file in the office of the clerk of the District Court of the United States for the District during the construction or within three months after the completion of such building, improvement, repairs, or addition, or the placing therein or in connection therewith of any engine, machinery, or other thing so as to become a fixture, a notice of his intention to hold a lien on the property hereby declared liable to such lien for the amount due or to become due to him, specifically setting forth the amount claimed, the name of the party against whose interest a lien is claimed, and a description of the property to be charged, and the said clerk shall file said notice and record the same in a book to be kept for the purpose. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1238.)

NOTES TO DECISIONS

COMPLETION

Question of completion or noncompletion should be determined by what the common intelligence and the common usage regard as completion, always, of course, with reference to the provisions of the building contract. At the same time no amount of work is too small, the completion of which is required to prevent the consummation of a fraud. *Riggs Fire Ins. Co.* v. *Shedd* (16 App. D. C. 150).

The abandonment of the work by the original contractor is deemed in law to be a completion of it for the purpose of filing mechanics' liens by subcontractors and materialmen. *Harper* v. *Galliher & Huguely* (58 App. D. C. 252, 29 Fed. (2d) 452, cert. den. 278 U. S. 657, 73 L. Ed. 565, 49 Sup. Ct. 185).

DISTINCT AND SEPARATE NOTICES

Two or more distinct and separate notices of lien may be comprised in one single instrument of writing; and two or more notices of lien may be enforced in one and the same proceeding in equity where the parties may be the same. Dicta in *Alfred Richards Brick Co.* v. *Trott* (23 App. D. C. 284).

"ELEVATOR" DEFINED

Electric passenger elevator is both an engine and machine; and whether its motive power be electricity, water or steam, can make no difference in the contemplation of the statute, subjecting building to a lien under Mechanics' Lien Law. *Lefler* v. *Forsberg* (1 App. D. C. 36).

INTEREST IN PROPERTY

All persons concerned or interested in the estate are to be at least constructively notified of the interest in the property and the name against which the lien is claimed. *Chamberlain Metal Weather Strip Co.* v. *Karrick* (60 App. D. C. 316, 53 Fed. (2d) 928).

NAMING WRONG PERSON

Notice of mechanic's lien naming wrong person as owner is invalid. *Chamberlain Metal Weather Strip Co.* v. *Karrick* (60 App. D. C. 316, 53 Fed. (2d) 928).

PURPOSE OF LIEN

The purpose of mechanic's lien laws is to protect by the property those who contribute to its value by labor or materials, and it is only by compliance with statutory requirements that this can be accomplished. *Chamberlain Metal Weather Strip Co.* v. *Karrick* (60 App. D. C. 316, 53 Fed. (2d) 928).

REQUISITES

"It is apparent that, under the statute, three essential averments are necessary to constitute a valid notice. These are, first, the amount claimed; second, the name of the party against whose interest the lien is claimed; and, third, a description of the property to be charged." *Fidelity Storage Corp.* v. *Trussed Concrete Steel Co.* (35 App. D. C. 1).

TIME FOR FILING

A mechanic's lien, if filed by an original contractor, must be filed either during the construction of the improvement or within three months after its completion. *Harper* v. *Galliher & Huguely* (58 App. D. C. 252, 29 Fed. (2d) 452, cert. den. 278 U. S. 657, 73 L. Ed. 565, 49 Sup. Ct. 185).

§ 38–103 [25: 353]. Subcontractor.

Any person directly employed by the original contractor, whether as subcontractor, material man, or laborer, to furnish work or materials for the completion of the work contracted for as aforesaid, shall be entitled to a similar lien to that of the original contractor upon his filing a similar notice with the clerk of the District Court of the United States for the District to that above mentioned, subject, however, to the conditions set forth in sections 38–104 to 38–122. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1239.)

CROSS REFERENCES

See note to § 38–107. *Winter* v. *Hazen-Latimer Co.* (42 App. D. C. 469).

See note to § 38–118. *Woodward and Lothrop* v. *Union Trust Co.* (49 App. D. C. 173, 262 Fed. 627).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Prior to code, see *Leitch* v. *Emergency Hosp.* (6 App. D. C. 247); *Herrell* v. *Donovan* (7 App. D. C. 322); *Sommerville* v. *Williams* (12 App. D. C. 520); *Riggs Fire Ins. Co.* v. *Shedd* (16 App. D. C. 150).

MATERIALMEN AS CONTRACTORS

Materialmen held to be contractors under § 1237 (§ 38–101), and not subcontractors under this section. *McLean* v. *Nolan* (44 App. D. C. 1).

SUB-SUBCONTRACTOR

Under this section, a subcontractor but not a sub-subcontractor has right to file a mechanic's lien. *Battista* v. *Horton, Myers & Raymond,* 1942 (128 F. 2d 29, 76 U. S. App. D. C. 1).

Where general contractors and subcontractor had entered into written agreements with owners not to permit or suffer any mechanic's liens to be filed against property but contract between subcontractor and sub-subcontrac-

tor did not specifically impose that condition on the subsubcontractor, it was entitled under its contract to retain all its legal rights until payment or a valid tender of payment. *Battista* v. *Horton, Myers & Raymond,* 1942 (128 F. 2d 29, 76 U. S. App. D. C. 1).

WAIVER

Subcontractors who waive their remedy under the mechanic's lien statute at the instance of the owner, who refuses to pay the contractor until such releases are executed, cannot, in the absence of fraud, have the release set aside and the lien reinstated, when it appears that the amount paid the contractor was insufficient to pay the subcontractors in full. *Stevens* v. *Gordon* (48 App. D. C. 604).

§ 38–104 [25: 354]. Conditions.

All such liens in favor of parties so employed by the contractor shall be subject to the terms and conditions of the original contract except such as shall relate to the waiver of liens and shall be limited to the amount to become due to the original contractor and be satisfied, in whole or in part, out of said amount only; and if said original contractor, by reason of any breach of the contract on his part, shall be entitled to recover less than the amount agreed upon in his contract, the liens of said parties so employed by him shall be enforceable only for said reduced amount, and if said original contractor shall be entitled to recover nothing said liens shall not be enforceable at all. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1240.)

§ 38–105 [25: 355]. Notice to owner.

The said subcontractor or other person employed by the contractor as aforesaid, besides filing a notice with the clerk of the District Court of the United States for the District of Columbia as aforesaid, shall serve the same upon the owner of the property upon which the lien is claimed, by leaving a copy thereof with said owner or his agent, if said owner or agent be a resident of the District, or if neither can be found, by posting the same on the premises; and on his failure to do so, or until he shall do so, the said owner may make payments to his contractor according to the terms of his contract, and to the extent of such payments the lien of the principal contractor shall be discharged and the amount for which the property shall be chargeable in favor of the parties so employed by him reduced. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1241.)

NOTES TO DECISIONS

CITED

Harper v. *Galliher & Huguely* (58 App. D. C. 252, 29 Fed. (2d) 452, cert. den. 278 U. S. 657, 73 L. Ed. 565, 49 Sup. Ct. 185).

§ 38–106 [25: 356]. Owner's duty.

After notice shall be filed by said party employed under the original contractor and a copy thereof served upon the owner or his agents as aforesaid, the owner shall be bound to retain out of any subsequent payments becoming due to the contractor a sufficient amount to satisfy any indebtedness due from said contractor to the said subcontractor, or other person so employed by him, secured by lien as aforesaid, otherwise the said party shall be entitled to enforce his lien to the extent of the amount so accruing to the principal contractor. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1242.)

CROSS REFERENCE

See note to § 38–107.

NOTES TO DECISIONS

CONTRACTOR PAID IN FULL

Where the owner pays the contractor in full, without notice of subcontractor's right, the subcontractor has no lien upon moneys subsequently accruing to contractor's surety who completes the work under the power reserved to it in the bond. *Winter* v. *Hazen-Latimer Co.* (42 App. D. C. 469).

LIMITATION OF RIGHTS

"The statute limits the right of a subcontractor to a lien upon money due the contractor from the owner at the time notice is given the owner." *Winter* v. *Hazen-Latimer Co.* (42 App. D. C. 469).

SUBCONTRACTOR'S RIGHTS

Subcontractor's rights are "dependent on the contract between the owner and the builder and on the state of the accounts between them; and * * * the subcontractors were bound by all the terms and conditions of that contract." But the subcontractor is equally entitled to the benefits of the contract as far as it inures to his advantage. *Riggs Fire Ins. Co.* v. *Shedd* (16 App. D. C. 150).

§ 38–107 [25: 357]. Subcontractor entitled to know terms of contract.

Any subcontractor or other person employed by the contractor as aforesaid shall be entitled to demand of the owner or his authorized agent a statement of the terms under which the work contracted for is being done and the amount due or to become due to the contractor executing the same, and if the owner or his agent shall fail or refuse to give the said information, or wilfully state falsely the terms of the contract or the amounts due or unpaid thereunder, the said property shall be liable to the lien of the said party demanding said information, in the same manner as if no payments had been made to the contractor before notice served on the owner as aforesaid. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1243.)

CROSS REFERENCE

See notes to § 38–106.

NOTES TO DECISIONS

SUBCONTRACTOR'S KNOWLEDGE OF TERMS

"The subcontractor should acquaint himself with the terms and conditions of the building contract. This information is made available by statute * * *. In the absence of anything to the contrary, we must assume that the plaintiff possessed this information." *Winter* v. *Hazen-Latimer Co.* (42 App. D. C. 469).

§ 38–108 [25: 358]. Advance payments.

If the owner, for the purpose of avoiding the provisions hereof, and defeating the lien of the subcontractor or other person employed by the contractor, as aforesaid, shall make payments to the contractor in advance of the time agreed upon therefor in the contract, and the amount still due or to become due to the contractor shall be insufficient to satisfy the liens of the subcontractors or others so employed by the contractor, the property shall remain subject to said liens in the same manner as if such payments had not been made. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1244.)

CROSS REFERENCE

See note to § 38–106. *Riggs Fire Ins. Co.* v. *Shedd* (16 App. D. C. 150).

NOTES TO DECISIONS

BAD FAITH

In suit by subcontractors to establish liens against owners who had made advance payments to general contractor prior to filing of notice of liens by subcontractors, District Court's ruling that actual bad faith on owners' part need not be shown was erroneous. *Merrill* v. *B. R. Acker Co.*, 1944 (142 F. 2d 102, 79 U. S. App. D. C. 51).

Where owner has made advances to general contractor in order to speed up the work, prior to filing of notice of liens by subcontractors, bad faith cannot be presumed from mere fact of advance payments, and something more is necessary to support such an inference, in order to establish owner's liability to subcontractors under this section. *Merrill* v. *B. R. Acker Co.*, 1944 (142 F. 2d 102, 79 U. S. App. D. C. 51).

EVIDENCE, SUFFICIENCY

In suit by subcontractors to establish liens against owners who had made advance payments to general contractor prior to filing of notice of liens by subcontractors, evidence did not disclose purpose by owner to defeat subcontractors' liens. *Merrill* v. *B. R. Acker Co.*, 1944 (142 F. 2d 102, 79 U. S. App. D. C. 51).

EXTENT OF LIEN

Where owners had, in good faith, made advance payments to general contractor and at time notice of lien was first filed by one of the subcontractors only a few dollars remained due from owners to general contractor, the subcontractors were not entitled to mechanic's liens in excess of amount remaining due when notice of lien was filed and served. *Merrill* v. *B. R. Acker Co.*, 1944 (142 F. 2d 102, 79 U. S. App. D. C. 51).

REMEDY OF SUBCONTRACTORS

Subcontractors have ample opportunity to protect themselves against advance payments by owner to general contractor under §§ 38–103, 38–105, 38–107 entitling subcontractors to require owner to disclose terms of general contract and state of account between himself and general contractor and to secure liens by filing them and giving notice to owner. *Merrill* v. *B. R. Acker Co.*, 1944 (142 F. 2d 102, 79 U. S. App. D. C. 51).

§ 38–109 [25: 359]. Priority of lien.

The lien hereby given shall be preferred to all judgments, mortgages, deeds of trusts, liens, and incumbrances which attach upon the building or ground affected by said lien subsequently to the commencement of the work upon the building, as well as to conveyances executed, but not recorded, before that time, to which recording is necessary, as to third persons; except that nothing herein shall affect the priority of a mortgage or deed of trust given to secure the purchase money for the land, if the same be recorded within ten days from the date of the acknowledgment thereof. When a mortgage or deed of trust of real estate securing advances thereafter to be made for the purpose of erecting buildings and improvements thereon is given, or when an owner of lands contracts with a builder for the sale of lots and the erection of buildings thereon, and agrees to advance moneys toward the erection of such buildings, the lien hereinbefore authorized shall have priority to all advances made after the filing of said notices of lien, and the lien shall attach to the right, title, and interest of the owner in said building and land to the extent of all advances which shall have become due after the filing of such notice of such lien, and shall also attach to and be a lien on the right, title, and interest of the person so agreeing to purchase said land at the time of the filing of said notices of lien. When a building shall be erected or repaired by a lessee or tenant for life or years, or a person having an equitable estate or interest in such building or land on which it stands, the lien created by this act shall only extend to and cover the interest or estate of such lessee, tenant, or equitable owners. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1245.)

NOTES TO DECISIONS

WHEN LIEN ATTACHES

Mechanic's lien attaches at commencement of work and sale thereafter does not affect validity. *Deland* v. *Wagner* (62 App. D. C. 54, 64 Fed. (2d) 552).

The mechanic's lien attached upon the property at the time of the commencement of the work upon the building, but was subordinate to two deeds of trust previously executed. *Deland* v. *Wagner* (62 App. D. C. 54, 64 Fed. (2d) 552).

§ 38–110 [25: 360]. How lien enforced.

The proceeding to enforce the lien hereby given shall be a bill in equity, which shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the clerk, and a copy thereof served on the owner or his agent, if so served, and the time when the building or the work thereon was completed, with a description of the premises and other material facts; and shall pray that the premises be sold and the proceeds of sale applied to the satisfaction of the lien. If such suit be brought by any person entitled, other than the principal contractor, the latter shall be made a party defendant, as well as all other persons who may have filed notices of liens, as aforesaid. All or any number of persons having liens on the same property may join in one suit, their respective claims being distinctly stated in separate paragraphs; and if several suits are brought by different claimants and are pending at the same time, the court may order them to be consolidated. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1246.)

CROSS REFERENCE

Joinder of parties, see notes to § 13–401.

RULES OF CIVIL PROCEDURE

Forms of actions abolished, see Rule 2.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

If claim filed under law as it existed prior to act of Congress of 2d of July, 1884, it should have been made out against the former owner of the property with whom contract was made and not against subsequent purchaser. *Lefler* v. *Forsberg* (1 App. D. C. 36).

There is no doubt of the right of the mortgagees and others acquiring an interest in the property against which the lien is sought to be enforced, to require and insist upon strict proof of everything that is essential to maintain the lien. *Brown* v. *Waring* (1 App. D. C. 378).

Burden is on plaintiffs to show by clear proof, when the buildings were commenced, the nature and character of the work and materials furnished and the time when the buildings were completed; and the failure to establish these facts, to a reasonable intent, will cause the plaintiffs to fail in their claim to a lien. *Brown* v. *Waring* (1 App. D. C. 378).

Sworn answer of defendant made it necessary for complainant to prove all allegations of bill which includes

filing of notice of lien in the manner and within time prescribed by statute. *Landvoight* v. *Melovich* (1 App. D. C. 498).

To enforce mechanics' liens although a personal judgment can only be enforced against party who incurred debt, still a personal decree by subcontractors against the owner of the property as well as original contractor is proper, especially where record shows an unexpended balance in owner's hands more than enough to pay claims of subcontractors. *Emack* v. *Rushenberger* (8 App. D. C. 249).

It has never been the practice for persons holding or claiming mechanics' liens, who have been made defendants, to take affirmative action as a prerequisite for their participation in the fund to be realized by the suit. *Emack* v. *Campbell* (14 App. D. C. 186).

Notices of lien should specifically set forth the amount claimed and not the items that go to make up that amount. *Emack* v. *Campbell* (14 App. D. C. 186).

In General

This section provides means for the enforcement of such liens only when filed within the limitations of the statutes. *Harper* v. *Galliher* (58 App. D. C. 252, 29 Fed. (2d) 452, cert. den. 278 U. S. 657, 73 L. Ed. 565, 49 Sup. Ct. 185).

Bill in Equity

A bill in equity is proper proceeding to enforce mechanics' lien against trustees under deed of trust. *Roth* v. *Eisinger Mill & Lbr. Co.* (63 App. D. C. 128, 70 Fed. (2d) 294).

Reinsurance Agreements

Reinsurers are liable to materialmen upon the first reinsurance agreements. *Bruckner-Mitchell* v. *Sun Indem. Co.* (65 App. D. C. 178, 82 Fed. (2d) 434).

Fact that payment, under the reinsurance agreements, is to be made to the District of Columbia is not conclusive that only such a default under the bond as would affect the District in its own right, as distinguished from such a default as affects materialmen, is intended to be covered by the reinsurance agreements. *Bruckner-Mitchell* v. *Sun Indem. Co.* (65 App. D. C. 178, 82 Fed. (2d) 434).

Subcontractor Entitled to Lien

Under § 1239 (§ 38–103) a subcontractor is entitled to a mechanic's lien, which must be enforced by a bill in equity. *Woodward* v. *Union Trust Co.* (49 App. D. C. 173, 262 Fed. 627).

§ 38–111 [25: 361]. Decree of sale.

If the right of the complainant, or of any of the parties to the suit, to the lien herein provided for shall be established, the court shall decree a sale of the land and premises or the estate and interest therein of the person who, as owner, contracted for the erection, repair, improvement of, or addition to the building, as aforesaid. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1247.)

§ 38–112 [25: 362]. Subcontractor preferred to contractor.

If the original contractor and the persons contracting or employed under him shall both have filed notices of liens, as aforesaid, the latter shall first be satisfied out of the proceeds of sale before the original contractor, but not in excess of the amount due him, and the balance, if any, of said amount shall be paid to him. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1248.)

§ 38–113 [25: 363]. Distribution.

If one, or some only, of the persons employed under the original contractor shall have served notice on the owner, as aforesaid, before payments made by him to the original contractor, said party or parties shall be entitled to priority of satisfaction out of said proceeds to the amount of such payments; but, subject to this provision, if the proceeds of sale, after paying thereout the costs of the suit, shall be insufficient to satisfy the liens of said parties employed under the original contractor the said proceeds shall be distributed ratably among them to the extent of the payments accruing to the original contractor subsequently to the service of notice on the owner by said parties, as aforesaid. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1249.)

§ 38–114 [25: 364]. Several buildings.

In case of labor done or materials furnished for the erection or repair of two or more buildings joined together and owned by the same person or persons, it shall not be necessary to determine the amount of work done or materials furnished for each separate building, but only the aggregate amount upon all the buildings so joined, and the decree may be for the sale of all the buildings and the land on which they are erected as one building, or they may be sold separately if it shall seem best to the court. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1250.)

Cross Reference

See note to § 38–101. *Alfred Richards Brick Co.* v. *Trott* (23 App. D. C. 284).

NOTES TO DECISIONS

Separate Notices

Where each lienor filed separate notices of lien, each in the full amount due, against each of the two lots, trustees under deed of trust were not prejudiced by release of the lien on one lot. *Roth* v. *Eisinger Mill & Lbr. Co.* (63 App. D. C. 128, 70 Fed. (2d) 294).

Whole Row of Buildings

Where the contract to erect a row of buildings related to the row as an entirety and not to the particular buildings separately, the whole row was a building in the meaning of the mechanic's lien statute, from having been thus united by the parties in one contract, as one general piece of work, and the lien could be claimed on the whole row of buildings. *Phillips* v. *Gilbert* (101 U. S. 721, 25 L. Ed. 833, decided under 11 Stat. 376, ch. 17).

§ 38–115 [25: 365]. When suit to be commenced.

Any person, entitled to a lien, as aforesaid, may commence his suit to enforce the same at any time within a year from and after the filing of the notice aforesaid or within six months from the completion of the building or repairs aforesaid, on his failure to do which the said lien shall cease to exist, unless his said claim be not due at the expiration of said periods, in which case the action must be commenced within three months after the said clam shall have become due. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1251.)

§ 38–116 [25: 366]. Extent of ground bound by lien.

If there be any contest as to the dimensions of the ground claimed to be subjected to the lien aforesaid, the court shall determine the same upon the evidence and describe the same in the decree of sale. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1252.)

§ 38–117 [25: 367]. Entry of satisfaction.

Whenever any person having a lien by virtue hereof shall have received satisfaction of his claim and cost, he shall, on the demand, and at the cost of the person interested, enter said claim satisfied, in

the clerk's office aforesaid, and on his failure or refusal so to do he shall forfeit fifty dollars to the party aggrieved, and all damages that the latter may have sustained by reason of such failure or refusal. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1253.)

§ 38–118 [25: 368]. Payment into court and release.

In any suit to enforce a lien hereunder, the owner of the building and premises to which such lien may have attached, as aforesaid, may be allowed to pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct, or he may file a written undertaking, with two or more sureties, to be approved by the court, to the effect that he and they will pay the judgment that may be recovered and costs, which judgment shall be rendered against all the persons so undertaking. On the payment of said money into court, or the approval of such undertaking, the property shall be released from such lien, and any money so paid in shall be subject to the final decree of the court. No such undertaking shall be approved by the court until the complainant shall have had at least two days' notice of the defendant's intention to apply to the court therefor, which notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath, if required, that they are worth, over and above all debts and liabilities, double the amount of said lien. The complainant may appear and object to such approval. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1254.)

CROSS REFERENCE

Payment into court, § 16–1401 and notes.

NOTES TO DECISIONS

BOND FILED

Where bond is filed by purchaser of realty, for release of mechanic's lien, the suit to foreclose the lien is properly dismissed. *Maiatico* v. *Fletcher* (59 App. D. C. 250, 39 Fed. (2d) 295).

Upon the filing and approval of the undertaking of the owner and his surety, the property was released from the operation of the mechanics' lien. *Deland* v. *Wagner* (62 App. D. C. 54, 64 Fed. (2d) 552).

NOTICE NOT REQUIRED

"It will be observed that no notice is required under section 1254 (this section), where a money payment is made by the owner; the theory evidently being that cash speaks for itself, and that no one possibly could be prejudiced by the substitution of cash for the obligation of the owner to pay the amount due under the contract. It was for this reason that section 1255 (§ 38–119) makes no mention of a cash payment." *Woodward* v. *Union Trust Co.* (49 App. D. C. 173, 262 Fed. 627).

PAYMENT INTO COURT OF SUM EQUAL TO LIEN

"The evident purpose of sections 1254 and 1255 (this section and § 38–119) is to enable the owner, against whose building or fixtures a lien has been asserted, to be relieved of the embarrassment of the lien through the payment into court of a sum equal to the amount of the lien with interest and costs, or the filing of an undertaking to cover that amount. Where admittedly an amount is due the principal contractor, and the lien is asserted by a subcontractor, there is no contest between the owner and the subcontractor; the issue being restricted to the contractor and subcontractor. If the owner does not take advantage of these provisions of the code for the release of the lien, the statute imposes upon him no duty to notify the contractor of the pendency of the subcontractor's suit." *Woodward* v. *Union Trust Co.* (49 App. D. C. 173, 262 Fed. 627).

§ 38–119 [25: 369]. Undertaking to discharge liens before suit.

Such an undertaking as above mentioned may be offered before any suit brought in order to discharge the property from existing liens, in which case notice shall be given as aforesaid to the parties whose liens it is sought to have discharged, and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, and said undertaking shall be to the effect that the owner and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1255.)

CROSS REFERENCE

See notes to § 38–118.

NOTES TO DECISIONS

EXCLUSIVE REMEDY

Where this section prescribed a specific method for removal of mechanic's liens from records by paying into court amount claimed plus interest and costs or by filing a bond, a direct action to remove the lien could not be maintained, notwithstanding plaintiff's contention that he was without funds either to pay amounts into court or to secure a bond and that delay incident to ordinary procedure would cause him irreparable damage, particularly where owner admitted that he had deposited sufficient money to cover lien with a title insurance company. *Clarke* v. *Huff* (App. D. C. 1948, 165 F. 2d 247).

§ 38–120 [25: 370]. Decree against sureties.

If such undertaking be approved before any suit brought, such suit shall be a suit in equity against the owner, to which the sureties may be made parties; if the undertaking be approved after suit brought, the said sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the sureties as well as the owner. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1256.)

CROSS REFERENCE

Joinder of parties, see notes to § 13–401.

NOTES TO DECISIONS

OWNER AND SURETY; DECREE AGAINST

Where owner and his surety had filed an undertaking and had thereby released the mechanics' lien, the decree was properly rendered against said owner and surety. *Deland* v. *Wagner* (62 App. D. C. 54, 64 Fed. (2d) 552).

§ 38–121 [25: 371]. No action by subcontractor against owner.

No subcontractor, materialman, or workman employed under the original contractor shall be entitled to a personal judgment or decree against the owner of the premises for the amount due to him from said original contractor, except upon a special promise of such owner, in writing, for a sufficient consideration, to be answerable for the same. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1257.)

NOTES TO DECISIONS

IN GENERAL

This section is applicable although the owner's contract with the contractor and the latter's contract with the subcontractor were to be performed in Maryland. *Mathews* v. *Libbey* (42 App. D. C. 272).

PERSONAL OBLIGATION

Where principal contract did not cover additional work which owner, through general contractor requested plumbing subcontractor to perform for owner, subcontractor's claim against owner was based on owner's personal promise to pay owner's own debt and not debt of another, and authorizing subcontractor to recover amount owed by original contractor from owner who specially promises in writing for consideration to be answerable for such amount was inapplicable to subcontractor's claim against owner, and such claim was not within statute of frauds, § 12–302, requiring special promise to answer for debt of another person to be in writing. *Jones* v. *Guice* (D. C. Mun. App. 1948, 57 A. 2d 190).

§ 38–122 [25: 372]. Judgment for deficiency upon a sale.

In any suit brought to enforce a lien by virtue of the provisions aforesaid, if the proceeds of the property affected thereby shall be insufficient to satisfy such lien, a personal judgment for the deficiency may be given in favor of the lien or against the owner of the premises or the original contractor, as the case may be, whichever contracted with him for the labor or materials furnished by him, provided such person be a party to the suit and shall have been personally served with process therein. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1258.)

NOTES TO DECISIONS

FORMER OWNERS LIABLE

Where property was sold under a deed of trust, it was properly held that a personal judgment for the deficiency should be rendered against the former owners who contracted for the repairs. *Davidson* v. *E. F. Brooks Co.* (46 App. D. C. 457, cert. den. 245 U. S. 665, 62 L. Ed. 538, 38 Sup. Ct. 63). See also *Emack* v. *Rushenberger* (8 App. D. C. 249); *McCarthy* v. *Holtman* (19 App. D. C. 150).

§ 38–123 [25: 373]. Wharves and lots.

Any person who shall furnish materials or labor in filling up any lot or in constructing any wharf thereon, or dredging the channel of the river in front of any wharf, under any contract with the owner, shall be entitled to a lien for the value of such work or materials on said lot and wharf upon the same conditions and to be enforced in the same manner as in the case of work done in the erection of buildings, as provided in section 38–110. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1259.)

§ 38–124 [25: 374]. Artisans' lien.

Any mechanic or artisan who shall make, alter, or repair any article of personal property at the request of the owner shall have a lien thereon for his just and reasonable charges for his work done and materials furnished, and may retain the same in his possession until said charges are paid; but if possession is parted with by his consent such lien shall cease. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1260.)

§ 38–125 [25: 375]. Enforcement by sale.

If the amount due and for which a lien is given by section 38–124 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263.)

§ 38–126 [25: 376]. Enforcement by bill in equity.

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264.)

Chapter 2.—GARAGE KEEPERS AND LIVERYMEN

Sec.
38–201. Lien of garage keepers and liverymen.
38–202. Enforcement of lien by sale.
38–203. Enforcement of lien by bill in equity.

§ 38–201 [13: 4]. Lien of garage keepers and liverymen.

It shall be lawful for all persons keeping or boarding any animals at livery within the District, under any agreement with the owner thereof, to detain such animals until all charges under such agreement for the care, keep, or board of such animals shall have been paid: *Provided, however,* That notice in writing shall first be given to such owner in person or at his last-known place of residence of the amount of such charges and the intention to detain such animal or animals until such charges shall be paid. Garage keepers shall also have a lien for their charges for storage, repairs, and supplies of or concerning motor vehicles, when such charges are incurred by an owner or conditional vendee of such motor vehicles, and may detain such motor vehicles at any time they may have lawful possession thereof, after giving a notice similar to that provided for liverymen. If said charges are not paid in thirty days said lien may be enforced in the manner provided in section 38–203. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1262; Apr. 19, 1920, 41 Stat. 568, ch. 153.)

AMENDMENT

The 1920 amendment added the last two sentences.

CROSS REFERENCE

Motor vehicle title liens, §§ 40–701 to 40–715.

NOTES TO DECISIONS

IN GENERAL

Congress, in amending this section, seems to have taken notice that motor vehicles are sold frequently upon conditional sale contracts, and accordingly provided for a lien in favor of garage keepers, where the charges are incurred either by the owner or the conditional vendee. *Barrett* v. *Commercial Credit Co.* (54 App. D. C. 249, 296 Fed. 996).

The very fact that the statute awards a lien for work done or materials furnished at the instance of the conditional vendee, and in view of the further fact that the automobile business is largely conducted upon a credit basis, by which dealers protect themselves through conditional sales agreements, are indicative of the legislative

intent to give such a lien priority over the conditional bill of sale. *Barrett* v. *Commercial Credit Co.* (54 App. D. C. 249, 296 Fed. 996).

§ 38–202 [13: 5]. Enforcement of lien by sale.

If the amount due and for which a lien is given by section 38–201 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263.)

CROSS REFERENCE

Hotel, boarding-house, and lodginghouse keepers' liens, § 34–103.

§ 38–203 [13: 6]. Enforcement of lien by bill in equity.

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264.)

Chapter 3.—HOSPITALS

Sec.

38–301. Hospitals to have lien for services on recovery in accident cases.
38–302. Notice to be filed.
38–303. Liability for not paying hospital amount of its lien.
38–304. Permission to examine hospital records.
38–305. Clerk to provide lien docket.

§ 38–301 [24: 22]. Hospitals to have lien for services on recovery in accident cases.

Every association, corporation, or other institution maintaining a hospital in the District of Columbia, which shall furnish medical or other service to any patient injured by reason of an accident causing injuries not covered by the Employees' Compensation Act or the Workmen's Compensation Act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient, of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages: *Provided,* That the lien herein set forth shall not be applied or considered valid against any one suffering injuries coming under the Employees' Compensation Act or the Workmen's Compensation Act in this District. (June 30, 1939, 53 Stat. 990, ch. 255, § 1.)

COMPILER'S NOTE

Evidently the acts above referred to are the federal laws providing compensation for injured governmental employees, which are made applicable to District employees by U. S. C., title 5, § 794, and the Workmen's Compensation Act for the District, §§ 36–501, 36–502, which make the Longshoremen's and Harbor Workers' Compensation Act (U. S. C., title 33, §§ 901–950) applicable to the District.

§ 38–302 [24: 23]. Notice to be filed.

No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the clerk of the District Court of the United States for the District of Columbia in a docket provided for such liens, prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm, or corporation against such liability, where the name of such insurance carrier is ascertained. (June 30, 1939, 53 Stat. 990, ch. 255, § 2.)

§ 38–303 [24: 24]. Liability for not paying hospital amount of its lien.

Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of one year from the date of payment to such patient or his heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; and any such association, corporation, or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment. (June 30, 1939, 53 Stat. 990, ch. 255, § 3.)

§ 38–304 [24: 25]. Permission to examine hospital records.

Any person or persons, firm or firms, corporation or corporations legally liable for such lien or against

whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the ledger entries and similar records of any such association, corporation, or other institution or body maintaining such hospital for the purpose of ascertaining the basis for such lien. (June 30, 1939, 53 Stat. 991, ch. 255, § 4.)

§ 38–305 [24: 26]. Clerk to provide lien docket.

The clerk of the District Court of the United States for the District of Columbia shall provide a suitable bound book to be called the hospital lien docket, in which, upon the filing of any lien claim under the provisions of this chapter, he shall enter the name of the injured person, the name of the person, firm, or corporation alleged to be liable for the injuries, the date of the accident, and the name of the hospital or other institution making the claim. Said clerk shall make a proper index of the same in the name of the injured person and the clerk shall charge such reasonable fees, not to exceed the sum of $1, as the court may by rule fix for the recording, indexing, and the releasing of the lien so filed. (June 30, 1939, 53 Stat. 991, ch. 255, § 5.)

TITLE 39.—MILITARY

Chap.		Sec.
1.	Composition, organization, and control	39–101
2.	Commissioned officers	39–201
3.	Noncommissioned officers	39–301
4.	Enlisted personnel	39–401
5.	Armament, equipment, and supplies	39–501
6.	Active military duty	39–601
7.	Courts-martial	39–701
8.	Pay and allowances	39–801
9.	Miscellaneous provisions	39–901

Chapter 1.—COMPOSITION, ORGANIZATION, AND CONTROL

Sec.
39–101. Militia—Persons to be enrolled.
39–102. Exemptions from service.
39–103. Assessors to make list of persons liable to enrolment.
39–104. Duty of enrolled militia.
39–105. Ordering enrolled militia into service.
39–106. Organized militia—Volunteer service—Designation.
39–107. Organization of National Guard units.
39–108. Reserve corps—Organization—Composition.
39–109. Government employees—Leaves of absence.
39–110. Government employees ordered to duty—Restoration to Government position.
39–111. Disbanding companies below minimum strength.
39–112. President to be Commander in Chief.

§ 39–101 [20: 1441]. Militia—Persons to be enrolled.

Every able-bodied male citizen resident within the District of Columbia, of the age of eighteen years and under the age of forty-five years, excepting persons exempted by section 39–102, and idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrollment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 1.)

COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1899, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–102 [20: 1442]. Exemptions from service.

In addition to the persons exempted from enrollment in the militia by the general laws of the United States, the following persons shall also be exempted from enrollment in the militia of the District of Columbia, namely: Officers of the government of the District of Columbia; judges and officers of the courts of the District of Columbia; officers who have held commissions in the Regular or Volunteer Army or Navy of the United States; officers who have served for a period of five years in the militia of the District of Columbia or of any state of the United States; ministers of the gospel; practicing physicians; conductors and engine-drivers of railroad trains; members of the paid police and fire departments. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 2.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–103 [20: 1443]. Assessors to make list of persons liable to enrolment.

The commissioners of the District of Columbia shall provide for the enrolment of the militia, and for this purpose may require the assessors of taxes, at the same time they are engaged in taking the assessment of valuation of real and personal property, to make a list of persons liable to enrolment; and such record shall be deemed a sufficient notification to all persons whose names are thus recorded that they have been enrolled in the militia. Immediately after the completion of each enrolment they shall furnish the commanding general of the militia with a copy of the same. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 3.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–104 [20: 1444]. Duty of enrolled militia.

The enrolled militia shall not be subjected to any duty except when called into the service of the United States, or to aid the civil authorities in the execution of the laws or suppression of riots. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 4.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–105 [20: 1445]. Ordering enrolled militia into service.

Whenever it shall be necessary to call out any portion of the enrolled militia the commander-in-chief shall order out, by draft or otherwise, or accept as volunteers as many as required. Every member of the enrolled militia who volunteers, or who is ordered out or drafted under the provisions of this chapter, who does not appear at the time and place designated, may be arrested by order of the commanding general and be tried and punished by a court-martial. The portion of the enrolled militia ordered out or accepted shall be mustered into service for such period as may be required, and the commanding general may assign them to existing organizations of the active militia, or may organize them as the exigencies of the occasion may require. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 5.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–106 [20: 1452]. Organized militia—Volunteer service—Designation.

The organized militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia. (Mar. 1, 1889, 25 Stat. 774, ch. 328, § 10; Feb. 18, 1909, 35 Stat. 629, ch. 146, § 10.)

AMENDMENT

Prior to the 1909 amendment, this section provided: "That the active militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia; and in case the militia of the District of Columbia are called into the service of the United States, or required for the suppression of riots, or to aid civil officers in the execution of the laws, shall be the first to be ordered into service."

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–107 [20: 1453]. Organization of National Guard units.

Except as otherwise specifically provided by law, the organization of the National Guard, including the composition of all units thereof, shall be the same as that which is or may after June 3, 1916, be prescribed for the Regular Army, subject in time of peace to such general exceptions as may be authorized by the Secretary of War. And the President may prescribe the particular unit or units, as to branch or arm of service, to be maintained in each state, territory, or the District of Columbia in order to secure a force which, when combined, shall form complete higher tactical units. (June 3, 1916, 39 Stat. 197, ch. 134, § 60.)

COMPILER'S NOTES

The act of June 15, 1933, 48 Stat. 156, ch. 87, § 6, amended the above section by adding thereto the following proviso: "*Provided,* That no change in allotment, branch, or arm of units or organizations wholly within a single State will be made without the approval of the Governor of the State concerned."

Section 11 of the act of 1889, 25 Stat. 774, ch. 328, as amended by act of Feb. 18, 1909, 35 Stat. 629, ch. 146, § 11, is deemed to have been superseded by this section. Sections 12–17 of the above-mentioned act were repealed by the act of Feb. 18, 1909, 35 Stat. 630, ch. 146.

CROSS REFERENCE

System of discipline and field exercise, § 39–904.

STATUTORY REFERENCES

As to the composition of the National Guard, U. S. C., title 32, §§ 4 and 4a, provide as follows:

"*National Guard of States, Territories, and District of Columbia; composition.*—The National Guard of each State, Territory, and the District of Columbia shall consist of members of the militia voluntarily enlisted therein, who upon original enlistment shall be not less than eighteen nor more than forty-five years of age, or who in subsequent enlistment shall be not more than sixty-four years of age, organized, armed, equipped, and federally recognized as hereinafter provided, and of commissioned officers and warrant officers who are citizens of the United States between the ages of twenty-one and sixty-four years: *Provided,* That former members of the Regular Army, Navy or Marine Corps under sixty-four years of age may enlist in said National Guard. (June 3, 1916, ch. 134, § 58, 39 Stat. 197; Feb. 28, 1925, ch. 371, § 1, 43 Stat. 1075; June 15, 1933, ch. 87, § 5, 48 Stat. 155.)

"*National Guard of United States; establishment; composition.*—The National Guard of the United States is hereby established. It shall be a reserve component of the Army of the United States and shall consist of those federally recognized National Guard units, and organizations, and of the officers, warrant officers, and enlisted members of the National Guard of the several States, Territories, and the District of Columbia, who shall have been appointed, enlisted and appointed, or enlisted, as the case may be, in the National Guard of the United States, as hereinafter provided, and of such other officers and warrant officers as may be appointed therein as provided in section 111 hereof [§ 81 of this title]: *Provided,* That the members of the National Guard of the United States shall not be in the active service of the United States except when ordered thereto in accordance with law, and, in time of peace, they shall be administered, armed, uniformed, equipped, and trained in their status as the National Guard of the several States, Territories, and the District of Columbia, as provided in this title: *And provided further,* That under such regulations as the Secretary of War shall prescribe, noncommissioned officers, first-class privates, and enlisted specialists of the National Guard may be appointed in corresponding grades, ratings, and branches of the National Guard of the United States, without vacating their respective grades and ratings in the National Guard.

"*And provided further,* That in the grades of first lieutenant and second lieutenant the number shall be unlimited. (June 3, 1916, ch. 134, § 58, 39 Stat. 197; June 15, 1933, ch. 87, § 5, 48 Stat. 155; June 19, 1935, ch. 277, § 2, 49 Stat. 391.)"

§ 39–108 [20: 1512]. Reserve corps—Organization—Composition.

A reserve corps of the National Guard of the District of Columbia is hereby organized, to consist of honorably discharged officers and men of the Army, the Navy, and the Marine Corps of the United States, honorably discharged officers and men of the organized militia of any state or territory who are residents of the District of Columbia, and honorably discharged members of the National Guard of the District of Columbia, whose military training and physical condition shall conform to the standard determined by regulations to be promulgated by the President of the United States: *Provided,* That the term of enlistment in the reserve and the military duties and obligations required of reservists shall be determined by regulations to be promulgated by the President of the United States: *Provided further,* That when called out for military duty, reservists shall receive the same pay and allowances as officers and men of like grade on the active list of the National Guard of the District of Columbia. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 72.)

COMPILER'S NOTES

Section 73 of the act of 1909, relating to exemption from jury service of officers and enlisted men is compiled herein as § 11–1420.

Section 74 of the 1909 act made the act of Jan. 21, 1903, 32 Stat. 775 applicable to the District of Columbia; but this act has been superseded by the National Defense Act of June 3, 1916, 39 Stat. 166, ch. 134.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–109. Government employees—Leaves of absence.

All officers and employees of the United States or of the District of Columbia who shall be members of the Officers' Reserve Corps shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be ordered to duty with troops or at field exercises, or for instruction, for periods not to

exceed fifteen days in any one calendar year. (May 12, 1917, 40 Stat. 72, ch. 12.)

CROSS REFERENCE

Leave of absence of officers or employees who are members of the National Guard, § 39–608.

§ 39–110. Government employees ordered to duty—Restoration to Government position.

Members of the Officers' Reserve Corps who are in the employ of the United States government or of the District of Columbia and who are ordered to duty by proper authority shall, when relieved from duty, be restored to the positions held by them when ordered to duty. (May 12, 1917, 40 Stat. 72, ch. 12.)

§ 39–111 [20: 1454]. Disbanding companies below minimum strength.

When any company of the National Guard shall, for a period of not less than ninety days, contain less than the required number of enlisted men, or upon a duly ordered inspection, shall be found to have fallen below a proper standard of efficiency, the commanding general may, with consent of the President, either disband such company or consolidate it with any other company of the National Guard, and grant an honorable discharge to the supernumerary officers and noncommissioned officers produced by such consolidation. Officers and enlisted men discharged by reason of such disbanding or consolidation and at any time thereafter reentering the service shall have allowed to them, as part of their term of service, the time already served. (Mar. 1, 1889, 25 Stat. 774, ch. 328, § 18; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 12; June 3, 1916, 39 Stat. 200, ch. 134, § 68.)

COMPILER'S NOTE

Section 14 of the act of 1889 fixed the minimum number of enlisted men in any company at forty. This section was repealed by the act of Feb. 18, 1909, 35 Stat. 630, ch. 146. It is considered that § 11 of the Act of 1889, as amended by the act of Feb. 18, 1909, 35 Stat. 629, ch. 146, § 11, was designed to take the place of § 14 of 1889, above referred to. Section 11 is considered as having been superseded by § 60 of the National Defense Act of 1916 (§ 39–107 herein).

AMENDMENTS

The 1909 act did not amend the text of this section, but changed the section number from 18 to 12.

The act of 1916 provided that "no organization of the National Guard * * * shall be disbanded without the consent of the President, nor, without such consent, shall the commissioned or enlisted strength of any such organization be reduced below the minimum that shall be prescribed therefor by the President."

STATUTORY REFERENCE

Disbanding of National Guard organizations, consent of President, U. S. C., title 32, § 16.

§ 39–112 [20: 1446]. President to be Commander-in-Chief.

The President of the United States shall be the commander-in-chief of the militia of the District of Columbia. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 6.)

STATUTORY REFERENCES

See U. S. C., title 32.

Soldiers' and Sailors' Civil Relief Act of 1940, act of October 17, 1940, 54 Stat. 1178, ch. 888.

Chapter 2.—COMMISSIONED OFFICERS

Sec.
39–201. Commanding general—Appointment and removal—Rank.
39–202. Staff officers—Appointment and removal—Noncommissioned staff.
39–203. Qualifications of staff officers—Tenure—Vacancies.
39–204. Detail for adjutant general.
39–205. Retired Army officer may be detailed as adjutant general.
39–206. Officers—Appointment—Oath.
39–207. Officers of staff departments—Appointment—Examination.
39–208. Vacancies above grade of second lieutenant—How filled.
39–209. Appointments to grade of second lieutenant.
39–210. Examinations for promotion—Retirement for disability—Suspension for failure to appear.
39–211. Examinations for second lieutenants.
39–212. Special examination of officer's capability—Certificate to President.
39–213. Retirement after ten years' service—Increased rank—Retirement at sixty-four years of age—Wearing uniform after retirement—Service on military boards—Pay and allowances—Retirement on recommendation of commanding general.
39–214. Discharge of commissioned officer.

§ 39–201 [20: 1447]. Commanding general—Appointment and removal—Rank.

There shall be appointed and commissioned by the President of the United States a commanding general of the militia of the District of Columbia with the rank of brigadier-general, who shall hold office until his successor is appointed and qualified, but may be removed at any time by the President. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 7.)

COMPILER'S NOTES

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1899, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

CROSS REFERENCES

Power to make rules and regulations, § 39–905.
President is Commander in Chief, § 39–112.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–202 [20: 1448]. Staff officers—Appointment and removal—Noncommissioned staff.

The staff of the militia of the District of Columbia shall be appointed and commissioned by the President. It shall consist of one adjutant-general, one inspector-general, one quartermaster-general, one commissary-general, one chief of ordnance, one chief engineer, one surgeon-general, one judge-advocate-general, and one inspector-general of rifle practice each with the rank of major; and four aids-de-camp, each with the rank of captain. The commanding general may appoint a noncommissioned staff of the militia, to consist of one sergeant-major, one quartermaster-sergeant, one commissary sergeant, one ordnance sergeant, two staff sergeants, one hospital

steward, one color sergeant, and one sergeant bugler. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 8; June 3, 1916, 39 Stat. 199, ch. 134, § 66.)

AMENDMENT

The 1916 amendment omitted the following words at the end of the first sentence "and hold office until their successors are appointed and qualified, but may be removed at any time by the President," also after the words "adjutant general" the words "with the rank of lieutenant colonel."

CROSS REFERENCES

Date of commissions, § 39–902.
General provision as to duties of officers, §39–901.
Noncommissioned officers, § 39–301.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–203 [20: 1449]. Qualifications of staff officers—Tenure—Vacancies.

It is hereby provided that staff officers, including officers of the pay, inspection, subsistence, and medical departments, appointed in the National Guard of the District of Columbia, shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and that vacancies among said officers shall be filled by appointment from the officers of the National Guard of the District of Columbia. (July 11, 1919, 41 Stat. 127, ch. 8, § 69.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–204 [20: 1450]. Detail for adjutant general.

The President may assign an officer of the army to act as adjutant-general of the militia of the District of Columbia, who, while so assigned, shall be commissioned as such and be subject to the orders of the commanding general and the provisions of this title: *Provided, however,* That the officer so assigned shall receive no other pay or emolument than that to which his rank in the army entitles him when on detached service. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 9.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–205 [20: 1451]. Retired Army officer may be detailed as adjutant-general

The President of the United States may detail as adjutant-general of the District of Columbia militia any retired officer of the Army who may be nominated to the President by the brigadier-general commanding the District of Columbia militia, said retired officer while so detailed to have the active service pay and allowances of his rank in the Regular Army. (June 6, 1900, 31 Stat. 671, ch. 811.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–206 [20: 1455]. Officers—Appointment—oath.

All officers shall be commissioned by the President of the United States, on the recommendation of the commanding general. They shall be nominated as herein provided. No person commissioned as an officer shall assume such rank or enter upon the duties of the office to which he may be commissioned until he has accepted such commission and taken such oath or affirmation as may be prescribed. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 19; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 13.)

AMENDMENT

The 1909 amendment added the words "on the recommendation of the commanding general" at the end of the first sentence, omitted from the second sentence the words "In time of peace, or when not in the service of the United States they shall be previously elected or."

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–207 [20: 1456]. Officers of staff departments—Appointment—Examination.

The officers of the staff departments, staff corps, and the organizations created by this chapter when organized, shall be nominated by the commanding general, subject to the examination required by law. (Mar. 1, 1889, 25 Stat. 775, ch. 328, §§ 20 and 21; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 14.)

AMENDMENT

Act of March 1, 1889, read as follows: "The staff officers of a regiment or battalion shall be nominated by the permanent commander thereof. Field officers of regiments or battalions shall be nominated by the commanding general. Captains and lieutenants of companies shall be elected by the written votes of the enlisted men of the respective companies."

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–208 [20: 1457]. Vacancies above grade of second lieutenant—How filled.

Vacancies occurring in the cavalry, coast artillery corps, field artillery, and infantry above the grade of second lieutenant shall, subject to the examination required by law, be filled by promotion according to seniority from the next lower grade in the troop, the separate company, the field battery, the separate battalion, and the regiment in which the vacancy occurs. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 22; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 15.)

AMENDMENT

Act of March 1, 1889, provided as follows: "That elections of officers shall be ordered and held under such regulations as may be prescribed by the commanding general."

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–209 [20: 1458]. Appointments to grade of second lieutenant.

All appointments to the grade of second lieutenant shall be from the enlisted men, under regulations prescribed by the commanding general, and subject to the examination required by law. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 630, ch. 146, § 16.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–210 [20: 1459]. Examinations for promotion—Retirement for disability—Suspension for failure to appear.

The commanding general is authorized to prescribe a system of examination to be conducted at such

times anterior to the accruing of the right to promotion as may be best for the interest of the service. If any officer fails to appear for examination within thirty days after notification to so appear or fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion: *And provided,* That should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in the line of duty he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for ninety days, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 23; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 17.)

AMENDMENT

Act of March 1, 1889, read as follows: "That every person accepting an election or nomination as an officer shall appear before an examining board, to be appointed by the commanding general, which board shall examine said officer as to his military and other qualifications. If any officer shall fail to appear before the board of examination within thirty days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the commanding general, who shall thereupon declare the election or nomination of such officer null and void. If, in the opinion of the board such officer is competent, and otherwise qualified, they shall certify the fact to the commanding general, who shall thereupon recommend him to the President for commission."

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–211 [20: 1460]. Examinations for second lieutenants.

The commanding general is authorized to prescribe a system of examination of enlisted men to determine their fitness for promotion to the grade of second lieutenant. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 630, ch. 146, § 18.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–212 [20: 1461]. Special examination of officer's capability—Certificate to President.

Whenever, in the opinion of the commanding general of the militia of the District of Columbia, an officer of the said militia has become incapacitated for the performance of duty for any reason, the commanding general shall submit the name of such officer to the Secretary of War, with a view to his being ordered before a board of examination, to be appointed by the Secretary of War, which board shall examine said officer as to his physical, mental, and military qualifications.

If any officer shall fail to appear before a board of examination so appointed within thirty days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the commanding general, who shall forward the record of examination to the Secretary of War, with his recommendation thereon, for submission to the President. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 631, ch. 146, § 19.)

STATUTORY REFERENCE

See U. S. C., title 32.

NOTES TO DECISIONS

FEDERAL RECOGNITION OF OFFICERS

The withdrawal of federal recognition to an officer of the National Guard of the state does not terminate his status as a state officer. *Hurley* v. *United States ex rel. Gladman* (60 App. D. C. 69, 47 Fed. (2d) 431).

§ 39–213 [20: 1462]. Retirement after ten years' service—Increased rank—Retirement at sixty-four years of age—Wearing uniform after retirement—Service on military boards—Pay and allowances—Retirement on recommendation of commanding general.

Any commissioned officer in the National Guard of the District of Columbia who shall have served as such in the National Guard of the District of Columbia for the continuous period of ten years may, upon his own application, be placed by the President of the United States upon a retired list, which is hereby authorized, with the rank held by him at the time such application is made: *Provided, however,* That an officer so retired, who at the time of making such application has remained in the same grade for the continuous period of ten years, or whose services have been especially meritorious, may be retired with increased rank of one grade and shall, before being so retired, receive from the President of the United States the commission of the new grade: *Provided further,* That whenever any officer on the active list reaches the age of sixty-four years he shall be retired; with or without increase of rank in the discretion of the President of the United States. Retired officers on occasions of ceremony may, and when acting under orders, as hereinafter provided, shall wear the uniform of the highest rank attained by them in the military service of the United States, the militia of the States or Territories, or the National Guard of the District of Columbia. Retired officers shall be eligible to perform any military duty to the same extent as if not retired, and the commanding general may, in his discretion, by order, require them to serve upon military boards, courts of inquiry, and courts-martial, or to perform any other special or temporary duty, and for such service they shall receive the same pay and allowances as are provided by law for like service by officers on the active list of the National Guard of the District of Columbia. All retired officers shall be amendable to court-martial for military offenses to the same extent as if upon the active list of the National Guard of the District of Columbia. The names of all officers of retired rank shall be borne upon a separate roster, kept under the supervision of the adjutant-general. The commanding general may at any time recommend to the President of the United States and the President may retire any commissioned officer who shall have been ordered before a medical board consisting of at least three commissioned medical officers and upon whom such a board shall have made report showing such officer to be physically unable to properly perform the duties of his office. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 631, ch. 146, § 20.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–214 [20: 1463]. Discharge of commissioned officer.

A commissioned officer may be honorably discharged—,

Upon tender of resignation;

Upon disbandment of the organization to which he belongs;

Upon report of a board of examination, or for failure to appear before such board when ordered.

He may be dismissed upon the sentence of a court-martial; conviction in a court of justice of an infamous offense. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 24; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 21.)

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 24 to 21.

Chapter 3.—NONCOMMISSIONED OFFICERS

Sec.
39–301. Noncommissioned officers—Appointment—Reduction to ranks.

§ 39–301 [20: 1464]. Noncommissioned officers — Appointment—Reduction to ranks.

The commanding officers of regiments and battalions not part of regiments shall appoint and warrant the noncommissioned staff officers of their respective regiments or battalions, and they shall, in their discretion, warrant the noncommissioned officers of the companies of their respective regiments and battalions from the members thereof, upon the written nomination of the commanding officers of the companies, respectively. In troop, battery, and companies not part of a regiment or battalion and in the hospital corps the noncommissioned officers shall be warranted by the commanding officer of the brigade, in his discretion, from the members thereof, upon the written nomination of the commanding officer of the troop, battery, company, or hospital corps. The officer warranting a noncommissioned officer shall have power to reduce to the ranks, for good and sufficient reasons, the noncommissioned officers named in this section, but such as were enlisted as noncommissioned officers shall be discharged. Noncommissioned officers who shall be dropped vacate their positions. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 25; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 22.)

COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1899, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

AMENDMENT

Act of March 1, 1889, provided as follows: "That noncommissioned staff officers shall be appointed by the permanent commander of the organization to which they belong; and permanent commanders of battalions shall appoint the noncommissioned officers of companies, upon the written nomination of the respective captains; but they may withhold such appointment if, in their judgment, there be proper cause; noncommissioned officers of unattached companies shall be appointed by there [their] respective captains. The permanent commander of any battalion or unattached company may reduce to the ranks any company noncommissioned officers of his command."

CROSS REFERENCES

General provisions as to duties of officers, § 39–901.
Noncommissioned staff of the militia, § 39–202.
Officers generally, § 39–201 et seq.

STATUTORY REFERENCE

See U. S. C., title 32.

Chapter 4.—ENLISTED PERSONNEL

Sec.
39–401. Term of enlistment—Re-enlistment.
39–402. Enlistment contract and oath.
39–403. Discharge of enlisted men from the National Guard.
39–404. Discharge without honor.
39–405. Dishonorable discharge.

§ 39–401 [20: 1465]. Term of enlistment—Re-enlistment.

Original enlistments in the National Guard and in the National Guard of the United States shall be for a period of three years, and subsequent enlistments for periods of one or three years each: *Provided,* That all enlisted men of the National Guard on June 15, 1933, may, under such regulations as may be prescribed by the Secretary of War, be enlisted in grade, rating, and branch in the National Guard of the United States for the remaining unexpired portions of their enlistments in the National Guard: *And provided further,* That in the event of an emergency declared by Congress the period of any enlistment which otherwise would expire may by Presidential proclamation be extended for a period of six months after the termination of the emergency. (June 3, 1916, 39 Stat. 200, ch. 134, § 69; June 4, 1920, 41 Stat. 781, ch. 227, § 37; June 6, 1924, 43 Stat. 470, ch. 275, § 4; June 15, 1933, 48 Stat. 156, ch. 87, § 7.)

COMPILER'S NOTE

Section 26 of the act of 1889, 25 Stat. 775, ch. 328, as amended by act of Feb. 18, 1909, 35 Stat. 632, ch. 146, § 23, is deemed to have been superseded by this section.

AMENDMENTS

Act of June 3, 1916, provided for an enlistment of six years, the first three in active organization and the remaining three in National Guard Reserve.

Act of June 4, 1920, provided for original enlistments for a period of 3 years and subsequent enlistments for 1 year.

Act of 1924 provided for subsequent enlistments of "one year or three years each."

Act of 1933 added the provisos.

CROSS REFERENCES

Disbanding companies below minimum strength, § 39–111.
Organization of National Guard, §§ 39–106, 39–107.
System of discipline and field exercise, § 39–904.

NOTES TO DECISIONS

IN GENERAL

It is immaterial whether the arrest was made before or after the issue or the service of the writ to release minor son from military service. *Ex Parte Foley* ((D. C.-Ky.), 243 Fed. 470).

Petitioner was not entitled to a discharge, and he could not be furloughed to the Reserve when he was in actual

military service. *Ex Parte Roach* ((D. C.-Ala.), 244 Fed. 625).

Effect of this section was at most to make the enlistment voidable by the parent. *Reed* v. *Cushman* ((C. C. A. 1), 251 Fed. 872).

CONTRACT OF ENLISTMENT

Fact that minor is under 21 when he enlisted, or that the written consent of his parent or guardian was not given to such enlistment, or that he was an alien, who had not made a declaration of his intention to become a citizen, or that he had a mother dependent upon him for support does not make his contract of enlistment void. *Ex Parte Dostal* ((D. C.-Ohio), 243 Fed. 664).

ENLISTED INTO MILITARY SERVICE

It was not intended that the provision containing the expression "enlisted or mustered into the military service of the United States" should apply to only one branch of that service. *Hoskins* v. *Dickerson* ((C. C. A. 5), 239 Fed. 275).

TRIAL BY MILITARY AUTHORITIES

Where petitioners were acting, under orders of the President in the discharge of a high duty, and might be ordered at any time to perform active military service, the State had no right to try the men for offense, but it was a case for the military authorities. *In re Wulzen* ((D. C.-Ohio), 235 Fed. 362).

§ 39–402 [20: 1466]. Enlistment contract and oath.

Men enlisting in the National Guard of the District of Columbia, shall sign an enlistment contract and subscribe to the following oath of enlistment: "I do hereby acknowledge to have voluntarily enlisted this ____ day of _____, 19__, as a soldier in the National Guard of the United States and of the District of Columbia, for the period of three (or one) years, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the President of the United States, and of the officers appointed over me according to law and the rules and Articles of War."

The oath of enlistment prescribed in this section may be taken before any officer of the National Guard authorized to administer oaths of enlistment in the National Guard of the District of Columbia, by respective laws thereof. All oaths of enlistment administered prior to June 19, 1935 by the officers described above are hereby validated. (June 3, 1916, 39 Stat. 201, ch. 134, § 70; June 4, 1920, 41 Stat. 781, ch. 227, subch. I, § 38; June 15, 1933, 48 Stat. 156, ch. 87, § 8; June 19, 1935, 49 Stat. 391, ch. 277, § 3.)

COMPILER'S NOTE

Section 27 of the act of 1889, 25 Stat. 776, ch. 328, as amended by act of Feb. 18, 1909, 35 Stat. 632, ch. 146, is deemed to have been superseded by this section.

AMENDMENTS

The 1920 amendment substantially reworded the first paragraph.

The 1933 amendment changed the words "of enlistment" which followed the word "oath" in paragraph one to "or affirmation."

The 1935 amendment added the second paragraph.

§ 39–403 [20: 1467]. Discharge of enlisted men from the National Guard.

An enlisted man discharged from service in the National Guard, shall receive a discharge in writing in such form and with such classification as is or shall be prescribed for the Regular Army, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the Secretary of State may prescribe. (June 3, 1916, 39 Stat. 201, ch. 134, § 72; June 4, 1920, 41 Stat. 781, ch. 227, § 40; June 15, 1933, 48 Stat. 157, ch. 87, § 10.)

COMPILER'S NOTE

Sections 28, 30 of the act of 1889, 25 Stat. 776, ch. 328, as amended by act of Feb. 18, 1909, 35 Stat. 632, ch. 146, is deemed to have been superseded by this section.

AMENDMENTS

The 1920 act added the exception with respect to men drafted into the military service.

The 1920 amendment added an exception which was deleted by the 1933 amendment.

The 1933 amendment added the words "and the National Guard of the United States," deleted the word "President" and inserted in lieu thereof the words "Secretary of War."

§ 39–404 [20: 1468]. Discharge without honor.

An enlisted man may be discharged without honor at any time by order of the commanding general on account of fraudulent enlistment, or on account of his being continuously absent without leave from his command for a period of not less than three months. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 26.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–405 [20: 1469]. Dishonorable discharge.

An enlisted man shall be dishonorably discharged by order of the commanding general upon conviction of felony in a civil court; upon discovery of re-enlistment after previous dishonorable discharge; or to carry out a sentence of a court-martial. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 27.)

STATUTORY REFERENCE

See U. S. C., title 32.

Chapter 5.—ARMAMENT, EQUIPMENT, AND SUPPLIES

Sec.

39–501. Uniform, arms, and equipment—Issuance by War Department.
39–502. Regulations for reissue of equipment by commanding general.
39–503. Personal liability for equipment—Determination of value of lost equipment.
39–504. Returns of equipment.
39–505. Penalty for selling, pawning, injuring, or retaining public property.
39–506. Transfer of property on promotion, retirement, or dismissal.
39–507. Failure to transfer property—Surveying officer—Appointment—Duties.
39–508. Defective accounts—Surveying officer to fix responsibility.
39–509. Surveying officer to be appointed upon death or desertion of accounting officer.
39–510. Liability of officer or his estate until accounts are found correct.
39–511. Liability of officer's estate for property lost, injured, or destroyed.
39–512. Distinctive uniforms.
39–513. Right to own personal property—Actions for injuries.

Sec.
39–514. Armories to be provided.
39–515. Annual inspections.
39–516. Use of Washington Barracks.
39–517. Purchase of supplies.

§ 39–501 [20: 1470]. Uniform, arms, and equipment—Issuance by War Department.

The uniforms, arms, and equipments of the National Guard shall as far as practicable be the same as prescribed and furnished to the Regular Army. Every organization of the National Guard shall be provided with such ordnance and ordnance stores, clothing, camp and garrison equipage, quartermaster's stores, medical supplies, and other military stores, as may be necessary for the proper training and instruction of the force and for the proper performance of the duties required under this chapter. Such property shall be issued in accordance with section 33, title 32, of the Code of the Laws of the United States of America. The property so issued shall remain and continue to be the property of the United States, and shall be accounted for by the commanding general at such times, in manner, and on such forms as the Secretary of War may require. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 31; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 29.)

COMPILER'S NOTES

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1899, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

Section 36 of the act of 1889, 25 Stat. 777, ch. 328, as amended by act of Feb. 18, 1909, 35 Stat. 634, ch. 146, is deemed to have been superseded by act of June 3, 1916, 39 Stat. 204, ch. 134, § 87, as amended by June 3, 1924, 43 Stat. 363, ch. 244, § 1, and Feb. 28, 1925, 43 Stat. 1077, ch. 371, § 4. Section 87, as amended in 1925, reads as follows:

"SEC. 87. *Disposition and Replacement of Damaged Property, and so forth.*—All military property issued to the National Guard as herein provided shall remain the property of the United States. Whenever any such property issued to the National Guard in the District of Columbia shall have been lost, damaged, or destroyed, or become unserviceable or unsuitable by use in service or from any other cause, it shall be examined by a disinterested surveying officer of the Regular Army or the National Guard, detailed by the Secretary of War, and the report of such surveying officer shall be forwarded to the Secretary of War, or to such officer as he shall designate to receive such reports; and if it shall appear to the Secretary of War from the record of survey that the property was lost, damaged, or destroyed through unavoidable causes, he is hereby authorized to relieve the District of Columbia from further accountability therefor. If it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage, or destruction could have been avoided by the exercise of reasonable care, the money value of such property shall be charged to the District of Columbia to be paid from District funds, or any funds other than Federal. If the articles so surveyed are found to be unserviceable or unsuitable, the Secretary of War shall direct what disposition by sale or otherwise shall be made of them; and if sold, the proceeds of such sale, as well as stoppages against officers and enlisted men, and the net proceeds of collections made from any person or from the District to reimburse the Government for the loss, damage, or destruction of any property, shall be deposited in the Treasury of the United States as a credit to the District of Columbia, accountable for said property, and shall remain available throughout the then current fiscal year and throughout the fiscal year following that in which the sales, stoppages, and collections were effected, for the purposes provided for in that portion of its allotment set aside for the purchase of similar supplies, stores, or material of war: *Provided,* That if the District of Columbia shall neglect or refuse to pay, or to cause to be paid, the money equivalent of any loss, damage, or destruction of property charged against the District of Columbia by the Secretary of War after survey by a disinterested officer appointed as hereinbefore provided, the Secretary of War is hereby authorized to debar the District of Columbia from further participation in any and all appropriations for the National Guard until such payment shall have been made: *Provided further,* That property issued to the National Guard and which has become unserviceable through fair wear and tear in service, may, after inspection thereof and finding to that effect made by an officer of the Regular Army designated by the Secretary of War, be sold or otherwise disposed of, and the District of Columbia shall be relieved from further accountability therefor; such inspection, and sale or other disposition, to be made under regulations prescribed by the Secretary of War, and to constitute as to such property a discretional substitute for the examination, report, and dispostiion provided for elsewhere in this section. (U. S. C., title 32, § 47.)

The third sentence as enacted, actually reads "Such property shall be issued from the stores and supplies appropriated for the use of the army, upon the approval and by the direction of the Secretary of War, to the commanding general, upon his requisitions for the same." However, U. S. C., title 32, § 33, seems to have superseded this sentence.

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 31 to 29.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–502 [20: 1471]. Regulations for reissue of equipment by commanding general.

The commanding general may transfer all public property, received by him for the use of the National Guard under the provisions of this chapter, to the several departmental officers of the general staff, and may make and prescribe regulations for its issue by them, and for its care and preservation by the officers or soldiers to whom issued. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 32; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 30.)

AMENDMENT

The act of 1909 made no change in the text of this section, but changed the section number from 32 to 30.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–503 [20: 1472]. Personal liability for equipment—Determination of value of lost equipment.

Every officer and enlisted man to whom property of the United States has been issued shall be personally responsible to the United States for such property, and no one shall be relieved from such responsibility except it be shown to the satisfaction of the commanding general that the loss or destruction of such property was unavoidable and in no way the fault of the person responsible for the same; and in all other cases the value of the property lost or destroyed shall be charged against the person at

fault or to the organization to which it has been issued, and such person or organization, if not relieved from such charge by the commanding general, shall pay the value of such property to the Quartermaster-General within one year after such loss or destruction. The value of lost or destroyed property and the person or organization to be charged therewith shall be determined by a board to consist of an inspector of the staff of the commanding general of the militia and the commanding officer of the organization in which such property is lost. In case of disagreement such value shall be fixed by the commanding general of the militia. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 31.)

CROSS REFERENCE

Disposition of funds, § 39–806.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–504 [20: 1473]. Returns of equipment.

Every officer receiving public property for military use shall be accountable for the articles so received by him, and shall make returns of such property at such times, in such manner, and on such forms as may be prescribed. He shall be liable to trial by court-martial for neglect of duty, and also make good to the United States the value of all such property defaced, injured, destroyed or lost, by any neglect or default on his part, to be recovered in an action of tort, or by any other action at law, to be instituted by the judge-advocate-general of the militia at the order of the commanding general. All money received on account of loss or damages shall be paid in the treasury of the United States, and shall be accounted for by the commanding general in his returns to the Secretary of War. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 33; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 32.)

AMENDMENT

The 1909 act did not change the text of this section, but changed the section number from 33 to 32.

CROSS REFERENCE

Disposition of funds, § 39–806.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–505 [20: 1474]. Penalty for selling, pawning, injuring, or retaining public property.

Any officer or soldier who shall sell, dispose of, pawn or pledge, wilfully destroy or injure, or retain after proper demand made, any public property issued under the provisions of this title, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not exceeding two months, or by a fine not exceeding one hundred dollars, or by both; and it is hereby made the duty of the judge of the police court of the District of Columbia, upon information filed or complaint, made under oath, to issue process for the arrest of the offender, and to cause him to be brought before the police court to be dealt with according to the provisions of this section. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 34; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 33.)

AMENDMENT

The 1909 act did not change the text of this section, but changed the section number from 34 to 33.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–506 [20: 1475]. Transfer of property on promotion, retirement, or dismissal.

Upon the promotion, tender of resignation, retirement, or dismissal of any officer who is responsible or accountable for public property, the commanding general of the militia shall designate an officer to accept and receipt for such property, and direct the officer responsible or accountable therefor to make prompt transfer of all property remaining on hand; and it shall be the duty of the officer responsible or accountable to proceed at once to complete such transfer and close his accounts without delay. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 34.)

AMENDMENT

The 1909 amendment repealed § 35 of the 1889 Act, and inserted in lieu thereof §§ 34–38 (§§ 39–506 to 39–510). The original § 35 provided as follows: "That until an officer, or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct, the liability of such officer, or of his estate, for public property for which he is or may have been responsible shall be in no way affected by resignation, discharge, change in official position, or death. Upon the death or desertion of an officer responsible for public property his immediate commander shall at once cause the property for which such officer was responsible to be collected, and a correct inventory made by actual count and examination; which inventory shall be forwarded to the commanding general, in order that any deficiency may be made good from the estate of the deceased or deserting officer; compensation for such deficiency may be recovered in the manner provided in § 34 (§ 39–505)."

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–507 [20: 1476]. Failure to transfer property—Surveying officer—Appointment—Duties.

Should any officer responsible or accountable for public property, after receiving instructions to transfer the same as aforesaid, fail to make proper transfer as directed within thirty days or any authorized extension of that period, the heads of the respective staff departments exercising supervision over or control of said property shall report the facts to the adjutant-general for the action of the commanding general of the militia. Upon receiving such a report the commanding general may in his discretion direct that a surveying officer be appointed, and it shall be the duty of such surveying officer to ascertain and verify all public property which the delinquent officer had on hand and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the head of the proper staff department. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which is not found or transferred as directed. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 35.)

CROSS REFERENCE

See amendment note to § 39–506.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–508 [20: 1477]. Defective accounts—Surveying officer to fix responsibility.

Should any officer responsible or accountable for public property, after receiving instructions to transfer the same and close his accounts as aforesaid, fail to close his accounts to the satisfaction of the commanding general, the heads of the respective staff departments exercising supervision over or control of said property will report the facts to the adjutant-general for the action of the commanding general of the militia. Upon receiving such a report, the commanding general may, in his discretion, direct that a surveying officer be appointed to determine and fix the responsibility for the loss or destruction of any public property for which said officer is responsible or accountable and which he has failed to transfer to the officer designated to receive the same. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 36.)

CROSS REFERENCE

See amendment note to § 39–506.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–509 [20: 1478]. Surveying officer to be appointed upon death or desertion of accounting officer.

In the event of the death or desertion of any officer accountable for public property the commanding general shall direct that a surveying officer be appointed, and also designate an officer to receive such property. Said surveying officer shall ascertain and verify all public property which the deceased or deserting officer had on hand at the time of his death or desertion and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the heads of the proper staff departments. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which is not found or transferred as directed. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 37.)

CROSS REFERENCE

See amendment note to § 39–506.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–510 [20: 1479]. Liability of officer or his estate until accounts are found correct.

Until an officer or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct the liability of such officer or of his estate for public property for which he is or may have been responsible or accountable shall be in no way affected by resignation, discharge, change in official position, desertion, or death. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38.)

CROSS REFERENCE

See amendment note to § 39–506.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–511 [20: 1480]. Liability of officer's estate for property lost, injured, or destroyed.

Compensation for any public property defaced, injured, lost, or destroyed through the neglect or default of a deceased officer may be recovered from his estate in the manner provided in section 39–505. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38.)

CROSS REFERENCES

See amendment note to § 39–506.
Disposition of funds, § 39–806.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–512 [20: 1481]. Distinctive uniforms.

Any organization of the active militia may, with the approval of the commanding general, and at its own expense, adopt any other uniform than that issued to it; but such uniform shall not be worn when such organization is on duty under the orders of the commanding general except by his permission. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 37; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 40.)

AMENDMENT

The 1909 act did not change the text of this section but changed the section number from 37 to 40.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–513 [20: 1482]. Right to own personal property—Actions for injuries.

Organizations of the National Guard shall have the right to own and keep personal property, which shall belong to and be under the control of the active members thereof; and the commanding officer of any organization may recover for its use any debts or effects belonging to it, or damages for injury to such property; action for such recovery to be brought, in the name of such commanding officer, before the municipal court, or before the District Court of the United States for the District of Columbia, and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but, upon the motion of the commander succeeding him, such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 38; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 41.)

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 38 to 41.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–514 [20: 1483]. Armories to be provided.

The quartermaster-general of the militia shall provide, by rental or otherwise, such armories for the National Guard as may be allowed and directed by the commanding general. He shall also provide each organization with such lockers, closets, gun racks, and cases or desks as may be necessary for the care, preservation, and safe-keeping of the arms, equipments, uniforms, records, and other militia property in their possession. He shall also provide suitable rooms for the offices of the commanding general and staff, for the keeping of books, the transaction of business, and the instruction of officers, and also suitable places for the storage and safe-keeping of

public property. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 39; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 42.)

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 39 to 42.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–515 [20: 1486]. Annual inspections.

An annual inspection and muster of each organization of the National Guard, and an inspection of their armories and of public property in their possession, shall be made at such times and places as the commanding general may order and direct. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 42; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 45.)

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 42 to 45.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–516 [20: 1488]. Use of Washington Barracks.

National Guard shall have the use of the drill grounds and rifle range at the Washington Barracks, subject to the approval of the Secretary of War, and the commanding general of the militia shall provide such additional targets and accessories as may be necessary for the use of the militia. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 44; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 47.)

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 44 to 47.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–517 [20: 1517]. Purchase of supplies.

The purchase of supplies and the procurement of services for all branches of the District of Columbia militia service may be made in open market, in the manner common among business men, when the aggregate of the amount required does not exceed one hundred dollars. (May 26, 1908, 35 Stat. 308, ch. 198.)

CROSS REFERENCE

Expenses and allowances, § 39–802 et seq.

Chapter 6.—ACTIVE MILITARY DUTY

Sec.

39–601. Drills to be military duty.
39–602. Prescribing drills.
39–603. Suppression of riots.
39–604. Cause for being excused from duty when militia is ordered into service of United States or to suppress riots.
39–605. Parades to have right of way.
39–606. Rules for parades and encampments.
39–607. Camp duty.
39–608. Governmental employees to have leave of absence to attend parades and encampments.

§ 39–601 [20: 1484]. Drills to be military duty.

Any drill, parade, encampment or duty that is required, ordered, or authorized to be performed under the provisions of this title, shall be deemed to be a military duty, and while on such duty every officer and enlisted man of the National Guard shall be subject to the lawful orders of his superior officers, and for any military offense may be put and kept under arrest or under guard for a time not extending beyond the term of service for which he is then ordered. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 40; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 43.)

COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1899, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

AMENDMENT

The 1909 act did not amend the text of this section but changed the section number from 40 to 43.

CROSS REFERENCES

Right-of-way, § 39–605.
Rules of parade or encampment, § 39–606.
System of discipline and field exercises, § 39–904.

STATUTORY REFERENCES

See U. S. C., title 32.
Soldiers' and Sailors' Civil Relief Act. Act of October 17, 1940, 54 Stat. 1178, ch. 888.

§ 39–602 [20: 1485]. Prescribing drills.

The commanding general shall prescribe such stated drills and parades as he may deem necessary for the instruction of the National Guard, and may order out any portion of the National Guard for such drills, inspections, parades, escort, or other duties, as he may deem proper. The commanding officer of any regiment, battalion or company may also assemble his command, or any part thereof, in the evening for drill, instruction, or other business, as he may deem expedient; but no parade shall be performed by any regiment, battalion, company, or part thereof, without the permission of the commanding general. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 41; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 44.)

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 41 to 44.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–603 [20: 1489]. Suppression of riots.

When there is in the District of Columbia a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony or to offer violence to persons or property, or by force or violence to break and resist the laws, or when such tumult, riot, or mob is threatened, it shall be lawful for the commissioners of the District of Columbia, or for the United States marshal for the District of Columbia, to call on the commander-in-chief to aid them in suppressing such violence and enforcing the laws; the commander-in-chief shall thereupon order out so much and such portion of the militia as he may deem necessary to suppress the same, and no member thereof who shall be thus ordered out by proper authority for any such duty shall be liable to civil or criminal prosecution for any act done in the discharge of his military duty.

(Mar. 1, 1889, 25 Stat. 778, ch. 328, § 45; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 48.)

AMENDMENT

The 1909 act did not amend the text of the 1899 act, but changed the section number from 45 to 48.

CROSS REFERENCE

Enrolled militia subject to call, § 39–104.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–604 [20: 1490]. Cause for being excused from duty when militia is ordered into service of United States or to suppress riots.

No officer or soldier of the National Guard, when ordered on duty to aid the civil authorities, or when ordered into the service of the United States in obedience to the call or order of the President, shall be excused from such duty except upon the certificate of the surgeon of his command of physical disability, such certificate to be presented to the commanding general in case of an officer, or to his company commander in case of a soldier. If such officer or soldier fail to furnish such excuse he shall be tried and punished by a court-martial. For absence from any other military duty required or ordered under the provisions of this chapter the penalty shall be such as may be prescribed by the commanding general, or the by-laws of the organization to which the officer or soldier belongs. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 46; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 49.)

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 46 to 49.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–605 [20: 1491]. Parades to have right of way.

The United States forces or troops, or any portion of the militia, parading, or performing any duty according to law, shall have the right of way in any street or highway through which they may pass: *Provided,* That the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of fire engines and fire departments shall not be interfered with thereby. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 47; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 50.)

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 47 to 50.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–606 [20: 1492]. Rules for parades and encampments.

Every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade or encampment. Whoever intrudes within the limits of the parade or encampment after being forbidden, or whoever shall interrupt, molest, or obstruct any officer or soldier while on duty, may be put and kept under guard until the parade, encampment, or duty be concluded; and the commanding officer may turn over such person to any police officer, and said police officer is required to detain him in custody for examination or trial before the police court, and the judge thereof may punish such offense by a fine not exceeding twenty-five dollars. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 48; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 51.)

AMENDMENT

The 1909 act did not amend the text of this section but changed the section number from 48 to 51.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–607 [20: 1487]. Camp duty.

The National Guard shall perform not less than six consecutive days of camp duty in each year, at such time as may be ordered by the commanding general; and the quartermaster-general of the militia, subject to the approval of the commanding general, shall provide, by rental or otherwise, a suitable camp ground for the annual encampment of the militia, make the necessary provisions thereon for the encampment, and provide necessary transportation to and from the same for baggage and supplies. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 43; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 46.)

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 43 to 46.

STATUTORY REFERENCE

See U. S. C., title 32.

COMPANY DRILL AND PARTICIPATION IN MANEUVERS—ANNUAL AMOUNT REQUIRED

Under such regulations as the Secretary of War shall prescribe, each company, troop, battery, and detachment in the National Guard shall assemble for drill and instruction, including indoor target practice, not less than forty-eight times each year, and shall, in addition thereto, participate in encampments, maneuvers, or other exercises, including outdoor target practice, at least fifteen days in training each year, including target practice, unless such company, troop, battery, or detachment shall have been excused from participation in any part thereof by the Secretary of War: *Provided,* That an assembly for drill and instruction may consist of a single duly ordered formation of a company, troop, battery, or detachment, or when so authorized by the Secretary of War of a series of duly ordered formations of subdivisions or parts thereof, but in the latter case the series of formations of subdivisions or groups must comprehend and include the entire organization, and must be included within the time limit of seven consecutive days within a calendar month. The sum total of the attendance at all the separate consecutive formations announced as constituting that assembly shall be counted as the attendance at the actual military assembly for the required period of time; but no officer, warrant officer, or enlisted man shall be counted more than once, nor receive credit for more than one required period of actual military attendance even though he may have attended more than one of the formations which constitute the assembly for the required period of time: *Provided further,* That credit for an assembly for drill or for indoor target practice shall not be given unless the number of officers and enlisted men present for duty at such assembly shall equal or exceed a minimum to be prescribed by the President, nor unless the period of actual military duty and instruction participated in by each officer and enlisted man at each such assembly at which he shall be credited as having been present shall be of at least one and one-half hours' duration and character of training such as may be prescribed by the Secretary of War. (June 3, 1916, 39 Stat. 206, ch. 134, § 92; June 3, 1924, 43 Stat. 363, ch. 244, § 2.)

ENCAMPMENTS OR MANEUVERS FOR FIELD OR COAST-DEFENSE INSTRUCTION

Under such regulations as the President may prescribe the Secretary of War is authorized to provide for the participation of the whole or any part of the National Guard in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction, either independently or in conjunction with any part of the Regular Army, and there may be set aside from the funds appropriated for that purpose and allotted to any State, Territory, or the District of Columbia, such portion of said funds as may be necessary for the payment, subsistence, transportation, and other proper expenses of such portion of the National Guard of such State, Territory, or the District of Columbia as shall participate in such encampments, maneuvers, or other exercises, including outdoor target practice, for field and coast-defense instruction. (June 3, 1916, 39 Stat. 206, ch. 134, § 94.)

§ 39–608 [20: 1493]. Governmental employees to have leave of absence to attend parades and encampments.

All officers and employees of the United States and of the District of Columbia who are members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay or time, on all days of any parade or encampment ordered or authorized under the provisions of this title. This section shall be construed as covering all days of service which the National Guard, or any portion thereof, may be ordered to perform by the commanding general. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 49; July 1, 1902, 32 Stat. 615, ch. 1352; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 52.)

AMENDMENTS

The 1902 act provided that this section should be construed as covering all days of service which the National Guard, or any portion thereof, may be ordered to perform by the commanding general.

The 1909 act did not amend the text of the section, but changed the section number from 49 to 52.

CROSS REFERENCE

Leave of absence of Government employees who are members of the Reserve Corps, §§ 39–109, 39–110.

STATUTORY REFERENCE

See U. S. C., title 32.

Chapter 7.—COURTS-MARTIAL

Sec.
39–701. Military courts—Designated.
39–702. Courts of inquiry.
39–703. General courts-martial.
39–704. Constitution—Jurisdiction.
39–705. Prosecution of members prohibited.
39–706. Jurisdiction to be presumed.
39–707. Witnesses—Compulsory attendance.
39–708. Sentences—How executed.
39–709. Warrants for arrest of accused.

§ 39–701 [20: 1495]. Military courts—Designated.

The military courts of the District of Columbia shall be: General courts-martial, special courts-martial, the summary courts-martial, and courts of inquiry, as now or hereafter provided by law. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 54.)

COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1899, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

AMENDMENT

The 1909 amendment repealed § 50 of the act of 1889 and inserted in lieu thereof §§ 54 and 55 (this section and § 39–702).

COMPILER'S NOTE

Sections 102 and 103 of the act of June 3, 1916, 39 Stat. 208, ch. 134, provide as follows:

"SEC. 102. *System of courts-martial for National Guard.*—Except in organizations in the service of the United States, courts-martial in the National Guard shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted like, and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations governing the Army of the United States, and the proceedings of courts-martial of the National Guard shall follow the forms and modes of procedure prescribed for said similar courts."

"SEC. 103. General courts-martial of the National Guard not in the service of the United States may be convened by orders of the President, or by the Governors of the respective States and Territories, or by the commanding general of the National Guard of the District of Columbia, and such courts shall have the power to impose fines not exceeding $200; to sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts."

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–702 [20: 1496]. Courts of inquiry.

Courts of inquiry, to consist of not more than three officers, may be ordered by the commanding general for the purpose of investigating the conduct of any officer, either at his own request or on complaint or charge of conduct unbecoming an officer. Such court of inquiry shall report the evidence adduced, a statement of facts, and an opinion thereon, when required, to the commanding general, who may, in his discretion, thereupon order a court-martial for the trial of the officer whose conduct has been inquired into. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 55.)

CROSS REFERENCE

See amendment note to § 39–701.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–703 [20: 1497]. General courts-martial.

General courts-martial for the trial of commissioned officers or enlisted men shall be ordered by the President of the United States or commanding general at such times as the interests of the service may require. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 51; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 56.)

COMPILER'S NOTE

Sections 52–54 of act of 1889, 25 Stat. 779, ch. 328 were repealed by act of Feb. 18, 1909, 35 Stat. 635, ch. 146.

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 51 to 56.

CROSS REFERENCE

See compiler's note to § 39–701.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–704 [20: 1498]. Constitution—Jurisdiction.

The constitution and jurisdiction of military courts, the form and manner in which their proceedings shall be conducted and reported, and the forms of oaths and affirmations taken in the administration of military law by such courts, the limits of punishment and the proceedings in revision shall be governed by the Articles of War and the law and procedure of the military courts of the United States. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 57.)

CROSS REFERENCES

Failure of member of National Guard to report for duty when ordered into service, § 39–604.

Failure of members of enrolled militia to appear when ordered out, § 39–105.

Failure to return, or destruction of Government property, § 39–504.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–705 [20: 1499]. Prosecution of members prohibited.

No action or proceeding shall be prosecuted or maintained against a member of a military court, or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court, nor shall any officer or enlisted man be liable to civil or criminal prosecution for any act done while in the discharge of his military duty. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 58.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–706 [20: 1500]. Jurisdiction to be presumed.

The jurisdiction of the courts and boards established by this title shall be presumed, and the burden of proof shall rest on any person to oust such courts or boards of jurisdiction in any action or proceedings. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 59.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–707 [20: 1501]. Witnesses — Compulsory attendance.

Every person not belonging to the National Guard of the District of Columbia who, being duly subpœnaed to appear as a witness before the military courts herein provided for, wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be guilty of a misdemeanor, for which such person shall be punished on information in the criminal courts of the District of Columbia, and it shall be the duty of the United States attorney for the District of Columbia, on certification of the facts to him by any military court herein provided for, to file an information against and prosecute the person so offending and the punishment of such person on conviction shall be by a fine of not more than one hundred dollars, or imprisonment not exceeding thirty days, or both, at the discretion of the court: *Provided,* That this section shall not apply to persons residing beyond the limits of the District of Columbia, and that the fees of such witness and his mileage at the rate provided for witnesses in the United States District Court in said District shall be duly paid or tendered said witness; *And provided,* That no witness shall be compelled to incriminate himself or to answer any questions which may tend to criminate or degrade him. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 60.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–708 [20: 1502]. Sentences—How executed.

The sentences of said courts, whether of fine or imprisonment, shall be executed by the United States marshal for the District of Columbia in the same manner as are sentences of the criminal courts of said District. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 61.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–709 [20: 1503]. Warrants for arrest of accused.

Whenever it shall appear to a regularly constituted court-martial convened under the provisions of this chapter that the accused, having been duly ordered or summoned to appear before such court-martial for trial, has refused or neglected so to appear, such court-martial shall issue a warrant or attachment for the arrest of the accused, directed to the United States marshal for the District of Columbia, who shall forthwith execute said warrant or attachment, make proper return thereof to such court-martial, and produce to such court-martial the body of the accused, if within the District of Columbia, and to retain the custody thereof and continue so to produce said body during the sessions of such court-martial until the conclusion of the trial, unless sooner discharged by said court-martial. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 62.)

STATUTORY REFERENCE

See U. S. C., title 32.

Chapter 8.—PAY AND ALLOWANCES

Sec.
39–801. Payment for active service.
39–802. Allowances for general expenses.
39–803. Musicians' pay.
39–804. Subsistence while on duty.
39–805. Annual estimates.
39–806. Deductions for lost property—Officers' clothing—Use of fines—Use of appropriations.

§ 39–801 [20: 1494]. Payment for active service.

Whenever the National Guard of the District of Columbia shall be ordered to duty in case of riot, tumult, breach of the peace, or whenever called in aid of the civil authorities, all enlisted men who do duty shall be paid at the rate equivalent to two times

the pay of enlisted men of the Regular Army of like grade. Commissioned officers who do duty shall be entitled to and shall receive the same pay and allowances as commissioned officers of like grade of the Regular Army. Each mounted officer and enlisted man shall be paid a reasonable per diem compensation for each horse actually furnished and used by him: *Provided,* That when the National Guard of the District of Columbia is called into actual service of the United States the officers and enlisted men shall, during their time of service, be entitled to the same pay and allowances as are or may be provided by law for the Regular Army. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 53.)

COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1899, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–802 [20: 1504]. Allowances for general expenses.

There shall be allowed for the general expenses of the militia such sums as may be necessary for the rental and furnishing of offices for headquarters, stationery, postage, printing and issuing orders, advertising orders, providing necessary blanks for the use of the militia, the cost of storing, caring for, and issuing all public property, and such other contingent expenses, not herein specially provided for, as may be estimated and appropriated for; the accounts for which shall be certified to by the officer receiving the service or property charged for, approved by the commanding general, and paid in the manner provided in section 39–901. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 55; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 63.)

COMPILER'S NOTE

The last phrase of this section in the original act read as follows: "and paid in the manner provided for in section 60." Section 60 of the 1889 act now appears as § 39–901, and as it does not refer to payment, it seems probable that the reference should have been to § 58 of that act which appears in this code as § 39–805.

AMENDMENT

The 1909 amendment did not change the text of this section, but changed the section number from 55 to 63.

CROSS REFERENCE

Method of purchase of services or supplies, § 39–517.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–803 [20: 1505]. Musicians' pay.

During the annual encampment, and on every duty on parade ordered by the commanding general, there shall be allowed and paid for each day of service: To each member of the regularly enlisted bands, four dollars; to the chief musicians, eight dollars; and to the principal musicians, six dollars. In event there is no enlisted band or field music, or not a sufficient number of either, the commanding general may authorize the employment of such as he may deem necessary for the occasion: *Provided,* That the total pay of the enlisted musicians shall not in any event exceed the rates authorized by this section. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 56; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 64.)

COMPILER'S NOTE

The act of July 15, 1939, 53 Stat. 1030, ch. 281: *Provided,* That so much of the act of March 1, 1889 (25 Stat. 773), as amended by the act of February 18, 1909 (35 Stat. 629), as provides and fixes the rates of extra compensation to members of the regularly enlisted bands of the Militia of the District of Columbia, is hereby repealed.

AMENDMENT

The 1909 act changed the number of this section from 56 to 64; omitted the words "to each member of the regularly enlisted corps of field music, two dollars," and changed "chief musician" and "principal musician" to "chief musicians" and "principal musicians" in the first sentence, and inserted the final proviso in lieu of a sentence which read as follows: "The payments for bands of music and drum corps shall be made in the manner provided in section sixty."

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–804 [20: 1506]. Subsistence while on duty.

During the annual encampment, or when ordered on duty to aid the civil authorities, the National Guard shall be furnished with subsistence stores, of the kind, quality, and amount allowed and prescribed by the army. Such stores shall be issued from the stores and supplies appropriated for the use of the army, upon the approval and by the direction of the Secretary of War, to the commanding general upon his requisitions for the same. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 57; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 65.)

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 57 to 65.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–805 [20: 1507]. Annual estimates.

The commanding general shall annually transmit to the Commissioners of the District of Columbia an estimate of the amount of money required for the next ensuing fiscal year to pay the expenses authorized by this title, and the said Commissioners shall include the same in their annual estimates of appropriations for the District; and all moneys appropriated to pay the expenses authorized by this title shall be disbursed in accordance with law. (Feb. 18, 1909, 35 Stat. 636, ch. 146, § 66.)

COMPILER'S NOTE

The act of June 11, 1896, 29 Stat. 412, ch. 419, provided as follows: "Hereafter all leases and contracts involving expenditures on account of the militia shall be made by the Commissioners of the District of Columbia; and appropriations for the militia shall be disbursed only upon vouchers duly authorized by the Commissioners, for which they shall be held strictly accountable."

AMENDMENT

The 1909 act repealed section 58 and inserted in lieu thereof section 66 which substituted the closing words "disbursed in accordance with law" for "disbursed by the

commissioners of the District of Columbia, upon vouchers duly certified and approved by the commanding general, and accounted for by them in the same manner as all other moneys appropriated for the expenses of the District."

CROSS REFERENCE

Method of purchase of services or supplies, § 39–517.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–806 [20: 1516]. Deductions for lost property—Officers' clothing—Use of fines—Use of appropriations.

All moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia, on account of government property lost or destroyed by such individual shall be repaid into the United States Treasury to the credit of the officer of the militia of the District of Columbia who is accountable to the United States Government for such property lost or destroyed: *Provided further,* That there may be paid to all commissioned officers (without discrimination, and in lieu of the limited pay authorized by this section) an allowance to be used by them in the purchase and maintenance of clothing and equipment: *Provided further,* that after March 2, 1911, all moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia for or on account of any violation of the regulations governing said National Guard, and all moneys which, by reason of the absence of officers or enlisted men from duly ordered assemblies or other duty, are not expended for pay of troops, shall be held by the commanding general of the militia of the District of Columbia, who is authorized to expend such moneys for necessary clerical and general expenses of the service, heretofore or hereafter incurred, including law books and books of reference, or for the pay of troops, other than government employees; and for all moneys so expended the commanding general shall make an accounting in like manner as for the appropriation disbursed for pay of troops: *Provided further,* That after March 2, 1911, any of the moneys appropriated for the District of Columbia Militia may be used to supplement specific appropriations or allotments which may be found insufficient for the purposes for which made, and authority is hereby given to supplement the regular ration by purchase of such additional articles of subsistence as may be deemed necessary: *Provided further,* That after March 2, 1911, the commanding general of the District of Columbia Militia is hereby authorized to make such deductions from any pay of any officer or enlisted man derived from appropriations or allotments made under the provisions of section sixteen hundred and sixty-one, United States Revised Statutes or other federal enactments as may be necessary to reimburse the United States or the District of Columbia for public property lost, destroyed, or damaged by such individual. (Mar. 2, 1911, 36 Stat. 1004, ch. 192.)

COMPILER'S NOTE

R. S., § 1661, referred to in this section, was repealed by act March 3, 1933, 47 Stat. 1428, ch. 202, § 1.

CROSS REFERENCE

Other provisions concerning disposition of funds, § 39–504.

STATUTORY REFERENCES

See U. S. C., title 32.

Soldiers' and Sailors' Civil Relief Act. Act of October 17, 1940, 54 Stat. 1178, ch. 888.

Chapter 9.—MISCELLANEOUS PROVISIONS

Sec.

39–901. Duties of officers.
39–902. Date of commissions.
39–903. Regulations—Company and battalion rules.
39–904. System of discipline and field exercise.
39–905. Commanding general to make regulations.
39–906. Naval battalion not affected.

§ 39–901 [20: 1509]. Duties of officers.

The departmental and military duties of the officers provided for in this title shall be correlative with those discharged by similarly designated officers in the Army of the United States. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 60; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 68.)

COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1899, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 60 to 68.

STATUTORY REFERENCE

See U. S. C., title 32.

NOTES TO DECISIONS

OFFICERS EXCEEDING AUTHORITY

Actions of company captain in giving furlough without authority from superior officers, were not binding upon the military authorities. *Ex Parte Roach* ((D. C.-Ala.), 244 Fed. 625).

§ 39–902 [20: 1515]. Date of commissions.

Any commission issuing under the provisions of this title shall, where the rank remains unchanged, bear the date of the commission held on Feb. 18, 1909; and any officer who has served continuously in the same grade may be recommissioned with rank from date of his original commission to that grade. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 76.)

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–903 [20: 1508]. Regulations—Company and battalion rules.

Companies, battalions, or regiments may adopt constitutional articles of agreement or by-laws subject to the approval of the commander-in-chief, for the government of matters relating to the civic affairs of their respective organizations, the regulation of fines for nonperformance of duty, and the determination of causes upon which excuses from fines may be based: *Provided, however,* That such ar-

ticles or rules shall not be repugnant to law or the regulations for the government of the militia: *And provided further,* That the articles or rules adopted by any company or battalion shall not be repugnant to the articles or rules adopted for the general government of the regiment or battalion to which it belongs. Certified copies of such articles or rules, with like copies of all alterations, as finally approved by the commanding general, shall be deposited in the office of the adjutant-general. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 59; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 67.)

AMENDMENT

The 1909 act did not amend the text of this section but changed the section number from 59 to 67.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–904 [20: 1510]. System of discipline and field exercise.

The system of discipline and field exercise ordered to be observed by the Army of the United States, or such other system as may be directed for the militia by laws of the United States, shall be observed by the National Guard. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 61; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 69.)

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 61 to 69.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–905 [20: 1511]. Commanding general to make regulations.

The commanding general, subject to the approval of the commander-in-chief, is authorized to make and publish regulations for the government of the militia in all matters not specifically provided for by law, conforming the same to the practice and regulations of the army so far as they may be applicable. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 62; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 70.)

COMPILER'S NOTES

Section 63 of the act of 1889, 25 Stat. 781, ch. 328, provided: "That the act 'more effectually to provide for the organization of the militia of the District of Columbia,' approved March third, eighteen hundred and three, is hereby repealed."

The act of Feb. 18, 1909, 35 Stat. 636, ch. 146, amends § 63 of the act of 1889 by changing the section from sixty-three to seventy-one.

AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 62 to 70.

STATUTORY REFERENCE

See U. S. C., title 32.

§ 39–906 [20: 1514]. Naval battalion not affected.

Nothing contained in this title shall be held to alter the status or organization of the naval battalion as now provided for by law. (Mar. 3, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 75.)

STATUTORY REFERENCE

See U. S. C., title 32; title 34, § 856.

TITLE 40.—MOTOR VEHICLES

Chap.		Sec.
1.	Registration of motor vehicles	40–101
2.	Inspection	40–201
3.	Operators' permits	40–301
4.	Owners' Financial Responsibility Act	40–401
5.	Public-owned vehicles	40–501
6.	Regulation of traffic	40–601
7.	Liens on motor vehicles or trailers	40–701
8.	Regulation of parking	40–801

Chapter 1.—REGISTRATION OF MOTOR VEHICLES

Sec.
40–101. Definitions.
40–102. Registration of motor vehicles—Certificates—Tags—Duplicates—Dealers—Fees—Official and foreign vehicles—Transfers—Regulations.
40–103. Fees classified and use of proceeds designated.
40–104. Unlawful acts—Penalty.
40–105. Provisions not affected.

§ 40–101 [20: 968]. Definitions.

As used in this chapter—

(a) The term "motor vehicle" means any vehicle propelled by an internal-combustion engine or by electricity or steam, except road rollers, farm tractors, and vehicles propelled only upon stationary rails or tracks.

(b) The term "person" means an individual, partnership, corporation, or association.

(c) The term "owner" means a person who holds the legal title to a motor vehicle or trailer the registration of which is required in the District of Columbia. If a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of these regulations.

(d) The term "director" means the director of vehicles and traffic of the District of Columbia, including assistants or agents duly designated by the commissioners.

(e) The term "dealer" means any person engaged in the business of manufacturing, distributing, or dealing in motor vehicles or trailers.

(f) The term "public highway" means any road, street, alley, or way, open to use of the public, as a matter of right, for purposes of vehicular traffic.

(g) The term "trailer" means a vehicle without motor power intended or used for carrying property or persons and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle.

(h) The term "farm tractor" means a motor vehicle designed and used primarily for drawing implements of agricultural husbandry.

(i) The term "pneumatic tire" means a tire inflated with compressed air.

(j) The terms "operate" and "operated" shall include operating, moving, standing, or parking any motor vehicle or trailer on a public highway of the District of Columbia. (Aug. 17, 1937, 50 Stat. 679, ch. 690, § 1, title IV; Sept. 8, 1950, 64 Stat. 791, ch. 921, §§ 1, 2.)

AMENDMENT

The act of Sept. 8, 1950, cited to text, inserted the words "or trailers" at the end of paragraph (e), and added paragraph (j).

CROSS REFERENCE

Powers and duties of department of vehicles and traffic, § 40–603.

§ 40–102 [20: 968a]. Registration of motor vehicles and trailers—Certificates—Tags—Duplicates—Dealers—Fees—Official and foreign vehicles and trailers—Transfers—Regulations.

(a) No motor vehicle or trailer shall be operated (except motor vehicles or trailers operated by nonresidents, exempted under the provisions of section 40–303, motor vehicles or trailers covered by a dealer's registration as provided in subsection (b) (1) of this section, and motor vehicles or trailers covered by a special use certificate as provided in subsection (b) (4) of this section) unless registered in the department of vehicles and traffic of the District of Columbia by the owner thereof. Upon receipt of an application from the owner of a motor vehicle or trailer and (except in the case of a motor vehicle or trailer covered by subsection (b) (2) of this section) payment of a registration fee computed as provided in section 40–103, and if there is in force with respect to such motor vehicle or trailer a valid certificate of title issued under section 40–603, the director shall issue to such owner a registration certificate and identification tags for such motor vehicle or trailer.

(b) The Commissioners of the District of Columbia by regulation shall provide for the issuance by the director—

(1) annually to any dealer, upon payment of the fee prescribed in section 40–103, of a registration certificate and identification tags bearing a distinguishing dealer's mark, for interchangeable use on motor vehicles and trailers in accordance with regulations promulgated by the Commissioners;

(2) annually, without charge, of certificates of registration and identification tags for all motor vehicles and trailers owned by the United States or by the District of Columbia, or officially used by any duly accredited representative of a foreign government;

(3) of duplicate registration certificates or duplicate identification tags, upon proof satisfactory to the director of loss, mutilation, or destruction thereof, upon payment of a fee of $1 for each set of duplicate tags or 50 cents for each duplicate registration certificate; and

(4) to any person, upon payment of a fee of $1, of a special use certificate and special use identification tags bearing a distinguishing mark, valid for a period not exceeding ten days, for use on a motor vehicle or trailer in accordance with regulations promulgated by the Commissioners: *Provided,* That if any person be convicted of a violation of such regulations, the director may refuse thereafter to issue a special use certificate and special use identification tags to such person for a period of one year: *Provided further,* That the issuance of a special use certificate and special use identification tags for a motor vehicle or trailer shall not constitute a registration of such motor vehicle or trailer for any purpose.

(c) Every registration made under this title shall expire at midnight on the last day of the registration year for which the registration was made, unless the time be extended by the Commissioners. Any such registration may be renewed for the ensuing registration year upon application made by the owner during the months of February and March, and upon payment of the fees required by law. During the month of March it shall be lawful to operate a motor vehicle or trailer registered for the ensuing registration year. For the purposes of this chapter, a registration year shall be deemed to begin on April 1 and end on March 31.

(d) Upon the sale or other transfer to another owner of any motor vehicle or trailer registered under this title, the registration thereof shall expire. The owner selling or otherwise transferring such vehicle or trailer may register another motor vehicle or trailer for the unexpired portion of the registration year upon payment of a fee of $1 and a sum equal to the difference between the registration fee originally paid and the fee computed for such other motor vehicle or trailer under section 40–103, in case the latter is the greater. Upon the death of a joint owner of a motor vehicle or trailer registered under this chapter the registration thereof shall be transferred to the survivor or survivors and the fee for such transfer shall be $1.

(e) The Commissioners of the District of Columbia are authorized to prescribe such regulations as may be necessary to carry out the provisions of this title and shall prescribe such forms of application for registration and for a special use certificate, such forms of registration and special use certificate, such design of identification tags, and provide for the keeping of such records of registration and issuance of special use certificates and transfers of registration as will facilitate the identification and the regulation of motor vehicles and trailers operated in the District of Columbia.

(f) The Commissioners of the District of Columbia are further authorized to prescribe regulations under which the director may revoke or suspend the registration of any dealer who shall cease to be a dealer as defined in this chapter, or who shall have violated the provisions of this chapter or the regulations promulgated thereunder by the Commissioners, and to revoke or suspend and provide for the return to the director of all dealers' identification tags issued to such dealer, subject to review by the Commissioners under rules and regulations prescribed by them. Pending such review, any such order of revocation or suspension shall be stayed unless the Commissioners shall otherwise direct. No order of the director or the Commissioners hereunder shall be set aside or suspended by any court unless such order is arbitrary or capricious. (Aug. 17, 1937, 50 Stat. 680, ch. 690, § 2, title IV; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1045, ch. 313, § 1; Sept. 8, 1950, 64 Stat. 792, ch. 921, § 3.)

COMPILER'S NOTES

The appropriation acts of March 3, 1909, 35 Stat. 693, ch. 250, § 1; May 18, 1910, 36 Stat. 379, ch. 248, § 1, (D. C. 1929, title 20, § 914), provided as follows:

"There shall be assessed and collected an annual wheel tax on all automobiles, or other motor vehicles, owned or operated in the District of Columbia, having seats for only two persons, the sum of three dollars; and on all such vehicles having seats for more than two persons an additional tax of two dollars for each additional seat."

It is believed that this section is obsolete. The tax is not now being collected by the municipal authorities. It has not been repeated in subsequent appropriation acts and the presumption is that provisions of appropriation acts are temporary. (27 O. A. G. 108.)

AMENDMENTS

The 1938 act amended paragraphs (c) and (d) of the section by changing the period of registration from the calendar year to a registration year beginning on the first day of March and ending on the last day of February.

The 1939 act amended paragraph (c) by changing the registration year to begin on the first day of April and end on the last day of March.

The 1950 act added paragraph (f) and amended the balance of the section, principally by adding "and trailers" after the words "motor vehicles" throughout.

CROSS REFERENCES

Operators' permits, § 40–301 et seq.

Revocation and suspension of licenses and permits, § 40–402 and notes.

Rules and regulations generally, § 40–603 and notes.

Taxes on motor vehicles must be paid before registration, § 47–1210.

Titling fees, § 40–603.

NOTES TO DECISIONS

VIOLATION

Where defendant was convicted for operating an automobile without identification tags, basic error was committed in convicting him of an offense for which he was not arrested or charged. While great strictness should not be employed in construing an information in traffic cases, it is nevertheless the law that an information must state an offense. *Smith* v. *District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 766).

§ 40–103 [20: 968b]. Fees classified and use of proceeds designated.

(a) There shall be levied, collected, and paid for each registration year for each motor vehicle or trailer required to be registered under sections 40–101 to 40–105, the registration fee provided in this section.

(b) Class A. For each gasoline-propelled passenger vehicle, including passenger vehicles licensed under paragraph (b) or paragraph (d) of section 47–2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of which is not more than three thousand five hundred pounds, $5.00; more than three thousand five hundred pounds and not more than four thousand five hundred pounds, $8.00; over four thousand five hundred pounds, $12.00.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class B. For each gasoline-propelled truck, tractor, and passenger-carrying vehicle for hire having a seating capacity of eight passengers or more in addition to the driver or operator, with the exception of passenger vehicles licensed under paragraph (b) of section 47–2431.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of the chassis, plus the weight of the cab and body, is not more than two thousand pounds, $15.00; more than two thousand pounds and not more than four thousand pounds, $20.00; more than four thousand pounds and not more than six thousand pounds, $35.00; more than six thousand pounds and not more than eight thousand pounds, $50.00; more than eight thousand pounds and not more than ten thousand pounds, $65.00; more than ten thousand pounds and not more than twelve thousand pounds, $75.00; more than twelve thousand pounds and not more than sixteen thousand pounds, $100; over sixteen thousand pounds, $150.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class C. For each trailer, when the manufacturer's shipping weight of the chassis plus the weight of the body is not more than five hundred pounds, $5.00; more than five hundred pounds and not more than twelve hundred and fifty pounds, $10.00; more than twelve hundred and fifty pounds and not more than two thousand pounds, $15.00; more than two thousand pounds and not more than four thousand pounds, $20.00; more than four thousand pounds and not more than six thousand pounds, $35.00; more than six thousand pounds and not more than eight thousand pounds, $50.00; more than eight thousand pounds and not more than ten thousand pounds, $65.00; more than ten thousand pounds and not more than twelve thousand pounds, $75.00; more than twelve thousand pounds and not more than sixteen thousand pounds, $100; over sixteen thousand pounds, $150.

Class D. For each motorcycle, motor bicycle, motor tricycle, and motor wheel, $5.00.

Class E. Motor vehicles not propelled by gasoline, double the fees for similar vehicles propelled by gasoline.

Class F. For dealers' identification tags, first three sets of tags, $50, and $10 for each additional set.

(c) When application for registration of any motor vehicle or trailer or for registration as a dealer or for issuance of dealers' identification tags is received by the director on or after October 1, the registration fee, or the fee for issuance of dealers' identification tags shall be one-half the amount otherwise provided.

(d) All proceeds from fees payable under this chapter and all moneys collected from the motor-vehicle-fuel tax, and fees charged for the titling of motor vehicles and trailers, including fees charged for the issuance of permits to operate motor vehicles, shall be deposited in a special account in the Treasury of the United States entirely to the credit of the District of Columbia and shall be appropriated and used solely and exclusively for the following purposes:

(1) For construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith;

(2) For the expenses of the office of the director of vehicles and traffic incident to the regulation and control of traffic and the administration of the same; and

(3) For the expenses necessarily involved in the police control, regulation, and administration of traffic upon the highways: *Provided, however,* That the total amount to be expended under this item shall not exceed 15 per centum of the total payment appropriated for pay and allowances of officers and members of the Metropolitan police force.

For the fiscal year 1938 all moneys appropriated for the construction, reconstruction, improvement, and maintenance of highways and administrative expenses in connection therewith, all moneys appropriated for the department of vehicles and traffic, and 15 per centum of all moneys appropriated for pay and allowances for officers and members of the Metropolitan police force shall be paid from and chargeable against the fund hereby created. (Aug. 17, 1937, 50 Stat. 681, ch. 690, § 3, title IV; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1046, ch. 313, § 2; Sept. 8, 1950, 64 Stat. 793, ch. 921, §§ 4, 5, 6.)

AMENDMENTS

The 1938 act amended (b) of the section by inserting "wholly" in clause (1) of Class A; "wholly or partially" in clause (2) of Class A; "wholly" in clause (1) of Class B; "wholly or partially" in clause (2) of Class B; by removing trailers from the provisions of clause (1) of Class B and inserting Class C and changing the then Classes C to E to Classes D to F.

Subsection (c) was amended in 1938 by changing "August 1" to "September 1" and in 1939 by changing "September 1" to "October 1."

The 1950 act amended (a) of the section by adding "or trailer" after "motor vehicle"; by striking out the figures and words "$25 and $5" in Class F of (b), and inserting in lieu thereof the figures and words "$50 and $10"; by adding the words "or trailer or for registration as a dealer or for issuance of dealers' identification tags" and "or the fee for issuance of dealers' identification tags" respectively, after the words "motor vehicle" and "registration fee" in (c); and by adding the words "and trainers" after the words "titling of motor vehicles" in (d).

CROSS REFERENCES

Department of motor vehicles and traffic, § 40–603.
Fees for operators permits, § 40–301.
Inspection fees, §§ 40–201, 40–202.

Motor vehicle fuel tax, § 47–1901 et seq.
Refund of fees when license refused, § 47–1018.
Titling and retitling, fees, § 40–603.

§ 40–104 [20: 968c]. Unlawful acts—Penalty.

(a) It shall be unlawful—

(1) for any person to operate any motor vehicle or trailer upon any public highway of the District of Columbia (except motor vehicles or trailers operated by nonresidents exempted under the provisions of section 40–303) (A) if such motor vehicle or trailer is not registered or covered by a dealer's registration or by a special use certificate as required by this title, (B) if such motor vehicle or trailer does not have attached thereto and displayed thereon the identification tags required therefor, or (C) if such person does not have in his possession or in the motor vehicle or trailer operated the registration certificate or special use certificate required therefor;

(2) for the owner of any motor vehicle or trailer knowingly to permit the operation thereof contrary to any provision of paragraph (1);

(3) to use a false or fictitious name or address in any application for registration or for a special use certificate, or any renewal or duplicate thereof, or knowingly to make any false statement or conceal any material fact in any such application.

(b) Any person violating any provision of this chapter or the regulations made or promulgated under the authority hereof shall upon conviction thereof be subject to a fine of not more than $300 or imprisonment of not more than thirty days, or both such fine and imprisonment. All such prosecutions shall be in the police court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 682, ch. 690, § 4, title IV; Sept. 8, 1950, 64 Stat. 794, ch. 921, § 7.)

AMENDMENT

The 1950 act amended (a) of the section by inserting "or covered by a dealer's registration or by a special use certificate" in (1) (A); by striking out "certificate of registration" and inserting in lieu thereof "registration certificate or special use certificate" in (1) (C); by inserting "or trailer" in (2); and by inserting "or for a special use certificate," in (3).

§ 40–105 [20: 968d]. Provisions not affected.

(a) Nothing in this chapter shall be construed to affect the power of the Commissioners of the District of Columbia, under the District of Columbia Traffic Act, 1925, as amended, to make rules and regulations, not inconsistent with the provisions of this chapter, with respect to the registration of motor vehicles.

(b) Nothing in this chapter shall be construed to relieve any person from the payment of any license tax under sections 47–2101 to 47–2109, 47–2301 to 47–2350. (Aug. 17, 1937, 50 Stat. 682, ch. 690, § 5, title IV.)

COMPILER'S NOTES

"The District of Columbia Traffic Act, 1925, as amended" referred to in this section will be found in sections 40–301 to 40–303, 40–601 to 40–603, 40–605, 40–609, 40–610, 40–612, 40–614, 40–615, and as amendments to sections 11–601, 11–616, 11–617, 11–621, 11–623 and 11–1407.

The act of August 17, 1937, 50 Stat. 682, ch. 690, § 7, title IV, provided as follows: "This title (§§ 40–101 to 40–105) shall take effect on January 1 of the first calendar year following the enactment thereof, except that the Commissioners of the District of Columbia are authorized to provide for the registration of motor vehicles under this title (§§ 40–101 to 40–105) for such calendar year, beginning with the 1st day of November preceding such effective date."

Chapter 2.—INSPECTION

Sec.
40–201. Annual inspection of motor vehicles—Inspection fee.
40–202. Payment to collector of taxes.
40–203. Appropriations for facilities for inspection.
40–204. Vehicles exempt from inspection fee.
40–205. Vehicles not inspected, or unsafe.
40–206. Penalties.
40–207. Regulations by Commissioners.

§ 40–201 [6: 256]. Annual inspection of motor vehicles—Inspection fee.

At the time of the registration of each motor vehicle or trailer there shall be levied and collected a fee known as the "inspection fee" of $1. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 1; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 1.)

EFFECTIVE DATE

Sec. 4 of Art. IV, act July 16, 1947, cited to text, provided that the amendment to this section become effective thirty days after approval.

AMENDMENTS

Act of July 16, 1947, cited to text, added "or trailer" and struck out provision for subsequent inspections at a fee of 50 cents.

CROSS REFERENCES

Fees generally, § 40–103 and notes.
Other provisions concerning supervision, control, and inspection of motor vehicles, § 40–603.
Refund of fees when license refused, § 47–1018.

§ 40–202 [6: 256a]. Payment to collector of taxes.

The inspection fee shall be paid to the collector of taxes and shall be deposited in the Treasury of the United States to the credit of the special fund created by sections 47–1901 to 47–1916, and the District of Columbia Revenue Act of 1937. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 2.)

CROSS REFERENCES

Disposition of fees, § 40–103.
For District of Columbia Revenue Act of 1937, see §§ 47–1401 to 47–1409, 47–1601 to 47–1626, 47–1701 to 47–1715, 47–1801 to 47–1808, 47–1901 to 47–1903, 47–1905 to 47–1907, 47–1908, 47–1911, and 47–2501 to 47–2504, and §§ 40–101 to 40–105.

§ 40–203 [6: 256b]. Appropriations for facilities for inspection.

The annual estimates of appropriations for the government of the District of Columbia for the fiscal year 1939 and succeeding fiscal years shall include estimates of appropriations for the construction and/or rental and/or leasing of ground and buildings, the purchase of equipment and supplies, and the payment of salaries of mechanics, laborers, clerks, and other employees to carry out the annual inspection of all motor vehicles and trailers in the

District of Columbia. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 3; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 2.)

EFFECTIVE DATE

Sec. 4 of Art. IV, act July 16, 1947, cited to text, provided that the amendment to this section become effective thirty days after approval.

AMENDMENTS

Act July 16, 1947, cited to text, added the words "or trailers."

§ 40–204 [6: 256c]. Vehicles exempt from inspection fee.

All motor vehicles and trailers owned and officially used by the government of the United States or by the government of the District of Columbia or by the representatives of foreign governments, shall be subject to annual inspection, such inspections to be furnished without charge. (As amended July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 3.)

EFFECTIVE DATE

Sec. 4 of Art. IV, act July 16, 1947, cited to text, provided that the amendment to this section become effective thirty days after approval.

AMENDMENTS

Act July 16, 1947, cited to text, added the words "or trailers."

CROSS REFERENCE

Publicly owned vehicles, § 40–501 et seq.

§ 40–205 [6: 256d]. Vehicles not inspected, or unsafe.

The Commissioners of the District of Columbia or their designated agent may refuse to register any motor vehicle or trailer which has not been inspected as required, or which is unsafe or improperly equipped, or otherwise unfit to be operated, and for like reason they may revoke or suspend any registration already made: *Provided,* That the provisions of section 40–302 (a) shall be applicable in all cases where registration is refused, revoked, or suspended under the terms of this chapter. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 5.)

CROSS REFERENCE

Revocation or suspension of license and permits generally, § 40–402 and notes.

§ 40–206 [6: 256e]. Penalties.

Any individual, partnership, firm, or corporation found guilty of using or permitting the use of any unregistered motor vehicle or trailer, or who is found guilty of using or permitting the use of the same during the period for which any such vehicle's registration is revoked or suspended under the terms of this chapter, shall, for each such offense, be fined not more than $300. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 6.)

§ 40–207 [6: 256f]. Regulations by Commissioners.

The Commissioners of the District of Columbia shall make such regulations as in their judgment are necessary for the administration of this chapter, and may affix thereto such reasonable fines and penalties as in their judgment are necessary to enforce such regulations. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 7.)

CROSS REFERENCE

Rules and regulations generally, § 40–603 and notes.

Chapter 3.—OPERATORS' PERMITS

Sec.
40–301 Operators' permits—Application—Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Possession of operator—Operation without permit prohibited.
40–302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Nonresidents—Penalty.
40–303. Nonresidents exempt from registration—Period of exemption.

§ 40–301 [6: 244]. Operators' permits—Application—Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Contents of permits—Possession of operator—Operation without permit.

(a) (1) Upon application made under oath and the payment of the fee hereinafter prescribed, the Commissioners or their designated agent shall issue a motor vehicle operator's permit to any individual who, after examination, in the opinion of the Commissioners or their designated agent, is mentally, morally, and physically qualified to operate a motor vehicle in such manner as not to jeopardize the safety of individuals or property. The Commissioners or their designated agent shall cause each applicant to be examined as to his knowledge of the traffic regulations of the District and shall require the applicant to give a practical demonstration of his ability to operate a motor vehicle within a congested portion of the District and in the presence of such individuals as may be authorized to conduct the demonstration, except that upon the renewal of any such operator's permit such examination and demonstration may be waived in the discretion of the Commissioners or their designated agent. Should the Commissioners or their designated agent believe that the issuance or reissuance of a permit in accordance with the provisions of this chapter may prove a menace to public safety, they or their agent may refuse the issuance or reissuance thereof. Operators' permits shall be issued for a period not in excess of three years upon compliance with such regulations as the Commissioners or their designated agent may prescribe. The fee for any such permit shall be $3. No operator's permit shall be issued to any individual under sixteen years of age. No operator's permit issued to any individual under eighteen years of age shall authorize the operation by such individual while he is under the age of eighteen years of any motor vehicle other than a passenger vehicle or motorcycle or motor bicycle, used solely for purposes of pleasure: *Provided,* That such permit shall not authorize the operation by any such individual under the age of eighteen years of any such motor vehicle for compensation.

(2) Upon application made under oath and the payment of a fee of $1, the Commissioners or their designated agent may issue a learner's permit to any applicant who has successfully passed all parts of the examination other than the driving demonstration test. Such permit shall entitle the permittee, while having such permit in his immediate possession, to drive a passenger motor vehicle in the

District for a period of thirty days, when accompanied by the holder of a motor vehicle operator's permit who is occupying a seat beside such permittee. Any such learner's permit may be extended for one additional period of thirty days. No learner's permit shall be issued to any individual under sixteen years of age; and no such permit issued to any individual sixteen years of age or over but under eighteen years of age shall authorize the operation of any motor vehicle unless the holder of such permit is accompanied by the holder of a motor-vehicle instructor's license who is occupying a seat beside such learner or unless the holder of such permit is operating a passenger vehicle used solely for purposes of pleasure and owned by such learner or his parent or guardian and such learner is accompanied by the holder of a motor-vehicle operator's permit who is occupying a seat beside such learner.

(3) Any pupil fifteen years of age or over enrolled in a high school or junior high school driver education and training course approved by the Commissioners or their designated agent may, without obtaining either an operator's or a learner's permit, operate a dual-control motor vehicle at such times as such pupil is under instruction and accompanied by a licensed motor-vehicle driving instructor: *Provided,* That such instructor shall at all times while he is engaged in such instruction have on his person a certificate from the principal or other person in charge of such school, stating that such instructor is officially designated to instruct pupils enrolled in such course, and whenever demand is made by a police officer such instructor shall display to him such certificate.

(4) In case of the loss of an operator's permit or a learner's permit, the individual to whom such permit was issued shall forthwith notify the commissioners or their designated agent, who shall furnish such individual with a duplicate permit. The fee for each such duplicate permit shall be 50 cents.

(5) Enlisted men of the Army, Navy, Marine Corps, and Coast Guard shall be issued, without charge, a permit to operate Government-owned vehicles, while engaged in official business, upon the presentation of a certificate from their commanding officers to the effect that they are assigned to operate a Government vehicle and are qualified to drive, and upon proving to the satisfaction of the director of vehicles and traffic that they are familiar with the traffic regulations of the District of Columbia.

(b) Each operator's permit shall (1) state the name and address of the holder, together with such other matter as the commissioners or their designated agent may by regulation prescribe, and (2) contain his signature and space wherein the police court judges or their subordinates are required to note convictions of violations of sections 40–605, 40–609, 40–610.

(c) Any individual to whom has been issued a permit to operate a motor vehicle shall have such permit in his immediate possession at all times when operating a motor vehicle in the District and shall exhibit such permit to any police officer when demand is made therefor. Any individual failing to comply with the provisions of this subdivision shall upon conviction thereof, be fined not less than $2 nor more than $40: *Provided,* That this shall not apply to transient visitors from states in the Union which do not require drivers' permits.

(d) Permits issued in accordance with the provisions of this chapter to individuals in possession of operators' permits issued to such individuals in the District prior to May 2, 1925, may be issued with or without the examination and practical demonstration provided in subdivision (a) of this section, as the director may deem advisable.

(e) No individual shall operate a motor vehicle in the District, except as provided in section 40–303, without first having obtained an operator's permit or a learner's permit issued under the provisions of this chapter. Any individual violating any provision of this subdivision shall, upon conviction thereof, be fined not more than $300 or be imprisoned not more than ninety days.

(f) Nothing in this chapter shall relieve any individual from compliance with section 47–2331 (e) of this Code. (Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 7; July 3, 1926, 44 Stat. 812, ch. 739, § 2; Feb. 18, 1929, 45 Stat. 1226, ch. 258; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; June 20, 1939, 53 Stat. 850, ch. 231; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 2; Dec. 15, 1944, 58 Stat. 806, ch. 589, § 1; Apr. 20, 1948, 62 Stat. 173, ch. 215, §§ 1, 2.)

COMPILER'S NOTES

Act March 3, 1925, 43 Stat. 1121, ch. 443, § 17 provided that § 7 (this section) should take effect sixty days after its enactment.

The act approved January 29, 1913 cited in paragraph (f) amended § 7, paragraph 11, of the act approved July 1, 1902. Section 7 was later amended in its entirety by act of July 1, 1932, 47 Stat. 555, ch. 366, so that the same subject matter is now contained in paragraph 31 (e) (§ 47–2431 (e) in this code).

"This chapter" referred to in this section will be found in §§ 40–301 to 40–303, 40–601 to 40–603, 40–605, 40–609 to 40–615, and as amendments to sections 11–601, 11–616, 11–617, 11–621, 11–623 and 11–1407.

TERMINATION DATE

Section 2 of act Dec. 15, 1944, cited to text, provides that the last two pars. of subsec. (a) as added by section 1 of said act, will cease to be effective six months after the termination of hostilities of World War II, which was proclaimed at 12 o'clock noon of December 31, 1946, by Proc. No. 2714, 12 F. R. 1.

AMENDMENTS

Prior to the 1926 amendment, this section provided for the annual renewal of operators' permits and prescribed fees of $1 and $2. The 1926 amendment also added the third sentence in paragraph (a); added "which do not require drivers' permits" at the end of paragraph (c); changed paragraph (d) which prior thereto related to the issuance without charge of temporary permits to expire on March 31, 1936, to persons holding permits issued prior to that act; and reduced the penalty in paragraph (e) from "not more than one year" to "not more than six months."

The act of 1936 also provided, "(g) This act shall become effective immediately upon passage, and promptly thereafter the director shall commence the call of outstanding permits and the reissuance thereof in accordance with the provisions of this act, and shall complete such reissuance within a period of one year."

The 1929 act added the proviso to paragraph (a).

The 1931 act inserted "commissioners or their designated agent" in lieu of "director." This act became effective July 1, 1931.

The 1939 act added the proviso in paragraph (e).

The act of Nov. 25, 1942, cited to text, amended subsec. (e) of section by deleting proviso which provided that operators of Government-owned vehicles stationed outside of District were not required to have permits while operating within limits of District, and also provided that violation of subsec. (e) was punishable with $500 fine and/or imprisonment not more than six months.

The act of Dec. 15, 1944, cited to text, amended subsec. (a) by adding last two pars.

The act of April 20, 1948, cited to text, amended subsec. (a) generally.

CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, § 25–127.

Commissioners' power to make rules and regulations not inconsistent with chapter 1 of this title, § 40–105.

Definition of "this chapter" and other terms used, § 40–602.

Fees and disposition thereof, § 40–103 and notes.

Licensing provisions of this section are not affected by provisions for licensing motor vehicles generally, § 40–105.

Metropolitan Police may not perform any functions under this chapter, except enforcement thereof, § 40–603.

Power of Commissioners to make rules and regulations for issuance and revocation or suspension of operators' permits, § 40–603.

Prosecution of violations of this chapter, § 40–603.

Rules and regulations concerning motor vehicles generally, § 40–603 and notes.

NOTES TO DECISIONS

EVIDENCE

In prosecution for driving without permit and leaving scene of collision, tried by court, erroneous admission of officer's testimony that persons who witnessed collision identified accused, in his presence, as driver of automobile involved in collision, was not cured by court's recognition of error and statement that such testimony was disregarded, where competent evidence of accused's guilt was far from conclusive. *Penwell* v. *District of Columbia* (D. C. 1943, 31 A, 2d 891).

EXCLUSIVE POWERS OF CONGRESS

Congress, as to the District of Columbia, has express power to exercise exclusive legislation in all cases whatsoever, thus possessing the combined powers of a general and a state government in all cases where legislation is possible. When and how it shall delegate or distribute authority to make detailed regulations under the police power are questions which Congress may determine for itself. *LaForest* v. *Board of Comrs. of District of Columbia* (67 App. D. C. 396, 92 Fed. (2d) 547).

FINES

Fine of $275 with commitment to jail for sixty days on default of payment, held not excessive. *Dorsey* v. *Peak* (58 App. D. C. 64, 24 Fed. (2d) 892).

GOVERNMENT EMPLOYEES

Traffic regulations apply to United States employees, driving government automobiles. *Croson* v. *District of Columbia* (55 App. D. C. 122, 2 Fed. (2d) 924).

There is no exception in favor of the vehicles of the Post Office Department, and the manifest purpose of the acts does not imply such an exception. *White* v. *District of Columbia* (55 App. D. C. 197, 4 Fed. (2d) 163).

PERMIT IN POSSESSION

Holder of a permit is required to have it in his immediate possession when operating a motor vehicle and exhibit the same to any police officer when demand is made therefor. *Dorsey* v. *Peak* (58 App. D. C. 64, 24 Fed. (2d) 892).

SUSPENSION OF PERMIT

Failure to prove that the permit had not been restored before the date of arrest was immaterial, even though the information contained no averment of it, as such averment was mere surplusage, and the burden of proof respecting it did not rest on the prosecution. *Chesevoir* v. *District of Columbia* (58 App. D. C. 268, 29 Fed. (2d) 798).

Action of the Commissioners in suspending petitioner's permit was not based upon illegally delegated power. *LaForest* v. *Board of Comrs. of District of Columbia* (67 App. D. C. 396, 92 Fed. (2d) 547).

§ 40–302 [6: 250]. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Nonresidents—Penalty.

(a) Except where for any violation of this chapter revocation of the operator's permit is mandatory, the Commissioners or their designated agent may with or without a prior hearing revoke or suspend an operator's permit for any cause which they or their agent may deem sufficient: *Provided,* That in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension: *Provided further,* That such order shall take effect five days after its issuance unless the holder of the permit shall have filed within such period, written application with the Commissioners of the District of Columbia for a review of their order or the order of their agent, and, if upon such review, the Commissioners shall sustain such order, the same shall become effective immediately: *Provided further,* That application to said Commissioners for a review shall not operate as a stay of such order of the commissioners or their agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving under the influence of liquor or narcotic drugs; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen: *Provided further,* That any individual whose permit shall be denied, suspended, or revoked by the commissioners or their agent may, within thirty days after such denial, revocation, or suspension is ordered, if application for a review by the commissioners of an order for revocation or suspension has not been filed, or in case such application has been filed, within thirty days after decision of the Commissioners, apply to any justice of the United States Court of Appeals for the District of Columbia for a writ of error to review the order of the Commissioners or their agent complained of or the decision of the Commissioners. Said court is authorized to promulgate rules governing the application for the writ, and the record and proceedings thereon, and to affirm, modify, or reverse the order of the Commissioners or their agent or the decision of the Commissioners, where the writ is allowed pursuant hereto; and the decision of said court shall be final: *And provided further,* That the application to said court for a writ of error shall not operate as a stay of such order of the Commissioners or their agent or the decision of the Commissioners.

(b) In case the operator's permit of any individual is revoked no new permit shall be issued to such individual for at least six months after the revocation except in the discretion of the Commissioners or their designated agent.

(c) The Commissioners of the District of Columbia, or their designated agent, may suspend or revoke the right of any nonresident person as defined in section 40–303, to operate a motor vehicle in the District of Columbia, for any cause they or their

agent may deem sufficient, and the proper authority at the place of issuance of the permit, or other authority to operate a motor vehicle shall be notified of such suspension and the reason therefor, immediately: *Provided,* That such order of suspension or revocation shall take effect ten days after its issuance, and the same be subject to review and appeal in the manner and under the same conditions as are provided for such matters in subsection (a) of this section.

(d) Any individual found guilty of operating a motor vehicle in the District during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended under this act shall, for each such offense, be fined not less than $100 nor more than $500, or imprisoned not less than 30 days nor more than one year, or both. (Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 13; July 3, 1926, 44 Stat. 814, ch. 739, § 3; Feb. 27, 1931, 46 Stat. 1424, 1428, ch. 317, §§ 2, 4; May 15, 1936, 49 Stat. 1273, ch. 393.)

COMPILER'S NOTES

Subsection (c) of this section as amended in 1936 was § 245a of title 6 in the Fifth Supplement to the 1929 Code of the District of Columbia.

"This chapter" referred to in this section will be found in sections 40–301 to 40–303, 40–601 to 40–603, 40–605, 40–609 to 40–615, and as amendments to sections 11–601, 11–616, 11–617, 11–621, 11–623 and 11–1407.

AMENDMENTS

Prior to the 1926 amendment paragraph (a) of this section provided that the director could in his discretion revoke or suspend the operator's permit of any person convicted of a violation but contained no provision for a hearing.

The 1931 amendment substituted "commissioners or their designated agent" for "director"; and in subdivision (a) substituted "five days" for "ten days" in the second proviso; omitted from the second proviso "but if the director or his assistant, such order shall thereupon be vacated;" and added the third proviso. This amendment became effective July 1, 1931.

The 1936 act amended paragraph (c) by adding the proviso and giving the right to revoke for any cause, this right being previously given only upon conviction of a violation.

CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, § 25–127.
Definition of "this act" and other terms used, § 40–602.
Revocation and suspension of licenses and permits generally, § 40–402 and notes.

NOTES TO DECISIONS

FOREIGN REGISTRATION AFTER SUSPENSION

One whose operator's permit in the District of Columbia had been revoked was properly convicted of driving in the District during the suspension period though he had become a resident of Virginia and had obtained registration and operator's licenses from that state. *District of Columbia* v. *Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163, revg. 59 App. D. C. 79, 33 Fed. (2d) 375).

OPERATING VEHICLE AFTER REVOCATION

Conviction for operating a motor vehicle after revocation of license was affirmed, and it was not necessary for the prosecution to show that no new permit had been issued. *Chesevoir* v. *District of Columbia* (58 App. D. C. 268, 29 Fed. (2d) 798).

§ 40–303 [6: 245]. Nonresidents exempt from registration—Period of exemption.

(a) The owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any state, territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 40–301 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the Commissioners or their designated agent have previously found that a similar privilege is extended to legal residents of the District by such state, territory, or possession of the United States, or foreign country or political subdivision thereof. The Commissioners or their designated agent shall from time to time ascertain such privileges and cause his findings to be promulgated.

(b) Any operator of a motor vehicle who is not a legal resident of the District and who does not have in his immediate possession an operator's permit issued by a state, territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the state, territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit or (2) he has submitted to examination within 72 hours after entering the District and obtained an operator's permit in accordance with the provisions of section 40–301. Any individual who violates any provision of this subdivision shall, upon conviction thereof, be fined not less than $5 nor more than $50 or imprisoned not less than 30 days, or both. (Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 8; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2.)

COMPILER'S NOTE

Section 17 (a) of the act of March 3, 1925, 43 Stat. 1126, ch. 443, provided that this section should take effect 60 days after its enactment.

AMENDMENT

The 1931 amendment inserted "commissioners or their designated agent" in lieu of "director." This amendment became effective July 1, 1931.

CROSS REFERENCES

Definition of terms, § 40–602.
See note to § 40–301.
Section 25–127 refers to this section.

NOTES TO DECISIONS

CONSTRUCTION OF PRIOR ACT

In the first part of this act the word "registration" is applied to the vehicle and the word "licensing" to the operator; and in the latter part the words "licensed or registered" should be treated as used in the same relation as their noun forms in the first part. *King* v. *District of Columbia* (51 App. D. C. 160, 277 Fed. 562). This case was in effect overruled on another point by *District of Columbia* v. *Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163).

The meaning of this act being doubtful, the District's interpretation thereof as evidenced by its agreement with Virginia as to operation of a motor vehicle in the District

by a person of that State should prevail. *King* v. *District of Columbia* (51 App. D. C. 160, 277 Fed. 562). This case was in effect overruled on another point by *District of Columbia* v. *Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163).

DUTY OF NONRESIDENT TO OBEY REGULATIONS

This act does not relieve a nonresident operator of amenability to valid traffic regulations. *King* v. *District of Columbia* (51 App. D. C. 160, 277 Fed. 562). This case was in effect overruled on another point by *District of Columbia* v. *Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163).

This section does not exempt a nonresident from compliance with the laws of the District of Columbia when, while a resident of the District, his driver's permit was revoked under § 40–302 and he is subject to punishment under that section. *District of Columbia* v. *Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163).

EVASION OF REVOCATION

One may be convicted of operating a motor vehicle without a license who procures a Virginia license after his District license has been revoked, and drives in the District during its unexpired period. *District of Columbia* v. *Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163, revg. 59 App. D. C. 79, 33 Fed. (2d) 375), and in effect overruling *King* v. *District of Columbia* (51 App. D. C. 160, 277 Fed. 562).

Chapter 4.—OWNERS' FINANCIAL RESPONSIBILITY ACT

Sec.

40–401. Financial responsibility of owners and operators of motor vehicles for damages—This chapter not to repeal existing traffic laws.
40–402. Suspension of motor-vehicle operator's permit and registration certificate—Proof of ability to respond in damages—Provisions as to chauffeurs, operators, or members of household of nonregistered owners—Judgments or orders to be reported.
40–403. Suspension of operator's permit and registration certificate—Judgments against nonresidents—Duty of clerk of court to certify copy of judgment to commissioners—Suspension for other judgment after proof furnished—What constitutes satisfaction of judgment—Permission to pay in instalments—Operator deemed to be agent of owner—Withdrawal of nonresident's privilege to drive vehicle after final judgment for damages—Service of process on nonresident.
40–404. Proof of ability to respond in damages, what constitutes—Additional certificates for additional vehicles—Certificates not to be canceled except upon ten days' notice to Commissioners—Action on same to be brought in name of District of Columbia—Exemption of such money from attachment or execution.
40–405. Commissioners to be notified of cancelation or expiration of insurance or bond—Suspension of permit on failure to furnish other proof of ability before expiration date.
40–406. Director of vehicles and traffic to furnish operating record—Fees.
40–407. Director of vehicles and traffic to furnish injured person evidence of ability of owners or operator to respond in damages.
40–408. Suspended person to return operator's permit to director of vehicles and traffic—Duty of Metropolitan Police to secure possession—Penalty for failure to return permit.
40–409. Authority of Commissioners to cancel evidence of insurance after three years—Substitution of other evidence of ability for money—Return of money.
40–410. Exemption of persons required to make other provision for injury or damage.
40–411. Penalty for forging—Evidence of guilt.
40–412. Meaning of "Motor-vehicle liability policy"—Coverage—Liability under Workmen's Compensation Law and to property in charge of insured excepted—Alternative provisions—Minimum limits—Additional coverage permitted—Other provisions not contrary to sections 40–401 to 40–416 hereof permitted—Separate policies for personal injury and property damage permitted—Approval of form of policy by Commissioner of Insurance—Statutory provisions—Same need not be contained in policy.
40–413. Definitions.
40–414. Commissioners to make rules and regulations.
40–415. Plaintiff not prevented from relying upon other processes.
40–416. Saving clause.

§ 40–401 [6: 255]. Financial responsibility of owners and operators of motor vehicles for damages—This chapter not to repeal existing traffic laws.

This chapter shall in no respect be considered as a repeal of any of the provisions of the Traffic Acts for the District of Columbia but shall be construed as supplemental thereto. (May 3, 1935, 49 Stat. 166, ch. 89, § 1.)

COMPILER'S NOTE

The Traffic Acts are sections 40–301 to 40–303, 40–601 to 40–603, 40–605, 40–609 to 40–615, and amendments to sections 11–601, 11–616, 11–617, 11–621, 11–623 and 11–1407.

NOTES TO DECISIONS

PURPOSE

The purpose of this chapter was the extension of liability of master for acts of servant to those owners who entrust their automobiles to others or give consent, express or implied, to their use by others. *Senator Cab Co.* v. *Rothberg* (D. C. Mun. App. 1945, 42 A, 2d 245).

The statute has a twofold purpose: To furnish a financially responsible defendant in case a person driving a car, with the owner's consent, negligently causes damage to another; and to promote more careful driving. *National Trucking and Storage Co.* v. *Driscoll* (D. C. Mun. App. 1949, 64 A. 2d 304).

§ 40–402 [6: 255a]. Suspension of motor-vehicle operator's permit and registration certificate—Proof of ability to respond in damages—Provisions as to chauffeurs, operators, or members of household of nonregistered owners—Judgments or orders to be reported.

The motor-vehicle operator's permit and all of the registration certificates of any person who shall by a final order or judgment have been convicted of or shall have forfeited any bond or collateral given for a violation of any of the following provisions of law, to wit—

Driving while under the influence of intoxicating liquor or narcotic drugs, as provided in section 40–609, commonly known as the Traffic Acts;

Leaving the scene of an automobile accident in which personal injury occurs without making identity known, as provided in section 40–609;

Reckless driving, as provided in section 40–609 (b), if personal injury occurs as a result thereof;

A conviction of an offense in any other State, which if committed in the District of Columbia would be a violation of any of the aforesaid provisions of the Traffic Acts of the District of Columbia; shall be suspended by the Commissioners of the District of Columbia or their designated agent and shall remain so suspended and shall not at any time

thereafter be renewed, nor shall any other motor vehicle be thereafter registered in his name until he shall give proof of his ability to respond thereafter in damages resulting from the ownership or operation of a motor vehicle and arising by reason of personal injury to or death of any one person of at least $5,000, and, subject to the aforesaid limit for each person injured or killed, of at least $10,000 for such injury to or the death of two or more persons in any one accident, and for damage to property of at least $1,000 resulting from any one accident. Such proof in said amounts shall be furnished for each motor vehicle owned or registered by such person. If any such person shall fail to furnish said proof, his operator's permit and registration certificates shall remain suspended and shall not at any time thereafter be renewed, nor shall any other motor vehicle be thereafter registered in his name until such time as said proof be given. If such person shall not be a resident of the District of Columbia the privilege of operating any motor vehicle in the District of Columbia and the privilege of operation within the District of Columbia of any motor vehicle owned by him shall be withdrawn until he shall have furnished such proof: *Provided,* That in case of both residents and nonresidents, however, if it shall be duly established to the satisfaction of the said Commissioners or their designated agent, and the said Commissioners or their designated agent shall so find (a) that any such person so convicted, or who shall have pled guilty or forfeited bond or collateral, was, upon the occasion of the violation upon which such conviction, plea, or forfeiture was based, a chauffeur or motor-vehicle operator, however designated, in the employ of the owner of such motor vehicle; or a member of the same family and household of the owner of such motor vehicle, and (b) that there was not, at the time of such violation, or subsequent thereto, up to the date of such finding, any motor vehicle registered in the District of Columbia in the name of such person convicted, entering a plea of guilty or forfeiting bond or collateral, as aforesaid, then in such event, if the person in whose name such motor vehicle is registered shall give proof of ability to respond in damages, in accordance with the provisions of this chapter (and the said Commissioners or their designated agent shall accept such proof from such person), such chauffeur or other person, as aforesaid, shall thereupon be relieved of the necessity of giving such proof in his own behalf. It shall be the duty of the clerk of the court in which any such judgment or order is rendered or other action taken to forward immediately to the said commissioners or their designated agent a certified copy or transcript thereof, which said certified copy or transcript shall be prima facie evidence of the facts therein stated. (May 3, 1935, 49 Stat. 166, ch. 89, § 2; May 9, 1941, 55 Stat. 184, ch. 98, § 1.)

AMENDMENTS

The act of 1941, cited to text, added the third subparagraph.

CROSS REFERENCES

Revocation or suspension for failure to satisfy civil obligations, § 40–403.

Revocation or suspension of licenses or permits for violation of Uniform Narcotic Drug Act, § 33–418.

Revocation or suspension of nonresidents operator's permit, § 40–302, sub. (c).

Revocation or suspension of operator's permit, § 40–302.

Revocation, suspension or refusal of licenses for unsafe vehicles, § 40–205.

NOTES TO DECISIONS

COVERAGE OF INSURANCE

Where policy of liability insurance by its own terms "does not cover any liability for death sustained by named insured" the financial responsibility act was applicable, where the insured was killed in her own automobile driven by another and the administratrix of named insured could not recover. *Hepburn* v. *Pennsylvania Indem. Corp.* (109 Fed. (2d) 833).

§ 40–403 [6: 255b]. Suspension of operator's permit and registration certificate—Judgments against nonresidents—Duty of clerk of court to certify copy of judgment to Commissioners—Suspension for other judgment after proof furnished—What constitutes satisfaction of judgment—Permission to pay in installments—Operator deemed to be agent of owner—Withdrawal of nonresident's privilege to drive vehicle after final judgment for damages—Service of process on nonresident.

The operator's permit and all of the registration certificates of any person, in the event of his failure to satisfy every judgment arising from an accident, or accidents, happening subsequently to the effective date of this chapter (August 1, 1935), and which shall have become final by expiration, without appeal, of the time within which appeal might have been perfected or by final affirmance on appeal, rendered against him by a court of competent jurisdiction in the District of Columbia or any State, or in a District Court of the United States, for damages on account of personal injury, or damages to property resulting from the ownership or operation of a motor vehicle by him, his agent, or any other person with the express or implied consent of the owner, shall be forthwith suspended by the said Commissioners or their designated agent upon receiving a certified copy of such final judgment or judgments from the court in which the same is or are rendered showing such judgment or judgments to have been still unsatisfied more than thirty days after the same became final, and shall remain so suspended and shall not be renewed, nor shall any other motor vehicle be thereafter registered in his name while any such judgment remains unstayed, unsatisfied, and subsisting, nor until every such judgment is satisfied or discharged, except by a discharge in bankruptcy, and until the said person gives proof of his ability to respond in damages, as required in section 40–404, for future accidents. It shall be the duty of the clerk of the court in which any such judgment is rendered to forward immediately upon the expiration of said thirty days to the said Commissioners or their designated agent a certified copy of such judgment or a transcript thereof. In the event the defendant is a nonresident, it shall be the duty of the said Commissioners or their designated agent to transmit to the Commissioner of motor vehicles (or officer in charge of the issuance of operators' permits and registration certificates) of the State of which the defendant

is a resident a certified copy of the said judgment. If after such proof has been given any other such judgment shall be recovered against such person for any accident occurring before such proof was furnished, and after the effective date of this chapter (August 1, 1935), such permit and certificates shall again be and remain suspended while any such judgment remains unsatisfied and subsisting: *Provided, however,* That (1) when $5,000 has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of one person as the result of any one accident; (2) when, subject to the limit of $5,000 for each person, the sum of $10,000 has been credited upon any judgments rendered in excess of that amount for personal injury to or the death of more than one person as the result of any one accident; or (3) when $1,000 has been credited upon any judgment or judgments rendered in excess of that amount for damage to property as the result of any one accident resulting from the ownership or operation of a motor vehicle by such judgment debtor, his agent, or any other person, with his express or implied consent, then and in such event such payment or payments shall be deemed a satisfaction of such judgment or judgments for the purposes of this section only: *And provided further,* That a judgment debtor to whom this section applies may, for the sole purpose of giving authority to the Commissioners or their designated agent to authorize the judgment debtor to operate a motor vehicle thereafter, on due notice to the judgment creditor, apply to the court in which the trial judgment was obtained for the privilege of paying such judgment in instalments, and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order, fixing the amounts and times of payment of the instalments. While the judgment debtor is not in default in payment of such instalments, the Commissioners or their designated agent upon his giving proof of ability to respond in damages for future accidents, as herein provided, may, in their discretion, restore or refrain from suspending his operator's permit and registration certificate or certificates; but such permit and certificate or certificates shall be suspended as hereinbefore provided if and when the Commissioners or their designated agent are satisfied that the judgment debtor has failed to comply with the terms of the court order.

Whenever any motor vehicle, after the passage of this chapter, shall be operated upon the public highways of the District of Columbia by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall, in case of accident, be deemed to be the agent of the owner of such motor vehicle, and the proof of the ownership of said motor vehicle shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner.

If any such motor-vehicle owner or operator shall not be a resident of the District of Columbia, the privilege of operating any motor vehicle in the District of Columbia and the privilege of operation within the District of Columbia of any motor vehicle owned by him shall be withdrawn, while any final judgment procured against him for damages, including personal injury or death caused by the operation of any motor vehicle, in the District of Columbia or elsewhere, shall be unstayed, unsatisfied, and subsisting, for more than thirty days, and until he shall have given proof of his ability to respond in damages for future accidents as required in section 40–404.

The operation by a nonresident or by his agent of a motor vehicle on any public highway of the District of Columbia shall be deemed equivalent to an appointment by such nonresident of the director of vehicles and traffic or his successor in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceedings against such nonresident growing out of any accident or collision in which said nonresident or his agent may be involved while operating a motor vehicle on any such public highway, and said operation shall be a signification of his agreement that any such process against him, which is so served, shall be of the same legal force and validity as if served upon him personally in the District of Columbia. Service of such process shall be made by leaving a copy of the process with a fee of $2 in the hands of the director of vehicles and traffic or in his office, and such service shall be sufficient service upon the said nonresident: *Provided,* That the plaintiff in such action shall first file in the court in which said action is commenced an undertaking in form and amount, and with one or more sureties, approved by said court, to reimburse the defendant, on the failure of the plaintiff to prevail in the action, for the expenses necessarily incurred by the defendant, including a reasonable attorney's fee in an amount to be fixed by the said court, in defending the action in the District of Columbia: *And provided further,* That notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff, or his attorney, to the defendant, and the defendant's return receipt appended to the writ and entered with the declaration, or such notice of such service and a copy of the process may be served upon the defendant in the manner provided by section 13–108. The court in which the action is pending may order such continuances as may be necessary to afford the defendant a reasonable opportunity to defend the action, and no judgment by default in any such action shall be granted until at least twenty days shall have elapsed after service upon the defendant, as hereinabove provided, of a copy of the process and notice of service of said process upon the director of vehicles and traffic. (May 3, 1935, 49 Stat. 167, ch. 89, § 3; August 24, 1937, 50 Stat. 751, ch. 753, § 1.)

AMENDMENT

The 1937 act struck out "in excess of $100" following "or damages to property.", in the first sentence.

CROSS REFERENCE

Revocation or suspension of licenses and permits, § 40–402 and notes.

NOTES TO DECISIONS

ACCIDENT OCCURRING BEFORE EFFECTIVE DATE

The Automobile Financial Responsibility Law cannot be applied to a collision occurring before its effective date. *Smith* v. *Doyle* (69 App. D. C. 60, 98 Fed. (2d) 341).

Prior to passage of the statute imposing on the owner of a car liability for the acts of any person who drives it with his consent, a corporation was not liable for an accident of its driver merely because it had entrusted its car to him. *Balinovic* v. *Evening Star Newspaper Co.* ((App.-D. C.), 113 Fed. (2d) 505).

In accident occurring before enactment of this section, a corporation was not liable for damages where the driver of its car at the time of the collision was engaged in chasing a traffic violator under direction of a policeman who was riding on the running board. *Balinovic* v. *Evening Star Newspaper Co.* ((App.-D. C.), 113 Fed. (2d) 505).

AGENCY BASED ON CONSENT

Congress intended to establish a new rule of liability in which agency is based on consent. *Forrester* v. *Jerman* (67 App. D. C. 167, 90 Fed. (2d) 412).

This section makes express or implied consent by owner to another's operation of his vehicle on public highways the equivalent of agency. *Rosenberg* v. *Murray,* 1940 (116 F. 2d 552, 73 U. S. App. D. C. 67).

Where party, injured by taxicab owned and operated by member of unincorporated association composed of men who owned and operated taxicabs, obtained judgment against members of association on theory that they were engaged with negligent operator in joint enterprise and were responsible for his negligence, the negligent operator was "agent" of other members of association within this section, so that permits and registration certificates of members of association were required to be suspended unless judgment against them was promptly paid. *Champ* v. *Atkins,* 1942 (128 F. 2d 601, 76 U. S. App. D. C. 15).

Proof that record title to taxicab, O. D. T. certificate, tire ration application, gas allotment papers and Public Utilities Commission certificate were in defendant's name, which was on outside of taxicab, operated by another, gave rise to presumption that taxicab was being operated by defendant's agent with defendant's consent and required proof from defendant to the contrary. *Gasque* v. *Saidman* (D. C. Mun. App. 1945, 44 A. 2d 537).

In determining whether an automobile is operated with consent of owner, the usual rules governing relation of master and servant are applied and a substantial deviation from an authorized use terminates consent. *Senator Cab Co.* v. *Rothberg* (D. C. Mun. App. 1945, 42 A. 2d 245).

AGENT OF OWNER

Owner of car was liable in damages for injury from accident which occurred when her car was being delivered to her by employee of a garage with which she had a monthly storage and delivery contract. *Jones* v. *King* ((App.-D. C.), 113 Fed. (2d) 522).

Where parking lot attendant was authorized to drive automobile and park it in street in front of owner's store after 6:30 p. m. and attendant had driven four blocks beyond his usual route at time of accident at 6:45 p. m., finding that evidence did not establish that attendant had removed automobile from parking lot for purpose of delivering automobile to owner, and did establish that at time of accident attendant was operating automobile without consent of owner, did not justify judgment relieving owner from liability for attendant's negligence. *Senator Cab Co.* v. *Rothberg* (D. C. Mun. App. 1945, 42 A. 2d 245).

BAILOR'S NEGLIGENCE

The better reasoned view is that the contributory negligence of a bailee is attributable to a bailor under the Automobile Financial Responsibility Law. *National Trucking and Storage Co.* v. *Driscoll* (D. C. Mun. App. 1949, 64 A. 2d 304).

BURDEN OF PROOF

The effect of this section making proof of ownership of automobile evidence of owner's consent to operation of automobile by another is simply to shift the burden of proof and impose on owner the affirmative duty of proving that automobile at time of accident was not operated with his express or implied consent. *Schwartzbach* v. *Thompson* (D. C. 1943, 33 A. 2d 624); *Rice* v. *Simmons* (D. C. Mun. App. 1947, 53 A. 2d 587).

CONDITIONAL SALE VENDOR

One who had sold and delivered taxicab to another on conditional sale contract and had retained legal title solely for security, was not the owner thereof nor liable for the property damage caused by negligence of another to whom purchaser had entrusted the taxicab and was not estopped to deny such ownership though his name appeared on taxicab. *Gasque* v. *Saidman* (D. C. Mun. App. 1945, 44 A. 2d 537).

DEGREE OF PROOF

Under this section making proof of ownership prima facie evidence of consent, owner must offer evidence sufficient to overcome the prima facie case. *Senator Cab Co.* v. *Rothberg* (D. C. Mun. App. 1945, 42 A. 2d 245).

DIRECTED VERDICT

Under provision of this section that proof of ownership of automobile causing damage shall be prima facie evidence that driver was operating automobile with owner's consent, to justify a directed verdict for defendant, shown to be owner of automobile involved, evidence must destroy all inferences and presumptions supporting plaintiff and must raise no doubts against defendant. *Hiscox* v. *Jackson,* 1942 (127 F. 2d 160, 75 U. S. App. D. C. 293).

In action for damage growing out of operation of taxicab, where evidence established defendant's ownership of taxicab, and defendant's evidence was somewhat inconsistent and self-contradictory, and the police report of accident stated that defendant was driver of taxicab at time of accident and testimony of plaintiff and one of his witnesses, brought out on cross-examination, contradicted defendant's story that taxicab was being operated without defendant's permission and placed the defendant as operator, evidence was sufficient for jury and directed verdict for defendant was improper. *Hiscox* v. *Jackson,* 1942 (127 F. 2d 160, 75 U. S. App. D. C. 293).

To constitute a joint enterprise there must be not only joint or community of interest but also an equal right, express or implied, to direct and control the management and movement of the motor vehicle involved. *Gasque* v. *Saidman* (D. C. Mun. App. 1945, 44 A. 2d 537).

Under this section, if the presumption that automobile was being used with the express or implied consent of owner at time of accident is overcome by uncontradicted proof, a motion for directed verdict for the owner will be granted, but if the evidence is contradictory or reasonably subject to contradictory interpretations, the question of liability is for the trier of the facts. *Rice* v. *Simmons* (D. C. Mun. App. 1947, 53 A. 2d 587).

JOINT ENTERPRISE

Where party, injured by taxicab operated by member of unincorporated association composed of men who owned and operated taxicabs, obtained judgment against members of association on theory that they were engaged with the negligent operator in joint enterprise and were responsible for his negligence, such judgment was conclusive in suit by members of association for declaratory judgment that members' permits and registration certificates should not be suspended on ground that they were not judgment debtors within this section. *Champ* v. *Atkins,* 1942 (128 F. 2d 601, 76 U. S. App. D. C. 15).

Whether the contributory negligence of the driver of a rented taxicab may be imputed to its owner must be based on the theory that both were engaged in a joint enterprise. But to establish such relationship there must exist not only a community of interest in the subject of the venture but also an equal right, express or implied, to direct and control the management and movement of the car. *National Trucking and Storage Co.* v. *Driscoll* (D. C. Mun. App. 1949, 64 A. 2d 304).

NEW TRIAL

Where principal question was whether colliding automobile was being operated with owner's consent and Municipal Court judge in case tried without a jury made a general finding for plaintiff and assessed damages and general finding was entered on the jacket of the case and in court's minutes and docket, and before judgment was entered defendant moved to set aside and render judgment for defendant, the court was without power to reverse such general finding and enter judgment for defendant, but the court's only recourse was to grant a new trial. *Rice* v. *Simmons* (D. C. Mun. App. 1947, 53 A. 2d 587).

OWNERSHIP AS EVIDENCE

Under provision of this section that proof of ownership of motor vehicle causing damage shall be "prima facie evidence" that driver operated automobile with owner's consent, with proof that defendant owned automobile involved and with no evidence on behalf of defendant, a plaintiff who has otherwise established liability is entitled to a directed verdict. *Hiscox* v. *Jackson,* 1942 (127 F. 2d 160, 75 U. S. App. D. C. 293).

Under provision of this section that proof of ownership of motor vehicle causing damage shall be prima facie evidence that driver operated motor vehicle with owner's consent, the presumption continues until there is credible evidence to the contrary and ceases when there is uncontradicted proof that the vehicle was not at the time being used with the owner's permission. *Hiscox* v. *Jackson,* 1942 (127 F. 2d 160, 75 U. S. App. D. C. 293).

Where owner of automobile involved in accident had permitted driver to drive automobile on previous occasions and the testimony, that at time of accident automobile was not driven with owner's consent was inconsistent and self-contradictory, a finding that owner had failed to break the force of the statutory presumption of consent was justified. *Schwartzbach* v. *Thompson* (D. C. 1943, 33 A. 2d 624).

The statutory presumption that vehicle involved in accident was driven with owner's consent continues until there is credible evidence to the contrary, and ceases when there is uncontradicted proof that the automobile was not being used with the owner's permission. *Schwartzbach* v. *Thompson* (D. C. 1943, 33 A. 2d 624); *Rice* v. *Simmons* (D. C. Mun. App. 1947, 53 A. 2d 587).

PRESUMPTION

Under this section, presumption that owner consented to use of automobile continues until there is credible evidence to contrary and ceases when there is uncontradicted proof that automobile was not at time being used with owner's permission, but, when fact of deviation from authorized use is established, the issue is one of law for court. *Senator Cab Co.* v. *Rothberg* (D. C. Mun. App. 1945, 42 A. 2d 245).

Except insofar as final clause of this section creates a prima facie case of owner's consent to use of his automobile at time of accident, common-law rules defining liability of employer for acts of employee are unaffected by this section. *Senator Cab Co.* v. *Rothberg* (D. C. Mun. App. 1945, 42 A. 2d 245).

Evidence presented was sufficient to meet the statutory presumption of consent under Owner's Financial Responsibility Act. When a statutory presumption is met by some credible evidence, it becomes, in a sense, something like an inference and when more than a single inference may be drawn from the evidence, it bcomes a question of fact for a jury's determination. *Bill's Auto Rental, Inc.* v. *Bonded Taxi Company* and *Bonded Taxi Company* v. *Bill's Auto Rental, Inc.* (D. C. Mun. App. 1950, 72 A. 2d 254).

PURPOSE

This section providing for service of summons on nonresident defendant in motor vehicle accident case by substituted service on Director of Vehicles and Traffic was passed for the benefit of injured persons within the District of Columbia, not for the benefit of nonresident motorists who caused injury within the District and then by absenting themselves therefrom avoid service and prevent recovery. *Seymour* v. *Hawkins,* 1942 (133 F. 2d 15, 76 U. S. App. D. C. 376).

QUESTION FOR JURY

Where owner of taxicab driven by another was in taxicab at time of collision and the evidence was conflicting whether driver was driving with owner's consent, the inferences to be drawn from the facts were for jury. *Gasque* v. *Saidman* (D. C. Mun. App. 1945, 44 A. 2d 537).

RESIDENT

Statute does not apply where person was resident of District of Columbia at time of accident and later moved from the jurisdiction. *Wood* v. *White* (68 App. D. C. 341, 97 Fed. (2d) 646).

REVIEW

On appeal from judgment for plaintiff in action against automobile owner for damages resulting from operation of automobile by another, the test is whether the showing was such as to justify a holding that defendant had failed to break the force of the statutory presumption of owner's consent, and in applying that test and in measuring the force, effect and extent of the testimony, the municipal court of appeals, like the trial court, was governed by the rules of reason, credibility, and probability. *Schwartzbach* v. *Thompson* (D. C. 1943, 33 A. 2d 624).

STRICTLY CONSTRUED

Statute is in derogation of common law and must be strictly construed. *Wood* v. *White* (68 App. D. C. 341, 97 Fed. (2d) 646).

Where this section, except final clause making proof of ownership of motor vehicle involved in accident prima facie evidence of consent, was in identical words of statute previously enacted by other states, there was imported into its terms the construction adopted by courts of such other states. *Senator Cab Co.* v. *Rothberg* (D. C. Mun. App. 1945, 42 A. 2d 245).

§ 40–404 [6: 255c]. Proof of ability to respond in damages, what constitutes—Additional certificates for additional vehicles—Certificates not to be canceled except upon ten days' notice to Commissioners—Action on same to be brought in name of District of Columbia—Exemption of such money from attachment or execution.

Proof of ability to respond in damages when required by this chapter may be evidenced by the written certificate or certificates of any insurance carrier, duly authorized to do business within the District of Columbia, or in the case of a nonresident by an insurance carrier authorized to transact business in any of the several states, that it has issued to or for the benefit of the person named therein a motor-vehicle liability policy or policies as defined in section 40–412 which, at the date of said certificate or certificates, is in full force and effect and designating therein by explicit description or by other appropriate reference all motor vehicles with respect to which coverage is granted by the policy certified to. The said commissioners or their designated agent shall not accept any certificate or certificates unless the same shall cover all motor vehicles registered in the name of the person furnishing such proof. Additional certificates as aforesaid shall be required as a condition precedent to the registration of any additional motor vehicle or motor vehicles in the name of such person required to furnish proof as aforesaid. Said certificate or certificates shall certify that the motor-vehicle liability policy or policies therein cited shall not be canceled except upon ten days' prior written notice thereof to the said commissioners or their designated agent.

Such proof may be the bond of a surety company duly authorized to do business within the District of Columbia or a bond with at least two individual

sureties, each owning unencumbered real estate in the District of Columbia, approved by a judge of a court of record, and filed with the said Commissioners or their designated agent, which said bond shall be conditioned for the payment of the amounts specified in section 40–402 hereof and shall not be cancelable except after ten days' written notice to the said Commissioners or their designated agent. Such bond in the case where individual sureties are offered shall contain a schedule of the real estate of said sureties and shall constitute a lien in favor of the District of Columbia upon said real estate, which lien shall exist in favor of any holder of any final judgment thereafter rendered on account of damage to property or injury to any person or persons caused by the operation of such person's motor vehicle. Said bond shall be recorded by the principal named therein among the land records of the District of Columbia before the same is filed with the Commissioners or their designated agent. If a final judgment rendered after the filing of the bond as aforesaid against the principal named in the surety or real-estate bond for damages sustained to person or property while said bond remains in force or effect shall not be satisfied within thirty days after its rendition, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action in the name of the District of Columbia against the company or persons executing such bond.

Such proof of ability to respond in damages may also be evidence presented to the said commissioners or their designated agent of a deposit by such person with the clerk of the District Court of the United States for the District of Columbia of a sum of money, the amount of which money shall be $11,000. The said clerk shall accept such deposit and issue a receipt therefor. But the said clerk shall not accept a deposit of money where any judgment or judgments, therefor recovered against such person as a result of damages arising from the operation of any motor vehicle, shall not have been paid in full. Such money shall be held by the said clerk to satisfy, in accordance with the provisions of this chapter, any execution issued against such person in any suit arising out of damage caused by the operation of any motor vehicle owned or operated by such person. Money so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages, including injury to property, and personal injury or death, as a result of the operation of a motor vehicle. (May 3, 1935, 49 Stat. 169, ch. 89, § 4; Aug. 24, 1937, 50 Stat. 751, ch. 753, § 2.)

AMENDMENT

The 1937 act struck out "over $100 in amount" following "final judgment thereafter rendered on account of damage to property" in the second sentence of the second paragraph.

CROSS REFERENCE

Hospital liens, § 38–301 et seq.

NOTES TO DECISIONS

CONSENT—BURDEN OF PROOF

The effect of this section is simply to shift burden of proof and impose on owner the affirmative duty of proving that automobile was not at time of accident operated with his express or implied consent. *Rosenberg* v. *Murray*, 1940 (116 F. 2d 552, 73 App. D. C. 67).

CONSENT—PRESUMPTIONS

The presumption of this section that vehicle was driven with owner's consent continues until there is credible evidence to the contrary, and ceases when there is uncontradicted proof that automobile was not being used with owner's permission. *Rosenberg* v. *Murray*, 1940 (116 F. 2d 552, 73 App. D. C. 67).

OWNERSHIP

The terms "owner" and "ownership" which are not defined in this section must be defined by judicial determination, made in a manner giving effect to the objects and purposes of this section. *Mason* v. *Automobile Finance Co.*, 1941 (121 F. 2d 32, 73 App. D. C. 284).

Chattel mortgagee is not an "owner" of an automobile within this section, nor does he become such merely by virtue of a default by the mortgagor, though the right to possession may accrue immediately upon default, but something more than a lien on the automobile, though presently and summarily enforceable, is necessary. *Mason* v. *Automobile Finance Co.*, 1941 (121 F. 2d 32, 73 App. D. C. 284).

Possession plus power and legal right to permit its use by another constitutes ownership within the meaning of this section. *Mason* v. *Automobile Finance Co.*, 1941 (121 F. 2d 32, 73 App. D. C. 284).

PURPOSE

In absence of some definite statutory criterion of ownership, the purpose of this section was to place liability on the person in a position immediately to allow or prevent the use of the automobile and to do so by giving a lawful and effective consent or prohibition to its operation by others, and its object was to control the giving of consent to irresponsible drivers by the one having that power rather than to impose liability on one having a naked legal title with no immediate right of control. *Mason* v. *Automobile Finance Co.*, 1941 (121 F. 2d 32, 73 App. D. C. 284).

§ 40–405 [6: 255d]. Commissioners to be notified of cancelation or expiration of insurance or bond—Suspension of permit on failure to furnish other proof of ability before expiration date.

The said Commissioners or their designated agent shall be notified of the cancelation or expiration of any motor-vehicle liability policy of insurance certified under the provisions of this chapter or of any surety or real estate bond at least ten days before the effective date of such cancelation or expiration. In the absence of such notice of cancelation or expiration said policy of insurance shall remain in full force and effect. Upon receipt of such notice of cancelation or expiration the said Commissioners or their designated agent shall require other evidence of ability to respond in damages, and upon failure to furnish the same before the effective date of such cancelation or expiration, the operator's permit and all of the registration certificates of the person failing to comply herewith shall be suspended by the Commissioners or their designated agent and shall remain so suspended until such other evidence of ability to respond in damages shall have been given. (May 3, 1935, 49 Stat. 170, ch. 89, § 5.)

§ 40–406 [6: 255e]. Director of vehicles and traffic to furnish operating record—Fees.

The director of vehicles and traffic shall, upon request, furnish any insurer, person, or surety a certificate abstract of the operating record of any

person subject to the provisions of this chapter, which abstract shall fully designate the motor vehicles, if any, registered in the name of such person, and if there shall be no record of any conviction of such person of a violation of any provision of any statute or regulation relating to the operation of a motor vehicle or of any injury or damage caused by such person as herein provided, the said director shall so certify. The said director shall collect for each such certificate the sum of $1. (May 3, 1935, 49 Stat. 170, ch. 89, § 6.)

§ 40–407 [6: 255f]. Director of vehicles and traffic to furnish injured person evidence of ability of owners or operator to respond in damages.

The director of vehicles and traffic shall furnish any person who may have been injured in person or property by any motor vehicle, upon written request, with all information of record in his office pertaining to the evidence of the ability of any operator or owner of any motor vehicle to respond in damages. (May 3, 1935, 49 Stat. 171, ch. 89, § 7.)

§ 40–408 [6: 255g]. Suspended person to return operator's permit to director of vehicles and traffic—Duty of Metropolitan Police to secure possession—Penalty for failure to return permit.

Any operator or any owner whose operator's permit or certificate of registration shall have been suspended as in this chapter provided shall immediately return to the director of vehicles and traffic his operator's permit, certificate of registration, and the number plates issued thereunder. If any person shall fail to return to the said director the operator's permit, certificate of registration, and the number plates issued thereunder as provided herein, the said director shall forthwith direct any member of the Metropolitan Police of the District of Columbia to secure possession thereof and to return the same to the office of the said director. Any person failing to return on demand such operator's permit or such certificate and number plates shall be guilty of a misdemeanor and shall be fined not more than $100, and each day such person shall fail to return the same shall constitute a separate offense. (May 3, 1935, 49 Stat. 171, ch. 89, § 8.)

§ 40–409 [6: 255h]. Authority of Commissioners to cancel evidence of insurance after three years—Substitution of other evidence of ability for money—Return of money.

The said Commissioners or their designated agent may cancel such bond or return such evidence of insurance, or the clerk of the District Court of the United States for the District of Columbia may, with the consent of the said Commissioners or their designated agent, return such money to the person furnishing the same, provided three years shall have elapsed since the filing of such evidence or the making of such deposit, during which period such person shall not have violated any provision of the Traffic Acts referred to in section 40–402 and provided no suit or judgment for damages on account of personal injury or damage to property resulting from the operation of a motor vehicle by him or his agent shall then be outstanding against such person; and the affidavit of such person that he has not so violated the motor vehicle laws and that there are then outstanding against him no suits or judgments for damages as aforesaid, shall be sufficient proof thereof in the absence of evidence to the contrary then before the Commissioners or their designated agent. The said Commissioners or their designated agent may direct the return of any money to the person who furnished the same upon the acceptance and substitution of other evidence of his ability to respond in damages or, at any time after three years from the expiration of the latest registration or permit issued to such person, provided no written notice shall have been filed with the director stating that such suit had been brought against such person by reason of the ownership, maintenance, or operation of a motor vehicle and upon the filing by such person with the said Commissioners or their designated agent of an affidavit that he has abandoned his residence in the District of Columbia or that he has made bona fide sale of any and all motor vehicles owned by him and does not intend to own or operate any motor vehicle in the District of Columbia for a period of one or more years. (May 3, 1935, 49 Stat. 171, ch. 89, § 9; Aug. 24, 1937, 50 Stat. 751, ch. 753, § 1.)

AMENDMENT

The 1937 Act struck out "in excess of $100" after "damage to property" in the first sentence.

§ 40–410 [6: 255i]. Exemption of persons required to make other provision for injury or damage.

Any person who by any other law of the District of Columbia is required to make provision for the payment of loss occasioned by injury to or death of persons or damage to property shall, to the extent of such provision so made and not otherwise, be exempt from sections 40–401 to 40–416. (May 3, 1935, 49 Stat. 171, ch. 89, § 10.)

§ 40–411 [6: 255j]. Penalty for forging—Evidence of guilt.

Any person who shall forge or, without authority, sign any evidence of ability to respond in damages as required by the said Commissioners or their designated agent in the administration of this chapter shall be fined not less than $100 nor more than $1,000 or imprisoned not to exceed one year, or both. (May 3, 1935, 49 Stat. 172, ch. 89, § 11.)

§ 40–412 [6: 255k]. Meaning of "Motor-vehicle liability policy"—Coverage—Liability under Workmen's Compensation Law and to property in charge of insured excepted—Alternative provisions—Minimum limits—Additional coverage permitted—Other provisions not contrary to sections 40–401 to 40–416 hereof permitted—Separate policies for personal injury and property damage permitted—Approval of form of policy by Commissioner of Insurance—Statutory provisions—Same need not be contained in policy.

"Motor-vehicle liability policy," as used in this chapter, shall be taken to mean a policy of liability insurance issued to the person therein named as insured by an insurance carrier authorized to transact business in the District of Columbia, or

in the case of a nonresident, by an insurance carrier authorized to transact business in any of the several States, which policy shall designate, by explicit description or by appropriate reference, all motor vehicles with respect to which coverage is intended to be granted by said policy, and shall insure the insured named therein and any other person using or responsible for the use of any such motor vehicle with the consent, express or implied, of such insured, against loss from the liability imposed upon such insured by law or upon such other person for injury to or death of any person, other than such person or persons as may be covered, as respects such injury or death by any Workmen's Compensation Law, or damage to property except property of others in charge of the insured or the insured's employees growing out of the maintenance, use, or operation of any such motor vehicle in the United States of America; or which policy shall, in the alternative, insure the person therein named as insured against loss from the liability imposed by law upon such insured for injury to or death of any person, other than such person or persons as may be covered as respects such injury or death by any Workmen's Compensation Law, or damage to property, except property of others in charge of the insured or the insured's employees, growing out of the operation or use by such insured of any motor vehicle, except a motor vehicle registered in the name of such insured, and occurring while such insured is personally in control, as driver or occupant, of such motor vehicle within the United States of America, to the amount or limit of $5,000, exclusive of interest and costs, on account of injury to or death of any one person, and, subject to the same limit as respects injury to or death of one person, of $10,000, exclusive of interest and costs, on account of any one accident resulting in injury to or death of more than one person; and of $1,000 for damage to property of others, as herein provided, resulting from any one accident; or a binder pending the issuance of any such policy; or an indorsement to an existing policy as hereinafter provided: *Provided,* That this section shall not be construed as preventing such insurance carrier from granting any lawful coverage in excess of or in addition to the coverage herein provided for, nor from embodying in such policy any agreements, provisions, or stipulations not contrary to the provisions of this chapter and not otherwise contrary to law: *Provided, however,* That separate concurrent policies covering, respectively, (a) personal injury or death, as aforesaid, and (b) property damage, as aforesaid, shall be considered a motor-vehicle liability policy within the meaning of this chapter.

No motor-vehicle liability policy shall be issued or delivered in the District of Columbia until a copy of the form of policy shall have been on file with the Superintendent of Insurance for at least thirty days, unless sooner approved in writing by the Superintendent of Insurance, nor if within said period of thirty days the Superintendent of Insurance shall have notified the carrier in writing that in his opinion, specifying the reasons therefor, the form of policy does not comply with the laws of the District of Columbia. The Superintendent of Insurance shall approve any form of policy which discloses the name, address, and business of the insured, the coverage afforded by such policy, the premium charged therefor, the policy period, the limit of liability, and the agreement that the insurance thereunder is provided in accordance with the coverage defined in this section as respects personal injury and death or property damage, or both, and is otherwise subject to all the provisions of this chapter.

Such motor-vehicle liability policy shall be subject to the following provisions, which need not be contained therein:

(a) The liability of any company under a motor-vehicle liability policy shall become absolute whenever loss or damage covered by said policy occurs, and the satisfaction by the insured of a final judgment for such loss or damage shall not be a condition precedent to the right or duty of the carrier to make payment on account of such loss or damage. No such policy shall be canceled or annulled as respects any loss or damage by any agreement between the carrier and the insured after the said insured has become responsible for such loss or damage, and any such cancelation or annulment shall be void. Upon the recovery of a final judgment against any person for any such loss or damage, if the judgment debtor was at the accrual of the cause of action insured against liability therefor under a motor-vehicle liability policy, the judgment creditor shall be entitled to have the insurance money applied to the satisfaction of the judgment. But the policy may provide that the insured, or any other person covered by the policy, shall reimburse the company for payments made on account of any accident, claim, or suit involving a breach of the terms, provisions, or conditions of the policy; and further, if the policy shall provide for limits in excess of the limits designated in this section, the insurance carrier may plead against such judgment creditor, with respect to the amount of such excess limits of liability, any defenses which it may be entitled to plead against the insured. Any such policy may further provide for the prorating of the insurance thereunder with other applicable valid and collectible insurance.

(b) The policy, the written application therefor (if any), and any rider or endorsement which shall not conflict with the provisions of this chapter shall constitute the entire contract between the parties.

(c) The insurance carrier shall, upon the request of the insured, deliver to the insured for filing, or at the request of the insured shall file direct, with the said commissioners or their designated agent an appropriate certificate as set forth in section 40–404 hereof.

(d) Any carrier authorized to issue motor-vchicle liability policies as provided for in this chapter, may, pending the issuance of such a policy, execute an agreement, to be known as a binder; or may, in lieu of such a policy, issue an endorsement to an

existing policy, each of which shall be construed to provide indemnity or protection in like manner and to the same extent as such a policy. The provisions of this section shall apply to such binders and endorsements. (May 3, 1935, 49 Stat. 172, ch. 89, § 12.)

§ 40–413 [6: 255*l*]. Definitions.

The following words, as used in this chapter shall have the following meanings:

(a) The singular shall include the plural. The masculine shall include the feminine and neuter, as requisite.

(b) "Person" shall include individuals, partnerships, corporations, receivers, referees, trustees, executors, and administrators; and shall also include the owner of any motor vehicle as requisite, but shall not include the District of Columbia.

(c) "Motor vehicle" shall include trailers, motorcycles, and tractors.

(d) "Public highways" shall include any street, road, or public thoroughfare. (May 3, 1935, 49 Stat. 173, ch. 89, § 13.)

§ 40–414 [6: 255m]. Commissioners to make rules and regulations.

The said Commissioners shall make rules and regulations necessary for the administration of this chapter. (May 3, 1935, 49 Stat. 174, ch. 89, § 14.)

CROSS REFERENCE

Rules and regulations generally, § 40–603 and notes.

§ 40–415 [6: 255n]. Plaintiff not prevented from relying upon other processes.

Nothing herein shall be construed as preventing the plaintiff in any action at law from relying for security upon the other processes provided by law. (May 3, 1935, 49 Stat. 174, ch. 89, § 15.)

§ 40–416 [6: 255*o*]. Saving clause.

If any part, subdivision, or section of this chapter shall be deemed unconstitutional, the validity of its remaining provisions shall not be affected thereby. (May 3, 1935, 49 Stat. 174, ch. 89, § 16.)

COMPILER'S NOTE

The act of May 3, 1935, 49 Stat. 174, ch. 89, § 17 provided as follows: "This act (§§ 40–401 to 40–416) shall go into effect ninety days after its passage and approval by the President of the United States."

Chapter 5.—PUBLIC-OWNED VEHICLES

Sec.

40–501. Motor vehicles to be marked.
40–502. Restrictions on payment of expenses of carriages or vehicles for personal or official use.
40–503. Section 40–502 made applicable to District of Columbia.
40–504. Police and fire departments—Transfer of vehicles.

§ 40–501 [20: 98]. Motor vehicles to be marked.

All motor vehicles and all horse-drawn carriages and buggies owned by the District of Columbia shall be of uniform color and have painted conspicuously thereon, in letters not less than three inches high and markedly contrasting in color with the body color of the vehicle, the words, "District of Columbia." (Mar. 3, 1917, 39 Stat. 1010, ch. 160.)

COMPILER'S NOTE

This section may be affected by § 40–614.

CROSS REFERENCES

Licensing and registration of publicly owned vehicles, § 40–102.

Operators' permits for operation of publicly owned vehicles, § 40–301.

Subject to inspection, exempted from inspection fees, § 40–204.

§ 40–502 [20: 97]. Restrictions on payment of expenses of carriages or vehicles for personal or official use.

No part of any money appropriated by any Act shall be used for purchasing, maintaining, driving, or operating any carriage or vehicle (other than those for the use of the President of the United States, the heads of the Executive Departments, and the Secretary to the President, and other than those used for transportation of property belonging to or in the custody of the United States), for the personal or official use of any officer or employee of any of the Executive Departments or other government establishments at Washington, District of Columbia, unless the same shall be specifically authorized by law or provided for in terms by appropriation of money, and all such carriages and vehicles so procured and used for official purposes shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of the public service to which the same belong and in the service of which the same are used. (Feb. 3, 1905, 33 Stat. 687, ch. 297, § 4.)

§ 40–503 [20: 97]. Section 40–502 made applicable to District of Columbia.

Section 40–502 shall apply to carriages, motor, and other vehicles owned by and used in the several branches of the government of the District of Columbia. (May 18, 1910, 36 Stat. 381, ch. 248, § 1.)

COMPILER'S NOTE

Ever since 1929, appropriation acts for the District have provided in substance as follows:

"All motor-propelled passenger-carrying vehicles owned by the District of Columbia shall be used exclusively for 'official purposes' directly pertaining to the public services of said District, and shall be under the direction and control of the commissioners, who may from time to time alter or change the assignment for use thereof or direct the joint or interchangeable use of any of the same by officials and employees of the District, except as otherwise provided in this act; and 'official purposes' shall not include the transportation of officers and employees between their domiciles and places of employment, except as to the commissioners of the District of Columbia and in cases of officers and employees the character of whose duties makes such transportation necessary, and then only as to such latter cases when the same is approved by the commissioners: *Provided*, That no passenger-carrying automobile, except busses, station wagons, patrol wagons, and ambulances, and except as otherwise specifically authorized in this act, shall be acquired under any provision of this act, by purchase or exchange, at a cost, including the value of a vehicle exchanged, exceeding $650." (July 15, 1939, 53 Stat. 1009, ch. 281, § 1; June 12, 1940, 54 Stat. 312, ch. 333, § 1.)

§ 40–504. Police and fire departments—Transfer of vehicles.

No motor vehicles shall be transferred from the police and fire departments to any other branch of

the government of the District of Columbia. (July 15, 1939, 53 Stat. 1010, ch. 281, § 1; June 12, 1940, 54 Stat. 312, ch. 333, § 1.)

COMPILER'S NOTE

This section which was taken from the Appropriation Act of 1939 was repeated in the Appropriation Act of 1940.

Chapter 6.—REGULATION OF TRAFFIC

Sec.
40–601. District of Columbia Traffic Act.
40–602. Definitions.
40–603. Commissioners authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Joint board—Arterial and boulevard highways—Commissioners may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions—Excise tax imposed for issuance of motor vehicle title certificates.
40–603–1. Appeal from assessment of excise tax for issuance of motor vehicle title certificates—Election of remedies.
40–603a. Office of Registrar of Titles and Tags.
40–603b. Issuance of congressional tags.
40–604. Parking space for Members of Congress.
40–605. Speeding and reckless driving.
40–606. Negligent homicide.
40–607. Negligent homicide included in manslaughter where death due to operation of vehicle.
40–608. Immoderate speed not dependent on legal rate of speed.
40–609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.
40–610. Smoke screens.
40–611. Reporting by garage keeper of cars damaged in accidents.
40–612. Convictions to be reported.
40–613. Control over park system not affected by this chapter.
40–614. Repeal and saving clauses.
40–615. Separability of provisions.
40–616. Parking meters.
40–617. Loitering by public cabs.

§ 40–601 [6: 241]. District of Columbia Traffic Act.

This chapter may be cited as the "District of Columbia Traffic Act, 1925." (Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 1.)

§ 40–602 [6: 242]. Definitions.

When used in this chapter—

(a) The term "motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam, except traction engines, road rollers, and vehicles propelled only upon rails and tracks;

(b) The term "court" means the police court of the District of Columbia;

(c) The term "District" means the District of Columbia;

(d) The term "Commissioners" means the Board of Commissioners of the District of Columbia;

(e) [Repealed].

(f) The term "person" means individual, partnership, corporation, or association;

(g) The term "park" means to leave any motor vehicle standing on a public highway, whether or not attended;

(h) The term "public highway" means any street, road, or public thoroughfare; and

(i) The term "this chapter" includes all lawful regulations issued thereunder by the commissioners.

(j) The term "vehicle" shall apply to any appliance moved over a highway on wheels or traction tread, including street cars, draft animals, and beasts of burden.

(k) Traffic shall be deemed to include not only motor vehicles but also all vehicles, pedestrians, and animals, of every description. (Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 2; July 3, 1926, 44 Stat. 812, ch. 739, § 1; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 1.)

COMPILER'S NOTES

This section as enacted contained the following paragraph, "(c) The term 'District of Columbia Code' means the act entitled 'An act to establish a code of law for the District of Columbia approved March 3, 1901,' as amended;" this phrase appeared only in the introductory lines of those sections of the act of March 3, 1925, amending that Code.

"This chapter" referred to in this section will be found in sections 40–301 to 40–303, 40–601 to 40–603, 40–605, 40–609, 40–610, 40–612, 40–614, 40–615, and as amendments to sections 11–601, 11–616, 11–617, 11–621, 11–623, and 11–1407.

AMENDMENTS

The 1926 act added paragraphs (i) and (j).

The 1931 act repealed a paragraph of this section which provided as follows "(e) The term 'director' means the director of traffic of the District of Columbia." The 1931 act became effective July 1, 1931.

CROSS REFERENCES

District of Columbia Motor Vehicle Parking Facility Act of 1942, see §§ 40–801 to 40–809.

NOTES TO DECISIONS

CONSTRUCTION

Term "this act" includes all lawful regulations issued thereunder by the commissioners. *Smallwood* v. *District of Columbia* (57 App. D. C. 58, 17 Fed. (2d) 210).

This chapter is not limited in its scope and purpose to motor vehicle traffic only. *Smallwood* v. *District of Columbia,* 1927 (17 F. 2d 210, 57 App. D. C. 58).

HORSE-DRAWN VEHICLES

The director of traffic is authorized to exclude horse-drawn vehicles from arterial highways or boulevards. *District of Columbia* v. *Wheeler* (57 App. D. C. 106, 17 Fed. (2d) 953).

VEHICLES INCLUDED

Vehicles are limited to those that run on the land. *McBoyle* v. *United States* (283 U. S. 25, 75 L. Ed. 816, 51 Sup. Ct. 340).

Commercial vehicles with solid tires. *Smallwood* v. *District of Columbia* (57 App. D. C. 58, 17 Fed. (2d) 210).

§ 40–603 [6: 243]. Commissioners authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Joint board—Arterial and boulevard highways—Commissioners may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions—Excise tax imposed for issuance of motor vehicle title certificates.

(a) The Commissioners of the District of Columbia are authorized and empowered to make, modify, repeal, and enforce usual and reasonable traffic rules and regulations relating to vehicles, and rules and regulations concerning the control of traffic, the registration of motor vehicles, and the issuance and revocation of operators' permits; and to exercise any power or perform any duty imposed on the director of traffic, which office is hereby abolished; and in the administration of the above powers and authority the commissioners may exercise the same through such officers or agents of the District as

the commissioners may designate: *Provided,* That no member of the Metropolitan Police Department may be empowered to perform any function under this chapter other than in the enforcement thereof.

(b) There is established in the government of the District of Columbia a department of vehicles and traffic, which, under the direction of the commissioners, shall have charge of the issuance and revocation of operators' permits, the registration and titling of motor vehicles, the making of traffic studies and plans, the installation and maintenance of traffic signs, signals, and markers, and of such other matters as may be determined by the commissioners. The commissioners shall appoint a director of vehicles and traffic, who shall be in charge of said department, and such other personnel as they may deem necessary to perform the duties thereof and as may be appropriated for by Congress. The salaries of such director of vehicles and traffic and other personnel shall be fixed in accordance with the Classification Act of 1923 (U. S. C., title 5, § 673). The director of vehicles and traffic shall be responsible directly to the commissioners for the faithful performance of his duties and shall be subject to removal by the commissioners for cause.

(c) The Commissioners of the District of Columbia are authorized and empowered to make, modify, and enforce reasonable regulations in respect to brakes, horns, lights, mufflers, and other equipment, the inspection of the same; the registering, reregistering, titling, retitling, transferring of titles, and revocation of the certificate of title to motor vehicles and trailers: *Provided,* That congressional tags shall be issued by the commissioners under consecutive numbers, one to each Senator and Representative in Congress, to the elective officers and disbursing clerks of the Senate and the House of Representatives, the Parliamentarian of the House of Representatives, the attending physician of the Capitol, and the assistant secretaries (one for the majority and one for the minority of the Senate), for their official use, which, when used by them individually while on official business, shall authorize them to park their automobiles in any available curb space in the District of Columbia, except within fire plug, fire house, loading station, and loading platform limitations, and such congressional tags shall not be assigned to or used by others: *Provided further,* That such congressional tags shall be valid only for the Congress in which such tags are so issued, and it shall be unlawful to display such congressional tags for a period longer than thirty days after the opening of the next Congress.

Any person violating this section shall be fined not more than $300 or imprisoned not more than ninety days, or both.

(d) The commissioners shall cause to be levied, collected, and paid such fees for titling and retitling as they deem necessary, not to exceed the sum of $1 for each such titling or retitling, and they shall not, after the 1st day of January, 1932, register or renew the registration of any motor vehicle or trailer unless and until the owner thereof shall make application in the form prescribed by the commissioners, under oath, and be granted an official certificate of title for such vehicle. No registration or other fee shall be charged to vehicles owned by the federal or District government or any duly accredited representative of a foreign government. The owner of a motor vehicle or trailer registered in the District of Columbia shall not, after the 1st day of January, 1932, operate or permit or cause to be operated any such vehicle upon any public highway in the District without first obtaining a certificate of title therefor, nor shall any individual knowingly permit any certificate of title to be obtained in his name for any vehicle not in fact owned by him, and any individual violating any provision of this subsection or any regulations promulgated thereunder shall be fined not more than $1,000 or imprisoned not more than one year, or both. If the properly designated agent of the commissioners shall determine that an applicant for a certificate of title is not entitled thereto, such certificate of title may be refused, and in that event unless such determination is reversed upon written application to the commissioners by the individual affected, such individual shall be entitled to proceed further as provided under section 40–302 (a), and jurisdiction is conferred upon the United States Court of Appeals for the District of Columbia for this purpose: *Provided,* That reasonable time for hearing be given the applicant in the first instance.

(e) The commissioners may in the administration of this chapter, section or any provision of the Traffic Acts for the District, exercise any power or perform any duty conferred on them by this chapter through such officers and agents of the District as the commissioners may designate. The commissioners are further authorized and empowered to make, modify, repeal, and enforce reasonable rules and regulations in respect to the movement of traffic, speed, length, weight, height, width, routing, and parking of vehicles, and the establishment and location of hack stands: *Provided,* That the commissioners shall establish and locate parking areas in the vicinity of governmental establishments for use only by members of Congress and governmental officials when on official business: *Provided further,* That as to all common carriers by vehicle which enter, operate in, or leave the District of Columbia, the power to route such vehicles within the District of Columbia, to regulate their equipment other than that specifically named elsewhere in this chapter, to regulate their schedules and their loading and unloading, to locate their stops, and all platforms and loading zones and to require the appropriate marking thereof, is vested in the Public Utilities Commission of the District of Columbia: *Provided further,* That whenever any order, rule, or regulation of the Public Utilities Commission shall be made relative to the routing of common carrier vehicles, to the location of their stops, to the establishment or change in location of platforms, loading zones, or other spaces on the public highway to be reserved for any purpose whatsoever, or to the appropriate marking thereof, or whenever any order, rule, or regulation of the District commissioners shall be made which affects such routing, stops, platforms, zones, or spaces, said order, rule, or regulation shall,

prior to promulgation, be referred to a joint board to be composed of the commissioners of the District of Columbia and the members of the Public Utilities Commission, which is hereby authorized and created. Such joint board may, by the affirmative action of any three members thereof, adopt rules and regulations which, when promulgated, shall be binding and shall have the full force and effect of law, and the engineer commissioner shall be the chairman of such joint board, and shall have but one vote. Any of said rules and regulations, after reasonable trial and within a reasonable time, may be changed by the joint board upon the request of the commissioners of the District of Columbia or of the Public Utilities Commission.

(f) The commissioners may establish and designate arterial and boulevard highways, regulate the speed of vehicles thereon, and provide for the equipment of any street, road, or highway, with control lights and/or other devices for the regulation of traffic, and make such other regulations with respect to the control of traffic as are deemed advisable.

(g) The District Commissioners are authorized to prescribe within the limitations of this chapter reasonable penalties of fine, or imprisonments not to exceed ten days in lieu of or in addition to any fine, for the violation of any rule or regulation promulgated under the authority of this chapter not otherwise herein provided for. All traffic, motor vehicle, and vehicle regulations not inconsistent herewith adopted and promulgated prior to July 1, 1931, are continued and shall remain in full force and effect until amended, altered, or revoked.

(h) All regulations promulgated under the authority of this chapter, except those made by the Public Utilities Commission under powers given it by Title 43 of this Code, shall, when adopted, be printed in one or more of the daily newspapers published in the District, and no penalty shall be enforced for any violation of any such regulation which occurs within ten days after such publication, except that whenever the commissioners of the District of Columbia deem it advisable to make effective immediately any regulation relating to parking, diverting of vehicular traffic, or the closing of streets to such traffic, the regulation shall be effective immediately upon placing at the point where it is to be in force conspicuous signs containing a notice of the regulation. The placing at or upon the public highway of any sign relating to parking or regulation of traffic, except by the authority of the commissioners of the District of Columbia or their designated agent, or of the joint board, is prohibited: *Provided,* That this restriction shall not apply to any such signs which do not purport to reserve space on the public highways and which the Public Utilities Commission may authorize under the provision of this chapter.

(i) All prosecutions for violations of this chapter, excepting section 40–610, and this act or regulations made and promulgated under the authority of this chapter shall be in the police court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants.

(j) In addition to the fees and charges levied under other provisions of this Act, there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for a motor vehicle or trailer in the District, and for the issuance of every subsequent certificate of title for a motor vehicle or trailer in the District in the case of sale or resale thereof, at the rate of 2 per centum of the fair market value of such motor vehicle or trailer at the time such certificate is issued, as determined by the Assessor of the District of Columbia or his duly authorized representatives. As used in this section, the term "original certificate of title" shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. No certificate of title so issued shall be delivered or furnished to the person entitled thereto until the tax has been paid in full. The Assessor of the District of Columbia may require every applicant for a certificate of title to supply such information as he deems necessary as to the time of purchase, the purchase price, and other information relative to the determination of the fair market value of any motor vehicle or trailer for which a certificate of title is required and issued. The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:

(1) Motor vehicles and trailers owned by the United States or the District of Columbia.

(2) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining residences in the District.

(3) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining a business or businesses in the District. Except as hereinafter provided, it is not intended to exempt from the tax the issuance of certificates of title for motor vehicles and trailers owned by nonresidents who are engaged in business in the District at the time of their purchase or acquisition of such vehicles and trailers and who use such vehicles and trailers in the conduct of their District business or businesses.

(4) Motor vehicles and trailers owned by a utility or public service company for use in furnishing a commodity or service: *Provided,* That the receipts from furnishing such commodity or service are subject to a gross-receipts or mileage tax in force in the District of Columbia at the time of a certificate of title for any such vehicle or trailer is issued. (Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 6; July 3, 1926, 44 Stat. 814, ch. 739, § 4; Feb. 27, 1931, 46 Stat. 1424, ch. 317, §§ 3, 4; Dec. 19, 1932, 47 Stat. 750, ch. 5; July 2, 1945, 59 Stat. 313, ch. 222; May 27, 1949, 63 Stat. 128, ch. 146, title III, § 301.)

COMPILER'S NOTES

Paragraph (f) of this section as enacted in 1931 contains the further provision at the end "and section 14 of said Traffic Acts is hereby repealed." That section appeared in the 1929 Code of the District of Columbia as section 251 of title 6.

"This chapter" referred to in this section will be found in sections 40–301 to 40–303, 40–601 to 40–603, 40–605,

40–609 to 40–615, and as amendments to sections 11–601, 11–616, 11–621, 11–623 and 11–1407.

AMENDMENTS

This section prior to amendment contained four paragraphs and provided for the appointment of a director of traffic, giving him the power to make the various regulations, beginning 50 days after the enactment of the original act, and contained provisions for the publication of such regulations and for the appointment of an additional assistant to the corporation counsel.

The 1926 act added a paragraph substantially the same as present paragraph (i) but contained the additional proviso "That nothing herein contained shall deprive any person of the right of trial by jury."

The 1931 act adopted this section in the form it now exists. This act became effective July 1, 1931.

The 1932 act added that part of the proviso in paragraph (c) following "Representative in Congress" and preceding "for their official use."

The act of July 2, 1945, cited to text, amended subsec. (c) by adding the last proviso and second par.

The act of May 27, 1949, cited to text, added subsection (j). Sec. 302 of said act provided: "The provisions of this title shall be applicable with respect to all certificates of title issued on or after the first day of the first month succeeding the sixtieth day after the approval of this Act."

CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, § 25–127.

Authority of commissioner to make rules and regulations concerning public utilities until altered by Public Utilities Commission, § 43–209.

Commissioners may designate portions of streets and sidewalks to be used for business purposes including parking, § 7–1205.

Commissioners' power to make rules and regulations not inconsistent with chapter 1 of this title, § 40–105.

Convictions to be reported, § 40–612.

Funds for expenses of office of director, § 40–103.

General provisions concerning jurisdiction and control over public ways, § 7–102 and notes.

Other provisions for inspection of motor vehicles, § 40–201 et seq.

Other provisions for prosecution of violations of this chapter, §§ 43–907, 43–908.

Parking meters; rules and regulations, § 40–616.

Power of Commissioners to locate hack stands, §§ 1–221, 1–222.

Provision concerning financial responsibility of owners and revocation and suspension of license thereunder are supplemental to and do not repeal this chapter, § 40–401.

Regulating traffic in public parks and playgrounds, §§ 8–109, 40–613.

Rules and regulations for administration of Owners' Financial Responsibility Act, § 40–414.

Rules and regulations for registration and licensing of motor vehicles, § 40–102.

Rules and regulations for the inspection of motor vehicles, § 40–207.

Rules and regulations for traffic in public parks, playgrounds and reservations, § 40–613.

Rules and regulations generally, § 1–226 and notes.

NOTES TO DECISIONS

IN GENERAL

Traffic Act, as amended, delegates to the commissioners authority to make rules and regulations in relation to traffic on the public highways, and to the Director of Parks authority to make regulations in relation to traffic on the roads in the public parks within the District; and to provide for punishment for violations by proceedings in the police court at instance of corporation counsel and to exclude United States Attorney from any prosecutions except provision involving smoke-screen felony. *Persham* v. *United States* (70 App. D. C. 116, 104 Fed. (2d) 249).

CONSTITUTIONALITY

This section is not unconstitutional as vesting legislative power and unregulated discretion in administrative officers. *La Forest* v. *Board of Comrs. of District of Columbia* (67 App. D. C. 396, 92 Fed. (2d) 547).

DUPLICATE CERTIFICATES

The requirements of this section for registration of a motor vehicle do not apply to duplicate certificates of title, and the oath required for registration is not required for issuance of a duplicate certificate. *Shelton* v. *U. S.* (App. D. C. 1948, 165 F. 2d 241).

EFFECT ON CONTRACTS OF PURCHASE

Subsection (d) of this section providing that the owner of a motor vehicle shall not operate it upon any public highway in the District of Columbia without first obtaining a certificate of title therefor does not void an otherwise valid contract for purchase of an automobile. *Associates Discount Corporation* v. *Hardesty,* 1941 (122 F. 2d 18, 74 App. D. C. 44).

GOVERNMENT-OWNED VEHICLES

Traffic laws of District govern as to mail trucks over orders of Post Office Department. *White* v. *District of Columbia* (55 App. D. C. 197, 4 Fed. (2d) 163).

PEDESTRIANS' RIGHT OF WAY

Under the regulations of this act pedestrians are given the right of way at all crosswalks except at controlled crossings. *Griffith* v. *Slaybaugh* (58 App. D. C. 237, 29 Fed. (2d) 437).

"PICK-UP AND DELIVERY" OF RAILROADS

In a mandamus action brought by a railroad company to compel the Public Utilities Commission to act on the railroad company's petition for designation of a route for alleged "pick-up and delivery service," relief was denied until the railroad company obtained a certificate of convenience and necessity from the Interstate Commerce Commission. *United States ex rel. Arlington & F. Auto R. Co.* v. *Elgen* (68 App. D. C. 392, 98 Fed. (2d) 264).

The question of what constitutes a terminal district is so largely one of fact and so far involves considerations calling for the expert knowledge in technical matters of transportation, that a railroad company seeking by mandamus to require the Public Utilities Commission to designate a route for alleged "pick-up and delivery service" within railroad terminal districts, should pursue its remedy before the Commerce Commission rather than the courts. *United States ex rel. Arlington & F. Auto R. Co.* v. *Elgen* (68 App. D. C. 392, 98 Fed. (2d) 264).

PROSECUTION

By (i) last paragraph Congress intended that all prosecutions for violations of the traffic act, except for the violation of the smoke-screen provision in section eleven should be at the instance of the corporation counsel and in the name of the District of Columbia. *District of Columbia* v. *Moyer* (68 App. D. C. 98, 93 Fed. (2d) 527).

SALE WITHOUT CERTIFICATE OF TITLE

The registration regulation requiring that certificate of title be assigned at time ownership of motor vehicle is transferred, and the regulation requiring that a dealer acquire a certificate of origin with a new motor vehicle should be construed consistently with reference to the effect of a failure to assign and deliver required certificate at time of transfer. *Fogle* v. *General Credit,* 1941 (122 F. 2d 45, 74 App. D. C. 208, 136 A. L. R. 814).

The sale of used automobile by dealer which had possession thereof with authority from finance company to offer it for sale in regular course of business was not void because certificate of title held by finance company was not assigned to buyer by dealer at time of transfer, as required by registration regulations. *Fogle* v. *General Credit,* 1941 (122 F. 2d 45, 74 App. D. C. 208, 136 A. L. R. 814).

The purpose of registration regulation that no dealer shall have any used motor vehicle or trailer in his possession unless he shall have a certificate of title for it issued

or assigned to him is apparently to prevent persons holding certificate from giving possession of vehicle to a dealer without also delivering certificate to him. *Fogle* v. *General Credit,* 1941 (122 F. 2d 45, 74 App. D. C. 208, 136 A. L. R. 814).

SUSPENSION OF SENTENCE

Where defendant was convicted for violation of a traffic regulation, and execution of sentence was suspended, such suspension must be vacated because such power is derived from the Federal Probation Act, and though under the District of Columbia Probation Act, the court is authorized to suspend execution, clearly the suspension in this case was not and did not purport to be exercised under the authority of the probation law and was beyond the power of the court. *Ziegler* v. *District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 618).

VALIDITY AND REASONABLENESS

Regulations prohibiting use of vehicles with solid tires on certain arterial streets were valid and reasonable. *Smallwood* v. *District of Columbia* (57 App. D. C. 58, 17 Fed. (2d) 210).

Regulations prohibiting speed in excess of 15 miles an hour on certain bridges were valid and reasonable. *District of Columbia* v. *Bailey* (57 App. D. C. 151, 18 Fed. (2d) 367).

Regulations which prevent parking of automobiles on certain streets between 2 a. m. and 8 a. m. to enable the snow-removal machinery of the city to function is a reasonable and proper regulation. *District of Columbia* v. *Smith* (68 App. D. C. 104, 93 Fed. (2d) 650).

VIOLATION AS NEGLIGENCE

Violation of an ordinance intended to promote safety is negligence, and if by creating hazard which ordinance was intended to avoid it brings about harm which ordinance was intended to prevent, it is a legal cause of the harm. *Ross* v. *Hartman,* 1944 (139 F. 2d 14, 78 U. S. App. D. C. 217, 158 A. L. R. 1370, certiorari denied 64 S. Ct. 790, 321 U. S. 790, 88 L. Ed. 1080).

An ordinance requiring motor vehicles, left unattended in public place, to be locked is a safety measure, and its violation is negligence. *Ross* v. *Hartman,* 1944 (139 F. 2d 14, 78 U. S. App. D. C. 217, 158 A. L. R. 1370, certiorari denied 64 S. Ct. 790, 321 U. S. 790, 88 L. Ed. 1080).

Where truck owner's agent violated traffic ordinance by leaving truck unattended, in a public alley, with ignition unlocked and key in switch, and an unknown person drove truck away and negligently ran over plaintiff, the violation of the ordinance was negligence and constituted the "proximate cause" of the injury rendering owner liable therefor. *Ross* v. *Hartman,* 1944 (139 F. 2d 14, 78 U. S. App. D. C. 217, 158 A. L. R. 1370, certiorari denied 64 S. Ct. 790, 321 U. S. 790, 88 L. Ed. 1080).

Where defendant's driver was negligent in leaving motor vehicle unlocked and such negligence was proximate cause of accident in which plaintiffs were injured, defendant was liable for damages. *R. W. Claxton, Inc.,* v. *Schaff.* (C. A., D. C. 1948, 169 F. 2d 303, certiorari denied, 69 S. Ct. 168, 335 U. S. 871, 93 L. Ed. 415.)

Violation of a traffic regulation constitutes negligence per se. *Rogers* v. *Cox* (D. C. Mun. App. 1950, 75 A. 2d 776).

§ 40–603–1. Appeal from assessment of excise tax for issuance of motor vehicle title certificates—Election of remedies.

Any person aggrieved by the assessment of any tax imposed by subsection 40–603 (j) may, within ninety days from the date the person entitled to a certificate of title was notified of the amount of such tax, appeal to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407, 47–2408, 47–2409, 47–2410 and 47–2411, and as the same may hereafter be amended. The remedy provided in this section shall not be deemed to take away from the person entitled to such certificate of title any remedy which he might have under any other provisions of law, but no suit by such person for the recovery of a tax, or any part thereof, imposed by subsection 40–603 (j) shall be instituted in any court if such person has elected to file an appeal with respect to such tax with the Board of Tax Appeals for the District of Columbia. (May 27, 1949, 63 Stat. 129, ch. 146, title III, § 303.)

§ 40–603a. Office of Registrar of Titles and Tags.

The employee of the Department of Vehicles and Traffic who is charged with the immediate responsibility for, and exercises supervision over, the issuance of tags and certificates of title and the registration of motor vehicles and trailers shall be known as the Registrar of Titles and Tags. (June 28, 1944, 58 Stat. 527, ch. 300, § 1; June 30, 1945, 59 Stat. 289, ch. 209, § 1.)

§ 40–603b. Issuance of congressional tags.

No part of any District of Columbia appropriations shall be available for any expense for or incident to the issuance of congressional tags except to those persons set out in § 40–603, including the Speaker and the Vice President. (June 28, 1944, 58 Stat. 532, ch. 300, § 8.)

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 8, 57 Stat. 346.
1943—June 27, 1942, ch. 452, § 8, 56 Stat. 460.
1942—July 1, 1941, ch. 271, § 8, 55 Stat. 539.
1941—June 12, 1940, ch. 333, § 9, 54 Stat. 343.

§ 40–604 [6: 243a]. Parking space for Members of Congress.

The Commissioners of the District of Columbia are authorized and directed to designate, reserve, and properly mark appropriate and sufficient parking spaces on the streets adjacent to all public buildings in such district for the use of Members of Congress engaged on public business. (July 15, 1939, 53 Stat. 1033, ch. 281, § 1; June 12, 1940, 54 Stat. 334, ch. 333, § 1.)

COMPILER'S NOTE

This section taken from the Appropriation Act of 1939 was repeated in the Appropriation Act of 1940, and is not part of the Traffic Acts of 1925 (act of Mar. 3, 1925, 43 Stat. 1119, ch. 443) and is therefore not included in the term "this chapter" as used elsewhere herein.

REPEATED

Act June 27, 1942, 56 Stat. 451, ch. 452, § 1; Act July 1, 1943, 57 Stat. 338, ch. 184, § 1; Act June 28, 1944, 58 Stat. 526, ch. 300, § 1; Act June 30, 1945, 59 Stat. 289, ch. 209, § 1; Act July 9, 1946, 60 Stat. 518, ch. 544, § 1; Act June 19, 1948; 62 Stat. 553, ch. 555, § 1; Act June 29, 1949, 63 Stat. 303, ch. 729, § 1; Act July 18, 1950, 64 Stat. 347, ch. 467, § 1.

CROSS REFERENCES

Parking restrictions on public and private property, see §§ 40–810 and 40–811.

Regulation of public off-street parking facilities, see §§ 40–801 to 40–809.

Congressional tags, issuance by Commissioners, § 40–603 (c).

§ 40–605 [6: 246]. Speeding and reckless driving.

(a) No vehicle shall be operated at a greater rate of speed than permitted by the regulations adopted under the authority of this chapter.

(b) Any person who drives any vehicle upon a highway carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving.

(c) Any individual violating any provision of this section where the offense constitutes reckless driving shall upon conviction for the first offense be fined not more than $250 or imprisoned not more than three months, or both; and upon conviction for the second or any subsequent offense committed within two years from the date of any such previous offense such individual shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(d) Any individual violating any provision of this section, except where the offense constitutes reckless driving, shall upon conviction thereof be fined not more than $300 or be imprisoned not more than ninety days. (Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 9; July 3, 1926, 44 Stat. 814, ch. 739, § 5; Feb. 27, 1931, 46 Stat. 1427, ch. 317; June 24, 1936, 49 Stat. 1901, ch. 749; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 1.)

COMPILER'S NOTES

The act of 1931 became effective July 1, 1931.

"This chapter" referred to in this section will be found in sections 40–301 to 40–303, 40–601 to 40–603, 40–605, 40–609 to 40–615, and as amendments to sections 11–601, 11–616, 11–621, 11–623 and 11–1407.

AMENDMENTS

The act of 1925 provided for a speed limit of 22 miles an hour except in outlying districts.

The act of 1926 provided for the regulation of speed in outlying districts.

The act of 1931 amended paragraph (a) as it now exists. The act of 1931 also changed the definition of reckless driving in paragraph (b).

The penalties for reckless driving were originally a fine of $25 to $100 and imprisonment of 10 to 30 days for first offense; and a fine of $100 to $1,000 and imprisonment of 30 days to 1 year for a subsequent offense. The 1931 act removed the lower limits on the fines and imprisonment permitted and included the provision that the subsequent offense must be committed within two years.

The 1936 act raised the upper limits for a first offense to those now provided in this section.

The penalties for other offenses provided by this section were originally a fine of from $5 to $25 for a first offense; a fine of from $25 to $100 for a second offense; and a fine of from $100 to $500 and imprisonment of 30 days to one year for subsequent offenses.

The 1931 act removed the lower limits on the fines and imprisonments and changed the upper limits on third and subsequent offenses as now provided in this section. The 1931 act also included the provisions that subsequent offenses must be committed within one year of the first offense.

The act of Nov. 25, 1942, cited to text, amended subsec. (d) of section by deleting provisions making first offense punishable with $25 fine, second offense within one year punishable with $100 fine, and third offense within one year punishable with $300 fine and/or imprisonment not more than ninety days or both.

CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, § 25–127.
Convictions to be reported, § 40–612.
Definition of "this act" and other terms used, § 40–602.
Power of commissioners to make rules and regulations, § 40–603.

NOTES TO DECISIONS

EVIDENCE

Where arresting officer testified that he had paced defendant for about two blocks at a speed varying from thirty-three to thirty-eight miles per hour, it cannot be said that the trial judge was wrong in making a finding of guilt. *Seidenberg* v. *District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 607).

FINE

Where fine was imposed for speeding and was within the statutory limitation, appellate court has no right to disturb it. *Seidenberg* v. *District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 607).

JURY TRIAL

One charged with driving an automobile recklessly, and so as to endanger property and individuals, has a right to a jury trial. *District of Columbia* v. *Colts* (282 U. S. 63, 75 L. Ed. 177, 51 Sup. Ct. 52, affg. 59 App. D. C. 224, 38 Fed. (2d) 535).

REGULATIONS OF DIRECTOR OF TRAFFIC

Provisions of this act not in conflict with regulations of director of traffic, as to speed of vehicles on certain bridges and highways. *District of Columbia* v. *Bailey,* (57 App. D. C. 151, 18 Fed. (2d) 367).

Section 40–603 authorized regulation excluding commercial vehicles equipped with solid tires on certain streets, in view of paragraph (a) of this section and act Mar. 3, 1925, ch. 443, § 14, 43 Stat. 1123, 1125. *Smallwood* v. *District of Columbia,* 1927 (17 F. 2d 210, 57 App. D. C. 58).

Regulation, excluding commercial vehicles equipped with solid tires from certain streets, was reasonable. *Smallwood* v. *District of Columbia,* 1927 (17 F. 2d 210, 57 App. D. C. 58).

§ 40–606 [6: 246a]. Negligent homicide.

Any person who, by the operation of any vehicle at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not wilfully or wantonly, shall cause the death of another, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than one year or by a fine of not more than $1,000 or both.

It shall be the duty of the coroner of the District of Columbia, upon any inquisition taken before him which results in the jury finding that negligent homicide, as defined herein, has been committed on the deceased, to require such witnesses as he thinks proper to give recognizance to appear and testify, or in default thereof to be committed to jail for appearance, in either the District Court of the United States for the District of Columbia or the police court of the District of Columbia, and the coroner shall return to either said court the said inquisition, testimony, and recognizance or order by him taken or given. (Mar. 3, 1901, ch. 854, § 802 (a), as added June 17, 1935, 49 Stat. 385, ch. 266.)

COMPILER'S NOTE

This section and the next two succeeding sections (§§ 40–607, 40–608) are not part of the Traffic Act of 1925 (act of Mar. 3, 1925, 43 Stat. 1119, ch. 443), and therefore are not included in the term "this chapter" as used elsewhere herein.

CROSS REFERENCE

Though this section was enacted after the Alcoholic Beverage Control Act, it would seem that such act is inapplicable by its express provision, § 25–127.

NOTES TO DECISIONS

CONCURRING NEGLIGENCE

If defendant drove bus at an immoderate rate of speed and such act was proximate or direct cause of death of deceased who was riding in another automobile with which the bus collided, defendant was not relieved from guilt of negligent homicide, because negligence of the driver of the automobile concurred in producing the result though acts of other drivers were to be considered so far as they shed light on question of defendant's negligence, but if negligence of other driver was sole cause of decedent's death, defendant was entitled to an acquittal. *Prezzi v. U. S.* (D. C. Mun. App. 1948, 62 A. 2d 196).

CONSTITUTIONALITY

This section specifies with sufficient certainty the conduct which it is intended to proscribe and punish and hence comes within the requirements of constitutionality. *U. S.* v. *Henderson,* 1941 (121 F. 2d 75, 73 App. D. C. 369).

CRIME, ELEMENTS OF

In prosecution for negligent homicide based on death caused by motortruck, the "corpus delicti" consisted of the death of a human being by the instrumentality of a motortruck operated at an immoderate rate of speed or in a careless, reckless or negligent manner but not willfully or wantonly. *Ercoli* v. *U. S.,* 1942 (131 F. 2d 354, 76 U. S. App. D. C. 360).

EVIDENCE

In prosecution for negligent homicide based on death caused by motortruck, evidence that the motortruck under defendant's control was of tremendous size and weight, that it was being driven on busy city street at speed that made it impossible to stop when defendant first saw pedestrian approximately 25 to 30 feet away, and that automobile in traffic lane to defendant's right obstructed his view of pedestrian until it was too late to stop truck, tended to prove the "corpus delicti", so that defendant's extrajudicial admissions were properly received in evidence. *Ercoli* v. *U. S.,* 1942 (131 F. 2d 354, 76 U. S. App. D. C. 360).

INSTRUCTIONS

Refusal of defendant's instructions precluding conviction of negligent homicide unless death of deceased was the proximate result of operation of the bus by defendant was not error in view of instruction by the court on same subject matter though nowhere therein did the court use the expression "proximate cause." *Prezzi v. U. S.* (D. C. Mun. App. 1948, 62 A. 2d 196).

In prosecution for negligent homicide by driver of bus which collided with automobile in which decedent was riding instructions not to ignore other drivers' action because whether defendant was driving at an immoderate rate of speed depended upon all other circumstances, and that if defendant was driving at such speed, then he was one of the causes of the accident, and that if driver of other automobile also caused the accident would make no difference but that defendant was not responsible for acts of the other drivers, were sufficient. *Prezzi* v. *U. S.* (D. C. Mun. App. 1948, 62 A. 2d 196).

JUDICIAL COMMENT

In prosecution for negligent homicide by driving a bus at an immoderate rate of speed and colliding with an automobile in which decedent was riding, trial court's comment that in its opinion, and as a matter of common sense, if immoderate speed was established, such speed caused the death, which contradicted or at least materially weakened, previous instruction respecting immoderate speed, and which had a strong tendency to eliminate from the jury, the question whether the acts of the driver of the other automobile were the sole cause of the collision, was reversible error. *Prezzi v. U. S.* (D. C. Mun. App. 1948, 62 A. 2d 196).

§ 40–607 [6: 246b]. Negligent homicide included in manslaughter where death due to operation of vehicle.

The crime of negligent homicide defined in section 40–606 shall be deemed to be included within every crime of manslaughter charged to have been committed in the operation of any vehicle, and in any case where a defendant is charged with manslaughter committed in the operation of any vehicle, if the jury shall find the defendant not guilty of the crime of manslaughter such jury may, in its discretion, render a verdict of guilty of negligent homicide. (Mar. 3, 1901, ch. 854, § 802 (b), as added June 17, 1935, 49 Stat. 385, ch. 266.)

CROSS REFERENCE

Alcoholic Beverage Control Act, see note to § 40–606.
See Compiler's Note to § 40–606.

NOTES TO DECISIONS

EVIDENCE

In prosecution for injuring a person with a motor vehicle and failing to stop and give assistance and report to police, excluding evidence of accused's reputation for tenderness and mercy was not shown to be error where record did not disclose the evidence concerning flight. *Morris* v. *District of Columbia,* 1942 (124 F. 2d 284, 75 U. S. App. D. C. 82).

In prosecution for injuring a person with a motor vehicle and failing to stop and give assistance and report to police, where accused asked for a subpoena duces tecum requiring production of statements which record implied were obtained by counsel for the person injured, but where there was nothing in the record to show that, at the trial, a foundation was or could have been laid for admitting the statements in evidence, either to impeach their authors or for any other purpose, there was no basis in the record for an inference that the error, if any, in refusing the subpoena was prejudicial. *Morris* v. *District of Columbia,* 1942 (124 F. 2d 284, 75 U. S. App. D. C. 82).

In prosecution for injuring a person with a motor vehicle and failing to stop and give assistance and report to police, excluding evidence that accused carried $100,000 of liability insurance was not prejudicial error where record did not show what testimony concerning flight there may or may not have been. *Morris* v. *District of Columbia,* 1942 (124 F. 2d 284, 75 U. S. App. D. C. 82).

§ 40–608 [6: 246c]. Immoderate speed not dependent on legal rate of speed.

In any prosecution under sections 40–606 or 40–607, whether the defendant was driving at an immoderate rate of speed shall not depend upon the rate of speed fixed by law for operating such vehicle. (Mar. 3, 1901, ch. 854, § 802 (c), as added June 17, 1935, 49 Stat. 385, ch. 266.)

CROSS REFERENCE

Alcoholic Beverage Control Act, see note to § 40–606.
See Compiler's Note to § 40–606.

NOTES TO DECISIONS

EVIDENCE

This section providing that in any prosecution for negligent homicide whether defendant was driving at an immoderate rate of speed shall not depend upon rate fixed by law for operating the vehicle manifests intent that speed shall be determined as a fact from all surrounding circumstances and this section does not expressly prohibit evidence of speed regulations which are admissible as one of the circumstances for the jury, in determining the question of immoderate speed. *Prezzi v. U. S.* (D. C. Mun. App. 1948, 62 A. 2d 196).

§ 40–609 [6: 247]. Fleeing from scene of accident—Driving under the influence of liquor or drugs.

(a) Any person operating a vehicle, who shall injure any person therewith, or who shall do substantial damage to property therewith and fail to stop and give assistance, together with his name, place

of residence, including street and number, and the name and address of the owner of the vehicle so operated, to the person so injured, or to the owner of such property so damaged, or to the operator of such other vehicle, or to any bystander who shall request such information on behalf of the injured person, or, if such owner or operator is not present, then he shall report the information above required to a police station or to any police officer within the District immediately. In all cases of accidents resulting in injury to any person, the operator of the vehicle causing such injury shall also report the same to any police station or police officer within the District immediately.

Any operator whose vehicle causes personal injury to an individual and who fails to conform to the above requirements shall, upon conviction of the first offense, be fined not more than $500, or shall be imprisoned not more than six months, or both; and upon the conviction of his second or subsequent offense, shall be fined not more than $1,000, or shall be imprisoned not more than one year, or both.

Any operator whose vehicle causes substantial damage to any other vehicle or property and fails to conform to the above requirements, shall, upon conviction of the first offense, be fined not more than $100, or be imprisoned not more than thirty days, or both; and for the second or any subsequent offense, be fined not more than $300, or be imprisoned not more than ninety days, or both.

(b) No individual shall, while under the influence of any intoxicating liquor or narcotic drug, operate any vehicle in the District. Any individual violating any provision of this subdivision shall upon conviction for the first offense be fined not more than $500 or imprisoned not more than six months, or both; and upon conviction for the second or any subsequent offense be fined not more than $1,000 or imprisoned not more than one year, or both. Upon conviction of a violation of any provision of this paragraph involving the operator of a motor vehicle the clerk of the court shall certify forthwith such conviction to the designated agent of the commissioners who shall thereupon revoke the operator's permit of such individual.

(c) Any violation of any provision of law or regulation issued thereunder which is repealed or amended by this Act, and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal or amendment, be prosecuted to the same extent as if this Act had not been enacted. (Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4; Dec. 15, 1944, 58 Stat. 805, ch. 588.)

Compiler's Notes

This section as amended by act of 1931 became effective July 1, 1931.

"This chapter" referred to in this section will be found in §§ 40–301 to 40–303, 40–601 to 40–603, 40–605, 40–609 to 40–615, and as amendments to §§ 11–601, 11–616, 11–617, 11–621, 11–623, and 11–1407.

Amendment

Prior to amendment in 1931 subsection (a) of this section provided for the giving of the information upon striking "any individual or any vehicle" or where the vehicle has been struck by another vehicle and provided only for the giving of information concerning the driver including the registration and operators permit numbers. The 1931 act also added all that part of the first paragraph of subsection (a) beginning with "if such owner or operator is not present."

The penalties provided for in subsection (a) were originally, for personal injury, a fine of $100 to $500 and imprisonment of 60 days to 6 months for a first offense, and a fine of $500 to $1,000 and imprisonment of 6 months to 1 year for a subsequent offense. The 1931 act removed the lower limits of fines and imprisonment. The penalties for damage to a vehicle prior to the 1931 amendment were a fine of not more than $500 or imprisonment of not more than six months for a first offense and a fine of not more than $1,000 or imprisonment of not more than one year for a subsequent offense.

The penalties provided for in subsection (b) were originally a fine of from $100 to $500 and imprisonment of 60 days to 6 months for a first offense, and a fine of $200 to $1,000 and imprisonment of 6 months to 1 year for a subsequent offense. The 1931 act removed the lower limits of fines and imprisonment.

The act of 1931 also added the present subsection (c) and included former paragraph (c) as the last sentence in present paragraph (b).

The act of Dec. 15, 1944, cited to text, amended section generally by omitting word "motor" preceding "vehicle" wherever appearing in subsec. (a), by inserting "involving the operator of a motor vehicle" following "of this paragraph" in subsec. (b), and reenacting subsec. (c).

Cross References

Alcoholic Beverage Control Act inapplicable, § 25–127.
Convictions to be reported, § 40–612.

NOTES TO DECISIONS

Agreement Not To Prosecute

The entry of a nolle prosequi, without more, to an information charging operation of a motor vehicle while intoxicated, would not warrant a holding that there was an implied agreement by assistant corporation counsel to withdraw information in consideration of a plea of guilty to less serious charge in another information of operating a motor vehicle on wrong side of street. *District of Columbia* v. *Buckley,* 1942 (128 F. 2d 17, 75 U. S. App. D. C. 301, certiorari denied 63 S. Ct. 57, 317 U. S. 658, 87 L. Ed. 529).

An agreement between assistant corporation counsel and a defendant for withdrawal of an information, to which a nolle prosequi was entered, charging operation of a motor vehicle while intoxicated, in consideration of a plea of guilty to less serious charge in another information of operating a motor vehicle on wrong side of street, would not be binding. *District of Columbia* v. *Buckley,* 1942 (128 F. 2d 17, 75 U. S. App. D. C. 301, certiorari denied 63 S. Ct. 57, 317 U. S. 658, 87 L. Ed. 529).

Constitutionality

Subsection (a) of this section making it an offense for a motorist to leave the scene of an accident, without making his identity known, where he has caused substantial damage to property, is not invalid on ground that it is indefinite because it provides no guide to a motorist for determination of what constitutes substantial damage. *Scott v. District of Columbia* (D. C. Mun. App. 1947, 55 A. 2d 854).

Evidence

In prosecution for driving without permit and leaving scene of collision, tried by court, erroneous admission of officer's testimony that persons who witnessed collision identified accused, in his presence, as driver of automobile involved in collision, was not cured by court's recognition of error and statement that such testimony was disregarded, where competent evidence of accused's guilt was far from conclusive. *Penwell* v. *District of Columbia,* (D. C. 1943, 31 A. 2d 891).

Testimony as to manner in which defendant's automobile was driven, identification of defendant as driver, and condition of defendant a short time thereafter, as reported by officers, was sufficient evidence, independent

of defendant's confession, to support conviction of operating a motor vehicle while intoxicated. *Price* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 142).

In prosecution for operating a motor vehicle while intoxicated, proof that defendant, while in such condition, collided with another vehicle and left the scene of the collision without stopping, although disclosing two other offenses, was admissible as proof of the offense charged and as merely incidentally proving other offenses. *Price* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 142).

It was error to exclude testimony of police officers who observed defendant that, in their opinion, defendant was under influence of intoxicating liquor, on ground that an expert may not testify to his conclusion regarding facts from which the jury are capable of drawing their own conclusions. Even though one is not an expert he may give his opinion based on personal observation as to whether a person is intoxicated. *Woolard* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 640).

FAILURE TO REPORT ACCIDENT

Admitted failure of defendant to report automobile accident to police station or officer justified conviction, and failure of prosecution to establish other charge that defendant failed to stop, give name and residence would not invalidate verdict or sentence. *Carpenter* v. *District of Columbia* (D. C. 1943, 32 A. 2d 251).

Laboratory records of urinalysis were properly admitted in evidence where such records were kept in conformity with the formal tests prescribed by 28 U. S. C., § 695. *Novak* v. *District of Columbia* (D. C. Mun. App. 1946, 49 A. 2d 88, reversed, 1947, 160 F. 2d 588, 82 U. S. App. D. C. 95).

In prosecution for drunken driving, admission of records of analysis of specimen of urine taken from defendant who had been legally arrested and was being detained was not an infringement of defendant's rights under U. S. C. Const. Amend. 4 prohibiting unreasonable searches and seizures. *Novak* v. *District of Columbia* (D. C. Mun. App. 1946, 49 A. 2d 88, reversed, 1947, 160 F. 2d 588, 82 U. S. App. D. C. 95).

The taking of specimen of urine from defendant who had been arrested and was being detained for drunken driving and the use in evidence of the analysis of the urine was not violative of defendant's rights under U. S. C. Const. Amend. 5 where specimen was given voluntarily, notwithstanding that police officer who requested specimen was in uniform and did not state that defendant had a right to refuse to give the sample, but did state that "if sample were right it would be to the defendant's benefit." *Novak* v. *District of Columbia* (D. C. Mun. App. 1946, 49 A. 2d 88, reversed, 1947, 160 F. 2d 588, 82 U. S. App. D. C. 95).

FAILURE TO STOP AND GIVE ASSISTANCE

Fact that defendant stopped and parked her automobile at the nearest available point, when informed of the accident, at a distance not exceeding 150 feet from the point where the collision occurred and furnished all the information, is all that the statute requires. *Oden* v. *District of Columbia* (65 App. D. C. 50, 79 Fed. (2d) 175).

While defendant testified that he intended to return and give the assistance and information required, the jury was at liberty to disbelieve him under the circumstances, and to conclude from his conduct, as testified to by the District's witnesses, that he did not so intend. *Seher* v. *District of Columbia* (68 App. D. C. 207, 95 Fed. (2d) 118).

FORMER JEOPARDY

In prosecution for driving a motor vehicle while intoxicated, police judge erroneously sustained defendant's plea of "autrefois convict" alleging that offense of driving on wrong side of street, in respect of which defendant had pleaded guilty, and offense of driving while intoxicated were the outgrowth of one identical act, since the same evidence would not sustain the two charges. *District of Columbia* v. *Buckley*, 1942 (128 F. 2d 17, 75 U. S. App. D. C. 301, certiorari denied 63 S. Ct. 57, 317 U. S. 658, 87 L. Ed. 529).

INSTRUCTIONS

Where there was sufficient evidence independent of defendant's statement to authorize conviction of operating a motor vehicle while intoxicated and trial court charged on presumption of innocence, burden of proof and reasonable doubt, requested charge that there could be no conviction upon an uncorroborated confession without first proving the corpus delicti was properly refused. *Price* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 142).

PURPOSE

Subsection (a) of this section making it an offense for a motorist to leave the scene of an accident, without making his identity known, where he has caused substantial damage to property, was intended to discourage and punish "hit and run" drivers. *Scott v. District of Columbia* (D. C. Mun. App. 1947, 55 A. 2d 854).

QUESTIONS FOR JURY

In prosecution for drunken driving, the weight to be given to results of analysis of specimen of defendant's urine and the medical testimony on the meaning thereof was for the jury. *Novak* v. *District of Columbia* (D. C. Mun. App. 1946, 49 A. 2d 88, reversed, 1947, 160 F. 2d 588, 82 U. S. App. D. C. 95).

SPECIMEN ANALYSIS, PROOF

In prosecution for driving automobile while intoxicated, the government must prove that urine specimen taken from defendant and the specimen analyzed by chemists and reported on in court were the same and were in substantially the same condition when tested as when taken. *Novak* v. *District of Columbia* (D. C. Mun. App. 1946, 49 A. 2d 88, reversed, 1947, 160 F. 2d 588, 82 U. S. App. D. C. 95).

Where witness for prosecution testified that he made an analysis of defendant's urine, the right of the defendant was properly protected by withdrawing from the jury all consideration of the urine analysis. The withdrawal of such evidence had the effect of showing the jury that they were to make no inference regarding the test. *Woolard* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 640).

SUBSTANTIAL DAMAGE

Motorist who ran into a parked vehicle, mashing in its rear bumper, damaging trunk and skirt, knocking out speedometer, and driving vehicle up and over sidewalk into lamp post caused "substantial damage" within subsection (a) of this section. *Scott* v. *District of Columbia* (D. C. Mun. App. 1947, 55 A. 2d 854).

In prosecution of motorist for leaving scene of accident, without making his identity known, after causing "substantial damage" to property, motorist was not entitled to have the prosecution dismissed because of government's failure to prove cost of repairing damage, where there was evidence that motorist caused substantial damage. *Scott* v. *District of Columbia* (D. C. Mun. App. 1947, 55 A. 2d 854).

§ 40–610 [6: 248]. Smoke screens.

(a) No individual shall knowingly—

(1) Have in his possession any device designed to cause the emission from a motor vehicle of a dense mass of smoke commonly called a smoke screen;

(2) Use or permit the use of any such device in the operation of any motor vehicle; or

(3) Have in his possession or control any motor vehicle equipped with any such device or specially fitted for the attachment thereto of any such device.

(b) Any individual violating any provision of this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for a term of not less than one year nor more than five years. (Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 11.)

CROSS REFERENCES

Definitions of terms used, § 40–602.
Section 25–127 refers to this section.
See notes to decisions, § 40–603. *Persham* v. *United States* (70 App. D. C. 116, 104 Fed. (2d) 249); *District of Columbia* v. *Moyer* (68 App. D. C. 98, 93 Fed. (2d) 527).

§ 40–611 [6: 249]. Reporting by garage keeper of cars damaged in accidents.

The individual in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident or struck by bullets shall report to a police station within 24 hours after such motor vehicle is received, giving the make of the motor vehicle, the engine number, the registry number, and the name and address of the owner or operator of such motor vehicle. Any such individual failing so to report shall, upon conviction thereof, be fined not less than $25 nor more than $100 for each offense. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 12.)

CROSS REFERENCES

Definitions of terms used, § 40–602.
Section 25–127 refers to this section.

§ 40–612 [6: 250a]. Convictions to be reported.

All convictions under sections 40–302, 40–603, 40–605, and 40–609 shall be reported by the clerk of the court to the commissioners or their designated agent. (Feb. 27, 1931, 46 Stat. 1429, ch. 317, § 5.)

CROSS REFERENCE

Alcoholic Beverage Control Act inapplicable, § 25–127.

§ 40–613 [6: 252]. Control over park system not affected by this chapter.

Nothing contained in this chapter shall be construed to interfere with the exclusive charge and control prior to March 3, 1925, committed to the Director of the National Park Service over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control, subject to the penalties prescribed in this chapter. (Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 16 (b); July 3, 1926, 44 Stat. 835, ch. 760, § 3.)

COMPILER'S NOTE

"This chapter" referred to in this section will be found in sections 40–301 to 40–303, 40–601 to 40–603, 40–605, 40–609 to 40–615, and as amendments to sections 11–601, 11–616, 11–617, 11–621, 11–623, and 11–1407.

AMENDMENTS

Act of 1926 amended this section by striking out the words "Chief of Engineers" and inserting in lieu thereof the words "Director of Public Buildings and Public Parks of the National Capital."

By Executive Order 6166, June 10, 1933, the office was changed to National Parks, Buildings, and Reservations.

Act of March 2, 1934, 48 Stat. 389, ch. 38, § 1, abolished National Parks, Buildings, and Reservations and transferred its powers and duties to the National Park Service.

CROSS REFERENCES

Definition of "this chapter" and other terms used, § 40–602.
Regulating traffic in public parks and playgrounds, § 8–109.
Rules and regulations generally, § 40–603 and notes.

§ 40–614. Repeal and saving clauses.

(a) The provisions of the act entitled "An Act regulating the speed of automobiles in the District of Columbia, and for other purposes," approved June 29, 1906 (34 Stat. 621, ch. 3615), and, in so far as they relate to the regulation of vehicles or vehicle traffic in the District, the provisions of the act entitled "An act to authorize the Commissioners of the District of Columbia to make police regulations for the government of said District," approved January 26, 1887 (24 Stat. 369, ch. 49) and of the joint resolution entitled "Joint resolution to regulate licenses to proprietors of theaters in the city of Washington, District of Columbia, and for other purposes," approved February 26, 1892 (27 Stat. 394, Res. 4, 7) and of the act entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," approved March 3, 1917 (39 Stat. 1064, ch. 160), are repealed. The provisions of section 20 of the Act entitled "An Act to prevent the manufacture and sale of alcoholic liquors in the District of Columbia, and for other purposes," approved March 3, 1917 (39 Stat. 1129, ch. 165), shall not apply to any person operating any motor vehicle in the District.

(b) Any violation of any provision of law or regulation issued thereunder which is repealed by this chapter and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal, be prosecuted to the same extent as if this chapter had not been enacted. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16 (a) (c).)

COMPILER'S NOTES

Subsections (a) and (b) were respectively subsections (a) and (c) of the act as enacted. The act of 1887 referred to is set forth in §§ 1–224 and 1–225. Subsection (b) of § 16 of the act of 1925 is § 40–613. The act of 1917 referred to has been repealed.

"This chapter" referred to in subsection (b) this section will be found in sections 40–301 to 40–303, 40–601 to 40–603, 40–605, 40–609 to 40–615, and as amendments to sections 11–601, 11–616, 11–617, 11–621, 11–623, and 11–1407.

Section 20 of the act entitled "An act to prevent the manufacture and sale of alcoholic liquors in the District of Columbia, and for other purposes" was repealed by act of Jan. 24, 1934, 48 Stat. 334, ch. 4, § 28.

EFFECTIVE DATE

Act of March 3, 1925, 43 Stat. 1126, ch. 443, § 17, provided as follows:

"SEC. 17. (a) The following provisions of this act shall take effect sixty days after its enactment: Sections 7 (§ 40–301) and 8 (§ 40–303) and subdivision (a) of section 16 (§ 40–614).

"(b) Except as provided in subdivision (a) of this section and in subdivision (b) of section 6 (§ 40–603), the provisions of this act shall take effect upon its enactment."

§ 40–615 [6: 253]. Separability of provisions.

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the chapter and the applicability of such provision to other persons and circumstances

shall not be affected thereby. (Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 18.)

COMPILER'S NOTE

"This chapter" referred to in this section will be found in sections 40–301 to 40–303, 40–601 to 40–603, 40–605, 40–609 to 40–615, and as amendments to sections 11–601, 11–616, 11–617, 11–621, 11–623, and 11–1407.

§ 40–616. Parking meters.

The Commissioners of the District of Columbia are hereby authorized and empowered, in their discretion, to secure and to install experimentally, at no expense to the said District, mechanical parking meters or devices on the streets, avenues, roads, highways, and other public spaces in the District of Columbia under the jurisdiction and control of said commissioners, such installations to be limited to a linear footage not to exceed the total of the perimeters of four normally sized squares in such District; and said commissioners are authorized and empowered to make and enforce rules and regulations for the control of the parking of vehicles on such streets, avenues, roads, highways, and other public spaces, and as an aid to such regulation and control of the parking of vehicles the commissioners may prescribe fees for the privilege of parking vehicles where said meters or devices are installed.

The Commissioners are further authorized and empowered to pay the purchase-price and cost of installation of the said meters or devices from the fees collected, which are hereby appropriated for such purpose, for the fiscal years 1938 and 1939, and thereafter such meters or devices shall become the property of said District, and all fees collected shall be paid to the collector of taxes for deposit in the treasury of the United States to the credit of the revenues of said District. (April 4, 1938, 52 Stat. 192, ch. 62, § 11.)

COMPILER'S NOTE

This section is not part of the Traffic Act of 1925 (act of Mar. 3, 1925, 43 Stat. 1119, ch. 443) and therefore is not included in the term "this chapter" as used elsewhere herein.

CROSS REFERENCES

Additional parking meters and devices, see § 40–804 (e). Use of fees collected, see § 40–808.

Rules and regulations generally, § 40–603 and notes.

§ 40–617 [6: 254]. Loitering by public cabs.

The loitering of public cabs and hacks or vehicles of all descriptions around or in front of the hotels, theaters, or public buildings in the District of Columbia, either by stopping, except to take on or discharge a passenger, or unnecessarily slow driving, is hereby prohibited, and any driver of any such cab or hack who wilfully causes the same to loiter either by stopping or slow driving as aforesaid shall be deemed guilty of a misdemeanor and punished in the police court of the District of Columbia by a fine of not less than $10 nor more than $40 for such offense. The Commissioners of the District of Columbia are hereby authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this section, and are hereby given authority to revoke the license of the driver of any public hack or cab who is convicted of a violation of this section. (July 11, 1919, 41 Stat. 104, ch. 7, § 12.)

COMPILER'S NOTE

This section is not part of the Traffic Act of 1925 (act of Mar. 3, 1925, 43 Stat. 1119, ch. 443) and is therefore not included in the term "this chapter" as used elsewhere herein.

CROSS REFERENCE

Power of Commissioners to locate hackstands, §§ 1–221, 1–222.

NOTES TO DECISIONS

POLICE REGULATIONS

This section supersedes police regulation, art. 4, § 8, adopted April 1918. *Willis* v. *District of Columbia* (54 App. D. C. 191, 295 Fed. 1012).

PUBLIC STREET

As the space upon which the cab was standing at the time of the arrest of its driver is stipulated to have been the private property of the Washington Terminal Company, by whose authority and permission he was there, it follows that he was not then upon any public street or avenue, and consequently his presence there did not fall within the purview of an act directed against the improper use of public streets and avenues. *Reamy* v. *District of Columbia* (50 App. D. C. 359, 273 Fed. 323).

TAXICABS AT HOTELS

This section does not apply to a taxicab stationed near a hotel which was for the exclusive use of the hotel and its guests, as the cab was under jurisdiction of the Public Utilities Commission and not of the District Commissioners. *Bell* v. *District of Columbia* (50 App. D. C. 351, 273 Fed. 315); *Parker* v. *District of Columbia* (50 App. D. C. 356, 273 Fed. 320).

Chapter 7.—LIENS ON MOTOR VEHICLES OR TRAILERS

Sec.
40–701. Definitions.
40–702. Lien to appear on certificate of title—Effect of other liens.
40–703. Entry of lien—Priority.
40–704. Entry of lien—Form and requirements of instrument creating lien—When lien not entered.
40–705. Liens to be kept by recorder in director's office.
40–706. Liens shown by application for certificate—Entry of lien—Collection of fees—Absence of liens to be shown—Certificate to holder of first lien.
40–707. Entry of lien on previously issued certificate.
40–708. Assignment of lien—Form and requirement of assignment—Entry and recording of assignment—Certificate to holder of first lien.
40–709. Entry of lien or assignment where certificate is not available—Recorder to obtain certificate.
40–710. Possession of certificate—Satisfaction of liens.
40–711. Satisfaction of lien—Duties of recorder—Procedure when certificate lost.
40–712. Fees.
40–712a. Fee for releasing liens.
40–713. Recording liens, place and method.
40–714. False statements as to liens, violations of law, penalties.
40–715. Appropriation.

§ 40–701. Definitions.

"Person" shall include one or more individuals, firms or unincorporated associations, or corporations.

"Director" shall mean the director of vehicles and traffic of the District of Columbia, including assistants or agents duly designated by the commissioners.

"Recorder" shall mean the recorder of deeds of the District of Columbia, including assistants or agents duly designated by the recorder.

"Certificate" shall mean a certificate of title for a motor vehicle or trailer issued by the director.

"Owner" shall mean the person to whom such certificate is issued by the director.

"Lien" shall mean any right or interest in or to, or lien or encumbrance upon any motor vehicle or trailer, or the equipment or accessories affixed or sold to be affixed thereto, in favor of a person other than the owner, except (1) a sale of such motor vehicle or trailer accompanied by delivery of possession and on execution of the assignment on the back of the certificate covering it, or (2) any possessory lien now or hereafter provided by law or any lien acquired in any judicial proceeding.

"Instrument" shall mean any written instrument signed and acknowledged by an owner creating such lien.

"Lien information" shall mean the amount, kind, date of lien, name and address of holder, and recorder's record number, if any. (July 2, 1940, 54 Stat. 736, ch. 527, § 1.)

§ 40–702. Lien to appear on certificate of title—Effect of other liens.

During the time a certificate is outstanding for any motor vehicle or trailer, no lien against such motor vehicle or trailer or any equipment or accessories affixed or sold to be affixed thereto shall be valid except as between the parties and as to other persons having actual notice, unless and until entered on such certificate as hereinafter set forth: *Provided,* That the foregoing shall not apply to a lien or liens in existence on January 1, 1940, against a motor vehicle or trailer for which a certificate is outstanding at the effective date of this chapter, or any equipment or accessories affixed thereto. The provisions of §§ 42–101 to 42–103, of the Code of Laws of the District of Columbia shall not apply to liens recorded as herein provided and a lien shall have no greater validity or effect during the time a certificate is outstanding for the motor vehicle or trailer covered thereby by reason of the fact that the lien has been filed in accordance with said sections or, in case of a conditional sales contract, that the purchase price of the property does not exceed $100. (July 2, 1940, 54 Stat. 736, ch. 527, § 2.)

§ 40–703. Entry of lien—Priority.

In the absence of agreement of all parties affected and in the absence of circumstances estopping a lienholder from insisting upon such rights, lien shall be entered on the certificate by the recorder and shall have priority among themselves in the following order:

(a) If the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction, unsatisfied liens shown by the previous certificate, title, registry, or proof of ownership shall be entered in the order in which they appear on such previous certificate, title, registry, or proof of ownership.

(b) Liens for which instruments are presented with the application for the certificate.

(c) Liens, where the instruments are presented for recording, together with the certificate, irrespective of the fact that one or more instruments not entered on the certificate may have been previously presented for recording without such certificate.

(d) As between two or more instruments presented for recording without the certificate, the one first presented for recording shall have priority. (July 2, 1940, 54 Stat. 737, ch. 527, § 3.)

§ 40–704. Entry of lien—Form and requirements of instrument creating lien—When lien not entered.

An instrument shall be in writing; shall show the name and address of the holder, the trade name and engine number of the motor vehicle or the trade name and serial number, if any, of the trailer; shall be signed by the parties and acknowledged by the owner in the manner provided by law for deeds of real estate. A lien shall not be entered upon a certificate unless (1) the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction and the lien is shown upon such previous certificate, title, registry, or proof of ownership; or (2) such an instrument is presented for recording pursuant to the provisions of this chapter; or (3) the lien is shown on the application for a certificate, and was created prior to January 1, 1941, or was created while the motor vehicle or trailer was titled or registered in some other jurisdiction. (July 2, 1940, 54 Stat. 737, ch. 527, § 4.)

§ 40–705. Liens to be kept by recorder in director's office.

The Commissioners of the District of Columbia shall assign to the recorder space in the office of the director, and the recorder shall furnish and maintain the necessary furniture, equipment, cards hereinafter mentioned, and other supplies and the required personnel for the purpose of carrying out the provisions of this chapter. (July 2, 1940, 54 Stat. 737, ch. 527, § 5.)

§ 40–706. Liens shown by application for certificate—Entry of lien—Collection of fees—Absence of liens to be shown—Certificate to holder of first lien.

Applications for certificates, in addition to all other matters which may be required by law, shall show under oath whether or not there are any liens against the motor vehicle or trailer or any equipment or accessories affixed thereto and if so, the lien information in the order of its priority, and shall be accompanied by instruments or any other papers necessary to entitle liens to be entered on the certificate. Upon receipt by the recorder from the director of an application for a certificate and accompanying documents, if any, or on the application for a duplicate, the recorder shall compare the statements in the application as to liens with his records and the documents and instruments accompanying the application and if such statements are incorrect or incomplete or if any of the liens shown by the application are not entitled to be entered on the certificate in the same order as they appear on the application the recorder shall return all of said papers to the director and advise him of the reasons therefor. If the statements as to liens are full, true, and complete and all liens shown by the application are entitled to be entered

on the certificate in the same order as they appear on the application, the recorder shall stamp on the application the words, "Statements as to liens in accordance with records," a facsimile of his signature, and the date, shall accept all instruments accompanying the application for recording and shall stamp his record number opposite the statement of each lien on the application for certificate. The recorder shall retain the instruments for his permanent file and collect the fees and charges thereon and return the application and all other papers to the director, who shall thereupon deliver same to a representative of the collector of taxes of the District of Columbia, stationed in the office of the director. Said representative shall then collect from the applicant or his representative all fees and charges in connection with the issuance of the certificate and shall return said application and papers to the director. The director shall thereupon issue the certificate and where liens are shown on such an application shall stamp upon each of two cards, the size of which shall be fixed by the director, the information stamped by the director on the face of such certificate and shall deliver such certificate, its application, cards, if any, and the identification-tag application to the recorder. If the application for title shows no liens, the recorder shall stamp on the certificate and on the reverse side of that portion of the application for identification tags known as "Collector's Coupon" the words "No Liens Shown By Records" and the date. If the application shows liens, the recorder shall stamp aforesaid "Collector's Coupon" with the words "Lien Recorded" and shall enter the lien information on certificate and on each of the said cards. The aforesaid stamping and entering shall be made on the face of the certificate in the space provided for the use of the recorder. The recorder shall then deliver both applications and the papers attached and the certificate to the director, who shall retain the application and the papers attached and shall deliver or mail the certificate to the record holder of the first lien shown thereon or his representative; or if there are no liens, then to the owner or his representative. (July 2, 1940, 54 Stat. 737, ch. 527, § 6.)

§ 40–707. Entry of lien on previously issued certificate.

When it is desired to have a lien entered on a certificate theretofore issued, the instrument and the certificate shall be presented to the recorder in the office of the director and upon the payment of the necessary fees to the representative of the recorder of deeds of the District of Columbia in the office of the director the recorder shall accept the instruments for recording and unless he has cards covering said motor vehicle or trailer the director shall stamp cards in the manner set forth in section 40–706. The recorder shall enter the lien information on the certificate in the space hereinbefore mentioned and on each of said cards and shall deliver or mail the certificate to the record holder of the first unsatisfied lien shown thereon or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 7.)

§ 40–708. Assignment of lien—Form and requirement of assignment—Entry and recording of assignment—Certificate to holder of first lien.

The rights of the holder of an unsatisfied lien shown on a certificate may be assigned by an assignment in writing, which shall show the name and address of the assignee, the trade name and engine number of the motor vehicle, or the trade name and serial number, if any, of the trailer, and the recorder's record number of the instrument, or, if none, a brief description sufficient to identify the lien shall be signed by the holder of the lien and acknowledged by him in the manner provided by law for deeds of real estate. Upon presentation of an assignment and a certificate and the payment of the prescribed fee to the representative of the recorder of deeds of the District of Columbia in the office of the director, the recorder shall enter upon the face of the certificate and upon each of the cards hereinbefore described the recorder's record number of the lien which is being assigned, or, if no such instrument is on file, a brief description sufficient to identify the lien, the date of the assignment and the words, "Assigned to," and the name and address of the assignee, and the date. The assignment shall be attached to the instrument if the instrument has been filed with the recorder, and, if not, the assignment shall be given a recorder's record number and filed by the recorder and such number shall be entered on the certificate and on each of the cards opposite the entry of the information relative to the assignment. The certificate shall be delivered to the record holder of the first unsatisfied lien shown thereon, or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 8.)

§ 40–709. Entry of lien or assignment where certificate is not available—Recorder to obtain certificate.

Whenever it is desired to enter a lien or an assignment upon a certificate and such certificate is not available, upon delivery to the recorder of the instrument or assignment the recorder shall demand that the person possessing the certificate surrender it for the purpose of entering thereon the lien or the assignment and upon surrender of the certificate the recorder shall perform the same acts as in cases where the certificate was presented with the instrument. This section shall not be deemed to affect the priority given under section 40–703 (c) to a lien where the instrument is presented together with the certificate. (July 2, 1940, 54 Stat. 739, ch. 527, § 9.)

§ 40–710. Possession of certificate—Satisfaction of liens.

The record holder of the first unsatisfied lien shown upon the certificate shall be entitled to the possession of the certificate and upon satisfaction of his lien he shall, within seventy-two hours, place upon the face of the certificate the recorder's record number of the lien, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "satisfied," or its equivalent, and his signature, swear to it before a notary public, and forward or deliver the certificate to the holder of the lien next in priority, or, if none, to the owner or to the person designated in writing by the owner.

Upon the satisfaction of any lien other than the first unsatisfied lien shown on the certificate, the record holder of the lien so satisfied shall, within seventy-two hours, make similar entries upon the face of the certificate, and it shall be the duty of the person in possession of the certificate, upon demand, to permit such holder to make said entries. Any person in possession of a certificate shall, upon demand of the recorder, surrender it to the recorder within seventy-two hours for the purpose of entering the lien or assignment thereon. (July 2, 1940, 54 Stat. 739, ch. 527, § 10.)

§ 40–711. Satisfaction of lien—Duties of recorder—Procedure when certificate lost.

The recorder, upon receipt of a certificate whereon a lien is marked "Satisfied" as set forth in § 40–710, shall enter on the face of the certificate and on each of the cards described in § 40–706, and on the instrument, if any, filed in the recorder's office as hereinafter provided, his said record number, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "released," a facsimile of his signature and the date. Where for any reason a lien-holder upon satisfaction of his lien has failed to mark the certificate as herein provided and the lien-holder cannot be located, or where the certificate after being so marked has been lost or destroyed and a duplicate certificate issued, the recorder upon receipt of evidence satisfactory to him that the lien has been satisfied shall release it upon the certificate or duplicate certificate, the aforesaid cards and instrument, if any, as above set forth. (July 2, 1940, 54 Stat. 739, ch. 527, § 11.)

§ 40–712. Fees.

The fee for recording liens or assignments of liens upon a certificate shall be the sum of $1 for each lien or assignment of lien on each motor vehicle or trailer contained in the instrument, which fee shall include the charge for recording the release of such lien. (July 2, 1940, 54 Stat. 739, ch. 527, § 12; Dec. 15, 1945, 59 Stat. 610, ch. 578; June 19, 1948, 62 Stat. 493, ch. 522, § 1.)

AMENDMENTS

Act June 19, 1948, increased the recording fee of liens and assignments from 50 cents to $1 on "each motor vehicle or trailer" rather than each "automobile." The words "there shall be no fee for releasing" were deleted.

Act Dec. 15, 1945, cited to text, amended section by inserting "or assignment or release of lien" following "for each lien" and by deleting second sentence which read "There shall be no fee for releasing."

§ 40–712a. Fee for releasing liens.

Notwithstanding the provisions of section 40–712, there shall be a fee of 50 cents for recording the release of a lien which is recorded under the provisions of this chapter, prior to June 19, 1948, and no assignment of which is recorded under the provisions of this chapter after June 19, 1948. (June 19, 1948, 62 Stat. 493, ch. 522, § 2.)

§ 40–713. Recording liens, place and method.

The recorder shall maintain, in the space assigned to him in the office of the director, files wherein he shall file one set of the cards hereinbefore described alphabetically under the name of owner and the other under the trade name and engine number if it covers a motor vehicle, or the trade name and serial number, if any, if it covers a trailer. The recorder shall file the instruments at his main office. (July 2, 1940, 54 Stat. 739, ch. 527, § 13.)

§ 40–714. False statements as to liens, violations of law, penalties.

Any person intentionally making a false statement with respect to liens in an application for a certificate, or wilfully violating any of the provisions of this chapter, shall upon conviction be punished by a fine of not more than $500 or be imprisoned for not more than one year, or both. Prosecutions for violations of this chapter shall be by the corporation counsel of the District of Columbia or any of his assistants, in the name of the District of Columbia. (July 2, 1940, 54 Stat. 739, ch. 527, § 14.)

NOTES TO DECISIONS

DUPLICATE CERTIFICATES

Section 706 of this title and this section relating to certificates of title apply to duplicate as well as original certificates. *Shelton* v. *U. S.* (App. D. C. 1948, 165 F. 2d 241).

NUMBER OF OFFENSES

One making two false statements, one violating the general perjury statute, § 22–2501, and the other violating this section, commits two offenses, though both statements are under one oath. *Shelton* v. *U. S.* (App. D. C. 1948, 165 F. 2d 241).

PROSECUTION BY CORPORATION COUNSEL

The making of false statement of lien under oath in application for certificate or duplicate certificate of title for motor vehicle in the District of Columbia must be prosecuted by corporation counsel in the name of the District of Columbia, under this section, rather than by the United States attorney in the name of the United States under the general perjury statute, § 22–2501. *Shelton* v. *U. S.* (App. D. C. 1948, 165 F. 2d 241).

REVERSAL

Where counts charging perjury were merged and it could not be determined upon which false statement in application for certificate of title the jury rested its general verdict, but verdict if upon statement as to liens would not support sentence, judgment of conviction was subject to reversal. *Shelton* v. *U. S.* (App. D. C. 1948, 165 F. 2d 241).

§ 40–715. Appropriation.

Appropriation is hereby authorized to be made to carry out the provisions of this chapter, and the commissioners of the District of Columbia are authorized to include in their annual estimates provision for all the expenses of the office of the director and recorder incident to such purposes, and for personnel subject to the limitations of the Classification Act of 1923 (U. S. C., title 5, § 673). (July 2, 1940, 54 Stat. 740, ch. 527, § 15.)

COMPILER'S NOTE

Section 16 of the act approved July 2, 1940, 54 Stat. 740, ch. 528, provided as follows: "The provisions of this act shall become effective January 1, 1941. Nothing herein contained shall affect existing liens on motor vehicles and trailers, or any equipment or accessories affixed thereto recorded prior to the effective date of this act."

Chapter 8.—REGULATION OF PARKING

Sec.
40–801. Short title.
40–802. Findings and declaration of necessity.
40–803. Definitions.
40–804. Commissioners' powers — Acquisition of property—Construction and maintenance—Leasing to private interests—Disposal of property—Establishment of rates—Miscellaneous rules and regulations—Parking meters.
40–805. Motor-Vehicle Parking Agency—Creation and composition—Term—Powers.
40–806. Establishment of parking facilities.
40–807. Records and data available—Additional surveys.
40–808. Disposition of fees and moneys collected.
40–809. Appropriations—Employment of director—Salaries of employees—Salaries of members of agency.
40–810. Parking restrictions—Vehicles impounded—Penalties.
40–811. Same—United States public buildings and property—Regulations—Penalties.

§ 40–801. Short title.

This chapter may be cited as the "District of Columbia Motor Vehicle Parking Facility Act of 1942." (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 10.)

SAVING CLAUSE

Section 9 of act Feb. 16, 1942, cited to text, provided as follows: "If any provision of this Act, or the application thereof to any person or circumstances, shall be held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

CROSS REFERENCES

District of Columbia Traffic Act, see §§ 40–601 to 40–617.

§ 40–802. Findings and declaration of necessity.

It is hereby declared that the free circulation of traffic of all kinds through the highways of the District is necessary to the health, safety, and general welfare of the public, whether residing in said District, or traveling to, through, or from said District in the course of lawful pursuits; that in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the highways of the District; that the parking of motor vehicles on the highways of the District has contributed to this congestion to such an extent as to interfere seriously with the primary use of such highways for the movement of traffic; that such parking prevents the free circulation of traffic in, through, and from said District impedes rapid and effective fighting of fires and the disposition of police forces in the District, threatens irreparable loss in valuations of property in the District, which can no longer be readily reached by vehicular traffic, and endangers the health, safety, and welfare of the general public; that this parking nuisance can be reduced by providing sufficient off-street parking facilities conveniently located in the several residential, commercial, industrial, and governmental areas of the District; that adequate off-street parking facilities have not been provided by private enterprise; that it may be necessary to supplement private parking spaces by off-street parking facilities provided by public undertaking; and that the enactment of this chapter, as well as the use of land for the purposes set forth in this chapter, is hereby declared to be a public necessity. (Feb. 16, 1942, 56 Stat. 90, ch. 76, § 1.)

SAVING CLAUSE

See note under § 40–801.

CROSS REFERENCES

Regulations and enforcement for control of vehicles. see § 8–109.

§ 40–803. Definitions.

That, when used in this chapter, unless the context indicates otherwise—

The term "District" means the District of Columbia.

The term "Commissioners" means the Commissioners of the District of Columbia.

The term "agency" means the Motor Vehicle Parking Agency created in section 40–805.

The term "parking facilities" means one or more public off-street parking areas for motor vehicles, including necessary structures. (Feb. 16, 1942, 56 Stat. 91, ch. 76, § 2.)

SAVING CLAUSE

See note under § 40–801.

§ 40–804. Commissioners' powers — Requisition of property—Construction and maintenance—Leasing to private interests—Disposal of property—Establishment of rates—Miscellaneous rules and regulations—Parking meters.

The Commissioners, within the limits of appropriations by Congress therefor, are authorized to exercise all powers necessary and convenient to carry out the purposes of this chapter, the said purposes being hereby declared to be the acquisition, creation, and operation, in any manner hereinafter provided, under public regulation, of public off-street parking facilities in the District as a necessary incident to insuring in the public interest the free circulation of traffic in and through said District. Such powers shall include, but shall not be limited to, the powers hereinafter enumerated:

(a) The power to acquire any property, real or personal, or any interest therein, by purchase, lease, gift, bequest, devise, or grant, or by condemnation under the provisions of sections 16–601, 16–602, 16–604, 16–606 to 16–611 in any area of the District as to which the agency shall have made a determination that public parking facilities are necessary or expedient. Before acquiring any area for parking facilities the Commissioners shall request the National Capital Park and Planning Commission for its recommendations and it shall be the duty of said Commission to report thereon within thirty days of such request.

(b) The power to undertake, by contract or otherwise, the clearance and improvement of any such property as well as the construction, establishment, reconstruction, alteration, repair, maintenance, and operation thereon of parking facilities; to contract, by lease or otherwise, with competitive bidding, with any individual, firm, association, or corporation, private or public, for the operation of any parking facilities for such period, not exceeding five years, as the Commissioners shall determine, and to ter-

minate, without prior notice, any contract in the event of any failure or omission of any party thereto to observe or enforce the rules or schedules of rates made under authority of paragraph (d) of this section. The words "such property" in this paragraph shall include, in addition to property acquired under this chapter, any other property, heretofore or hereafter acquired by the District, until needed for the purpose for which it was acquired, or if no longer needed for the purpose for which it was acquired, or upon which parking facilities may be established without impairing its use for the purpose for which it was acquired: *Provided,* That in each case the agency shall have made a determination that parking facilities thereon are necessary or expedient. Before establishing any parking facilities upon the property not acquired under authority of this chapter, the Commissioners shall request the National Capital Park and Planning Commission for its recommendations and it shall be the duty of said Commission to report thereon within thirty days of such request.

(c) The power to sell, exchange, transfer, or assign any property, real or personal, or any interest therein, acquired under authority of this chapter, whether or not improved: *Provided,* That such action shall be in accordance with the general law covering the disposal of such property by the District of Columbia: *Provided further,* That the agency shall have first determined such property to be no longer necessary for the purposes of this chapter.

(d) The power to establish and from time to time to revise, with or without public hearings, uniform schedules of rates to be charged for use of space in each such parking facility; to provide rate differentials between said parking facilities for such reasons as the amount of space occupied, the location of the facility, and other reasonable differences; and to prescribe and promulgate such rules and regulations for the carrying out of the provisions of this chapter as may be necessary to keep said parking facilities subject at all times to public regulation, and to insure the maintenance and operation of such parking facilities in a clean and orderly manner and in such a manner as to provide efficient and adequate service to the public. The rates to be charged for parking of motor vehicles within said parking facilities shall be fixed at the lowest possible rates, consistent with the achievement of the purposes of this chapter, that will defray the cost of maintaining, operating, and administering the parking facilities; liquidate within such time as the Commissioners shall determine the cost of acquiring and improving the required property for parking-facility purposes; and provide for the acquisition and improvement of other necessary parking facilities, but without any purpose of obtaining for the District any profit or surplus revenue from the operation of said parking facilities. There shall be no discrimination in rates or privileges among the members of the public using said parking facilities.

(e) The power to secure and install mechanical parking meters or parking devices on the streets, avenues, roads, highways, and other public spaces in the District under the jurisdiction and control of the said Commissioners, in addition to those mechanical parking meters and devices installed pursuant to the authority conferred on the said Commissioners by section 40–616, such meters or devices to be located at such points as the Commissioners may determine, and the said Commissioners are authorized and empowered to make and enforce rules and regulations for the control of parking of vehicles on such streets, avenues, roads, highways, and other public spaces, and as an aid to such regulation and control of the parking of vehicles the Commissioners may prescribe fees for the parking of vehicles where meters or devices are installed.

(f) The power to lease on competitive bids for terms not exceeding fifty years, any property acquired pursuant to this chapter, or any other property heretofore or hereafter acquired by the District if no longer needed for the purpose for which it was acquired, and to stipulate in any such lease that the lessee shall erect at his or its expense a structure or structures on the land leased, which structure or structures and property shall be used, maintained, and operated for the purposes of this chapter, including purposes incidental thereto, subject to regulation as provided in paragraph (d) of this section, except that the rates for use of space in parking facilities covered by any such lease shall be fixed and regulated by the Commissioners so as to allow to the lessee a fair return, as fixed by the Commissioners, on the cost of such structure or structures, together with an amount sufficient to amortize within the term of any such lease the cost of such structure or structures. Every such lease shall be entered into upon such terms and conditions as the Commissioners shall impose including, but not limited to, requirements that such structure or structures shall conform with plans and specifications approved by the Commissioners, that such structure or structures shall become the property of the District upon termination or expiration of any such lease; that the lessee shall furnish security in the form of a penal bond or otherwise to guarantee fulfillment of his or its obligations, and any other requirement which, in the judgment of the Commissioners, shall be related to the accomplishment of the purposes of this chapter. (As amended Feb. 16, 1942, 56 Stat. 91, ch. 76, § 3; Dec. 16, 1944, 58 Stat. 808, ch. 595, § 1; June 19, 1948, 62 Stat. 565, ch. 559.)

AMENDMENTS

The act of Dec. 16, 1944, cited to text, amended subsection (b) by adding the last three sentences.

Act June 19, 1948, cited to text, added subsection (f).

SAVING CLAUSE

See note under § 40–801.

CROSS REFERENCES

Jurisdiction and control of street parking, see § 8–110.

NOTES TO DECISIONS

ESTOPPEL

Appellant's contention, that, by placing the sign upon the meters the District is estopped to urge that Saturday afernoon is not a holiday within the meaning of the traffic regulation, is unfounded since the principle of estoppel generally does not apply to a city or a state when acting in its governmental capacity. *Doing* v. *District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 396).

PARKING REGULATIONS

Where appellant was convicted for illegal parking on Saturday afternoon and controversy arose by reason of fact that parking meter bore sign limiting parking to one hour, except on Sundays and holidays, his contention that Saturday afternoon was a legal holiday is without merit because Saturday is not a holiday under the statute or regulations issued thereunder. *Doing* v. *District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 396).

PRESUMPTION

The presumption that everyone is presumed to know the law applies to traffic regulations just as it does to statutes. *Doing* v. *District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 396).

§ 40–805. Motor-Vehicle Parking Agency—Creation and composition—Term—Powers.

There is hereby created a motor-vehicle parking agency consisting of seven members, namely, a representative of the Federal Works Agency, to be designated by the Administrator thereof; a representative of the National Park Service, to be designated by the Secretary of the Interior; a representative of the Department of Vehicles and Traffic of the District, to be designated by the Commissioners, and four other members, each of whom shall have been a bona fide resident of the District for at least three years immediately preceding his appointment, to be appointed by the Commissioners, without regard to race or creed. The Secretary of the Interior, the Federal Works Administrator, and the Commissioners may from time to time, in their discretion, change their respective designates in office, and they shall name new designates to fill any vacancies caused by the death, resignation, or other inability to serve, of their respective designates in office. The terms of the other four members of the agency shall be four years each, except that in the case of the initial appointments, one shall be for a term of one year, one for a term of two years, and one for a term of three years. In the case of any vacancy in the position of the members appointed for definite terms the same shall be filled for the remainder of the term. The said agency shall perform the duties imposed upon it by this chapter and such other duties as the Commissioners may assign to it. The Commissioners are authorized to delegate to the agency any or all of the powers vested in the said Commissioners by this chapter, except the powers set forth in paragraphs lettered (a) and (c) in section 40–804. The Commissioners are also authorized to delegate to the agency any or all of the powers vested in said Commissioners by sections 1 and 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to provide for the parking of automobiles in the Municipal Center", approved June 6, 1940. (Feb. 16, 1942, 56 Stat. 92, ch. 76, § 4, Dec. 16, 1944, 58 Stat. 808, ch. 595, § 2.)

REFERENCES IN TEXT

An Act to authorize the Commissioners of the District of Columbia to provide for the parking of automobiles in the Municipal Center refers to Act June 6, 1940, 54 Stat. 241, ch. 253.

AMENDMENTS

The act of Dec. 16, 1944, cited to text, amended section by adding last sentence.

SAVING CLAUSE

See note under § 40–801.

§ 40–806. Establishment of parking facilities.

Parking facilities may be established in any section or portion of the District except that no parking facilities shall be established upon any property zoned residential without the approval of the Zoning Commission of the District. The Zoning Commission may grant such approval only after public notice and hearing in accordance with section 5–415. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 5.)

SAVING CLAUSE

See note under § 40–801.

§ 40–807. Records and data available—Additional surveys.

The National Capital Park and Planning Commission and the Highway Planning Survey Unit shall make available such records and factual data and make such additional surveys as the Commissioners or the agency may deem necessary to carry out the purposes of this chapter. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 6.)

SAVING CLAUSE

See note under § 40–801.

§ 40–808. Disposition of fees and moneys collected.

All fees and other moneys collected under this chapter, including all fees collected pursuant to section 40–616, and the Act entitled "An Act to authorize the Commissioners of the District of Columbia to provide for the parking of automobiles in the Municipal Center", approved June 6, 1940, and all moneys derived from the sale or assignment of any property, real or personal, shall be deposited in a special account in the Treasury of the United States entirely to the credit of the District of Columbia and shall be appropriated and used solely and exclusively for the purposes set forth in this chapter, including the reimbursement of the highway fund of the District for any moneys advanced therefrom to carry out the purposes of this chapter. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 7; Dec. 16, 1944, 58 Stat. 809, ch. 595, § 3.)

REFERENCES IN TEXT

An Act to authorize the Commissioners of the District of Columbia to provide for the parking of automobiles in the Municipal Center refers to Act June 6, 1940, 54 Stat. 241, ch. 253.

AMENDMENTS

The act of Dec. 16, 1940, cited to text, amended section by adding "and the Act * * * June 6, 1940" following "section 40–616".

SAVING CLAUSE

See note under § 40–801.

PARKING METER FEES

The following District of Columbia Appropriation Acts provided that the fees from parking meters should be deposited to the credit of the highway fund:

1951—July 18, 1950, ch. 467, § 1, 64 Stat. 467.
1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
1949—June 19, 1948, ch. 555, § 1, 62 Stat. 553.
1948—July 25, 1947, ch. 324, § 1, 61 Stat. 443.
1947—July 9, 1946, ch. 544, § 1, 60 Stat. 518.
1946—June 30, 1945, ch. 209, § 1, 59 Stat. 289.
1945—June 28, 1944, ch. 300, § 1, 58 Stat. 526.
1944—July 1, 1943, ch. 184, § 1, 57 Stat. 338.
1943—June 27, 1942, ch. 452, § 1, 56 Stat. 451.
1942—July 1, 1941, ch. 271, § 1, 55 Stat. 528.

§ 40–809. Appropriations—Employment of director—Salaries of employees—Salaries of members of agency.

Appropriations from the highway fund of the District are hereby authorized to carry out the provisions of this chapter for the fiscal year ending June 30, 1942, and thereafter the Commissioners are authorized and directed to include in their annual estimates such amounts as may be required from said highway fund and the fund created by this chapter for the purpose of carrying out the provisions of this chapter, including the payment of salaries and necessary administrative expenses. The Commissioners are authorized to employ a director and such other personal services as may be necessary to carry out the provisions of this chapter, and the salaries of such employees, other than members of said agency, are to be fixed in accordance with the provisions of the Classification Act of 1923, as amended (U. S. C., Title 5, §§ 661–663, 664–673, and 674). The Commissioners shall fix the compensation of the members of said agency without reference to the provisions of the Classification Act (U. S. C., Title 5, §§ 661–663, 664–673, and 674): *Provided, however,* That the compensation of any members shall not exceed $500 per annum: *And provided further,* That no compensation for services as a member of such agency shall be provided for any member who holds a salaried public office or position, in the District of Columbia or the Federal Government. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 8.)

SAVING CLAUSE

See note under § 40–801.

§ 40–810. Parking restrictions—Vehicles impounded—Penalties.

It shall be unlawful to park, store, or leave any vehicle of any kind, whether attended or not, or for the owner of any vehicle of any kind to allow, permit, or suffer the same to be parked, stored, or left, whether attended or not, upon any public or private property in the District of Columbia, other than public highways, without the consent of the owner of such public or private property and the Commissioners of the District of Columbia, and their designated agent or agents, are authorized to remove and impound any vehicle parked, stored, or left in violation of this section and section 40–811 and to keep the same impounded until the owner thereof, or other duly authorized person, shall deposit collateral for his appearance in court to answer for such violation, the amount of such collateral to be fixed by the Commissioners in an amount not to exceed $25. Whoever violates the provisions of this section and section 40–811 shall be punished by a fine of not more than $25. Prosecutions for violations of the provisions of this section shall be in the police court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants. In any prosecution under this section, proof that a vehicle was parked, stored, or left on public or private property shall be prima facie evidence that the vehicle was so parked, stored, or left without the consent of the owner of such public or private property. (Jan. 15, 1942, 56 Stat. 5, ch. 4, § 1.)

SAVING CLAUSE

Section 3 of act Jan. 15, 1942, cited to text, provided as follows: "Should any provisions of this Act be declared by the courts to be unconstitutional or invalid, the validity of the Act as a whole or any part thereof, other than the part declared to be unconstitutional or invalid, shall not be affected."

CODIFICATION

This section and section 40–811 are not part of the "Motor Vehicle Parking Facility Act of 1942" which constitutes this chapter.

CROSS REFERENCES

Jurisdiction and control of street parking, see § 8–110.
Regulation and enforcement for control of vehicles, see § 8–109.

§ 40–811. Same—United States public buildings and property—Regulations—Penalties.

Nothing contained in this section and section 40–810 shall be construed to interfere with the charge and control committed to the Federal Works Administrator, acting through the Commissioner of Public Buildings, over the public buildings and property of the United States in the District of Columbia or any other officer charged with the custody and control of property of the United States in the District of Columbia and such officers with respect to such property, under their respective jurisdiction and control, are hereby authorized and empowered to make and enforce all regulations for the parking of vehicles upon the property of the United States in the District of Columbia (other than public highways), to remove and impound any vehicle, parked, stored, or left in violation of this section and section 40–810 and to keep the same impounded until the owner thereof, or other duly authorized person, shall deposit collateral for his appearance in court to answer for such violation, the amount of collateral to be fixed by the officer charged with the custody and control of property of the United States in the District of Columbia in an amount not to exceed $25. Violations of regulations for the parking of cars upon the property of the United States in the District of Columbia shall be subject to the penalties prescribed in section 40–810 and all prosecutions for the violations thereof shall be upon information filed by the United States attorney in the police court of the District of Columbia. (Jan. 15, 1942, 56 Stat. 6, ch. 4, § 2.)

SAVING CLAUSE

Saving clause, see note under § 40–810.

CODIFICATION

This section is not part of the "Motor Vehicle Parking Facility Act of 1942" which constitutes this chapter.

CROSS REFERENCES

Jurisdiction and control of street parking, see § 8–110.
Regulation and enforcement for control of vehicles, see § 8–109.

TITLE 41.—PARTNERSHIPS

Chap. Sec.

1. Limited partnerships 41–101
2. Dissolution and payment of debts 41–201

Chapter 1.—LIMITED PARTNERSHIPS

Sec.

41–101. Limited partnerships—For what purposes to be formed.
41–102. "General" and "special partners" defined.
41–103. Number of special partners.
41–104. Liability of special partners.
41–105. Certificate to be signed.
41–106. Acknowledgment and recording.
41–107. Affidavits to be filed.
41–108. Partnership not formed until certificate and affidavit filed.
41–109. False statements.
41–110. Publication.
41–111. Effect of failure to publish.
41–112. Affidavit as to publication.
41–113. Renewal of partnership.
41–114. General partnership to result from failure to properly renew.
41–115. What shall be a dissolution.
41–116. Effect of acts after dissolution.
41–117. Name to be used.
41–118. What names to be used in suits.
41–119. Effect of use in firm of name of special partner.
41–120. Who to transact business.
41–121. Withdrawal of capital.
41–122. Reduction of capital.
41–123. Assignment with preferences.
41–124. Special partner violating sections 41–122 and 41–123 liable as general partner.
41–125. Creditors to have preference over special partner.
41–126. Suits to be against general partners only, in what cases.
41–127. Suits against general and special partners may be prosecuted against general partners.
41–128. New suits against special partners after judgment against general partners.
41–129. Judgment prima facie evidence—Merger of partnership debt in judgment.
41–130. Voluntary dissolution.
41–131. Liability of the general partners.

§ 41–101 [23: 5]. Limited partnerships—For what purposes to be formed.

Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business within the District may be formed by two or more persons upon the terms, with the rights and powers, and subject to the conditions and liabilities prescribed in this chapter. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1498.)

§ 41–102 [23: 6]. "General and special partners" defined.

Such partnership may consist of one or more persons, who shall be called general partners and who shall be jointly and severally responsible as general partners are by law, and of one or more persons who shall contribute, in actual cash payments, a specific sum as capital to the common stock, who shall be called special partners. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1499.)

NOTES TO DECISIONS

LIABILITY

Persons who hold themselves out or knowingly permit others to hold them out as partners become bound as partners to all who deal with them in that apparent relation. *Orndorff* v. *Cohen* (D. C. Mun. App. 1948, 62 A. 2d 794).

§ 41–103 [23: 7]. Number of special partners.

The number of special partners shall in no partnership exceed six. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1500.)

§ 41–104 [23: 8]. Liability of special partners.

The special partners shall not be liable for the debts of the partnership beyond the fund contributed by them to the capital. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1501.)

§ 41–105 [23: 9]. Certificate to be signed.

Persons desirous of forming a limited partnership shall make and severally sign a certificate which shall contain—

First. The name of firm under which such partnership is to be conducted.

Second. The general nature of the business intended to be transacted.

Third. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners and their respective places of residence.

Fourth. The amount of capital which each special partner shall have contributed to the common stock.

Fifth. The period at which the partnership is to commence and the period at which it is to terminate. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1502.)

§ 41–106 [23: 10]. Acknowledgment and recording.

The certificate shall be acknowledged by the several persons signing the same before a judge of any court in the District, or before any notary public, and such acknowledgments shall be made and certified in the same manner as the acknowledgments of deeds of land, and when so acknowledged and certified shall be filed in the office of the clerk of the District Court of the United States for the District of Columbia, and shall be recorded by him at large in a book kept for that purpose, open to public inspection. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1503.)

§ 41–107 [23: 11]. Affidavits to be filed.

At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as directed in section 41–106 an affidavit of one or more of the general partners shall also be filed therewith in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid in cash. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1504.)

§ 41–108 [23: 12]. Partnership not formed until certificate and affidavit filed.

No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed, and recorded. nor until an affidavit shall have been made and filed, as directed by sections 41–105, 41–106 and 41–107. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1505.)

§ 41–109 [23: 13]. False statements.

If any false statement, not the result of accident or mistake, shall be made in the certificate or affidavit required by sections 41–105, 41–106, and 41–107, all the persons interested in the partnership shall be liable for all the engagements of such partnership as general partners. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1506.)

§ 41–110 [23: 14]. Publication.

The partners shall publish the terms of the partnership, when registered, three times a week for at least four weeks immediately after such registry in two newspapers to be designated by the clerk of the District Court of the United States for the District of Columbia, the first publication to appear within one week after the registry. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1507.)

§ 41–111 [23: 15]. Effect of failure to publish.

If the publication prescribed in section 41–110 be not made, the partnership shall be deemed general. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1508.)

§ 41–112 [23: 16]. Affidavit as to publication.

The affidavits of the publication of the notice required by section 41–110 by the editor or publishers of the newspapers in which the same shall have been published shall be filed with the clerk directing the same, and shall be prima facie evidence of the facts therein contained, the affidavit of any one editor or publisher of each newspaper being sufficient. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1509.)

§ 41–113 [23: 17]. Renewal of partnership.

Every renewal or continuance of a partnership beyond the time originally fixed for its duration shall be certified, acknowledged, and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner required by the provisions of this chapter for its original formation. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1510.)

§ 41–114 [23: 18]. General partnership to result from failure to properly renew.

Every partnership which shall be renewed and continued otherwise than as provided in this chapter shall be deemed a general partnership. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1511.)

§ 41–115 [23: 19]. What shall be a dissolution.

Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership. (Mar. 3, 1901, 31 Stat 1416, ch. 854, § 1512.)

§ 41–116 [23: 20]. Effect of acts after dissolution.

Every partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership under the provisions of section 41–113. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1513.)

§ 41–117 [23: 21]. Name to be used.

The business of the partnership may be conducted under the name of any one or more of the general partners, and with or without the addition of the word Co. or company, as the parties may determine. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1514.)

§ 41–118 [23: 22]. What names to be used in suits.

In any action or suit brought on any contract or engagement of the partnership, or to enforce any liability of the same, the general partners whose names shall be used in the firm or business shall be the only necessary defendants; and any judgment or decree recovered against such defendants shall have the same legal effect and operation and execution thereon shall be enforced and have like effect against the partnership assets as if the judgment or decree had been recovered against the general partners. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1515.)

CROSS REFERENCES

Parties to actions, § 13–401 and notes.
Partners as witnesses, § 14–304.

§ 41–119 [23: 23]. Effect of use in firm of name of special partner.

If the name of any special partner shall be used in the firm with his privity, he shall be deemed a general partner. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1516.)

§ 41–120 [23: 24]. Who to transact business.

The general partners only shall transact the business, and if a special partner shall interfere contrary to this provision he shall be deemed a general partner, but he may from time to time examine into the state and progress of the partnership concerns and advise as to their management. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1517.)

§ 41–121 [23: 25]. Withdrawal of capital.

No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits, or otherwise, during the continuance of the partnership, but any partner may annually receive lawful interest on the sum so contributed by him if the payment of such interest shall not reduce the original amount of such capital; and if after the payment of such interest any profits shall remain to be divided, he may also receive his portion of such profits. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1518.)

§ 41–122 [23: 26]. Reduction of capital.

If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to

make good his share of capital, with interest, on being notified thereof. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1519.)

§ 41–123 [23: 27]. Assignment with preferences.

Every sale, assignment, or transfer of any property or effects of a partnership, or of any general partner, made by such partnership or general partner when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of any general partner, with the intent of giving preference to any creditor of such partnership or insolvent partner, and every judgment confessed, lien created, or security given by such partnership or general partner under the like circumstances and with the like intent, shall be void as against the creditors of such partnership. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1520.)

§ 41–124 [23: 28]. Special partner violating sections 41–122 and 41–123 liable as general partner.

Every special partner who shall violate any of the provisions of sections 41–122 and 41–123 or who shall concur in or assent to any such violation by the partnership or by any individual partner, shall be liable as a general partner. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1521.)

§ 41–125 [23: 29]. Creditors to have preference over special partner.

In case of the insolvency or bankruptcy of a partnership no special partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership shall be satisfied. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1522.)

§ 41–126 [23: 30]. Suits to be against general partners only, in what cases.

All suits respecting the business of the partnership shall be brought by and against the general partners only, subject to the provisions of section 41–118, except in those cases in which provision is made in this chapter that special partners shall be deemed general partners and special partnerships general partnerships, in which cases all persons so becoming general partners may be joined with those originally general partners in any suit brought against such partnerships. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1523.)

CROSS REFERENCE

Parties to action, § 41–118 and notes.

NOTES TO DECISIONS

LIABILITY OF PARTNERS

Persons who hold themselves out or knowingly permit others to hold them out as partners become bound as partners to all who deal with them in that apparent relation. *Orndorff* v. *Cohen* (D. C. Mun. App. 1948, 62 A. 2d 794).

When liability of a partner must be predicated on the fact that one of them was held out by another as a partner, it must appear that the person so held out consented in fact to the holding out, or when the fact of the holding out came to his knowledge, he negligently failed to assert the non-existence of the partnership in time to prevent others from relying thereon. *Orndorff* v. *Cohen* (D. C. Mun. App. 1948, 62 A. 2d 794).

§ 41–127 [23: 31]. Suits against general and special partners may be prosecuted against general partners.

If, in any case or suit brought against general and special partners, it shall appear at the trial of the case that the special partners or any one of them are not liable to the suit of the plaintiff, the court may proceed to judgment or decree against the partners who may appear to be liable, in the same manner as if such partners were the only parties defendant to the suit, excepting that the partners who may be deemed not liable shall recover their legal costs against the plaintiffs. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1524.)

§ 41–128 [23: 32]. New suits against special partners after judgment against general partners.

If, in any case or suit brought against general and special partners, the creditor shall recover a judgment or obtain a decree against the general partners only, and shall afterward discover that special partners, or some one or more of them, have become liable as general partners, he may bring a new suit against such special partner or partners. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1525.)

§ 41–129 [23: 33]. Judgment prima facie evidence—Merger of partnership debt in judgment.

In the suits mentioned in sections 41–127 and 41–128 the judgment recovered shall be prima facie evidence of the amount due by the partnerships, and the partnership debt shall not be merged in any judgment or decree recovered or obtained against any partner or partners as against any other partner or partners. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1526.)

§ 41–130 [23: 34]. Voluntary dissolution.

No dissolution of such partnership by act of the partners shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, unless in consequence of the death of one of the partners or insolvency of the partnership or of one of the general partners, nor until a notice of such dissolution shall have been filed and recorded in the office of the clerk of the District Court of the United States for the District, and published once a week for four weeks in two newspapers to be designated by the clerk, which publication may be proved by affidavit, and recorded as hereinbefore prescribed for the publication of the certificate for the formation of such partnership. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1527.)

§ 41–131 [23: 35]. Liability of the general partners.

The general partners shall be liable to account to each other and to the special partners for the management of the concern, both at law and in equity. (Mar. 3, 1901, 31 Stat. 1418, ch. 854, § 1528.)

NOTES TO DECISIONS

RIGHT TO SUE

The law does not forbid partners to sue each other at law merely because they are or have been partners. It is only when the adjustment of the matter in controversy involves an investigation and audit of the partnership account that resort must be had to equity. *Boyle* v. *Smith* (D. C. Mun. App. 1949, 64 A. 2d 428).

Chapter 2.—DISSOLUTION AND PAYMENT OF DEBTS

Sec.

41–201. Composition with creditors on dissolution.
41–202. Memorandum of exoneration may be furnished—Use of memorandum in evidence or to release judgment.
41–203. Other partners not discharged.
41–204. Partners' right of contribution.

§ 41–201 [23: 1]. Composition with creditors on dissolution.

Where a partnership is dissolved, by mutual consent or otherwise, any partner may make a separate composition or compromise with any creditor of the partnership; and such a composition or compromise shall be a full and effectual discharge to the debtor who makes the same, and to him only, of and from all and every liability to the creditor with whom the same is made, according to the terms thereof. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1494.)

CROSS REFERENCES

Dissolution of limited partnership, §§ 41–115, 41–130.
Separate compromise by one of several joint debtors, § 16–906.

NOTES TO DECISIONS

NEGOTIABLE INSTRUMENTS

It is not within the general scope of the authority of one partner to make or endorse negotiable paper in the firm name. *Presbrey* v. *Thomas* (1 App. D. C. 171).

§ 41–202 [23: 2]. Memorandum of exoneration may be furnished—Use of memorandum in evidence or to release judgment.

Every such debtor who makes such composition or compromise may take from the creditor with whom he makes the same a note or memorandum, in writing, exonerating him from all and every individual liability incurred by reason of his connection with the partnership, which note or memorandum may be given in evidence by such debtor, in bar of such creditor's right of recovery against him; and if such liability be by judgment, then, on the production and filing with the clerk of the notes or memorandum, the clerk shall enter the judgment as released by the plaintiff as far as the compromising debtor is concerned. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1495.)

NOTES TO DECISIONS

DISCRETION OF COMMISSION

In public utility rate proceeding, Public Utility Commission's refusal of demand of intervening Price Administrator that thoroughgoing examination be made into rate base, rate of return, operating expenses, depreciation, and all other matters relative to establishment of fair return was not an abuse of discretion. *Washington Gas Light Co.* v. *Byrnes*, 1943 (137 F. 2d 547, 78 U. S. App. D. C. 107, certiorari granted 64 S. Ct. 191, 320 U. S. 730, 88 L. Ed. 431, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

FEDERAL LAWS, SCOPE OF

The right conferred on Price Administrator to intervene in public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. *Washington Gas Light Co.* v. *Byrnes*, 1943 (137 F. 2d 547, 78 U. S. App. D. C. 107, certiorari granted 64 S. Ct. 191, 320 U. S. 730, 88 L. Ed. 431, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

POWER TO FIX RATES

The power to fix public utility rates is a legislative power which has been delegated by Congress to Public Utility Commission of District of Columbia, and in its exercise, within constitutional limits, discretion of commission may not be controlled even by courts. *Washington Gas Light Co.* v. *Byrnes*, 1943 (137 F. 2d 547, 78 U. S. App. D. C. 107, certiorari granted 64 S. Ct. 191, 320 U. S. 730, 88 L. Ed. 431, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

§ 41–203 [23: 3]. Other partners not discharged.

Such compromise or composition with an individual member of a firm shall not be held to discharge the other partners, nor shall it impair the right of the creditor to proceed against such members of the partnership as have not been discharged; and the members of the partnership so proceeded against shall be permitted to set off any demand against the creditor which could have been set off had the suit been brought against all the individuals composing the firm. Nor shall the compromise or discharge of an individual member of a firm prevent the other members of the firm from availing themselves of any defense that would have been available had this title not been passed, except that they shall not set up the discharge of one individual as a discharge of the other partners, unless it appear that all were intended to be discharged; but the discharge of any such partner shall be deemed a payment to the creditor equal to the proportionate interest of the partner discharged in the partnership concern. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1496.)

§ 41–204 [23: 4]. Partners' right of contribution.

Such compromise or composition of a member of a firm with a creditor of such firm shall in no wise affect the right of the other partners to call on the member who makes it for his ratable proportion of any partnership debt which they may be compelled to pay. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1497.)

TITLE 42.—PERSONAL PROPERTY

Chap. Sec.
1. Recordation of instruments 42–101

Chapter 1.—RECORDATION OF INSTRUMENTS

Sec.
42–101. Recording of bills of sale, chattel mortgages, and deeds of trust.
42–102. Instruments relating to chattels need not be transcribed—Instruments retained by recorder.
42–103. Conditional sales.

§ 42–101 [25: 177]. Recording of bills of sale, chattel mortgages, and deeds of trust.

No bill of sale, mortgage, or deed of trust to secure a debt of any personal chattels whereof the vendor, mortgagor, or donor shall remain in possession, shall be valid or effectual to pass the title therein, except as between the parties to such instruments and as to other persons having actual notice of it, unless the same be executed, acknowledged, and within ten days from the date of such acknowledgment filed in the office of the recorder of deeds and the said filing of such instrument therein as aforesaid as to third persons not having notice of it as aforesaid shall be operative only from the time within the said ten days when it is delivered to said recorder. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 546; Mar. 3, 1925, 43 Stat. 1103, ch. 417.)

AMENDMENT

The 1925 amendment struck out "recorded in the same manner of deeds of real estate."

CROSS REFERENCES

Application to motor vehicle liens §§ 40–701, 40–702.

Bulk Sales Law, §§ 28–1701 to 28–1705.

Concealing, removing, or converting mortgaged property, § 22–1209.

Introduction into evidence of records of written instruments, §§ 14–401, 14–402.

Negotiable warehouse receipt for mortgaged property, penalty, § 28–2106.

Uniform Sales Act, §§ 28–1101 to 28–1608.

Warehouse receipts, uniform law, §§ 28–1801 to 28–2205.

STATUTORY REFERENCE

Bills of lading, U. S. C., title 49, ch. 4.

NOTES TO DECISIONS

ACTUAL NOTICE

The sale is not void as to persons who had "actual notice of it" before their rights accrued. *Splain* v. *B. F. Goodrich Rubber Co.* (53 App. D. C. 300, 290 Fed. 275).

CONSTRUCTIVE NOTICE

A mortgagee cannot throw the buyer of mortgaged property off guard concerning protection which this section gives to him and take advantage at the same time of what otherwise would or might have been discovered, and thus if the mortgagee clothes mortgagor with indicia of ownership, or gives him authority to sell the property, or stands by in silence and watches the mortgagor deal with it as owner, the mortgagee nullifies the effect of recording by his inconsistent representation. *Fogle* v. *General Credit,* 1941 (122 F. 2d 45, 74 App. D. C. 208, 136 A. L. R. 814).

The opportunity to investigate is foundation of the "constructive notice" afforded by this section and when it exists unimpaired by any act of mortgagee, this section casts burden of investigation on those who may deal with the mortgagor, and their failure to make it assumes something of the quality of negligence, but this section is a bulwark, not a trap, and mortgagee is favored only so long as he acts consistently with its conditions, and when he goes further and either by his conduct prevents purchaser from making usual investigation or takes advantage of circumstances which he knows or reasonably should know would have such effect, he destroys the foundation on which his own protection rests. *Fogle* v. *General Credit,* 1941 (122 F. 2d 45, 74 App. D. C. 208, 136 A. L. R. 814).

DATE OF ACKNOWLEDGEMENT

"Record is required within 10 days after * * * the act of acknowledgement. There is nothing in the law which requires that acknowledgment of the instrument be of its date, and, unless the delay in acknowledging be unreasonable and intervening rights accrue during the period of delay the recorded instrument will have the same force and effect as if acknowledged on the date of its execution." *R. P. Andrews Paper Co.* v. *Southern Soda Fountain Co.* (46 App. D. C. 84).

Rights under the mortgage do not relate back to the time of the execution of the deed where mortgage was not acknowledged or recorded until after mortgagor had contracted new debts with third parties without notice. *In re Nolan Motor Co., Inc.* ((D. C.-D. C.), 25 Fed. Supp. 186).

The code regarding recordation of chattel mortgages does not require acknowledgment simultaneous with the execution thereof. *In re Nolan Motor Co., Inc.* ((D. C.-D. C.), 25 Fed. Supp. 186).

FAILURE TO DELIVER POSSESSION

Failure to deliver possession to the buyer did not make the sale void, but was a fact to be considered by the jury in determining whether or not the sale was fraudulent. *Splain* v. *B. F. Goodrich Rubber Co.* (53 App. D. C. 300, 290 Fed. 275).

LANDLORD'S LIEN

Quaere: Whether landlord's lien is embraced within provision requiring recordation of conditional sales contract. *R. P. Andrews Paper Co.* v. *Southern Soda Fountain Co.* (46 App. D. C. 84).

PROPERTY WITHIN SECTION

This chapter applies to chattels, generally, not merely to automobiles, and accordingly a construction peculiarly applicable to motor vehicles is not appropriate. *Fogle* v. *General Credit,* 1941 (122 F. 2d 45, 74 App. D. C. 208, 136 A. L. R. 814).

PURPOSE

This chapter is intended ordinarily to make a recorded instrument effective to give constructive notice to all with whom person in possession may undertake to deal, but the protection is not entirely one-sided or absolute, and this section has the further function of providing an opportunity for investigation of the title and discovery of liens. *Fogle* v. *General Credit,* 1941 (122 F. 2d 45, 74 App. D. C. 208, 136 A. L. R. 814).

UNRECORDED BILL OF SALE

Failure to record bill of sale does not make sale void as to marshal who levied on the property with notice of the transfer of title. *Splain* v. *B. F. Goodrich Rubber Co.* (53 App. D. C. 300, 290 Fed. 275).

UNRECORDED TRANSFER

Unrecorded transfer is good inter partes. *V. G. Fisher Art Co.* v. *Hutchins* (41 App. D. C. 156), citing *Colbert* v. *Baetjer* (4 App. D. C. 416).

§ 42–102 [25: 178]. Instruments relating to chattels need not be transcribed—Instruments retained by recorder.

It shall not be necessary for the recorder of deeds to spread such instruments upon the records of his office, but the same shall be indexed in the manner as deeds to real estate are indexed, and said in-

struments shall be kept on file and shall be open to inspection by the public, and shall have the same force and legal effect as if they were actually recorded in the books of said office. For filing and indexing such aforesaid instruments the recorder of deeds shall collect $1 each. (Mar. 3, 1901, ch. 854, § 546a, added Mar. 3, 1925, 43 Stat. 1103, ch. 417.)

COMPILER'S NOTE

This section (paragraph 2 of § 546) appeared for the first time in the 1925 act. Paragraph 1 was an amendment to § 546 of D. C. 1901 (§ 42–101 herein).

CROSS REFERENCES

Application to motor vehicle liens, § 40–702.
See notes to § 42–101.

§ 42–103 [25: 179]. Conditional sales.

No conditional sale of chattels in virtue of which the property is delivered to the purchaser, but by the terms of which the title is not to pass until the price of said chattels is fully paid, where the purchase-price exceeds $100, shall be valid as against third persons acquiring title to said property from said purchaser without notice of the terms of said sale, unless the terms of said sale are reduced to writing and signed by the parties thereto and acknowledged by the purchaser and filed in the office of the recorder of deeds of the District of Columbia, and said writing shall be indexed as if the purchaser were a mortgagor and the seller a mortgagee of such chattels, and shall be operative as to third persons without actual notice of it from the time of being filed. And for filing and indexing such an instrument, the recorder of deeds shall collect $1. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 547; June 30, 1902, 32 Stat. 533, ch. 1329; Mar. 3, 1925, 43 Stat. 1103, ch. 417.)

AMENDMENTS

The 1902 amendment added the words "when the purchase price exceeds $100."

The 1925 amendment added the words "where the purchase price exceeds $100," deleted the words "and recorded in the same manner as a chattel mortgage, as hereinabove provided," and inserted in lieu thereof the words "and filed in the office of the recorder of deeds of the District of Columbia," deleted the words "so recorded," and inserted in lieu thereof the word "filed" at the end of the first sentence, and added the last sentence.

CROSS REFERENCES

Application to motor vehicle liens, § 40–702.
Criminal penalty for concealing, removing, or converting property held under conditional sales contract, § 22–1406.
See notes to § 42–101.

NOTES TO DECISIONS

ASSIGNEE OF LEASE

Assignee of lease held not third person "acquiring title to said property from said purchaser." *Palm* v. *Bachrach* (55 App. D. C. 302, 5 Fed. (2d) 125).

CONSTRUCTION AND APPLICATION

Quaere: Whether creditor of vendee in contract of conditional sale, or of purchaser (without notice) from him, are entitled to the benefits of this section. *Baum* v. *Knabe Mfg. Co.* (33 App. D. C. 237).

"Since this statute restricts the rights of property by regulating its use its scope may not be broadened by construction." *Gill* v. *Kahl-Holt Co.* (47 App. D. C. 53).

Lease construed as conditional sales agreement. *Stern* v. *Drew* (52 App. D. C. 191, 285 Fed. 925, distinguishing *Randolph & Co.* v. *Columbia Graphophone Co.*, 45 App. D. C. 146). See also *Smith* v. *Gilmore* (7 App. D. C. 192), as to determination of intention of parties to such agreements.

ELECTION OF REMEDIES

Election of remedies as affecting rights under conditional bill of sale. *Smith* v. *Gilmore* (7 App. D. C. 192)

FICTITIOUS NAMES, USE OF

A conditional seller who records conditional sale agreement obtains full protection under this section, even though such instrument was executed in a fictitious name by buyer. *Zweig* v. *Schwartz* (D. C. 1943, 31 A. 2d 857).

LANDLORD'S LIEN

Unrecorded conditional sale contract of chattels brought upon leased premises is superior to landlord's lien on chattels. *Stern Co.* v. *Rosenberg* (67 App. D. C. 99, 89 Fed. (2d) 843).

NOTICE

Where conditional buyer of $400 diamond ring perpetrated fraud in representing herself to be another person, but sellers did not record conditional sale agreement and second-hand dealer purchased ring for $75 in usual course of business from one known to the dealer, the price paid was not so inadequate as to constitute "notice" to the second-hand dealer of possible defects in the title acquired by him. *Zweig* v. *Schwartz* (D. C. 1943, 31 A. 2d 857).

ORAL AGREEMENT

An assignee of after-acquired property takes it subject to the conditions with which it is encumbered, notwithstanding that such encumbrance is an oral conditional sales agreement. *Gill* v. *Kahl-Holt Co.* (47 App. D. C. 53)

TITLE WITHHELD

"A sale and delivery of personal property on condition that the title remain in the vendor until performance of the condition authorizes the vendor, in case of failure to fulfill the conditions, to repossess himself of the property, not only from the vendee but from those holding under him. * * * Such a condition may exist either in the case of a sale for cash or on time." *Minnix Co.* v. *L. C. Smith & Bros. Typewriter Co.* (33 App. D. C. 357).

Title does not pass until condition is fulfilled. *Minnix Co.* v. *L. C. Smith & Bros. Typewriter Co.* (33 App. D. C. 357). See *Wall* v. *De Mitkiewicz* (9 App. D. C. 109).

UNRECORDED CONDITIONAL SALE

When property under conditional sale contracts is reserved in the vendor until the purchase price is paid, such contracts are valid even though unrecorded except as against third persons acquiring title without notice of the terms of sale. *Baum* v. *Knabe Mfg. Co.* (33 App. D. C. 237).

Unrecorded conditional sale was valid against judgment, creditor levying upon buyer's property. The provision that it should not be valid against third persons without notice applies only in favor of subsequent purchasers and mortgagees. *Higgins* v. *Central Cigar Co.* (59 App. D. C. 9, 32 Fed. (2d) 400).

Unrecorded conditional sale contract superior to levy on an automobile, the latter not transferring any title. *C. I. T. Corp.* v. *Carl* (66 App. D. C. 232, 85 Fed. (2d) 809).

At common law a conditional bill of sale was valid not only as between parties but also as to third parties, but under this section when purchase price exceeds $100, unless seller protects his lien by recording the conditional sale agreement, the buyer may convey an indefeasible title to a third party for value and without notice. *Zweig* v. *Schwartz* (D. C. 1943, 31 A. 2d 857).

Even though conditional buyer perpetrated fraud in representing herself to be another person, conditional sellers who did not avail themselves of benefit of this section could not recover from subsequent buyer if he was a purchaser for value and acquired title without notice of the conditional sale. *Zweig* v. *Schwartz* (D. C. 1943, 31 A. 2d 857).

WAREHOUSEMAN'S LIEN

Conditional sale contract, not of record, is inferior to warehouseman's lien. *Fidelity Storage Co.* v. *Reliable Stores Corp.* (63 App. D. C. 83, 69 Fed. (2d) 569).

TITLE 43.—PUBLIC UTILITIES

Chap.		Sec.
1.	Definition of terms and application of law	43–101
2.	Creation of Public Utilities Commission—Members—Counsel—Employees	43–201
3.	Service, valuation, accounts	43–301
4.	Rates, examinations, investigations, and hearings	43–401
5.	Sale and merger of utilities	43–501
6.	Gas and electric corporations	43–601
7.	Orders and court proceedings	43–701
8.	Issuance of securities	43–801
9.	Penal provisions	43–901
10.	General provisions	43–1001
11.	Electric light and power companies—Special acts	43–1101
12.	Gas companies—Special acts	43–1201
13.	Private conduits	43–1301
14.	Telegraph and telephone companies	43–1401
15.	Water supply, assessments, and rates	43–1501

Chapter 1.—DEFINITION OF TERMS AND APPLICATION OF LAW

Sec.

43–101. Definitions—Commission.
43–102. Commissioner.
43–103. Public utility.
43–104. Service.
43–105. Corporation.
43–106. Person.
43–107. Joint rates.
43–108. Extension or extensions.
43–109. Street railroad.
43–110. Street railroad corporation.
43–111. Common carrier—Exempt organizations.
43–112. Gas plant.
43–113. Gas corporation.
43–114. Electric plant.
43–115. Electrical corporation.
43–116. Water-power company.
43–117. Telephone corporation.
43–118. Telephone line.
43–119. Telegraph corporation.
43–120. Telegraph line.
43–121. Pipe-line company.
43–122. Chapters 1–10 of this title applicable to transportation of passengers, freight, or property within the District of Columbia—Construction in connection with Constitution and interstate commerce laws.
43–123. Corporations subject to chapters 1–10 of this title.

§ 43–101 [26: 1]. Definitions—Commission.

For the purpose of chapters 1–10 of this title the term "commission" when used herein shall mean the Public Utilities Commission of the District of Columbia created by chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–102 [26: 2]. Commissioner.

The term "commissioner" when used in chapters 1–10 of this title shall mean one of the members of such commission. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–103 [26: 3]. Public utility.

The term "public utility" as used in chapters 1–10 of this title shall mean and embrace every street railroad, street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electrical corporation, water power company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipe line company. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

NOTES TO DECISIONS

AUTOMOBILE FOR HIRE

Owner of automobile who hires out the vehicle and his services by the hour, held not a "public utility." *Bell* v. *Harlan* (57 App. D. C. 255, 20 Fed. (2d) 271).

§ 43–104 [26: 4]. Service.

The term "service" is used in chapters 1–10 of this title in its broadest and most inclusive sense. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–105 [26: 5]. Corporation.

The term "corporation" when used in chapters 1–10 of this title includes a corporation, company, association, and joint-stock company or association. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–106 [26: 6]. Person.

The word "person" when used in chapters 1–10 of this title includes an individual and a firm or copartnership. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–107 [26: 7]. Joint rates.

The term "joint rates" when used in chapters 1–10 of this title with reference to street railways shall be taken to mean rates between unrelated lines in effect on March 4, 1913, under then existing law or under contract, or which may thereafter be specifically authorized by law. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–108 [26: 8]. Extension or extensions.

The term "extension or extensions" when used in chapters 1–10 of this title shall include the reasonable extension of the service and facilities of every street railroad, street railroad corporation, gas plant, gas corporation, electric plant, electrical corporation, telephone corporation, telephone line, telegraph line, and telegraph corporation as the same are defined in chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–109 [26: 9]. Street railroad.

The term "street railroad" when used in chapters 1–10 of this title includes every such railroad,

whether wholly or partly in the District of Columbia, by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for compensation, and includes all equipment, construction, maintenance, repairs, switches, spurs, tracks, terminals, terminal facilities of every kind, trackage, joint or reciprocal trackage, transfers of passengers between street railways having connecting lines and street railways having independent lines, subways, tunnels, and stations, used, operated, or owned by or in connection with any such street railroad, and all the property of the same used in the conduct of its business. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–110 [26: 10]. Street railroad corporation.

The term "street railroad corporation" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any street railroad or any cars or other equipment used thereon or in connection therewith. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43–111 [26: 11]. Common carrier—Exempt organizations.

The term "common carrier" when used in chapters 1–10 of this title includes express companies and every corporation, street railroad corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire. Steam railroads, express companies subject to the jurisdiction of the Interstate Commerce Commission, the Washington Terminal Company, and the Norfolk and Washington Steamboat Company, and all companies engaged in interstate traffic upon the Potomac River and Chesapeake Bay and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia, and the Arlington and Fairfax Railway Company, excepting as to the regulation of its operation inside of the District of Columbia, are excluded from the operation of chapters 1–10 of this title, and are not included in the term "common carrier." (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; Feb. 25, 1916, 39 Stat. 13, ch. 34; Aug. 21, 1916, 39 Stat. 521, ch. 367; Aug. 26, 1916, 39 Stat. 536, ch. 412.)

AMENDMENTS

Act of February 25, 1916, added the following: "and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia."

Act of August 21, 1916, added the following: "express companies subject to the jurisdiction of the Interstate Commerce Commission."

Act of August 26, 1916, added all beginning with "and the Washington and Old Dominion" and ending with "District of Columbia."

NOTES TO DECISIONS

EMERGENCY PRICE CONTROL ACT

One who owned and rented taxicabs to others for operation in the District of Columbia was a "common carrier" within this section and was entitled, under provision of former Emergency Price Control Act, 50 U. S. C. App. § 942 (c), to exemption from price control, though rentals which he charged were not actually controlled by Public Utilities Commission. *In re Rice* (App. D. C. 1948, 165 F. 2d 617).

OWNERSHIP

Under this section providing that term "common carrier" includes every person owning, operating, controlling, or managing any agencies for public use for conveyance of persons or property within the District of Columbia for hire, any person who owns such facilities, regardless of whether he personally operates them, is a "common carrier" subject to regulation by Public Utilities Commission of the District. *In re Rice* (App. D. C. 1948, 165 F. 2d 617).

TAXICAB COMPANY

A taxicab company is a common carrier within this act and subject to the jurisdiction of the Public Utilities Commission. *Terminal Taxicab Co.* v. *Kutz* (241 U. S. 252, 60 L. Ed. 984, 36 Sup. Ct. 583).

§ 43–112 [26: 12]. Gas plant.

The term "gas plant" when used in chapters 1–10 of this title includes all buildings, easements, real estate, mains, pipes, conduits, service pipes, services, pipe galleries, meters, boilers, water-gas sets, retorts, fixtures, condensers, scrubbers, purifiers, holders, materials, apparatus, personal property, and franchises, and property of every kind used in the conduct of the business operated, owned, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale, or furnishing of gas (natural or manufactured) for light, heat, or power. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43–113 [26: 13]. Gas corporation.

The term "gas corporation" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person manufacturing, making, distributing, or selling gas for light, heat, or power, or for any public use whatsoever in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, and in said district owning, operating, controlling, or managing any gas plant, except where the gas is made or produced and distributed by the maker on or through private property solely for its own use or the use of its tenants and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43–114 [26: 14]. Electric plant.

The term "electric plant" when used in chapters 1–10 of this title includes all engines, boilers, dynamos, generators, storage batteries, converters, motors, transformers, cables, wires, poles, lamps, meters, easements, real estate, fixtures, and personal property, materials, apparatus, and devices of every kind operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale, or furnishing of electricity for light, heat, or power, and any conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying electrical conductors used or to be used wholly or in part for the transmission of electricity for light, heat, or power, except

where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43–115 [26: 15]. Electrical corporation.

The term "electrical corporation" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any electric plant, including any water plant, or water property, or water falls, or dam, or water-power stations, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–116 [26: 16]. Water-power company.

The term "water-power company" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling any plant or property, dam or water supply, canal, or power station for the development of water power for the generation of electrical current or other power or for the distribution or sale of such electrical current or other power. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–117 [26: 17]. Telephone corporation.

The term "telephone corporation" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–118 [26: 18]. Telephone line.

The term "telephone line" when used in chapters 1–10 of this title includes conduits, ducts, poles, wires, cables, cross arms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–119 [26: 19]. Telegraph corporation.

The term "telegraph corporation" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trus,-tees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles, or property for the purposes of communication, or of transmitting or receiving messages by telegraph, or by any telegraphic apparatus or instrument, or any telegraph line or part of telegraph line used in the conduct of the business of affording for hire, communication by telegraph, or which licenses, lets, or permits telegraphic communication for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–120 [26: 20]. Telegraph line.

The term "telegraph line" when used in chapters 1–10 of this title includes conduits, ducts, poles, wires, cables, cross-arms, instruments, machinery, appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, and routes used, operated, controlled, or owned by any telegraph corporation to facilitate the business of affording communication by telegraph for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–121 [26: 21]. Pipe-line company.

The term "pipe-line company" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling the supply of any liquid, steam, or air through pipes or tubing to consumers for use or for lighting, heating, or cooling purposes, or for power. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–122 [26: 22]. Chapters 1–10 of this title applicable to transportation of passengers, freight, or property within the District of Columbia—Construction in connection with Constitution and interstate commerce laws.

Chapters 1–10 of this title shall apply to the transportation of passengers, freight, or property from one point to another within the District of Columbia, and any common carrier performing such service; and chapters 1–10 of this title shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)

NOTES TO DECISIONS

GARAGE BUSINESS

A taxicab company which has the exclusive right to taxicab passengers from the Washington terminal, and the exclusive right to the taxicab business out from certain hotels, is to this extent, under the jurisdiction of the Public Utilities Commission, but the Commission has no jurisdiction over its garage business, or rates charged on such business. *Terminal Taxicab Co.* v. *Kutz* (241 U. S. 252, 60 L. Ed. 984, 36 Sup. Ct. 583).

SINGLE OPERATOR

An operator of a single passenger sedan is not a public utility and does not come under the jurisdiction of an order of Public Utilities Commission requiring financial protection of his patrons. *Bell* v. *Harlan* (57 App. D. C. 255, 20 Fed. (2d) 271).

§ 43–123 [26: 23]. Corporations subject to chapters 1–10 of this title.

Corporations formed to acquire property or to transact business which would be subject to the provisions of chapters 1–10 of this title, and corporations possessing franchises for any of the purposes contemplated by chapters 1–10 of this title shall be deemed to be subject to the provisions of chapters 1–10 of this title, although no property may have been acquired, business transacted, or franchises exercised. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)

Chapter 2.—CREATION OF PUBLIC UTILITIES COMMISSION—MEMBERS—COUNSEL—EMPLOYEES

Sec.

43–201. Members—Eligibility of Commissioners—Oath.
43–202. Quorum—Investigations, inquiries, may be undertaken by any Commissioner.
43–203. Acts of prior commission validated.
43–204. Corporation counsel as counsel of Commission—Duties—Additional compensation—Employment of additional counsel—Enforcement of orders.
43–205. People's counsel—Duties, term of office, salary, qualifications.
43–206. Employees—Compensation—Expenses—Expenditures.
43–207. Power withdrawn from Interstate Commerce Commission—Rules and regulations of said Commission to remain in force.
43–208. Orders as to repairs—Improvement in equipment, service.
43–209. Authority of District of Columbia Commissioners to continue—Ordinances and regulations to remain in force until modified by the Public Utilities Commission.

§ 43–201 [26: 126]. Members—Eligibility of Commissioners—Oath.

The Public Utilities Commission of the District of Columbia shall be composed of three commissioners as follows: (1) The Engineer Commissioner of the District of Columbia, and (2) two persons appointed by the President, by and with the advice and consent of the Senate. Each of the appointed commissioners shall receive a salary at the rate of $7,500 per annum. Of the two commissioners first appointed after December 15, 1926, one shall be appointed for a term of two years, and one for a term of three years, commencing July 1, 1926. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The commission shall at least biennially elect a chairman by a majority vote of its members. No commissioner, other than the said Engineer Commissioner of the District of Columbia, shall, during his term of office, hold any other public office. The commissioners of the District of Columbia shall furnish the Public Utilities Commission with suitable offices and quarters. No person, other than the said Engineer Commissioner of the District of Columbia, shall be eligible to the office of commissioner of the Public Utilities Commission who has not been a bona fide resident of the District of Columbia for a period of at least three years next preceding his appointment or who has voted or claimed residence elsewhere during such period. No person shall be eligible to the office of commissioner of said Public Utilities Commission who is, or who shall have been during a period of five years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility. If any such commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if any such commissioner shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails to do so his office shall become vacant. Before entering upon the duties of his office each commissioner, the secretary of the commission, the counsel of the commission and every employee of said commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the District Court of the United States for the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia. (Dec. 15, 1926, 44 Stat. 920, ch. 8, § 1.)

CROSS REFERENCES

Constitutionality of act, § 43–1003.
Liberal construction of act, § 43–1003.
Saving clause; laws, orders, rules and regulations prior to this act; proceedings pending, §§ 43–1005, 43–1006.

§ 43–202 [26: 127]. Quorum—Investigations, inquiries may be undertaken by any Commissioner.

A majority of the commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission. Any investigation, inquiry, or hearing within the powers of the commission may be made or held by any commissioner, whose acts and orders, when approved by the commission, shall be deemed to be the order of the commission. The commission shall have power to adopt and publish rules and regulations for the administration of the provisions of chapters 1–10 of this title, including the conduct of its investigations, inquires, hearings, and other proceedings. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97; Dec. 15, 1926, 44 Stat. 921, ch. 8, § 1.)

AMENDMENT

The 1926 amendment deleted the words "To govern its proceedings and to regulate the mode and manner of all investigations and hearings pertaining to public utilities" and inserted in lieu thereof the words now following the word "rules" in the last sentence.

CROSS REFERENCES

Investigation of injuries or deaths occurring in the operation of a utility company, § 43–1001.
Jurisdiction and control over street railroads and bus lines, § 44–201 et seq.

Powers over motor carriers; liability insurance or bond required, § 44–301.

Prosecution of violations of rules and regulations, §§ 43–906 to 43–908.

Recommendations of changes in utility laws, § 43–304.

Rules and regulations by Commissioners of the District, § 43–209.

Rules and regulations for street car fenders, § 44–204.

Rules and regulations for testing gas and electric meters, § 43–603.

Rules and regulations for testing meters and measuring devices, § 43–320.

Rules and regulations generally, § 1–226.

Rules and regulations governing proceedings, investigations, inspections, tests, audits, and hearings before the Commission, § 43–402.

Rules and regulations governing sliding scale of rates and dividends, § 43–317.

Rules and regulations of Interstate Commerce Commission, § 43–207.

Rules, regulations, and forms for accounts of new construction, § 43–316.

Rules, regulations, and forms for computing depreciation, § 43–315.

NOTES TO DECISIONS

ADMINISTRATIVE AGENCY

Congress of the United States exercises exclusive legislative powers within the District of Columbia, and the Public Utilities Commission is merely an administrative agency. *Patrick* v. *Smith* (60 App. D. C. 6, 45 Fed. 2d) 924).

§ 43–203 [26: 128]. Acts of prior Commission validated.

Sections 43–201 to 43–203 shall not be construed (1) to invalidate any subpœna, valuation, order, rule, regulation, or revocation, or any rescission, alteration, modification, amendment, or suspension thereof issued by the commission prior to the date on which the commissioners first appointed under section 43–201 take office; or (2) to invalidate any complaint served, or any investigation, inquiry, or hearing held or commenced, or any determination, or decision rendered by the commission prior to such date; or (3) to invalidate, abate, or discontinue any action, suit, trial, or proceeding commenced by or against such commission prior to such date. (Dec. 15, 1926, 44 Stat. 921, ch. 8, § 2.)

CROSS REFERENCE

Other provisions for saving clause for laws, orders, rules, and regulations, and pending proceedings, §§ 43–1005, 43–1006.

§ 43–204 [26: 116]. Corporation counsel as counsel of Commission—Duties—Additional compensation—Employment of additional counsel—Enforcement of orders.

The corporation counsel of the District of Columbia shall be the general counsel of the commission and shall receive from and be paid out of the appropriations provided and to be provided for the expenses of the commission in addition to his compensation otherwise provided by law the sum of $1,000 per annum, payable in equal monthly installments. It shall be the duty of the general counsel to represent and appear for the commission in all actions and proceedings involving any question under chapters 1–10 of this title, or under or in reference to any act, order, or proceeding of the commission, and if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute all actions and proceedings directed or authorized by the commission, and to expedite, in every way possible, final and just determination of all such actions and proceedings; to advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and of the members thereof, and generally to perform all duties and services as attorney and counsel to the commission which the commission may reasonably require of him. The assistants to the corporation counsel shall perform such duties relating to matters arising under chapters 1–10 of this title and all other matters as the corporation counsel may prescribe. The commission may, if at any time it deems necessary, employ other attorneys at law as additional assistants to the said general counsel for the performance of such extraordinary legal services for or in behalf of the commission at such special compensation for such additional assistants as the commission may prescribe, which said compensation shall be paid out of the appropriations provided for the expenses of the commission. The said corporation counsel and any of his assistants designated by him or by the commission shall have the right to appear and prosecute any civil, quasi criminal, or criminal case to recover any penalty, forfeiture, fine, or for the imposition of any punishment provided for in chapters 1–10 of this title whether instituted by or on behalf of the United States of America or by or on behalf of the District of Columbia or otherwise, and on every appeal provided by law. The commission may enforce its orders in any case by mandamus or other legal or equitable remedy in any court of competent jurisdiction, and it shall be the duty of the corporation counsel or his assistants to represent the commission in every such proceeding. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 91.)

§ 43–205 [26: 117]. People's counsel—Duties, term of office, salary, qualifications.

There shall be appointed by the President, by and with the advice and consent of the Senate, an additional counsel of the commission to be known as the people's counsel, who—

(1) Shall represent and appear for the people of the District of Columbia at all hearings of the commission and in all judicial proceedings involving the interests of users of the products of or service furnished by public utilities under the jurisdiction of the commission;

(2) Shall represent and appear for petitioners appearing before the commission for the purpose of complaining in matters of rates or service; and

(3) May investigate the service given by, the rates charged by, and the valuation of the properties of, the public utilities under the jurisdiction of the commission.

(b) The term of office of the people's counsel shall be four years, and he shall receive a salary at the rate of $7,500 a year. No person shall be appointed as people's counsel who has not been a bona fide resident of the District of Columbia continuously

for a period of at least five years immediately preceding the effective date of his appointment, or who has not been engaged in the actual practice of law before the District Court of the United States for the District of Columbia for a period of at least five years. No person shall be eligible to the office of people's counsel who is, or who shall have been during a period of five years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia, or in any stock, bond, mortgage, security, or contract of any such public utility. (Dec. 15, 1926, 44 Stat. 921, ch. 8, § 3.)

§ 43–206 [26: 121]. Employees — Compensation — Expenses—Expenditures.

The commission shall have the power in each and every instance to employ and to prescribe the duties of such officers, clerks, stenographers, typewriters, inspectors, experts, and employees as it may deem necessary to carry out the provisions of chapters 1–10 of this title, and to fix and pay their compensation within the appropriations provided by Congress subject to the Classification Act of 1923 (U. S. C., title 5, ch. 13). The commission is hereby authorized, within the appropriation made by Congress, to incur and pay incidental expenses for postage, printing, blanks, books, law books, books of reference, and periodicals, stationery, binding, rebinding, repairing and preservation of records, desks, office furniture and supplies, traveling expenses of the commission, the commissioners, and every officer, agent, and employee thereof, and all other general expenses reasonably necessary to be incurred in carrying out the purposes of chapters 1–10 of this title. All payments and disbursements, as provided in chapters 1–10 of this title, shall be made by the disbursing officer of the District of Columbia upon proper vouchers, certified as required by the commission; and the commission is hereby also granted power and authority to designate and appoint during its pleasure such officers, clerks, inspectors, and employees of the District of Columbia and members of the Metropolitan police force of the District of Columbia to perform any of the duties which the commission may from time to time, respectively, assign to them, and to employ any assistance within the limits of the appropriations for its use made by Act of Congress. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 95.)

COMPILER'S NOTE

It is not clear that the last clause of the first sentence was superseded in its entirety by the act of Mar. 4, 1923 (the Classification Law), 42 Stat. 1488, ch. 265.

§ 43–207 [26: 124]. Power withdrawn from Interstate Commerce Commission—Rules and regulations of said commission to remain in force.

The authority vested by law in the Interstate Commerce Commission by virtue and under the Act of Congress, approved May 23, 1908, entitled "An Act authorizing certain extensions to be made in the lines of the Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway of Washington, and the Capital Traction Company, in the District of Columbia and for other purposes" (35 Stat. 246, ch. 190), shall no longer be exercised by the Interstate Commerce Commission: *Provided*, That the orders, rules, and regulations made by the Interstate Commerce Commission by virtue of and under the said Act of Congress, approved May 23, 1908, shall continue to be in force until changed, repealed, altered, or amended by the commission created by chapters 1–10 of this title, which said commission is hereby given power and jurisdiction to issue and, at its pleasure, to revoke all permits, or licenses, to carry chapters 1–10 of this title into effect, and its rules and regulations shall be valid and binding on all public-service corporations and on all persons. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96.)

CROSS REFERENCES

Act of May 23, 1908, referred to in text, see §§ 44–202, 44–203, 44–206, and 44–207.

Rules and regulations generally, § 43–202 and notes.

§ 43–208 [26: 125]. Orders as to repairs—Improvement in equipment, service.

Whenever the commission shall be of opinion, after hearing had upon its own motion or upon complaint, that repairs, improvements, or changes in any street railroad, gas plant, electric plant, telephone line, telegraph line, pipe line, water-power plant, or the facilities of any common carrier ought reasonably to be made, or that any addition of service or equipment ought reasonably to be made thereto, or that the vehicles or cars of any street railroad or common carrier are unclean, insanitary, uncomfortable, inconvenient, or improperly equipped, operated, or maintained, or are in need of paint, or unsightly in appearance, or that any addition ought reasonably to be made thereto, in order to promote the comfort or convenience of the public or employees, or in order to secure adequate service or facilities, the commission shall have power to make and serve an order directing that such repairs, improvements, changes, or additions to service or equipment be made within a reasonable time and in a manner to be specified therein, and every such public utility is hereby required and directed to obey every such order of the commission. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96.)

CROSS REFERENCES

New construction, § 43–316.

Other provisions concerning care, maintenance, and repair of street cars, § 44–202 et seq.

NOTES TO DECISIONS

STREET-CAR VESTIBULES

This act did not impliedly repeal act March 3, 1905 (§ 44–205), requiring glass vestibules. *Washington R. & Elec. Co.* v. *District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999).

§ 43–209 [26: 130]. Authority of District of Columbia Commissioners to continue—Ordinances and regulations to remain in force until modified by the Public Utilities Commission.

All the duties, powers, and authority of the Commissioners of the District of Columbia shall continue and remain in full force and effect notwithstanding chapters 1–10 of this title; and all powers, authority

and duties of the municipality known as the District of Columbia and all rights vested in said municipality shall continue and remain in full force and effect notwithstanding chapters 1–10 of this title. All the lawful ordinances and regulations made by the Commissioners of the District of Columbia as such, and all other lawful municipal ordinances and regulations, shall continue and remain in full force and effect, and may be altered, changed, or amended, and new ordinances and regulations may be made by the commissioners of the District of Columbia, acting as such, hereafter, notwithstanding chapters 1–10 of this title: *Provided,* That when any order of the Commission created by chapters 1–10 of this title shall be made which shall be inconsistent and repugnant to any municipal ordinance or regulation, or any ordinance or regulation made or to be made by the Commissioners of the District of Columbia, acting as such, then and in such event the order of the Commission created by chapters 1–10 of this title shall be given full force and effect, notwithstanding such municipal ordinance or regulation. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 99.)

CROSS REFERENCES

Power of Commissioner to fix fares charged by public conveyances, §§ 1–223, 1–224.

Rules and regulations generally, § 43–202 and notes.

Traffic regulations by joint board composed of Commissioners of the District and the Public Utilities Commission, § 40–603.

Chapter 3.—SERVICE, VALUATION, ACCOUNTS

Sec.

43–301. Public utilities—Service and facilities—Charges to be reasonable, just, and nondiscriminatory—To obey orders of commission.
43–302. Use of equipment of other companies—Application to commission to require such use in event of disagreement.
43–303. Commission to compel compliance with chapters 1–10 of this title, with laws, ordinances, and charter—Criminal liability continued.
43–304. Proposed changes in law to be submitted to commission—Hearings—Recommendations to Congress.
43–305. Commission to ascertain cost of construction, replacement value, outstanding stock—Information to be printed in annual report.
43–306. Property to be valued as of time of evaluation.
43–307. Valuation—Notice and hearing—Statement of valuation to be filed.
43–308. Revaluation.
43–309. Uniform accounts to be rendered—Separate account of other business may be required.
43–310. Commission to prescribe forms of books and records.
43–311. Commission to furnish blank forms.
43–312. Utilities to have office in the District of Columbia—Books and records of utilities not to be removed from the District of Columbia—Records may be kept at general office of utility.
43–313. Accounts to be closed annually—Verified balance sheet to be filed with commission—Copy to Congress.
43–314. Commission to provide for examination and audit of accounts—Allocation of items to accounts—Authority of agents, accountants, and examiners.
43–315. Depreciation account—Rates of depreciation—Application of depreciation fund.
43–316. Commission to keep informed of new construction—Construction account.
43–317. Sliding scale of rates and dividends.
43–318. Utilities to furnish accounts and reports—Information to be included.
43–319. Annual report of commission.
43–320. Commission to fix adequate and serviceable standards—Regulations for testing products, service, and meters.
43–321. Commission to provide for examination and test of appliances—Fees paid by consumer—Appliances to be tested at request of consumer.
43–322. Commission may purchase material and equipment for tests—Entry on premises of utilities for purpose of tests.
43–323. Schedule of rates to be filed—Existing rates to remain in force until changed.
43–324. Rules and regulations affecting rates to be filed.
43–325. Copy of rate schedule to be available for public inspection.
43–326. Schedule of joint rates to be filed.
43–327. Change in schedule—Notice.
43–328. New schedules to be filed.
43–329. Utility not to receive greater or less compensation than fixed in schedule.
43–330. Commission may prescribe changes in form of schedule.

§ 43–301 [26: 24]. Public utilities—Service and facilities—Charges to be reasonable, just, and nondiscriminatory—To obey orders of commission.

Every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminatory charge for such facility or service is prohibited and is hereby declared unlawful. Every public utility is hereby required to obey the lawful orders of the commission created by chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 2.)

CROSS REFERENCES

Constitutionality of act, § 43–1003.

Criminal penalties for failure to obey laws or rules, regulations or orders of Commission, §§ 43–906 to 43–908.

Illegal rates of electric power companies, § 43–1107.

Liberal construction of act, § 43–1003.

Power to alter unreasonable or discriminatory rate, regulation, or practice, § 43–911.

Provisions concerning discriminatory rates, §§ 43–329, 43–902 to 43–904.

Saving clauses for previous laws, orders, rules and regulations, and pending proceedings, § 43–203 and notes.

NOTES TO DECISIONS

GAS RATES

Commission is without power to fix rates at which gas piped from another State will be supplied to local distributing company. *Galloway* v. *Bell* (56 App. D. C. 172, 11 Fed. (2d) 558).

INJUNCTIVE RELIEF

Where telephone company, operating in the District, received a letter from U. S. attorney requesting company to discontinue service because phone was used in violation of District gambling statute, an injunction against the United States attorney would be improper because his action was that of the United States. *Fay* v. *Miller* (C. A. D. C. 1950, 183 F. 2d 986).

RIGHT TO COMPEL FURNISHING SERVICE

Appellant has no positive right to compel the power company to furnish service to him contrary to its own rules and regulations duly approved by the Commission, the company's right to suspend or discontinue the service

in accordance with its notice can neither be controlled nor restrained. *Lewis* v. *Potomac Elec. Power Co.* (62 App. D. C. 63, 64 Fed. (2d) 701).

§ 43–302 [26: 25]. Use of equipment of other companies—Application to commission to require such use in event of disagreement.

Every utility doing business in the District of Columbia having tracks, conduits, subways, poles, wires, switchboards, exchanges, works, or other equipment shall, for a reasonable compensation, permit the use of the same by any other public utility whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owners or other users of such equipment; nor in any substantial detriment to the service to be rendered by such owners or other users. In case of failure to agree upon such use, or the conditions or compensation for such use, any public utility or any person, firm, copartnership, association, or corporation interested may apply to the commission, and if after investigation the commission shall ascertain that public convenience and necessity require such use and that it would not result in irreparable injury to the owners or other user of such equipment not in any substantial detriment to the service to be rendered by such owners or other users of such equipment, it shall by order direct that such use be permitted and prescribe the conditions and compensation for such joint use. Such use so ordered shall be permitted and such conditions and compensation so prescribed shall be the lawful conditions and compensation to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party, as hereinafter provided, which provisions, so far as applicable, shall apply to any action arising on such complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon its own motion after hearing and notice by order in writing. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 3.)

CROSS REFERENCES

Joint use of bridges, §§ 7–505, 7–507, 7–508, 7–511.

Joint use of certain railroad facilities, §§ 7–1213, 7–1216 to 7–1224, 44–208 to 44–212.

Rules and regulations relative to inspections, tests, audits, investigations, and hearings, § 43–402.

Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company, § 43–1108.

§ 43–303 [26: 26]. Commission to compel compliance with chapters 1–10 of this title, with laws, ordinances, and charter—Criminal liability continued.

The commission shall have power, after hearing and notice by order in writing, to require and compel every public utility to comply with the provisions of chapters 1–10 of this title, and with all other laws of the United States applicable, and any municipal ordinance or regulation relating to said public utility, and to conform to the duties upon it thereby imposed or by the provisions of its own charter, if any charter has or shall be granted it: *Provided,* That nothing herein contained shall be held to relieve any public utility, its officers, agents, or servants, from any punishment, fine, forfeiture, or penalty for violation of any such law, ordinance, regulation, or duty imposed by its charter, nor to limit, take away, or restrict the jurisdiction of any court or other authority which on March 4, 1913, had or which may thereafter have power to impose any such punishment, fine, forfeiture, or penalty. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 4.)

CROSS REFERENCES

Certified copies of orders, effect as evidence, § 43–713.

Criminal penalties, §§ 43–901 to 43–913.

Penalties and forfeitures provided by this act do not bar proceedings or prosecutions under other laws, § 43–913.

§ 43–304 [26: 27]. Proposed changes in law to be submitted to Commission—Hearings—Recommendations to Congress.

Whenever any public utility or person shall propose any change in any law relating directly or indirectly to the property or operations of any public utility the said proposed change shall also and at the same time be submitted to the commission, which may take testimony and give a public hearing thereon, and the commission shall recommend such bills as will in its judgment protect the interests of the public and such public utility and transmit the same to the proper committees of the Senate and House of Representatives. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 5.)

§ 43–305 [26: 28]. Commission to ascertain cost of construction, replacement value, outstanding stock—Information to be printed in annual report.

The commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right of way; also the amount of money it would require to secure the right of way, reconstruct any roadbed, track, depots, cars, conduits, subways, poles, wires, switchboards, exchanges, offices; works, storage plants, power plants, machinery, and any other property or instrument not included in the foregoing enumeration used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. It shall ascertain the outstanding stock, bonds, debentures, and indebtedness, and the amount, respectively, thereof, the date when issued, to whom issued, to whom sold, the price paid in cash, property, or labor therefor, what disposition was made of the proceeds, by whom the indebtedness is held, so far as ascertainable, the amount purporting to be due thereon, the floating indebtedness of the public utility, the credits due the public utility, other property on hand belonging to it, the judicial or other sales of said public utility, its property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor, and the taxes paid thereon. The commission shall also ascertain in detail the gross and net income of the public utility from all sources, the amounts paid for salaries to officers and the wages paid to its employees, and the maximum hours of continuous service required of each class. Whenever the information required by this section is obtained it shall be printed in the annual report of the commission. In making such investigation the commission may avail itself of any information in possession of any department of the government of the United States

or of the commissioners of the District of Columbia. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 6.)

CROSS REFERENCES

Application to court for instructions, § 43–704.
Payment of expenses, § 43–412.
Rates and rate making, see § 43–401 and notes.
Records, form and requisites, §§ 43–309 to 43–319.
Rules and regulations relative to inspections, tests, audits, investigations, and hearings, § 43–402.

NOTES TO DECISIONS

GOODWILL

Court when fixing rate base valuation of street railway property on appeal from the Public Utilities Commission could properly include the goodwill of one of the companies that had previously consolidated. *Public Utilities Comm.* v. *Capital Trac. Co.* (57 App. D. C. 85, 17 Fed. (2d) 673).

§ 43–306 [26: 29]. Property to be valued as of time of evaluation.

The commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 7.)

CROSS REFERENCES

Application to court for instructions, § 43–704.
Expenses of making valuation, § 43–412.

NOTES TO DECISIONS

VALUATION

Where consent decree fixed rate base, established a sliding scale of rates, and provided that if rates yielded more than a certain per cent return, one-half of excess should be used in reduction of future rates, and Public Utilities Commission, after full hearing on proper notice, directed electric company to file new lower rate schedules, the new rate order, which would allow fair return on fair valuation, was not invalid on ground that company had not consented thereto nor on ground that valuation requirements of this section had not been complied with. *Potomac Elec. Power Co.* v. *Public Utilities Commission of District of Columbia* (App. D. C. 1946, 158 F. 2d 521, certiorari denied, 67 S. Ct. 1303, 331 U. S. 816, 91 L. Ed. 1834).

§ 43–307 [26: 30]. Valuation—Notice and hearing—Statement of valuation to be filed.

Before final determination of such value the commission shall, after notice of not less than thirty days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The commission shall, within ten days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District Committees in Congress. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 8.)

CROSS REFERENCES

Payment of expenses of proceedings, § 43–412.
Rules and regulations relative to inspections, tests, audits investigations, and bearings, § 43–402.

§ 43–308 [26: 31]. Revaluation.

The commission may at any time, on its own initiative, make a revaluation of the property of any public utility. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 9.)

CROSS REFERENCES

Application to court for instructions, § 43–704.
Payment of expenses of revaluating, § 43–412.

§ 43–309 [26: 32]. Uniform accounts to be rendered—Separate account of other business may be required.

Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. Every public utility engaged directly or indirectly in any other business than that of the conduct of a street railway, or the production, transmission, or furnishing of heat, light, water, or power, or the conveyance of telegraph or telephone messages, shall, if required by the commission, keep and render separately to the commission in like manner and form the accounts of all such other business, in which case all the provisions of chapters 1–10 of this title shall apply with like force and effect to the books, accounts, papers, and records of such other business. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 10.)

CROSS REFERENCES

Criminal penalties for violation of this section, § 43–905.
Witnesses; production of books, records, and accounts; investigation of records and accounts; duty of utility companies to furnish information, records, and accounts, §§ 43–405 to 43–407.

§ 43–310 [26: 33]. Commission to prescribe forms of books and records.

The commission shall prescribe the forms of all books, accounts, papers, and records required to be kept, and every public utility is required to keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the commission, and to comply with all directions of the commission relating to such books, accounts, papers, and records. In so far as practicable for the purposes of chapters 1–10 of this title, the form prescribed shall be the form accepted by the Interstate Commerce Commission. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 11.)

CROSS REFERENCES

Criminal penalties, § 43–905.
Production and examination, see note to § 43–309.

§ 43–311 [26: 34]. Commission to furnish blank forms.

The commission shall cause to be prepared suitable blanks for carrying out the purposes of chapters 1–10 of this title, and shall when necessary furnish such blanks to each public utility. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 12.)

§ 43–312 [26: 35]. Utilities to have office in the District of Columbia—Books and records of utilities not to be removed from the District of Columbia—Records may be kept at general office of utility.

Each public utility shall have an office within the District of Columbia in which it shall keep all such books, accounts, papers, and records as shall be required by the commission to be kept within the District of Columbia. No books, accounts, papers, or records required by the commission to be kept within the District of Columbia shall be at any time removed from the District of Columbia, except upon such condition as may be prescribed by the Commission: *Provided,* That public utilities operating in the

District of Columbia and elsewhere who have their general or executive offices outside of the District, may continue to keep their books, accounts, records, and so forth, at their executive or general offices, such public utilities being required, however, to produce before the commission such books, accounts, records, and papers from time to time as the commission may order. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 13.)

CROSS REFERENCES

Production and examination, see note to § 43–309.
Rules and regulations relative to inspections, tests, audits, investigations, and hearings, § 43–402.

§ 43–313 [26: 36]. Accounts to be closed annually—Verified balance sheet to be filed with commission—Copy to Congress.

The accounts shall be closed annually on the thirty-first day of December, and a balance sheet of that date promptly taken therefrom. On or before the first day of February following such balance sheet, together with such other information as the commission shall prescribe, verified by an owner or officer of the public utility, shall be filed with the commission, and a copy thereof transmitted to Congress. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 14.)

§ 43–314 [26: 37]. Commission to provide for examination and audit of accounts—Allocation of items to accounts—Authority of agents, accountants, and examiners.

The commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission. The agents, accountants, or examiners employed by the commission shall have authority, under the direction of the commission, to inspect and examine any and all books, accounts, papers, records, and memoranda kept by such public utility. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 15.)

CROSS REFERENCES

Payment of expense of audit, § 43–412.
Production and examination, see note to § 43–309.
Rules and regulations, § 43–402.
Similar provisions, § 43–404.

§ 43–315 [26: 38]. Depreciation account—Rates of depreciation—Application of depreciation fund.

Every public utility shall carry a proper and adequate depreciation account. The commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as it may find to be necessary. The commission shall also prescribe rules, regulations, and forms of accounts regarding such depreciation which the public utility is required to carry into effect. The commission shall provide for such depreciation in fixing the rates, tolls, and charges to be paid by the public. All moneys in this fund may be expended in keeping the property of such public utility in repair and good and serviceable condition for the use to which it is devoted, or invested, and, if invested, the income from the investments shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this section, unless with the consent and by order of the commission. Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 16.)

CROSS REFERENCES

Production and examination, see notes to § 43–309.
Rules and regulations generally, § 43–202.

§ 43–316 [26: 39]. Commission to keep informed of new construction—Construction account.

The commission shall keep itself informed of all new construction, extensions, and additions to the property of all public utilities, and shall prescribe the necessary forms, regulations, and instructions to the officers and employees of all public utilities for the keeping of construction accounts, which shall clearly distinguish all operating expenses and new construction. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 17.)

CROSS REFERENCES

Power of commission to require repairs to be made, § 43–208.
Rules and regulations generally, § 43–202.

§ 43–317 [26: 40]. Sliding scale of rates and dividends.

Nothing in chapters 1–10 of this title shall be taken to prohibit a public utility, with the consent of the commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purposes of chapters 1–10 of this title. Such arrangement shall be under the supervision and regulation of the commission. The commission shall ascertain, determine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the commission notwithstanding any such arrangement and mutual agreement. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 18.)

CROSS REFERENCES

Payment of expenses of investigation, § 43–412.
Power of commission to alter or amend unreasonable or discriminatory rates, regulations, or practices, § 43–911.
Production and examination, see note to § 43–309.
Rate making, § 43–401.
Rules and regulations generally, § 43–202 and notes.

NOTES TO DECISIONS

DEPOSITS

Order of Public Utilities Commission which permits deposits in advance from those unable to establish financial responsibility was not discriminatory. *Riegel* v. *Public Utilities Comm.* (60 App. D. C. 111, 48 Fed. (2d) 1023).

EMERGENCY FLEET CORPORATION

The Emergency Fleet Corporation, although organized as a private corporation under District of Columbia laws, is entitled to the benefit of the provisions of the Post Roads Act of 1866 giving it special rates for telegraph service. *United States Shipping Board Emergency Fleet Corp.* v. *Western Union Tel. Co.* (275 U. S. 415, 72 L. Ed. 345, 48 Sup. Ct. 198).

EMERGENCY PRICE CONTROL ACT

In determining whether power of Public Utility Commission of District of Columbia to regulate utility rates had been restricted by amendment to Emergency Price Control Act, 50 U. S. C. App., § 901 et seq. and § 961, the purpose of said act and amendment were required to be considered. *Washington Gas Light Co.* v. *Byrnes,* 1943 (137 F. 2d 547, 78 U. S. App. D. C. 107, certiorari granted 64 S. Ct. 191, 320 U. S. 730, 88 L. Ed. 431, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

On application of gas company to Public Utilities Commission of the District of Columbia for a rate increase in accordance with a sliding scale arrangement entered into in 1935, Commission should afford president's representatives the opportunity to intervene pursuant to amendment to Emergency Price Control Act, 50 U. S. C. App., § 901 et seq. and § 961 et seq., and grant them opportunity to fully test the inflationary trend, if any, which proposed increase in rates might portend. *Byrnes* v. *Flanagan* (D. C., D. C. 1943, 48 F. Supp. 703).

Public Utilities Commission of the District of Columbia could not proceed on application of gas company for a rate increase in accordance with a sliding scale arrangement entered into in 1935 alone, in face of amendment to Emergency Price Control Act, 50 U. S. C. App., § 901 et seq. and § 961 et seq., requiring public utilities seeking general increase in their rates which were in effect on September 15, 1942, to first give 30 days' notice to president, or such agency as he may designate, and consent to timely intervention by such agency before the federal, state or municipal authority having jurisdiction to consider such increase. *Byrnes* v. *Flanagan* (D. C., D. C. 1943, 48 F. Supp. 703).

§ 43–318 [26: 41]. Utilities to furnish accounts and reports—Information to be included.

Each public utility shall furnish to the commission in such form and at such times as the commission shall require, such accounts, reports, and information as shall show in itemized detail: Depreciation; salaries and wages; legal expenses; taxes and rentals; quantity and value of material used; receipts from residuals, by-products, services, or other sales; total and net costs; net and gross profits; dividends and interest; surplus or reserve; prices paid by consumers; and in addition such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing its product or service to the public. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 19.)

CROSS REFERENCES

Annual reports by street railroads, § 44–215.
Production and examination, see note to § 43–309.
Reports by electric power companies, § 43–1109.
Reports by gas companies, § 43–1206.
Rules and regulations, § 43–402 and notes.

§ 43–319 [26: 42]. Annual report of commission.

The commission shall publish annual reports showing its proceedings relating to all the public utilities of each kind in the District of Columbia, and such other occasional reports as it may deem advisable. The commission shall also publish in its annual reports the value of all property actually used and useful for the convenience of the public, of every public utility as to whose rates, charges, service, or regulations any hearing has been held by the commission or the value of whose property has been ascertained by it under the provisions of chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 20.)

§ 43–320 [26: 43]. Commission to fix adequate and serviceable standards—Regulations for testing products, service, and meters.

The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other condition pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examining and testing such product or service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 21.)

CROSS REFERENCES

Provisions for testing gas and electric meters, rules and regulations, § 43–603.
Provisions for testing quality of gas, § 43–605.
Rules and regulations generally, § 43–202 and notes.

§ 43–321 [26: 44]. Commission to provide for examination and test of appliances—Fees paid by consumer—Appliances to be tested at request of consumer.

The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliance tested upon payment of the fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 22.)

§ 43–322 [26: 45]. Commission may purchase material and equipment for tests—Entry on premises of utilities for purpose of tests.

The commission may purchase such materials, apparatus, and standard measuring instruments for such examination and tests as it may deem necessary. The commission, its agents, experts, or examiners, shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided for in chapters 1–10 of this title, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 23.)

CROSS REFERENCE

Criminal penalties for destruction of apparatus belonging to commission, § 43–909.

§ 43–323 [26: 46]. Schedule of rates to be filed—Existing rates to remain in force until changed.

Every public utility shall file with the commission, within a time to be fixed by the commission, schedules, which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the District of Columbia, or for any service in connection therewith or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges allowed by law on March 4, 1913, and shall be the lawful rates, tolls, and charges within the District of Columbia, and shall remain and be in force until set aside by the commission. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 24.)

COMPILER'S NOTE

This section is largely temporary and executed.

CROSS REFERENCE

Changing existing rates, § 43–401.

NOTES TO DECISIONS

JURISDICTION OF COMMISSION

Limitations upon the commission forbid any attempt at regulation by it of the manner or price at which gas shall be delivered by a Maryland company to its consumers. *Galloway* v. *Bell* (56 App. D. C. 172, 11 Fed. (2d) 558).

§ 43–324 [26: 47]. Rules and regulations affecting rates to be filed.

Every public utility shall file with and as a part of such schedule all rules and regulations that in any manner affect the rates charged or to be charged for any service. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 25.)

CROSS REFERENCES

Rate making, § 43–401.
See compiler's note to § 43–323.

§ 43–325 [26: 48]. Copy of rate schedule to be available for public inspection.

A copy of so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type and kept on file in every station and office of such public utility where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public and so as to be conveniently inspected. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 26.)

§ 43–326 [26: 49]. Schedule of joint rates to be filed.

Where a schedule of joint rates or charges is, or may be, in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office, as provided in section 43–325. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 27.)

§ 43–327 [26: 50]. Change in schedule—Notice.

No change shall be made in any schedule, including schedules of joint rates, except upon ten days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect: *Provided*, That the commission, upon application of any public utility, may prescribe a less time within which a reduction may be made. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 28.)

CROSS REFERENCES

Changes to conform to orders of commission, § 43–701.
Rate making, § 43–401.

§ 43–328 [26: 51]. New schedules to be filed.

Copies of all new schedules shall be filed, as hereinbefore provided, in every station and office of such public utility where payments are made by consumers or users ten days prior to the time the same are to take effect, unless the commission shall prescribe a less time. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 29.)

CROSS REFERENCE

Rate making, § 43–401.

§ 43–329 [26: 52]. Utility not to receive greater or less compensation than fixed in schedule.

It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the District of Columbia, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed as provided in chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 30.)

CROSS REFERENCES

Criminal penalties, §§ 43–902 to 43–904.
Other provisions concerning discriminatory rates, § 43–301.
Rate making, § 43–401.

§ 43–330 [26: 53]. Commission may prescribe changes in form of schedule.

The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 31.)

CROSS REFERENCE

Rate making, § 43–401.

Chapter 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

Sec.

43–401. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by District Court.
43–402. Commission may adopt rules and regulations.
43–403. Commission to keep informed as to conduct of business—May obtain from utilities all necessary information.
43–404. Inspection of books and examination of officers of utilities.
43–405. Production of records of utilities compellable by summons—Attendance of witnesses—Duties of district attorney and corporation counsel.
43–406. Appointment of investigating agents—Powers.

Sec.
43–407. Utilities to furnish information required by commission—Maps, books, reports to be delivered to commission on request.
43–408. Commission may investigate unjust discriminatory rates—No order to be entered without formal hearing.
43–409. Commission to notify utility of complaints.
43–410. Notice as to hearings—Compulsory attendance of witnesses.
43–411. Reasonable rates may be ordered—Notice to be given utility affected thereby.
43–412. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings.
43–413. Separate hearings on complaints—Complaints not to be dismissed because of absence of direct damage.
43–414. Summary investigation.
43–415. Hearings after summary investigation.
43–416. Notice of hearing—Hearing to be conducted as though complaint had been filed.
43–417. Utility may make complaint.
43–418. Commissioners and agents may administer oaths, issue subpoenas, proceeding to punish for contempt.
43–419. Witness fees.
43–420. Testimony may be taken by deposition.
43–421. Record of proceedings to be kept—Testimony to be taken stenographically.
43–422. Transcript of evidence or proceedings, certified by stenographer, to be received in evidence—Copy of transcript to be furnished without cost.

§ 43–401 [26: 120]. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by District Court.

First, unless the commission shall otherwise order, it shall be unlawful for any public utility within the District of Columbia to demand, collect, or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same service under the law in force on March 4, 1913; second, every public utility in the District of Columbia shall, within thirty days after March 4, 1913, file in the office of the commission copies of all schedules of rates and charges, including joint rates, in force on March 4, 1913; third, any public utility desiring to advance or discontinue any such rate or rates may make application to the commission in writing, stating the advance in or discontinuance of the rate or rates desired, giving the reasons for such advance or discontinuance; fourth, upon receiving such application the commission shall fix a time and place for hearing, and give such notice to interested parties as shall be proper and reasonable; if, after such hearing and investigation, the commission shall find that the change or discontinuance applied for is reasonable, fair, and just, it shall grant the application, either in whole or in part; fifth, any public utility being dissatisfied with any order of the commission made under the provisions of this section may commence a proceeding against it in the District Court of the United States for the District of Columbia in the manner as is in chapters 1–10 of this title provided, which action shall be tried and determined in the same manner as is in chapters 1–10 of this title provided. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 94.)

Compiler's Note

The second clause is clearly temporary.

Cross References

Accounts required; form and requisites, audits, expenses of audits, §§ 43–309 to 43–319.

Alteration, revocation, or amendment of orders, § 43–702 and notes.

Changing rates, § 43–411.

Complaint by utility company for change of rate or service, § 43–417.

Constitutionality of act, § 43–1003.

Criminal penalties for discriminatory rates; refusal to give information, testimony, records, or accounts; failure to obey laws, rules, orders, or regulations, §§ 43–902 to 43–908.

Discriminatory rates forbidden, § 43–301 and notes.

Enforcement of orders, appeal or review, rights and duties pending appeal, § 43–701 et seq.

Filing schedules of rates and charges; rates and charges effective when act took effect, change thereof, §§ 43–323 to 43–330.

Investigation of unreasonable or discriminatory rates, § 43–408.

Itemized accounts and reports required of utility companies, § 43–318.

Liberal construction of act, § 43–1003.

Power of commission to alter or amend unreasonable or discriminatory rates, regulations, or practices, § 43–911.

Rates for electric power companies, § 43–1107.

Rates for gas companies, § 43–1207.

Saving clause for laws, regulations, or orders and pending proceedings, §§ 43–1005, 43–1006.

Sliding scale of rates and dividends, § 43–317.

Street railroads, §§ 44–207, 44–212 to 44–214.

Summary investigation of rates, § 43–414.

Valuation of public utilities, §§ 43–305 to 43–308.

NOTES TO DECISIONS

Discretion of Commission

In public utility rate proceeding, Public Utility Commission's refusal of demand of intervening Price Administrator that thoroughgoing examination be made into rate base, rate of return, operating expenses, depreciation, and all other matters relative to establishment of fair return was not an abuse of discretion. *Washington Gas Light Co.* v. *Byrnes,* 1943 (137 F. 2d 547, 78 U. S. App. D. C. 107, certiorari granted 64 S. Ct. 191, 320 U. S. 730, 88 L. Ed. 431, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

Bus and street car transportation between points in the District of Columbia and points on the Virginia side of the Potomac River, which operations were performed within territorial limits of the District of Columbia municipal zone and involved intrastate transportation subject to regulation by the Commissions of Virginia and the District of Columbia, was not "interurban" but "urban transportation," and, as such, it was not within jurisdiction of Interstate Commerce Commission to regulate fares for such transportation. *Capital Transit Co.* v. *U. S.* (D. C., D. C. 1944, 55 F. Supp. 51).

Hearing, Sufficiency of

Record showed that the Director of Economic Stabilization and the Administrator of the Office of Price Administration of the United States as interveners in a rate proceeding before the Public Utilities Commission of the District of Columbia were offered every opportunity for a full hearing. *Vinson* v. *Washington Gas Light Co.,* 1944 (64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883, affirming 137 F. 2d 547).

Power to Fix Rates

The power to fix public utility rates is a legislative power which has been delegated by Congress to Public Utility Commission of District of Columbia, and in its exercise, within constitutional limits, discretion of commission may not be controlled even by courts. *Washington Gas Light Co.* v. *Byrnes,* 1943 (137 F. 2d 547, 78 U. S. App. D. C. 107, certiorari granted 64 S. Ct. 191, 320 U. S.

730, 88 L. Ed. 431, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

The Emergency Price Control Act of 1942, 50 U. S. C. App. § 901 et seq. and the Inflation Control Act of 1942, 50 U. S. C. App. § 961 et seq., did not limit powers conferred by law on regulatory commissions over utility rates nor prohibit such commissions from permitting any increase in utility rates which were not shown to be necessary to prevent actual hardship, nor endow a different federal agency with new and superior rights and powers over utility rates. *Vinson* v. *Washington Gas Light Co.*, 1944 (64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883, affirming 137 F. 2d 547).

RECONSIDERATION AFTER INTERVENTION

Record showed that Director of Economic Stabilization and Administrator of the Office of Price Administration as interveners in a rate proceeding before the Public Utilities Commission in the District of Columbia requested the reconsideration of the basic principle of sliding scale arrangement and demanded the suspension of the sliding scale and re-examination of its basis in a complete investigation of all the elements that entered into the determination of a utility rate by a regulatory body and that such demands were properly denied. *Vinson* v. *Washington Gas Light Co.*, 1944 (64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883, affirming 137 F. 2d 547).

§ 43–402 [26: 54]. Commission may adopt rules and regulations.

The commission shall have power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 32.)

CROSS REFERENCE

Rules and regulations generally, § 43–202 and notes.

NOTES TO DECISIONS

FEDERAL LAWS, SCOPE OF

The right conferred on Price Administrator to intervene in public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. *Washington Gas Light Co.* v. *Byrnes*, 1943 (137 F. 2d 547, 78 U. S. App. D. C. 107, certiorari granted 64 S. Ct. 191, 320 U. S. 730, 88 L. Ed. 431, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

INTERVENTION, EFFECT OF

The intervention of the Director of Economic Stabilization and Administrator of Office of Price Administration in rate proceeding before the Public Utilities Commission of the District of Columbia was in subordination to Commission's standing rule that intervention should not change or enlarge the issues. *Vinson* v. *Washington Gas Light Co.*, 1944 (64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883, affirming 137 F. 2d 547).

§ 43–403 [26: 55]. Commission to keep informed as to conduct of business—May obtain from utilities all necessary information.

The commission shall keep itself informed as to the manner and method in which the business of all public utilities is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 33.)

CROSS REFERENCE

Utility companies required to keep and furnish information, accounts, books, and records, §§ 43–309 to 43–319.

§ 43–404 [26: 56]. Inspection of books and examination of officers of utilities.

The commission or any commissioner or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection or examination. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 34.)

CROSS REFERENCE

Similar provisions, § 43–314 et seq.

§ 43–405 [26: 57]. Production of records of utilities compellable by summons—Attendance of witnesses—Duties of district attorney and corporation counsel.

The commission may require, by order or subpœna, to be served upon any public utility in the same manner that a summons is served in a civil action in the District Court of the United States for the District of Columbia, the production within the District of Columbia at such time and place as it may designate of any books, accounts, papers, or records kept by such public utility in any office or place without the District of Columbia, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission under its direction. Any public utility failing or refusing to comply with any order or subpœna shall for each day it shall so fail or refuse forfeit and pay to the District of Columbia the sum of one hundred dollars, to be recovered in an action to be brought in the name of said District.

Attendance of witnesses and the production of such documentary evidence may be required from any place in the United States. And in case of disobedience to a subpœna the commission, or any party to a proceeding before the commission may invoke the aid of any court of the United States or the District Court of the United States for the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section. And the said commission is hereby given power to call on any district attorney of the United States, the corporation counsel of the District of Columbia or any counsel of the commission to enforce the provisions of chapters 1–10 of this title in the proper courts of the United States, and on such call it shall be the duty of the said district attorney, corporation counsel, or any counsel of the commission, upon request of said commission, to enforce the provisions of this section, the cost and expenses incurred to be paid out of the appropriations for the expenses of the courts of the United States. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 35.)

CROSS REFERENCES

Commissioners and agents may issue subpoenas, § 43–418.

Criminal penalties, § 43–905.

Depositions, § 43–420.

Records and accounts required to be kept by utility companies, §§ 43–309 to 43–319.

§ 43–406 [26: 58]. Appointment of investigating agents—Powers.

For the purpose of making any investigation with regard to any public utility the commission shall have power to appoint, by an order in writing, an agent, whose duties shall be prescribed in such order. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in chapters 1–10 of this title to the commission and shall have power to administer oaths and take depositions. The commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent or agents the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only, and shall not preclude the taking of further testimony, if the commission so order, nor further investigation. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 36.)

Cross References

Commissioners and agents may issue subpoenas, § 43–418.

Records, see note to § 43–105.

§ 43–407 [26: 59]. Utilities to furnish information required by commission—Maps, books, reports to be delivered to commission on request.

Every public utility shall furnish to the commission all information required by it to carry into effect the provisions of chapters 1–10 of this title, and shall make specific answers to all specific questions submitted by the commission. Any public utility receiving from the commission any blanks with directions to fill the same shall cause the same to be properly filled out so as to answer, fully and correctly, each question therein propounded, and in case it is unable to answer any question it shall give a good and sufficient reason for such failure; and said answer shall be verified under oath by the president, secretary, superintendent, or general manager of such public utility, and returned to the commission at its office within the period fixed by the commission. Whenever required by the commission, every public utility shall deliver to the commission any or all maps, profiles, contracts, reports of engineers, and all documents, books, accounts, papers, and records, or copies of any or all of the same, with a complete inventory of all its property, in such form as the commission may direct. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 37.)

Cross Reference

Records, see notes to § 43–405.

§ 43–408 [26: 60]. Commission may investigate unjust discriminatory rates—No order to be entered without formal hearing.

Upon its own initiative or upon reasonable complaint made against any public utility that any of the rates, tolls, charges, or schedules, or services, or time and conditions of payment, or any joint rate or rates, schedules, or services, are in any respect unreasonable or unjustly discriminatory, or that any time schedule, regulation, or act whatsoever affecting or relating to the conduct of any street railway or common carrier, or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or can not be obtained, the commission may, in its discretion, proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, or act complained of shall be entered by the commission without a formal hearing. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 38.)

Cross Reference

Rate making generally, § 43–401 and notes.

NOTES TO DECISIONS

Federal Laws, Scope of

The right conferred on Price Administrator to intervene in public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. *Washington Gas Light Co.* v. *Byrnes* (App. D. C. 1943, 137 F. 2d 547).

Legislative Intent

It is not contemplated that any resident of the District, feeling himself aggrieved, may rush into the courts without first submitting his case to the Public Utilities Commission, whose duty it is primarily to hear and adjust and, if possible, finally dispose of such complaints. *Hollis* v. *Kutz* (49 App. D. C. 301, 265 Fed. 451).

§ 43–409 [26: 61]. Commission to notify utility of complaints.

The commission shall prior to such formal hearing notify the public utility complained of that a complaint has been made, and ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 39.)

§ 43–410 [26: 62]. Notice as to hearings—Compulsory attendance of witnesses.

The commission shall give the public utility and the complainant, if any, ten days' notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 40.)

§ 43–411 [26: 63]. Reasonable rates may be ordered—Notice to be given utility affected thereby.

If upon such investigation the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of chapters 1–10 of this title, the commission shall have power to determine and by order fix and order to be substituted therefor such rate or rates, tolls, charges, or schedules as shall be just and reasonable. If upon such investi-

gation it shall be found that any regulation, time schedule, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of this section, or if it is to be found that reasonable service is not supplied, the commission shall have power to determine and substitute therefor such other regulations, time schedules, service, or acts and to make such orders respecting and such changes in such regulations, time schedules, service, or acts as shall be just and reasonable. And upon any investigation for the purpose of determining upon and requiring any reasonable extension or extensions of lines or of service that shall promise to be compensatory within a reasonable time, the commission shall have power to fix, determine, and require every such extension or extensions to be made and the terms and conditions upon which the same shall be made: *Provided*, That no hearing shall be had and no order shall be made respecting such extension or extensions, without notice to the public utility affected thereby, as provided in section 43–410. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 41.)

CROSS REFERENCE

Rate making generally, § 43–401 and notes.

NOTES TO DECISIONS

CONSTITUTIONALITY

The constitutional rights of private consumers of gas are not invaded by rates established by the Public Utilities Commission at a higher rate than is charged to the Government. *Hollis* v. *Kutz* (255 U. S. 452, 65 L. Ed. 727, 41 Sup. Ct. 371).

COST OF CAPITAL

In proceedings before Public Utilities Commission of District of Columbia relating to fixing gas rates, question before Commission was what constitutes a reasonable allowance based on cost of common stock capital, and by "cost of capital" is meant interest charges and enough more to attract capital to the company and to maintain its credit. *Washington Gas Light Co.* v. *Public Utilities Commission of District of Columbia* (D. C., D. C. 1944, 55 F. Supp. 627).

DETERMINATION OF REASONABLENESS

Gas rates fixed by Public Utilities Commission of District of Columbia, to be valid, must enable company to operate successfully, to maintain its financial integrity to attract capital, and to compensate its investors for risks assumed. *Washington Gas Light Co.* v. *Public Utilities Commission of District of Columbia* (D. C., D. C. 1944, 55 F. Supp. 627).

§ 43–412 [26: 65]. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings.

The expenses of any investigation, valuation, revaluation, or proceeding of any nature by the Public Utilities Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the said commission, shall be borne by the public utility investigated, valued, revalued, or otherwise affected as a special franchise tax in addition to all other taxes imposed by law, and such expenses with interest at 6 per centum per annum may be charged to operating expenses and amortized over such period as the Public Utilities Commission shall deem proper and be allowed for in the rates to be charged by such utility. When any such investigation, valuation, revaluation, or other proceeding is begun the said Public Utilities Commission may call upon the utility in question for the deposit of such reasonable sum or sums as in the opinion of said commission, it may deem necessary from time to time until the said proceeding or the litigation arising therefrom is completed, the money so paid to be deposited in the treasury of the United States to the credit of the appropriation account known as "miscellaneous trust fund deposit, District of Columbia" and to be disbursed in the manner provided for by law for other expenditures of the government of the District of Columbia, for such purposes as may be approved by the Public Utilities Commission. Any unexpended balance of such sum or sums so deposited shall be returned to the utility depositing the same: *Provided*, That the amount expended by the commission in any valuation or rate case shall not exceed one-half of 1 per centum of the existing valuation of the company investigated, and that the amount expended in all other investigations shall not exceed one-tenth of 1 per centum of the existing valuation for any one company for any one year. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 42; Mar. 3, 1927, 44 Stat. 1351, ch. 304; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 3.)

COMPILER'S NOTE

Section 43–711 provides as follows: "If any provisions of §§ 43–412, 43–704 to 43–711 or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby."

AMENDMENTS

The act of Mar. 3, 1927, 44 Stat. 1351, ch. 304, added paragraph 42a.

The act of Aug. 27, 1935, 49 Stat. 884, ch. 742, § 3, struck out both paragraphs 42 and 42a and inserted in lieu thereof a new paragraph 42, reading as above.

The 1935 amendment added the following: "and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the said commission."

CROSS REFERENCES

Investigation and valuations, § 43–305 et seq.

Rate making generally, § 43–401 and notes.

NOTES TO DECISIONS

FRANCHISE TAX

The application of the rule of assessment provided for in this section does not impose an unconstitutional burden upon the utilities company.

PAYMENT OF EXPENSES

Later statute requiring utility to bear expenses of investigation or revaluation by Public Utilities Commission prevails over a previous statute which requires a utility to pay expenses only where utility is at fault. *Washington R. & Elec. Co.* v. *District of Columbia* (64 App. D. C. 243, 77 Fed. (2d) 366).

§ 43–413 [26: 66]. Separate hearings on complaints—Complaints not to be dismissed because of absence of direct damage.

The commission may, in its discretion, when complaint is made of more than one rate or charge, order

separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 43.)

§ 43–414 [26: 67]. Summary investigation.

Whenever the commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory, or that any reasonable service is not supplied, or that an investigation of any matter relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same with or without notice. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 44.)

CROSS REFERENCE

Rate making generally, § 43–401 and notes.

§ 43–415 [26: 68]. Hearings after summary investigation.

If after making such investigation the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested a statement notifying the public utility of the matters under investigation. Ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinbefore provided. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 45.)

§ 43–416 [26: 69]. Notice of hearing—Hearing to be conducted as though complaint had been filed.

Notice of the time and place for such hearing shall be given to the public utility and to such other interested persons as the commission shall deem necessary, as provided in section 43–410, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 46.)

§ 43–417 [26: 70]. Utility may make complaint.

Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by the commissioner or upon reasonable complaint as hereinbefore provided. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 47.)

CROSS REFERENCE

Rate making generally, § 43–401 and notes.

§ 43–418 [26: 71]. Commissioners and agents may administer oaths, issue subpœnas—Proceeding to punish for contempt.

Each of the commissioners and every agent provided for in section 43–406, for the purposes mentioned in chapters 1–10 of this title, shall have power to administer oaths, certify to official acts, issue subpœnas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. In case of disobedience on the part of any person or persons to comply with any order of the commission or any commissioner, or any subpœna, or on the refusal of any witness to testify to any matter regarding which he may be interrogated before the commission or its agent authorized, it shall be the duty of the District Court of the United States for the District of Columbia, or a judge thereof, on application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpœna issued from such court or a refusal to testify therein. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 48.)

§ 43–419 [26: 72]. Witness fees.

Each witness who shall appear before the commission or its agent by its order shall receive for his attendance the fees and mileage provided for witnesses in the District Court of the United States for the District of Columbia on March 4, 1913, which shall be audited and paid in the same manner as fees in criminal cases within the District of Columbia are audited and paid, upon the presentation of proper vouchers, sworn to by such witnesses and approved by the chairman of the commission. No witnesses subpœnaed at the instance of parties other than the commission shall be entitled to compensation for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated, and that his attendance as a witness was reasonably necessary. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 49.)

§ 43–420 [26: 73]. Testimony may be taken by deposition.

The commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the District of Columbia to be taken in the manner prescribed by law for like depositions in civil actions in District Courts. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 50.)

§ 43–421 [26: 74]. Record of proceedings to be kept—Testimony to be taken stenographically.

A full and complete record shall be kept of all proceedings had before the commission or its agents on any formal investigation had, and all testimony shall be taken down by a stenographer appointed by the commission. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 51.)

§ 43–422 [26: 76]. Transcript of evidence or proceedings, certified by stenographer, to be received in evidence—Copy of transcript to be furnished without cost.

A transcribed copy of the evidence and proceedings, or any specific part thereof, in any investigation taken by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of all the testimony in the investigation or of a particular witness, or of other specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had in such investigation so purporting to be taken and transcribed, shall be received in evidence with the

same effect as if such reporter were present and testified to the fact so certified. A copy of such transcript shall be furnished on demand, free of cost, to any party to such investigation. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 53.)

Chapter 5.—SALE AND MERGER OF UTILITIES

Sec.
43–501. Assignment of franchise—Acquisition of stocks and bonds of competing utilities.
43–502. Antimerger law.
43–503. Merger of street railways permitted.

§ 43–501 [26: 77]. Assignment of franchise—Acquisition of stocks and bonds of competing utilities.

No franchise nor any right to or under any franchise to own or operate any public utility as defined in chapters 1–10 of this title or to use the tracks of any street railroad shall be assigned, transferred, or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer, lease, contract, or agreement shall have been approved by the commission in writing. The permission and approval of the commission to the assignment, transfer, or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture. It shall be unlawful for any street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or other public utility corporation, directly or indirectly, to acquire the stock or bonds of any other corporation incorporated for or engaged in the same or similar business as it is, unless authorized in writing to do so by the commission, and every contract, transfer, agreement for transfer or assignment of any such stock or bonds without such written authority shall be void and of no effect. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 54.)

CROSS REFERENCES

Constitutionality of act, § 43–1003.
Criminal penalties, §§ 43–906 to 43–908.
Liberal construction of act, § 43–1003.
Other provisions concerning reorganization or consolidation of companies, issuance of stock, § 43–805.
Saving clauses, §§ 43–1005, 43–1006.

NOTES TO DECISIONS

PURCHASE OF OTHER COMPANIES

Under authority of this paragraph, the Washington Gas Light Company was granted permission by the Public Utilities Commission to purchase the stocks and bonds of various other gas-light companies. *Washington Gas Light Co.* v. *Dann* (63 App. D. C. 142, 70 Fed. (2d) 746).

§ 43–502 [26: 78]. Antimerger law.

It shall be unlawful for any foreign public utility corporation, or for any foreign or local holding corporation, or for any local street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or any other local public utility corporation, directly or indirectly, to own, control, or hold or vote stock or bonds of any public utility corporation organized under any general incorporation law or special act of the United States or authorized under any law of the United States to do business in the District of Columbia, except as heretofore or hereafter expressly authorized by Congress; and it shall be unlawful for any public utility corporation organized or authorized as aforesaid to sell or transfer any portion of its stock or bonds to any other public utility corporation or holding corporation whatsoever, unless heretofore or hereafter expressly authorized by Congress so to do; and every contract, transfer, agreement to transfer, or assignment by any said public utility corporation organized or authorized as aforesaid of any portion of its stock or bonds without such authority shall be utterly void and of no effect. The District Court of the United States for the District of Columbia, on application of the District of Columbia by its commissioners or attorney, or on application of the United States by its proper officer, or on application of any shareholder interested in any such corporations, shall have jurisdiction in equity to dissolve any public utility corporation organized under any general incorporation law or special section of the United States, or authorized under any law of the United States to do business in the District of Columbia, for violation of any of the provisions of this section or of their charters; and further, to require any foreign public utility corporation, or foreign or local holding corporation which owns, holds, or controls, or which shall hereafter own, hold, or control any such stock or bonds contrary to any of the provisions of this section, to sell or dispose of the same and to refrain from voting such stock or bonds: *Provided,* That in case the allegations in any bill filed in said court relate to the ownership of stock or bonds of a local corporation by any foreign corporation, then it must be shown to the satisfaction of the court that such ownership includes at least twenty per centum of the capital stock of the local corporation.

The inhibitions and restrictions contained in this section are hereby removed, so far and only so far, as they affect the acquisition by any corporation of the stocks or bonds of any of the corporations referred to in section 43–503: *Provided,* Congress reserves the right to alter, amend, or repeal this paragraph of this section.

The word "foreign" when used in this section shall be construed to mean foreign to the District of Columbia, and the word "local" when used in this section shall be construed to mean local in the District of Columbia.

Each provision of this section and every part of each provision is hereby declared to be an independent provision, and the holding of any provision or provisions, or part or parts thereof, to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other provision or part thereof. (Mar. 4, 1913, 37 Stat. 1006, ch. 150, § 11; Mar. 4, 1925, 43 Stat. 1265, ch. 527, §§ 2, 3.)

AMENDMENT

Act of 1925 provides that the inhibitions and restrictions in this section are thereby removed so far, and only so far, as they affect the acquisition by any corporation of the stocks or bonds of any of the corporations approved by Public Utilities Commission. Congress also reserves

the right to alter, amend, or repeal this act or any provision thereof.

COMPILER'S NOTE

The word "section" in the second sentence of the first paragraph is undoubtedly a misprint for "Act."

CROSS REFERENCE

Reorganization or consolidation, issuance of stock, § 43–805.

NOTES TO DECISIONS

EVIDENCE

In electric rate proceeding, an exhibit which allegedly contained information purporting to show that the holding companies owning common stock of the electric company involved were engaged in conspiracy to violate this section was properly excluded, since the Public Utilities Commission was justified in refusing to take into account the collateral issues posed by the tendered exhibit. *U. S.* v. *Public Utilities Commission of District of Columbia* (App. D. C. 1946, 158 F. 2d 533, certiorari denied, 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

§ 43–503 [26: 79]. Merger of street railways permitted.

Any or all of the street railway companies operating in the District of Columbia are hereby authorized and empowered to merge or consolidate, either by purchase or lease by one company of the properties, and/or stocks or securities of any of the others, or by the formation of a new corporation to acquire the properties and/or stocks or securities and to succeed to the powers and obligations of each or any of said companies under such terms and conditions as may be agreed upon by a vote of a majority in amount of the stock of the respective corporations and as may be approved by the Public Utilities Commission of the District of Columbia: *Provided,* That no merger of said companies shall be finally consummated until the same is approved by a joint resolution of Congress. Such new corporation shall be incorporated under the provisions of chapter 2 of title 29 of this Code, as far as applicable, with issues of stock at a stated par value and/or of no par value, as may be approved by the Public Utilities Commission. Congress reserves the right to alter, amend, or repeal this section or any provision thereof. (Mar. 4, 1925, 43 Stat. 1265, ch. 527, §§ 1, 3.)

CROSS REFERENCES

Competitive carriers must obtain certificate of convenience and necessity, § 44–201.

Reorganization or consolidation, issuance of stock, § 43–805.

STREETCAR MERGER

Paragraph "Second" of the preamble of the joint resolution to authorize merger of street-railway corporations operating in the District of Columbia, approved January 14, 1933, was amended to read as follows by act February 16, 1933, 47 Stat. 819, ch. 94, § 1:

"Second. The New Company shall be incorporated under the provisions of subchapter IV of chapter XVIII of the Code of Law of the District of Columbia and pursuant to an act of Congress entitled 'An Act to permit the merger of street-railway corporations operating in the District of Columbia, and for other purposes', approved March 4, 1925, with power subject to the approval of the Public Utilities Commission to acquire, construct, own, and operate directly transit properties within the District of Columbia and either directly or through subsidiaries in adjacent States, including the power to acquire, own, and operate the properties to be conveyed to the New Company in accordance with this agreement, and to acquire and own the stock and/or bonds of said companies and of any other company or companies engaged in the transportation of passengers by street railway or bus in the District of Columbia and adjacent States with the power to mortgage its property rights, and franchises, and to conduct such other activities as may be useful or necessary in connection with or incident to the foregoing purposes, including the power to buy, sell, hold, own, and convey real estate within and without the District of Columbia. Said New Company when incorporated shall become and remain subject in all respects to regulation by the Public Utilities Commission of the District of Columbia or its successors to the extent of the jurisdiction now or hereafter vested in it or them by law over corporations engaged in the transportation of passengers by street railway or bus within the District of Columbia: *Provided,* That before they are recorded, the articles of incorporation and/or any amendments thereto shall be approved by the Public Utilities Commission."

"SEC. 2. That Congress hereby expressly reserves the right to alter, amend, or repeal this resolution."

CROSS REFERENCE

Competing lines, restrictions, § 44–201.

NOTES TO DECISIONS

REMOVAL OF TRACKS

Commissioners of District of Columbia had the right to require the removal of tracks from streets where the Public Utilities Commission has lawfully ordered the abandonment of street railway service. *Capital Transit Co.* v. *Hazen* (68 App. D. C. 91, 93 Fed. (2d) 250).

Chapter 6.—GAS AND ELECTRIC CORPORATIONS

Sec.

43–601. Public Utilities Commission—General powers.
43–602. Approval of construction of gas or electric plant.
43–603. Inspectors of gas and electric meters—Inspection of meters—Commission to make rules and regulations.
43–604. Excessive charges to defeat suit to collect for gas or electricity furnished.
43–605. Appointment and removal of inspectors and assistant inspectors of gas and meters.
43–606. Inspector of gas and meters to transfer books to commission.

§ 43–601 [26: 80]. Public Utilities Commission—General powers.

The commission shall, within its jurisdiction—

Have general supervision of all gas corporations and electrical corporations having authority under any general or special law or under any charter or franchise to lay down, erect, or maintain wires, pipes, conduits, ducts, or other fixtures in, over, or under the streets, highways, and public places in the District of Columbia for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat, or power, or maintaining underground conduits or ducts for electrical conductors, and all gas plants and electric plants owned, leased, or operated by any corporation.

Investigate and ascertain, from time to time, the quality and quantity of gas supplied by persons or corporations; examine or investigate the methods employed by such persons and corporations in manufacturing, distributing, and supplying gas or electricity for light, heat, or power, and in transmitting the same, and have power to order such reasonable improvements as will reasonably promote the public interest, preserve the public health, and protect those using such gas or electricity and those employed in the manufacture and distribution thereof or in the manufacture and operation of the works, wires, poles, lines, conduits, ducts, and systems con-

nected therewith, and have power to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts, and other reasonable devices, apparatus, and property of gas corporations and electrical corporations.

Have power by order to fix from time to time standards for determining the purity or the measurement of the illuminating power of gas to be manufactured, distributed, or sold by persons or corporations for lighting, heating, or power purposes, and to prescribe from time to time the efficiency of the electric supply system, of the current supplied, and of the lamps furnished by the persons or corporations generating and selling electric current, and by order to require the gas so manufactured, distributed, or sold to equal the standards so fixed by it, and to prescribe from time to time the reasonable minimum and maximum pressure at which gas shall be delivered by said persons or corporations. For the purpose of determining whether the gas manufactured, distributed, or sold by such persons or corporations for lighting, heating, or power purposes conforms to the standards of illuminating power, purity, and pressure, and for the purpose of determining whether the efficiency of the electric supply system, of the current supplied, and of the lamps furnished conforms to the orders issued by the commission, the commission shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering, and supplying gas or electricity, and shall have access, through its members or persons employed and authorized by it to make such examinations and investigations, to all parts of the manufacturing plants owned, used, or operated for the manufacture, transmission, or distribution of gas or electricity by any such person or corporation. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination, except in so far as he may be directed by the commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $50 nor more than $500 for each offense. (Mar. 4, 1913, 37 Stat. 986, ch. 150, § 8, par. 55.)

Cross References

Constitutionality of act, § 43–1003.
Criminal penalties generally, §§ 43–906, 43–907.
Disposition of fines and forfeitures, § 43–912.
Fees for testing meters or measuring devices, § 43–321.
General provisions for testing meters and quality of product, rules and regulations, § 43–320.
Investigation of personal injuries or deaths occurring from operation of utility, § 43–1001.
Liberal construction of act, § 43–1003.
Penalties provided by this section do not bar prosecution under other laws, § 43–913.
Saving clauses, §§ 43–1005, 43–1006.
Special provisions concerning electric and gas companies, §§ 43–1101 to 43–1109, 43–1201 to 43–1207.

§ 43–602 [26: 81]. Approval of construction of gas or electric plant.

No gas corporation or electrical corporation shall begin the construction of a gas plant or electric plant without first having obtained the permission and approval of the commission. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 56.)

Cross Reference

See notes to § 43–601.

§ 43–603 [26: 82]. Inspectors of gas and electric meters—Inspection of meters—Commission to make rules and regulations.

The commission shall appoint inspectors of gas meters, whose duty it shall be, when required by the commission, to inspect, examine, prove, and ascertain the accuracy of any and all gas meters used or intended to be used for measuring or ascertaining the quantity of gas for light, heat, or power furnished by any person or corporation to or for the use of any person or corporation, and when found to be or made to be correct, the inspector shall seal all such meters and each of them with some suitable device, which device shall be recorded in the office of the commission.

No corporation or person shall furnish, set, or put in use any gas meter which shall not have been inspected, proved, and sealed by an inspector of the commission.

The commission shall appoint inspectors of electric meters, whose duty it shall be, when required by the commission, to inspect, examine, and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat, or power by any person or corporation to or for the use of any person or corporation, and to inspect, examine, and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters; and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device, which device shall be recorded in the office of the commission. No corporation or person shall furnish, set, or put in use any electric meter the type of which shall not have been approved by the commission or any meter not approved by an inspector of the commission.

Every gas corporation and electrical corporation shall provide, repair, and maintain such suitable premises and apparatus and facilities as may be required and approved by the commission for testing and proving the accuracy of gas and electric meters furnished for use by it, and by which apparatus every meter may be tested.

If any consumer to whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested; if the same, on being so tested, shall be found to be more than two per centum defective or incorrect to the prejudice of the consumer, the inspector shall order the gas or electrical corporation forthwith to remove the same and to place instead a correct meter, and the expense of such inspection and test shall be borne by the corporation; if the same, on being so tested, shall be found to be correct, the expense of such inspection and test shall be borne by the consumer.

The commission shall prescribe such rules and regulations to carry into effect the provisions of this

section as it may deem necessary and shall fix uniform reasonable charges for the inspection and testing of meters upon complaint. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 57; Apr. 5, 1939, 53 Stat. 568, ch. 38.)

AMENDMENT

The 1939 amendment deleted the words "four per centum, if an electric meter, or more than" in the fifth paragraph following the word "than" the first time it appears; and deleted the words "if a gas meter" following the words "two per centum" where they appear in said paragraph.

CROSS REFERENCES

Laboratory for inspector of gas and meters, §§ 43–1201 to 43–1204.
Rules and regulations generally, § 43–202.
See notes to § 43–601.

§ 43–604 [26: 83]. Excessive charges to defeat suit to collect for gas or electricity furnished.

If it be alleged and established in an action brought in any court for the collection of any charge for gas or electricty that a price has been demanded in excess of that fixed by the commission or by statute no recovery shall be had therein, but the fact that such excessive charges have been made shall be a complete defense to such action. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 58.)

CROSS REFERENCE

Cutting off gas for failure to pay charges, § 43–1205.

§ 43–605 [26: 84]. Appointment and removal of inspectors and assistant inspectors of gas and meters.

A suitable and impartial person, competent as a chemist, who is not a stockholder or employee in any gas works, shall be appointed by the Public Utilities Commission to be designated and known as inspector of gas and meters, whose duties shall be to test and determine the illuminating power and purity of the gas furnished by any company, person, or persons in the District of Columbia; and to test, prove, and seal all meters that may be hereafter used by them. The inspector shall give bond to the extent of double his annual salary, and shall take an oath or affirmation, before some officer legally qualified to administer the same, that he will faithfully, diligently, and impartially discharge the duties of his office. The appointment and power to remove the inspector of gas and meters and assistant inspectors of gas and meters from office is hereby vested in the commission. All the powers and duties of such inspectors conferred and imposed by statute shall be exercised and performed under the supervision and control of the commission. (June 23, 1874, 18 Stat. 278, 279, ch. 480, §§ 2, 10; Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 59.)

AMENDMENT

The 1913 amendment added the last two sentences.

CROSS REFERENCE

See notes to § 43–601.

§ 43–606 [26: 85]. Inspector of gas and meters to transfer books to commission.

The inspector of gas and meters provided for by law prior to March 4, 1913, shall transfer and deliver to the commission all books, maps, papers, records, apparatus, and the property of whatsoever description in his possession, and said commission is authorized to take possession of all books, maps, papers, records, apparatus, and property of whatsoever description. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 60.)

COMPILER'S NOTE

This section is largely, if not altogether, temporary and executed.

Chapter 7.—ORDERS AND COURT PROCEEDINGS

Sec.

43–701. Schedules to conform to orders of Commission—Changes in schedules to be first approved by Commission.
43–702. Commission may rescind, alter, or amend orders fixing rates.
43–703. Rates to be in force and to be prima facie reasonable.
43–704. Application to District Court for instructions—Application for reconsideration.
43–705. Appeal to District Court from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Subsequent appeals—Commission not liable for costs or damages.
43–706. Appeal limited to questions of law.
43–707. Orders to remain in force pending appeal—Suspension of order.
43–708. Certification of question to United States Court of Appeals.
43–709. Authority of Commission to rescind its order after appeal is filed.
43–710. Method of review exclusive.
43–711. Saving clause.
43–712. Production of incriminating evidence compellable, immunity from prosecution.
43–713. Commission to furnish certified copies of orders.

§ 43–701 [26: 86]. Schedules to conform to orders of commission—Changes in schedules to be first approved by Commission.

All public utilities to which an order of the commission applies shall make such changes in their schedules on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any public utility in any such rates, tolls, or charges, or in any joint rate or rates, without the approval of the commission. Certified copies of all other orders of the commission shall be delivered to the public utility affected thereby in like manner, and the same shall take effect within such reasonable time thereafter as the commission shall prescribe. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 61.)

CROSS REFERENCES

Certified copies, effect as evidence, § 43–713.
Constitutionality of act, § 43–1003.
General penal provisions, §§ 43–906 to 43–908.
Liberal construction of act, § 43–1003.
Other provisions concerning changes of rates and schedules, §§ 43–323 to 43–328.
Rates and rate making, § 43–401 et seq.
Saving clauses, §§ 43–1005, 43–1006.

§ 43–702 [26: 87]. Commission may rescind, alter, or amend orders fixing rates.

The commission may, at any time, upon notice to the public utility and after opportunity to be heard as provided in section 43–410, rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the commission, and certified copies of the same shall be served

and take effect as herein provided for original orders. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 62.)

CROSS REFERENCES

Pending appeal, § 43–709.
Power of Commission to alter unreasonable or discriminatory rates, § 43–911.

§ 43–703 [26: 88]. Rates to be in force and to be prima facie reasonable.

All rates, tolls, charges, time and condition of payment thereof, schedules, and joint rates fixed by the commission shall be in force and shall be prima facie reasonable until finally found otherwise in an action brought for that purpose. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 63.)

§ 43–704 [26: 89]. Application to District Court for instructions—Application for reconsideration.

If at any time the commission shall be in doubt of the elements of value to be by them considered in arriving at the true valuation under the provisions of chapters 1–10 of this title, they are authorized and empowered to institute a proceeding in equity in the District Court of the United States for the District of Columbia petitioning said court to instruct them as to the element or elements of value to be by them considered as aforesaid, and the particular utility under valuation at the time shall be made party defendant in said action.

Any public utility or any other person or corporation affected by any final order or decision of the commission may, within thirty days after the publication thereof, file with the commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration. No public utility or other person or corporation shall in any court urge or rely on any ground not so set forth in said application. The commission, within thirty days after the filing of such application, shall either grant or deny it. Failure by the commission to act upon such application within such period shall be deemed a denial thereof. If such application be granted, the commission, after giving notice thereof to all interested parties, shall, either with or without hearing, rescind, modify, or affirm its order or decision. The filing of such an application shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application: *Provided,* That upon written consent of the utility such order or decision shall not be stayed unless otherwise ordered by the Commission. No appeal shall lie from any order of the Commission unless an application for reconsideration shall have been first made and determined. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 64; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 1.)

AMENDMENT

The act of 1935 has completely reworded the provisions of this section for a reconsideration of a final order of the Commission, and omitted reference to precedence over other civil causes, and to liability for costs.

CROSS REFERENCE

Valuation, § 43–305 et seq.

NOTES TO DECISIONS

AGREEMENT NOT TO RESELL PRODUCT

Utility may require agreement from user not to remeter and resell current. *Lewis* v. *Potomac Elec. Power Co.* (62 App. D. C. 63, 64 Fed. (2d) 701).

COMPLAINT AND HEARING

A formal complaint and hearing before the Commission are not necessary conditions precedent to a suit in equity. *Hollis* v. *Kutz* (255 U. S. 452, 65 L. Ed. 727, 41 Sup. Ct. 371, affg. 49 App. D. C. 301, 265 Fed. 451).

COSTS ON APPEAL

Appeal taken by the Public Utilities Commission from the order of the District Court of the United States for the District in a rate case was an administrative proceeding and the costs of printing the record and the brief of the Commission upon the appeal were expenses of the proceeding, although the appeal wherein these expenses were incurred was dismissed as a result of changed conditions. *Washington R. & Elec. Co.* v. *District of Columbia* (64 App. D. C. 243, 77 Fed. (2d) 366).

LEGISLATIVE INTENT

Congress intended that the court shall revise the legislative discretion of the Commission by considering the evidence and full record of the case and entering the order it deems the Commission ought to have made. *Keller* v. *Potomac Elec. Power Co.* (261 U. S. 428, 67 L. Ed. 731, 43 Sup. Ct. 445).

§ 43–705 [26: 89a]. Appeal to District Court from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Subsequent appeals—Commission not liable for costs or damages.

The District Court of the United States for the District of Columbia shall have jurisdiction to hear and determine any appeal from an order or decision of the Commission. Any public utility or any other person or corporation affected by any final order or decision of the Commission, other than an order fixing or determining the value of the property of a public utility in a proceeding solely for that purpose, may, within sixty days after final action by the Commission upon the petition for reconsideration, file with the clerk of the District Court of the United States for the District of Columbia a petition of appeal setting forth the reasons for such appeal and the relief sought; at the same time such appellant shall file with the Commission notice in writing of the appeal together with a copy of the petition. Within twenty days of the receipt of such notice of appeal the Commission shall file with the clerk of the said court the record, including a transcript of all proceedings had and testimony taken before the Commission, duly certified, upon which the said order or decision of the Commission was based, together with a statement of its findings of fact and conclusions upon the said record, and a copy of the application for reconsideration and the orders entered thereon: *Provided,* That the parties, with the consent and approval of the Commission, may stipulate in writing that only certain portions of the record be transcribed and transmitted. Within this period the Commission or any other interested party shall answer, demur, or otherwise move or plead. Thereupon the appeal shall be at issue and ready for hearing. All such proceedings shall have precedence over any civil cause of a different nature pending in said court, and the District Court of the United States for the District

of Columbia shall always be deemed open for the hearing thereof. Any such appeal shall be heard upon the record before the Commission, and no new or additional evidence shall be received by the said court. The said court, or any justice or justices thereof, before whom any such appeal shall be heard, may require and direct the Commission to receive additional evidence upon any subject related to the issues on said appeal concerning which evidence was improperly excluded in the hearing before the Commission or upon which the record may contain no substantial evidence. Upon receipt of such requirement and direction the Commission shall receive such evidence and without unreasonable delay shall transmit to the said court the findings of fact made thereon by the Commission and the conclusions of the Commission upon the said facts.

Upon the conclusion of its hearing of any such appeal the court shall either dismiss the said appeal and affirm the order or decision of the Commission or sustain the appeal and vacate the Commission's order or decision. In either event the court shall accompany its order by a statement of its reasons for its action, and in the case of the vacation of an order or decision of the Commission the statement shall relate the particulars in and the extent to which such order or decision was defective.

Any party, including said Commission, may appeal from the order or decree of said court to the United States Court of Appeals for the District of Columbia, which shall thereupon have and take jurisdiction in every such appeal. Thereafter the Supreme Court of the United States may, upon a petition for certiorari granted in its discretion, review the said case.

Said Commission shall not, nor shall any of its members, officers, agents, or employees, be taxed with any costs, nor shall they or any of them be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said Commission, or any of its members, officers, agents, or employees, shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any public utility or person, nor required in any case to make any deposit for costs or pay for any service to the clerks of any court or to the marshal of the United States. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 65; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 2.)

AMENDMENT

This section was substituted by the 1935 act for paragraph 65 of § 8 of the 1913 act, which provided as follows: "That every proceeding, action, or suit to set aside, vacate, or amend any determination or order of the Commission, or to enjoin the enforcement thereof, or to prevent in any way any such order or determination from becoming effective shall be commenced, and every appeal to the courts or right of recourse to the courts shall be taken or exercised, within one hundred and twenty [120] days after the entry or rendition of such order or determination, and the right to commence any such action, proceeding, or suit, or to take or exercise any such appeal or right of recourse to the courts, shall terminate absolutely at the end of such one hundred and twenty days."

NOTES TO DECISIONS

"AFFECTED", DEFINITION

The word "affected", as used in this section was chosen by Congress to expand the privilege of complaint and appeal beyond that contemplated by words it used in other statutes, and beyond the conventional tests used in equity suits seeking restraint of governmental action. *U. S.* v. *Public Utilities Commission of District of Columbia* (App. D. C. 1945, 151 F. 2d 609, 80 U. S. App. D. C. 227, certiorari denied, 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

DECISION UNDER PRIOR LAW

Though the burden of proof was upon the party contesting a finding of the Commission, the court must exercise its own judgment where challenged for a mistake of law, failure of evidence or contrary to weight of evidence. *Potomac Elec. Power Co.* v. *Public Utilities Comm.* (51 App. D. C. 77, 276 Fed. 327).

EVIDENCE TO SUPPORT FINDINGS

Where Public Utilities Commission's witness found that investors' appraisal of return required on common stock capital of gas company was 11.68 percent, and company's witnesses fixed it at 10.98 percent, both exclusive of cost of financing, and earnings-price ratio of companies involved to which Commission's witness testified was 10.54 percent, Commission's action in substituting 9 percent as a reasonable allowance in fixing rates and in amending sliding scale order so as to reduce primary rate of return from 6½ percent to 5¾ percent, was void, as not supported by substantial evidence. *Washington Gas Light Co.* v. *Public Utilities Commission of District of Columbia* (D. C., D. C. 1944, 55 F. Supp. 627).

FINAL AND CONCLUSIVE ORDERS

Where each year during which sliding scale arrangement under consent decree had been in effect, electric rates were fixed by an order of Public Utilities Commission, the annual orders became final and conclusive when no person affected thereby availed himself of right of appeal under this section, and therefore the rates so fixed became the legal rates for the periods during which they were to endure, and neither the United States, as a consumer, nor any other party affected thereby could brand them as illegal. *U. S.* v. *Public Utilities Commission of District of Columbia* (App. D. C. 1946, 158 F. 2d 533, certiorari denied, 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

FINDINGS OF COMMISSION

Findings of administrative agency such as Public Utility Commission of District of Columbia, where there is evidence to support them, may not be set aside by court. *Washington Gas Light Co.* v. *Byrnes,* 1943 (137 F. 2d 547, 79 U. S. App. D. C. 107, certiorari granted 64 S. Ct. 191, 320 U. S. 730, 88 L. Ed. 431, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

A mere general opinion of Public Utilities Commission of District of Columbia in relation to gas rates, unsupported by findings of fact based on substantial evidence is ineffective. *Washington Gas Light Co.* v. *Public Utilities Commission of District of Columbia* (D. C., D. C. 1944, 55 F. Supp. 627).

JURISDICTION OF COURTS

Congress may vest in the courts of the District power to review the discretion of a Public Utilities Commission fixing rates for a public service corporation, and enter the order which they deem the commission should have made. *Keller* v. *Potomac Elec. Power Co.* (261 U. S. 428, 67 L. Ed. 731, 43 Sup. Ct. 445).

NATURE OF APPEAL

The right of appeal from order of public service commission is statutory in character, and extent of the right in each case depends upon meaning of language used in the statute, and not upon ordinary requirements of injunction suits. *U. S.* v. *Public Utilities Commission of District of Columbia* (App. D. C. 1945, 151 F. 2d 609, 80 U. S. App. D. C. 227, certiorari denied, 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

PERSONS AFFECTED

The term "person affected", as used in this section includes a consumer of a public utility company. *U. S.* v. *Public Utilities Commission of District of Columbia* (App.

D. C. 1945, 151 F. 2d 609, 80 U. S. App. D. C. 227, certiorari denied, 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

The United States, as a customer of public utility company, had standing as a "person affected" to prosecute its petition of appeal in the District Court from an order of Public Utilities Commission of District of Columbia determining rates which the company could charge for sale of electric energy in District of Columbia. *U. S.* v. *Public Utilities Commission of District of Columbia* (App. D. C. 1945, 151 F. 2d 609, 80 U. S. App. D. C. 227, certiorari denied, 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

RECORD OF CASE

Order of District Court vacating Public Utility Commission's order granting utility a rate increase could not be reversed on theory that district judge did not have before him record of case before commission where material parts of record were brought to attention of district judge at time of hearing and before his decision was rendered. *Washington Gas Light Co.* v. *Byrnes,* 1943 (137 F. 2d 547, 78 U. S. App. D. C. 107, certiorari granted 64 S. Ct. 191, 320 U. S. 730, 88 L. Ed. 431, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

VALIDITY

A section of the statute providing for review is not rendered wholly void by the inclusion in it of an invalid provision for ultimate appeal to the Supreme Court. *Keller* v. *Potomac Elec. Power Co.* (261 U. S. 428, 67 L. Ed. 731, 43 Sup. Ct. 445).

§ 43–706 [26: 89b]. Appeal limited to questions of law.

In the determination of any appeal from an order or decision of the Commission the review by the court shall be limited to questions of law, including constitutional questions; and the findings of fact by the Commission shall be conclusive unless it shall appear that such findings of the Commission are unreasonable, arbitrary, or capricious. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 66; Aug. 27, 1935, 49 Stat. 883, ch. 742, § 2.)

AMENDMENT

The 1935 amendment inserted the above section in lieu of paragraph 66 of § 8 of the 1913 act, which provided as follows: "That no injunction shall issue suspending or staying any order of the commission, except upon application to the Supreme Court of the District of Columbia or a judge thereof, and only upon notice to the commission and after hearing had."

§ 43–707 [26: 89c]. Orders to remain in force pending appeal—Suspension of order.

All orders and decisions of the Commission shall remain in full effect, except as provided in section 43–704 hereof, unless and until they are suspended, superseded, or rescinded by the Commission or are vacated by lawful order of the District Court of the United States for the District of Columbia: *Provided,* That if in any petition made to the said court appealing from an order or decision of the Commission it be alleged that substantial and irreparable property loss would be occasioned to the petitioner by the operation of the said order pending the determination of the said appeal, the court shall set a time and place for hearing upon the said allegation after not less than three days' notice to the Commission (during which period the execution of the order or decision shall be stayed), and the said court may then, upon a clear showing of the irreparable and substantial property loss as alleged, suspend the effective date of the said order. No such suspension shall be for a greater period than sixty days without further order after notice or hearing by the court. In the event of the issuance of an order suspending the operation of any order of the Commission, the court may include therein such provision as it deems advisable for the preservation of records or accounts and the impounding or otherwise securing of moneys necessary to give effect to the order of the Commission in the event the said order is sustained. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 67; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

AMENDMENT

The 1935 amendment substituted the above section for paragraph 67 of § 8 of the 1913 act, which provided the procedure formerly followed upon introduction of new evidence.

NOTES TO DECISIONS

ERROR OF LAW

High profits of electric company and alleged fact that Public Utilities Commission had not been as vigilant as it might have been in driving down the company's rates did not establish an error of law requiring judicial remedy and did not justify retrospectively holding invalid rate schedules authorized by the Commission over a course of many years. *U. S.* v. *Public Utilities Commission of District of Columbia* (App. D. C. 1946, 158 F. 2d 533, certiorari denied, 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

The earnings, in percentages, are meaningful only when they are related to electric company's total capital structure which presents a task for the Public Utilities Commission, and federal appellate court should not impose its judgment to effect that earnings were unlawful unless it is clearly shown that the rates which gave rise to the earnings were invalid because they woefully neglected the interests of consumers. *U. S.* v. *Public Utilities Commission of District of Columbia* (App. D. C. 1946, 158 F. 2d 533, certiorari denied, 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

§ 43–708 [26: 89d]. Certification of question to United States Court of Appeals.

The District Court of the United States for the District of Columbia, or any justice thereof before whom an appeal from an order of the Commission is pending, may certify to the United States Court of Appeals for the District of Columbia any questions or propositions of law concerning which instructions are desired for the proper disposition of the appeal; and thereupon the Court of Appeals may either give binding instructions on the questions and propositions certified or may require that the entire record in the cause be sent up for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there by writ of error or appeal. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 68; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

AMENDMENT

The 1913 act substituted the above section for paragraph 68 of § 8 of the 1913 act, which provided procedure formerly followed when the Commission rescinded, altered, modified, or amended its order.

§ 43–709 [26: 89e]. Authority of Commission to rescind its order after appeal is filed.

The Commission may at any time, rescind, alter, modify, or amend its order. If, after appeal is filed, the Commission shall rescind the order or decision

appealed from, the appeal shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order or decision shall take the place of the original order and the court shall proceed thereon as though the late order had been made by the Commission in the first instance. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 69; Aug. 27, 1935, 49 Stat. 884, ch. 742, §2.)

AMENDMENT

The 1913 act substituted the above section for paragraph 69 of § 8 of the 1913 act, which fixed the burden of proof on the party adverse to the Commission.

CROSS REFERENCE

Amendment or revocation of orders, § 43–702 and notes.

§ 43–710 [26: 89f]. Method of review exclusive.

The method of review of the orders and decisions of the Commission provided by paragraphs 43–704 to 43–709, herein, shall be exclusive. (Mar. 4, 1913, ch. 150, § 8, par. 69a, as added Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

§ 43–711 [26: 89g]. Saving clause.

If any provisions of sections 43–412, 43–704 to 43–711 or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby. (Aug. 27, 1935, 49 Stat. 885, ch. 742, § 4.)

COMPILER'S NOTE

Section 5 of the act of 1935 provided as follows:

"No proceeding or litigation, except a proceeding involving solely the valuation of the property of any public utility, pending in any court in the District of Columbia on August 27, 1935, shall be affected by any of the provisions hereof."

CROSS REFERENCE

Saving clauses generally, §§ 40–1005, 40–1006.

§ 43–712 [26: 95]. Production of incriminating evidence compellable, immunity from prosecution.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of chapters 1–10 of this title, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided,* That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further,* That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpœna, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 70.)

CROSS REFERENCE

Criminal penalties for failure to testify or to produce documentary evidence, §§ 43–905.

§ 43–713 [26: 96]. Commission to furnish certified copies of orders.

Upon application of any person the commission shall furnish certified copies, under the seal of the commission, of any order made by it, which shall be prima facie evidence of the facts stated therein. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 71.)

Chapter 8.—ISSUANCE OF SECURITIES

Sec.

43–801. Creation of liens on property of utilities—Supervision by Commission.
43–802. Certificate of Commission showing authority to issue stocks to be obtained.
43–803. Stocks not to be issued until certificate is recorded.
43–804. Stock dividends prohibited.
43–805. Issue of stocks for purpose of reorganization or consolidation—Approval of consolidation by Commission.
43–806. Application of proceeds of stock.
43–807. Stock to be void unless law is complied with.
43–808. Penalty for improper issuance or application of stock or proceeds.

§ 43–801 [26: 97]. Creation of liens on property of utilities—Supervision by Commission.

The power to create liens on corporate property by public utilities in the District of Columbia is hereby declared to be a special privilege, the right of supervision, regulation, restriction, and control of which is hereby vested in the Public Utilities Commission of the District of Columbia, and such power shall be exercised according to the provisions of chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 72.)

CROSS REFERENCES

Constitutionality of act, § 43–1003.
Liberal construction of act, § 43–1003.
Saving clauses, §§ 43–1005, 43–1006.

§ 43–802 [26: 98]. Certificate of Commission showing authority to issue stocks to be obtained.

No public utility shall hereafter issue any stocks, stock certificates, bonds, mortgages, or any other evidences of indebtedness payable in more than one year from date, until it shall have first obtained the certificate of the commission showing authority for such issue from the commission. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 73.)

CROSS REFERENCE

Criminal penalties, § 43–901.

§ 43–803 [26: 99]. Stocks not to be issued until certificate is recorded.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness for money, property, or services, either directly or indirectly, nor shall it receive any money, property, or services in payment of the same, either directly or indirectly, until there shall have been recorded upon the books of such public utility the certificate of the commission in this section provided for. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 74.)

CROSS REFERENCE

Criminal penalties, § 43–901.

§ 43–804 [26: 100]. Stock dividends prohibited.

No public utility shall declare any stock, bond, or scrip dividend or divide the proceeds of the sale of

any stock, bond, or scrip among its stockholders. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 75.)

§ 43–805 [26: 101]. Issue of stocks for purpose of reorganization or consolidation—Approval of consolidation by commission.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness secured on its property in the District of Columbia for the purpose of any reorganization or consolidation in excess of the total amount of the stocks, certificates of stock, bonds, or other evidences of indebtedness than outstanding against the public utilities so reorganizing or consolidating, and no such public utility shall purchase the property of any other public utility for the purpose of effecting a consolidation until the commission shall have determined and set forth in writing that said consolidation will be in the public interest, nor until the commission shall have approved in writing the terms upon which said consolidation shall be made. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 76.)

CROSS REFERENCES

Merger of street railways, § 43–503.
Other similar provisions, §§ 43–501, 43–502.

§ 43–806 [26: 102]. Application of proceeds of stock.

No public utility shall apply the proceeds of any such stock, certificates of stock, bonds, or other evidences of indebtedness to any other purpose or issue the same on any less favorable terms than that specified in the certificate issued by the commission. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 77.)

§ 43–807 [26: 103]. Stock to be void unless law is complied with.

All stocks, certificates of stock, bonds, and other evidences of indebtedness issued contrary to the provisions of chapters 1–10 of this title shall be void. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 78.)

§ 43–808 [26: 104]. Penalty for improper issuance or application of stock or proceeds.

Any public utility, or any agent, director, or officer thereof, who shall, directly or indirectly, issue or cause to be issued any stocks, certificates of stock, bonds, or other evidences of indebtedness contrary to the provisions of chapters 1–10 of this title, or who shall apply the proceeds from the sale thereof to any purposes other than that specified in the certificate of the commission, shall forfeit and pay into the Treasury of the United States, to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia, not less than $1,000 nor more than $10,000 for each offense. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 79; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

Act of 1921 amended act of 1913 by adding the words beginning with "to the credit" and ending with "revenues of the District of Columbia."

CROSS REFERENCES

Disposition of fines, forfeitures, and penalties, § 43–912.
Federal Government now makes a lump-sum appropriation for the District, § 47–134.
Other criminal penalties, § 43–901.
Penalties and forfeitures do not bar prosecutions under other laws, § 43–913.

Chapter 9.—PENAL PROVISIONS

Sec.
43–901. Penalty for false statements in securing approval of issuance of stock.
43–902. Penalty for demanding or receiving greater or less than established rates.
43–903. Less than rates not to be charged in consideration of consumer furnishing equipment—Exceptions.
43–904. Rebates prohibited—Penalty.
43–905. Penalties for failing or refusing to furnish information, for furnishing false information, for failing to keep proper accounts.
43–906. Penalty for failure or refusal to perform duty enjoined or to obey order of commission.
43–907. Prosecution and penalty for violation of rules.
43–908. Construction of sections 43–906 and 43–907.
43–909. Penalty for destruction of apparatus or appliance of commission.
43–910. Each day's default to constitute separate and distinct offense.
43–911. Commission may regulate unreasonable and discriminatory rates and fix new rates.
43–912. Fines, penalties, and forfeitures to be paid into Treasury.
43–913. Saving clause—Rights, penalties, and forfeitures under laws and regulations continued—Penalties and forfeitures cumulative.

§ 43–901 [26: 105]. Penalty for false statements in securing approval of issuance of stock.

Each and every director, president, secretary, or other official of any such public utility who shall make any false statement to secure the issue of any stock, certificate of stock, bond, mortgage, or other evidence of indebtedness, or who shall, by false statement knowingly made, procure of the commission the making of the certificate herein provided, or issue, with knowledge of such fraud, negotiate, or cause to be negotiated, any such stock, certificate of stock, bond, mortgage, or other evidence of indebtedness in violation of chapters 1–10 of this title, shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than $1,000 or by imprisonment for a term of not less than one year, or by both such fine and imprisonment, in the discretion of the court. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 80.)

§ 43–902 [26: 106]. Penalty for demanding or receiving greater or less than established rates.

If any public utility or any agent or officer thereof shall, directly or indirectly, by any device whatsoever, or otherwise, charge, demand, collect, or receive from any person, firm, or corporation a greater or less compensation for any service rendered or to be rendered by it in or affecting or relating to the conduct of a street railroad or street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electric corporation, water power company, telephone line, telephone corporation, telegraph line, or telegraph corporation, or pipe line company, or to the production, transmission, delivery, or furnishing of heat, light, water, or power, or the conveyance

of telephone or telegraph messages, or for any service in connection therewith than that prescribed in the public schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm, or corporation other than one conducting a like business for a like and contemporaneous service, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be a misdemeanor and unlawful, and upon conviction thereof shall forfeit and pay to the District of Columbia not less than $100 nor more than $1,000 for each offense; and such agent or officer so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $100 for each offense. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 81.)

CROSS REFERENCE

Illegal rates by electric power companies, § 43–1107.

NOTES TO DECISIONS

CASH DEPOSIT

Utility may require cash deposit from customers unable to establish financial responsibility. *Riegel* v. *Public Utilities Comm.* (60 App. D. C. 111, 48 Fed. (2d) 1023).

§ 43–903 [26: 107]. Less than established rates not to be charged in consideration of consumer furnishing equipment—Exceptions.

It shall be unlawful for any public utility to demand, charge, collect, or receive from any person, firm, or corporation less compensation for any service rendered or to be rendered by said public utility in consideration of the furnishing by said person, firm, or corporation of any part of the facilities incident thereto: *Provided,* That nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to the production, transmission, delivery or furnishing of heat, light, water, or power, or the supply of any liquid, steam, or air, through pipes or tubing, or the conveyance of telegraph or telephone messages, and paying a reasonable rental therefor; or as requiring any public utility to furnish any part of such appliances which are situated in and upon the premises of any consumer or user, except telephone station equipment upon the subscriber's premises, and, unless otherwise ordered by the commission, meters, and appliances for measurements of any product or service. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 82.)

§ 43–904 [26: 108]. Rebates prohibited—Penalty.

It shall be unlawful for any person, firm, or corporation to solicit, accept, or receive any rebate, concession, or discrimination in respect to any service in or affecting or relating to any public utility or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any liquid, steam, or air, or the conveying of telegraph or telephone messages within the District of Columbia, or for any service in connection therewith whereby any such service shall, by any device whatsoever or otherwise, be rendered free or at a less rate than that named in the schedules and tariffs in force as provided in this section, or whereby any service or advantage is received other than is in this section specified. Any person, firm, or corporation violating the provisions of this paragraph shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $200 nor more than $1,000 for each offense. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 83.)

§ 43–905 [26: 109]. Penalties for failing or refusing to furnish information, for furnishing false information, for failing to keep proper accounts.

Any officer, agent, or employee of any public utility who shall fail or refuse to fill out and return any blanks, as required by chapters 1–10 of this title, or shall fail or refuse to answer any question therein propounded, or shall knowingly or wilfully give a false answer to any such question, or shall evade the answer to any such question where the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or refuse to exhibit to the commission or any commissioner or any person authorized to examine the same, any book, paper, account, record, or memoranda of such public utility which is in his possession or under his control, or who shall fail to properly use and keep his system of accounting, or any part thereof, as prescribed by the commission under chapters 1–10 of this title, or who shall refuse to do any act or thing in connection with such system of accounting when so directed by the commission or its authorized representative shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $200 nor more than $1,000 for each offense, and a penalty of not less than $500 nor more than $2,000 shall, on conviction, be imposed on the public utility for each such offense when such officer, agent, or employee acted in obedience to the direction, construction, or request of such public utility or any general officer thereof. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 84.)

§ 43–906 [26: 110]. Penalty for failure or refusal to perform duty enjoined or to obey order of commission.

If any public utility shall violate any provision of chapters 1–10 of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission, or any judgment or decree made by any court upon its application, for every such violation, failure, or refusal such public utility shall forfeit and pay to the District of Columbia the sum of $200 for each such offense. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any public utility acting within the scope of his employment and instructions shall in every case be deemed to be the act, omission, or failure of such public utility. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 85.)

CROSS REFERENCES

Each day's default separate offense, § 43–910.

Investigation of neglect or violations of laws, rules, or regulations, § 43–1002.

§ 43–907 [26: 110a]. Prosecution and penalty for violation of rules.

Prosecution for violation of any rule, order, or regulation made, adopted, or approved by the Public Utilities Commission under authority of chapters 1–10 of this title, or section 40–603, or sections 47–2401 to 47–2450, or by the Joint Board under authority of section 40–603 or sections 47–2301 to 47–2350, shall be on information in the Police Court of the District of Columbia, in the name of the District of Columbia, by the corporation counsel or any of his assistants. Any person, corporation, or public utility violating any such rule, order, or regulation shall, upon conviction, be fined not more than $200: *Provided,* That the provisions of sections 43–907, 43–908 shall not be construed to apply to rules, orders, or regulations adopted or promulgated by the Commissioners of the District of Columbia which are not specifically required to be referred to the Joint Board or subject to the approval of such board: *Provided further,* That with respect to orders, rules, or regulations made or adopted by the Public Utilities Commission under authority of chapters 1–10 of this title, this section shall be construed to apply only to such orders, rules, or regulations as are subject to the penalties specifically provided in section 43–906. (Apr. 5, 1939, 53 Stat. 569, ch. 40, § 1.)

CROSS REFERENCES

Criminal penalty for recording instrument by one who has no color of title, § 22–1302.

Rules and regulations generally, § 43–202 and notes.

Violations of provisions concerning street cars, § 44–203.

§ 43–908 [26: 110b]. Construction of sections 43–906 and 43–907.

The provisions of sections 43–906 and 43–907, so far as they relate to the orders, rules, and regulations of the Public Utilities Commission, shall be construed as prescribing alternative methods of enforcement of the orders, rules, or regulations of the commission, and any order, rule, or regulation adopted by the Public Utilities Commission which is required to be referred to or is subject to the approval of the joint board may be enforced either as provided by sections 43–906 or 43–907. (Apr. 5, 1939, 53 Stat. 569, ch. 40, § 2.)

§ 43–909 [26: 111]. Penalty for destruction of apparatus or appliance of Commission.

Any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by or in charge of the commission or its agent shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding $100 or imprisonment for a period not exceeding thirty days, or both. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 86.)

§ 43–910 [26: 112]. Each day's default to constitute separate and distinct offense.

Every day during which any public utility, or any officer, agent, or employee thereof, shall fail knowingly or willfully to observe and comply with any order or direction of the commission, or to perform any duty enjoined by this section, shall constitute a separate and distinct violation of such order, or direction, or of chapters 1–10 of this title, as the case may be. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 87.)

§ 43–911 [26: 113]. Commission may regulate unreasonable and discriminatory rates and fix new rates.

Whenever, after hearing and investigation as provided in chapters 1–10 of this title, the commission shall find that any rate, toll, charge, regulation, or practice of any public utility within the District of Columbia is unreasonable or discriminatory, it shall have the power to regulate, fix, and determine the same as provided in chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 88.)

CROSS REFERENCES

General provision for alteration, revocation, or amendment of orders, § 43–702.

Investigation and determination of rates, §§ 43–408 to 43–417.

§ 43–912 [26: 129]. Fines, penalties, and forfeitures to be paid into Treasury.

All moneys received from fines, forfeitures, and penalties shall be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 98; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCE

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

§ 43–913 [26: 119]. Saving clause—Rights, penalties, and forfeitures under laws and regulations continued—Penalties and forfeitures cumulative.

Chapters 1–10 of this title shall not have the effect to release or waive any right of action by the United States, or by the District of Columbia, or by any person, for any right, penalty, or forfeiture under any law of the United States or any regulation in force in the District of Columbia; and all penalties and forfeitures accruing under said chapters shall be cumulative, and a suit for any recovery of one shall not be a bar to the recovery of any other penalty. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 93.)

Chapter 10.—GENERAL PROVISIONS

Sec.

43–1001. Utilities to report to Commission accidents upon their premises—Commission may investigate.
43–1002. Commission to inquire into neglect or violation of law and have power to enforce all laws affecting utilities.
43–1003. Chapters to be liberally construed—Saving clause.
43–1004. Number of directors of public utilities.
43–1005. Existing laws to remain in force.
43–1006. Action pending March 4, 1913, unaffected by chapters 1–10 of this title.
43–1007. Right of repeal reserved.

§ 43–1001 [26: 114]. Utilities to report to Commission accidents upon their premises—Commission may investigate.

Every public utility shall, whenever an accident attended with loss of human life or personal injury without loss of human life occurs within the District of Columbia, upon its premises, or directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the commission. In the event of any such accident, the commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 89.)

§ 43–1002 [26: 115]. Commission to inquire into neglect or violation of law and have power to enforce all laws affecting utilities.

The commission shall inquire into any neglect or violation of the laws or regulations in force in the District of Columbia by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be its duty, to enforce the provisions of chapters 1–10 of this title as well as all other laws relating to public utilities. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 90.)

CROSS REFERENCE

General provisions for enforcement of laws, rules and regulations, §§ 43–906 to 43–908.

§ 43–1003 [26: 118]. Chapters to be liberally construed—Saving clause.

The provisions of chapters 1–10 of this title shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the commission by the provisions of chapters 1–10 of this title the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in chapters 1–10 of this title conferred on said commission. The commission hereby created shall have, in addition to the powers in chapters 1–10 of this title specified, mentioned, and indicated all additional, implied, and incidental power which may be proper and necessary to effect and carry out, perform, and execute all the said powers herein specified, mentioned, and indicated. A substantial compliance with the requirements of chapters 1–10 of this title shall be sufficient to give effect to all the rules, orders, acts, and regulations of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto. That each section of chapters 1–10 of this title, and every part of each section, are hereby declared to be independent sections and the holding of any section or sections or part or parts thereof to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other section or part thereof. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 92.)

§ 43–1004 [26: 131]. Number of directors of public utilities.

The Board of Directors of every public utility shall consist of not more than fifteen nor less than seven members, within which limitation the membership may be in any case increased or diminished, as the stockholders may from time to time determine. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 100.)

§ 43–1005 [26: 132]. Existing laws to remain in force.

Except as modified or changed by chapters 1–10 of this title and until modified or changed under its provisions, all charters, statutes, laws, ordinances, and regulations in force on March 4, 1913, shall remain and continue to be in full force and effect until altered, amended, or repealed according to law: *Provided,* That all charters, statutes, acts, and parts of acts, laws, ordinances, and regulations enacted prior to March 4, 1913, inconsistent and repugnant to the provisions of chapters 1–10 of this title, and only so far as inconsistent and repugnant thereto, are hereby repealed. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 101.)

CROSS REFERENCES

Appeal and review, saving clause, § 43–711 and note.

Other provisions for saving clause for laws, orders, rules and regulations and pending proceedings, §§ 43–203, 43–1006, and notes.

§ 43–1006 [26: 133]. Action pending March 4, 1913, unaffected by chapters 1–10 of this title.

Chapters 1–10 of this title shall not affect actions or proceedings, civil or criminal, or quasi criminal, pending on March 4, 1913, but the same may be prosecuted or defended as provided by preexisting law or regulation. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 102.)

COMPILER'S NOTE

This section is probably temporary and obsolete.

CROSS REFERENCE

Saving clauses, see notes to § 43–1005.

§ 43–1007 [26: 134]. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 103.)

Chapter 11.—ELECTRIC LIGHT AND POWER COMPANIES—SPECIAL ACTS

Sec.

43–1101. Extension of overhead wires in Georgetown—Extension of underground conduits in Mount Pleasant.
43–1102. Conduits and overhead wires for electric lighting prohibited in streets—House connections authorized.
43–1103. Certain existing conduits and overhead wires legalized.
43–1104. Electric-lighting wires west of Rock Creek.
43–1105. Electric-lighting wires east of Rock Creek.
43–1106. Permits for repair, extension, and enlargement of conduits.
43–1107. Extension of conduits—Ducts for use of fire and police wires—Maximum price of current—Additional charge for nonpayment of bills.
43–1108. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.
43–1109. Annual reports to Congress.

§ 43–1101 [26: 172]. Extension of overhead wires in Georgetown—Extension of underground conduits in Mount Pleasant.

The said commissioners may authorize any electric light company existing June 11, 1896, to construct

and use under such regulations as the commissioners may fix conduits for the reception of overhead wires existing on said date within the territory formerly known as Georgetown, and to extend the same by an aggregate of not more than one and one-fourth miles of conduit in the same territory. And the United States Electric Lighting Company may extend its underground conduits and wires east of Rock Creek and within the fire limits to Mount Pleasant, and Washington and Columbia Heights under such regulations as the Commissioners of the District of Columbia may prescribe. (June 11, 1896, 29 Stat. 401, ch. 419.)

CROSS REFERENCES

Inspection and regulation of production, use and control of electrical power, § 1–719 et seq.

Jurisdiction and control over public ways, § 7–102 and notes.

Permits to lay underground conduits in connection with certain bridges, §§ 7–1230, 7–1232.

Private conduits, § 43–1301 et seq.

Rules and regulations generally, § 1–226 and notes.

§ 43–1102 [26: 173]. Conduits and overhead wires for electric lighting prohibited in streets—House connections authorized.

Until Congress shall provide for a conduit system it shall be unlawful to lay conduits or erect overhead wires for electric lighting purposes in any road, street, avenue, highway, park, or reservation, except as specifically authorized by law: *Provided, however,* That the Commissioners of the District of Columbia are hereby authorized to issue permits for house connections with conduits and overhead wires existing on June 4, 1897, adjacent to the premises with which such connection is to be made; and also permits for public lighting connections with conduits existing on June 4, 1897, in the portion of the street proposed to be lighted. And nothing herein contained shall be construed to affect in any way any litigation pending on June 4, 1897, involving the validity or invalidity or legality of the construction of any conduits made since June 18, 1896, nor to prevent the United States Electric Lighting Company from extending conduits into Columbia Heights, Washington Heights, and Mount Pleasant within the fire limits as specifically provided in sections 43–1101 and 43–1401. (Mar. 3, 1897, 29 Stat. 673, ch. 387; June 4, 1897, 30 Stat. 41, ch. 2.)

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCE

Similar provisions, § 43–1401.

§ 43–1103 [26: 174]. Certain existing conduits and overhead wires legalized.

All conduits existing on July 7, 1898, within the fire limits, and all overhead electric light wires existing on July 7, 1898, without the fire limits in the District of Columbia are hereby legalized until otherwise provided by law, and house connections may be made with such overhead electric light wires outside such fire limits. (July 7, 1898, 30 Stat. 664, ch. 571.)

§ 43–1104 [26: 175]. Electric-lighting wires west of Rock Creek.

The Commissioners of the District of Columbia are hereby authorized to issue permits to electric light companies existing on July 8, 1898, in the District of Columbia for the extension of overhead electric wires existing on July 8, 1898, outside the fire limits and west of Rock Creek to be used for lighting purposes only. (July 8, 1898, 30 Stat. 753, Joint Res. No. 59.)

§ 43–1105 [26: 176]. Electric-lighting wires east of Rock Creek.

The Commissioners of the District of Columbia are hereby authorized, under conditions and regulations to be prescribed by them, to permit the erection of poles and the stringing of overhead wires thereon outside of the fire limits and east of Rock Creek for electric-lighting purposes only. (July 1, 1902, 32 Stat. 602, ch. 1352.)

§ 43–1106 [26: 177]. Permits for repair, extension, and enlargement of conduits.

The Commissioners of the District of Columbia are hereby authorized to grant permits for the repair, enlargement, and extension, under proper regulations, of electric-lighting conduits existing on June 6, 1900, and in every conduit constructed or to be constructed under the provisions of this section, three ducts shall be reserved for the use of the United States and the District of Columbia. (June 6, 1900, 31 Stat. 563, ch. 789.)

§ 43–1107 [26: 194]. Extension of conduits—Ducts for use of fire and police wires—Maximum price of current—Additional charge for nonpayment of bills.

The Commissioners of the District of Columbia are authorized to grant permits for the repair, enlargement, and extension, under proper regulations, of electric-lighting conduits existing on March 3, 1899, and in every conduit constructed or to be constructed under the provisions of this section, three ducts shall be reserved for the use of the United States and the District of Columbia. As a condition for the right to use conduits built prior to March 3, 1899, or built or to be built under the provisions of this section, the electric lighting companies shall be required at all times to furnish to the public and to private consumers in all parts of the District of Columbia standard arc lights of not less than one thousand actual candlepower, at a rate not exceeding seventy-two dollars per annum for each arc light. The maximum price of electric current sold or furnished to any consumer in the District of Columbia shall not exceed ten cents per kilowatt hour. If consumers other than the Government shall not pay monthly electric bills within ten days after the same shall have been presented, said companies may charge and collect from said consumer so failing to pay said bill as aforesaid eleven cents per kilowatt hour for the electric current furnished to said consumer during said month: *And provided further,* The right to amend, modify, or repeal the privileges granted in this section, and to further limit the prices herein specified, is hereby expressly reserved; any company charging or collecting an amount in excess of the rates prescribed in this section shall be deemed guilty of a misdemeanor, and shall pay to the District of Columbia the sum of fifty dollars for each and every offense,

to be collected as other fines are collected in the District of Columbia. (Mar. 3, 1899, 30 Stat. 1053, ch. 422.)

CROSS REFERENCES

Criminal penalties for discriminatory or unreasonable rates, §§ 43–902 to 43–904.
Illegal rates, § 43–301.
Rates and rate making generally, § 43–401 and notes.
See notes to § 43–1101.

§ 43–1108 [26: 195]. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.

The Commissioners of the District of Columbia are hereby authorized, in their discretion, to permit the Potomac Electric Power Company to make connections between its conduits and the conduits of the Washington Railway and Electric Company and all other companies controlled by the Washington Railway and Electric Company for the purpose of furnishing electric current through the said conduits for public and private uses, the use of said railway companies' conduits to be upon such terms as may be agreed upon between the said companies. (Apr. 27, 1904, 33 Stat. 376, ch. 1628.)

CROSS REFERENCE

Joint use of utility facilities, §43–302.

§ 43–1109 [26: 196]. Annual reports to Congress.

Any company, association or corporation engaged in the manufacture and sale of electricity for illuminating or heating or power purposes, or either, in the District of Columbia, through its president or other duly authorized officer, shall make a sworn statement to Congress annually, on or before the first day of February in each year. Said report shall contain a detailed statement of the condition of the business of said company, association or corporation for the year ending December thirty-first next preceding, and such statement shall set forth the actual cost and also present value of the property of such company, association or corporation used in the conduct of its business, the amount of paid-up capital stock, the amount and character of the indebtedness of such company, association, or corporation, the amount and cost of materials used in making electricity, the quantity of electricity manufactured, the quantity of electricity sold, the amount received per annum for each public arc light, the amount received per kilowatt for each public incandescent light, the average price received per annum for each arc light furnished to others than the public, the varying discounts allowed to consumers using arc lights during a part of or the entire night, the average price charged per kilowatt for incandescent lights furnished to others than the public, with the varying discounts, and the price charged per kilowatt hour for power or heat furnished, and the gross revenues from each source, the revenues from all other sources, the extensions and improvements made in the plant and works, the actual cost of the same, the amount expended for labor, the amount set aside for depreciation, the amount set aside for insurance and renewals, the amount paid out of earnings for betterments, the amount paid for betterments from other sources, the amount set aside and paid in interest and dividends, the surplus after paying the operating expenses and fixed charges, the statement of the operating expenses to be itemized and classified as is done by other public utility corporations in the District of Columbia, the names of the stockholders and the amount of stock held in such company, association or corporation by each of them on December thirty-first next preceding the date of such report. (Mar. 2, 1907, 34 Stat. 1134, ch. 2510.)

CROSS REFERENCE

Reports of utility companies, § 47–318.

Chapter 12.—GAS COMPANIES—SPECIAL ACTS

Sec.
43–1201. Laboratory for testing gas of Washington Gas Light Company.
43–1202. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies—Payment of expenses incident thereto.
43–1203. Officer of company may be present at tests.
43–1204. Daily inspections—Reports.
43–1205. Removal of gas meters for neglect or refusal to pay amount due.
43–1206. Annual reports to Congress.
43–1207. Maximum rates for gas—Additional charge for nonpayment of bills.

§ 43–1201 [26: 151]. Laboratory for testing gas of Washington Gas Light Company.

A laboratory shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Public Utilities Commission, in the central part of the City of Washington, at a distance as near as may be, of two thousand feet from any gas-works, and furnished with suitable apparatus for the transaction of the business of the inspector and assistant inspectors of gas and meters, for which it is intended, and the laboratory shall be kept open on all business-days between the hours of nine o'clock in the forenoon and four o'clock in the afternoon: *Provided,* That the cost of fitting up said laboratory shall be paid for by each gas company in the District of Columbia in proportion to their sale of gas for the year 1873. (June 23, 1874, 18 Stat. 278, ch. 480, § 3; Mar. 3, 1893, 27 Stat. 543, ch. 199; Mar. 11, 1902, 32 Stat. 63, ch. 181; Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8.)

COMPILER'S NOTE

This section and § 43–1202 are partly temporary and executed.

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCE

Other provisions concerning gas inspector and testing of meters, § 43–603 and notes.

§ 43–1202 [26: 152]. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies—Payment of expenses incident thereto.

Two additional laboratories shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Commissioners of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Commissioners, at a total cost not to exceed one thousand dollars, for inspecting and testing the

illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for measuring the gas supplied to consumers by the said Washington Gas Light Company. One of the said laboratories shall be located in the northwestern portion of the city of Washington and the other in the southeastern portion of said city, and the cost of providing and fitting up the said laboratories shall be paid for by the said Washington Gas Light Company. A laboratory shall be provided and fitted up by the Georgetown Gas Light Company, subject to the approval of the Commissioners of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Commissioners at a total cost not to exceed one thousand dollars, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for measuring the gas supplied to consumers by the said Georgetown Gas Light Company: *Provided,* That the cost of providing and fitting up the said laboratory shall be paid by the said Georgetown Gas Light Company: *Provided further,* That the Washington Gas Light Company and the Georgetown Gas Light Company shall, at the beginning of each fiscal year, in proportion to their respective receipts from sales of gas for the fiscal year immediately preceding, provide in advance, by depositing with the collector of taxes of the District of Columbia, a sum sufficient to pay the necessary expenses of maintaining the service of inspecting and testing illuminating gas and gas meters, herein provided for, as estimated by the Commissioners of the District of Columbia, and not to exceed five hundred dollars per annum for each of the said additional laboratories. (Mar. 3, 1893, 27 Stat. 543, ch. 199.)

CROSS REFERENCE

See notes to § 43–1201.

§ 43–1203 [26: 153]. Officer of company may be present at tests.

The company, person or persons furnishing the gas may, if they see fit, on each occasion of the testing of the gas by the inspector, be represented by some officer, but such officer shall not interfere in the testing. (June 23, 1874, 18 Stat. 278, ch. 480, § 4, July 1, 1882, 22 Stat. 138, ch. 263, § 1.)

AMENDMENT

Act of July 1, 1882, amended the act of June 23, 1874, by abolishing the office of "assistant inspector."

§ 43–1204 [26: 154]. Daily inspections—Reports.

Daily inspections, Sundays excepted, shall be made at any time after twelve o'clock noon and before twelve o'clock midnight, in the discretion of the inspector of gas and meters. (June 23, 1874, 18 Stat. 278, ch. 480, § 5; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

AMENDMENT

Act of 1874 provided for inspections between five and eleven o'clock in the afternoon.

CROSS REFERENCE

Right of access to make examinations and inspections, § 43–601.

§ 43–1205 [26: 155]. Removal of gas meters for neglect or refusal to pay amount due.

If any person or persons, supplied with gas, neglect or refuse to pay the amount due for the same, such company may stop the gas from entering the premises of such person or persons. In no case shall the officers, servants, or workmen of the company remove a meter from premises supplied by the company, unless by consent of the consumer, without first giving forty-eight hours' notice in writing by leaving the same at the premises of the consumers; and said removal shall take place only between the hours of eight o'clock in the forenoon and two o'clock in the afternoon. It shall be lawful for Congress at any time hereafter to alter, amend, or repeal this section. (June 23, 1874, 18 Stat. 280, ch. 480, §§ 13, 14.)

CROSS REFERENCE

Defective meter as defense, § 43–604.

§ 43–1206 [26: 156]. Annual reports to Congress.

Any association or corporation engaged in the manufacture and sale of gas for illuminating and fuel purposes in the District of Columbia, through its president or other duly authorized officer, shall make a sworn statement to Congress annually, on or before the 1st day of February in each year. Said report shall contain a detailed statement of the condition of the business of said association or corporation for the year ending December 31st next preceding, and such statement shall set forth the actual cost and also present value of the property of such association or corporation used in the conduct of its business, the amount of paid-up capital stock, the amount and character of the indebtedness of such association or corporation, the amount and cost of materials used in making gas, the amount of gas manufactured, the amount of gas sold, the average price per thousand cubic feet received for gas sold, the revenue from the sale of all by-products, the revenues from all other sources, the extensions and improvements made in the plant and works, the actual cost of the same, the amount expended for labor, the amount set aside for depreciation, the amount set apart for insurance and renewals, the amount paid out of earnings for betterments, the amount paid for betterments from other sources, the amount set aside and paid in interest and dividends, the surplus after paying the operating expenses and fixed charges, the statement of the operating expenses to be itemized and classified as is done by other public utility corporations, in the District of Columbia, the names of the stockholders and the amount of the stock held in such association or corporation by each of them on December 31st next preceding the date of such report. (Mar. 2, 1907, 34 Stat. 1133, ch. 2510.)

CROSS REFERENCE

Reports generally, § 43–318.

§ 43–1207 [26: 157]. Maximum rates for gas—Additional charge for nonpayment of bills.

No part of any money appropriated by any Act shall be used for the payment to the Washington Gas Light Company or the Georgetown Gas Light Company for any gas furnished by said companies

for use in any of the public buildings of the United States or the District of Columbia at a rate in excess of 70 cents per one thousand cubic feet.

The Washington Gas Light Company shall not charge or collect for gas furnished a private consumer in any part of the District of Columbia a rate in excess of 75 cents per one thousand cubic feet of gas so furnished: *Provided,* That if a consumer of gas other than the Government or the District of Columbia shall not pay monthly any gas bill within ten days after the same shall have been presented, said gas company may charge and collect from any such consumer so failing to pay said gas bill as aforesaid 10 cents additional for each one thousand cubic feet of gas represented by said bill: *And provided further,* That nothing contained in this section shall be construed as limiting or taking away any of the powers vested by law in the Public Utilities Commission of the District of Columbia.

The Georgetown Gas Light Company shall not be permitted to charge or collect more than 85 cents per one thousand cubic feet for gas for cooking, illuminating, or other purposes. (Sept. 1, 1916, 39 Stat. 716, ch. 433, § 6.)

CROSS REFERENCE

Rates and rate making generally, § 43–401 and notes.

Chapter 13.—PRIVATE CONDUITS

Sec.
43–1301. Conditions under which private conduits may be laid.
43–1302. Refusal to remove conduits—Penalty.
43–1303. Right of repeal reserved.
43–1304. Construction of tunnels and structures in Anacostia River.

§ 43–1301 [19: 121]. Conditions under which private conduits may be laid.

The Commissioners of the District of Columbia are hereby authorized to grant permission to lay conduits for the transmission of electric power and pipes for the transmission of steam in alleys in the District of Columbia, under the following conditions, namely:

The conduits or pipes shall be laid entirely within a square or block, and shall not cross or enter any avenue, street, or highway.

The conduits and pipes shall be located as directed by said Commissioners and be laid under their inspection; and the cost of such inspection, together with the cost of replacing all improved pavements disturbed in connection with said work, shall be paid in advance by the party desiring to lay said conduits or steam pipes.

The conduits or pipes shall be used only to connect the premises owned and operated by the permittee, and no power or steam shall be supplied therefrom for any other purpose than the use of the permittee.

The permittee shall not rent the conduit or pipe or any portion thereof. (May 26, 1900, 31 Stat. 217, ch. 587, § 1.)

CROSS REFERENCE

Other provisions concerning electrical conduits, § 43–1101 et seq.

§ 43–1302 [19: 122]. Refusal to remove conduits—Penalty.

On violation of any of the provisions or restrictions of section 43–1301 the said Commissioners shall require the permittee, after thirty days' notice, to abandon the use of said conduits or pipes and remove them from the alley or alleys in which they are located, and if said permittee shall neglect or refuse to remove said conduits or pipes and place the surface of the alley in good condition within sixty days after the date of said notice, the said permittee shall be deemed guilty of a misdemeanor, and shall be liable to a fine of ten dollars for each and every day that said conduits or pipes are allowed to remain in the alley, or the said alley shall remain out of repair, which fine shall be recovered in the police court of said District, in the name of said District, as other fines and penalties are now recovered in said court. (May 26, 1900, 31 Stat. 218, ch. 587, § 2.)

§ 43–1303 [19: 123]. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 43–1301 and 43–1302. (May 26, 1900, 31 Stat. 218, ch. 587, § 3.)

§ 43–1304 [19: 130f]. Construction of tunnels and structures in Anacostia River.

The Secretary of War is authorized to permit the construction and operation of any intake and discharge tunnels and/or other structures in the Anacostia River in so far as they affect navigable waters of the United States; and the Director of National Park Service is authorized, in consideration of the above-mentioned quitclaims to the United States, to convey, on behalf of the United States, to the owners of square 667 that portion of square east of 667 lying west of the direct southerly projection of the west line of Half Street as existing on June 15, 1932, north of U Street southwest; and said Director of National Park Service is authorized to permit the construction and operation of any pipe lines and intake and discharge tunnels, upon such terms and conditions as shall be fair and reasonable, under and on any lands owned or claimed by the Government of the United States lying in the above area and/or between the east line of Water Street, or other streets, and the Anacostia River. All areas conveyed by the United States to the owners of square 667 shall thereafter be assessed on the books of the assessor of the District of Columbia the same in all respects as other private properties in the District of Columbia. (June 15, 1932, 47 Stat. 319, ch. 265, § 4.)

COMPILER'S NOTES

Director of Public Buildings and Public Parks of the National Capital was changed to Director of National Parks, Buildings and Reservations by Ex. Or. No. 6166, June 10, 1933. This in turn was changed to Director of National Park Service by act of March 2, 1934, 48 Stat. 389, ch. 38, § 1.

The following laws are not of general application and are deemed to be executed, but are set out as notes so as to make them available. They appeared in the Code of 1929 and Supplement. Sections 124 to 130V were in title 19, of the 1929 code. Sections 107, 107a, 107b and 107c were in title 20 of that code. They are set out as they appeared in that code, retaining the section number and wording.

§ 124. Certain conduits across E and F Streets, southwest, authorized.—The Commissioners of the District of Columbia are authorized to issue a permit to the Terminal Refrigerating and Warehousing Corporation, its successors or assigns, for the laying of an underground conduit

and pipes from square 328 across and under E Street southwest, to and into square 327; and traversing all public alleys in said square, and from square 328 across and under F Street southwest, to and into square 329, for refrigerating purposes, under the following conditions, namely: The conduit and pipes therein laid shall be laid in a straight direction at right angles to the building lines of said streets; they shall be located as directed by the Commissioners of the District of Columbia and be laid under their inspection and the cost of such inspection and the replacing of pavements, curbs, and sidewalks disturbed shall be paid by the parties to whom the permit shall be granted: *Provided,* That such conduit and pipes shall be used for no purpose other than refrigeration. Congress reserves the right to amend, alter, or repeal this section. (Feb. 28, 1931, 46 Stat. 1459, ch. 344.)

§ *125. Pipe lines for use of Griffith-Consumers Company; installation authorized.*—The Commissioners of the District of Columbia are authorized and empowered to grant permission to the Griffith-Consumers Company, a corporation organized and existing under the laws of the State of Delaware, the owner of square 661 in the city of Washington in the District of Columbia, said square being bounded on the north by R Street, on the south by S Street, on the east by Half Street, and on the west by First Street, its successors and assigns, to lay down, construct, maintain, and use not more than ten pipe lines for the carriage of petroleum and petroleum products from a point or points within said square 661, in and through R Street, due east to Half Street, east, and thence north on Half Street, east, to a point opposite lots 12 or 13 in square east of square 708 (through which said lots the said Griffith-Consumers Company on April 14, 1932, had an easement to run said pipe lines), thence through said lots or any other lots in said square east of square 708 which may be acquired by the said Griffith-Consumers Company or through which it may secure an easement, and to the pierhead line of the Anacostia River. (Apr. 14, 1932, 47 Stat. 79, ch. 99, § 1.)

§ *126. Same; regulation and rentals.*—All the construction and use provided for in section 125 of this title shall be under such regulations and rentals as the Commissioners of the District of Columbia may make and establish in connection therewith. (Apr. 14, 1932, 47 Stat. 79, ch. 99, § 2.)

§ *127. Same; title of United States not affected.*—No permission granted or enjoyed under sections 125, 126 of this title shall vest any title or interest in or to the land within the above-mentioned streets or affect any right, title, or interest of the United States in or to land within square east of square 708. (Apr. 14, 1932, 47 Stat. 79, ch. 99, § 3.)

§ *128. Same; right of repeal reserved.*—The Congress reserves the right to amend, alter, or repeal sections 125–127 of this title at any time. (Apr. 14, 1932, 47 Stat. 79, ch. 99, § 4.)

§ *129. Pipe lines for use of Gulf Refining Company; installation authorized.*—The Commissioners of the District of Columbia are authorized and empowered to grant permission to the Gulf Refining Company, a corporation organized and existing under the laws of the State of Texas and registered and doing business in the District of Columbia, to lay down, construct, maintain, and use not more than ten pipe lines for the carriage of petroleum and petroleum products from a point or points within square 662 in the city of Washington, in the District of Columbia, said square being bounded on the north by R Street, on the south by S Street, on the east by Water Street and South Capitol Street, and on the west by Half Street (west), in and through Water Street, South Capitol Street, in an easterly direction to lot 4 of square south of square 708, which lot is bounded on the north by lands of the Standard Oil Company, on the south by S Street, extended, on the east by Anacostia River, and on the west by South Capitol Street. (June 3, 1932, 47 Stat. 168, ch. 206, § 1.)

§ *130. Same; regulation and rental.*—All the construction and use provided for in section 129 of this title shall be in accordance with plans approved by the Commissioners of the District of Columbia, and under such regulations and rentals as the said commissioners may make and establish in connection herewith. (June 3, 1932, 47 Stat. 168, ch. 206, § 2.)

§ *130a. Same; title of United States not affected.*—No permission granted or enjoyed under sections 129 and 130 of this title shall vest any title or interest in or to the land within the above-mentioned streets, or affect any right, title, or interest of the United States in or to land within square south of square 708. (June 3, 1932, 47 Stat. 168, ch. 206, § 3.)

§ *130b. Same; right of repeal reserved.*—The Congress reserves the right to alter, amend, or repeal sections 129–130a of this title at any time. (June 3, 1932, 47 Stat. 168, ch. 206, § 4.)

§ *130c. Closing of portion of U Street, southwest, authorized.*—The Commissioners of the District of Columbia are authorized to close, upon the recommendation of the National Capital Park and Planning Commission, that portion of U Street southwest, lying between First Street and Half Street southwest, as may be rendered useless or unnecessary by reason of the construction of an electric light and power plant on squares 665 and 667 adjoining said street: *Provided,* That the said Commissioners of the District of Columbia shall sell to the abutting property owners the land contained within the portion of said street to be closed for cash at a price not less than the assessed value of contiguous lots, and the money received therefrom paid into the Treasury of the United States to the credit of the District of Columbia, and that such lands shall thereafter be assessed on the books of the assessor of the District of Columbia the same in all respects as other private properties in the District. (June 15, 1932, 47 Stat. 318, ch. 265, § 1.)

§ *130d. Closing of portion of Water Street authorized; construction and operation of pipe lines, etc., to Anacostia River.*—The Commissioners of the District of Columbia are authorized to close, upon the recommendation of the National Capital Park and Planning Commission, that portion of Water Street between U and V Streets southwest; and said commissioners are hereby authorized to give title to the owners of square 667 abutting on Water Street that portion of Water Street so closed lying west of the direct southerly projection of the west line of Half Street as existing on June 15, 1932, north of U Street southwest, upon notification from the Director of Public Buildings and Public Parks of the National Capital of the receipt from all claimants in absolute quitclaim deeds to the United States of all lands in square east of 667, east of the direct southerly projection of the west line of Half Street, as existing on June 15, 1932, north of U Street southwest, and such other land as may be acquired by the owners of square 667 in square east of south of 667, subject to the right of said owners to construct and operate any pipe lines and intake and discharge tunnels in or under the same to the Anacostia River, and provided that all of said lands deeded to private owners by the Commissioners of the District of Columbia under this section shall thereafter be assessed on the books of the assessor of the District of Columbia the same in all respects as other private properties in the District of Columbia. (June 15, 1932, 47 Stat. 318, ch. 265, § 2.)

§ *130e. Pipe lines, etc., under streets south of T Street and east of Second Street, southwest.*—The Commissioners of the District of Columbia are authorized to grant any and all permits for the construction and operation of any pipe lines and intake and discharge tunnels in or under the public streets, roads, and highways south of T Street southwest and east of Second Street southwest to the Anacostia River as may become necessary in the construction, installation, and operation of any electric lighting and power plant, provided the same will not interfere with the development of other property located within this area. (June 15, 1932, 47 Stat. 319, ch. 265, § 3.)

§ *130g. Pipe lines for use of Pennsylvania Greyhound Transit Company; installation authorized.*—The Commissioners of the District of Columbia are authorized and empowered to issue a permit to Pennsylvania Greyhound Transit Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, its successors and assigns, to construct, maintain, repair, renew, and use not more than four underground pipe lines from the parcel of real estate owned by The Philadelphia,

Baltimore and Washington Railroad Company, and leased or to be leased to and occupied by Pennsylvania Greyhound Transit Company on the northerly side of New York Avenue Northeast, to the parcel of real estate owned by said Pennsylvania Greyhound Transit Company, in square 4038, parcel 142/25, in the city of Washington, District of Columbia, across and under New York Avenue Northeast, under the following conditions, namely: Said pipe lines shall be laid, constructed, and located as directed by the Commissioners of the District of Columbia, and under their inspection and the cost of such inspection, and of replacing pavements, curbs, and sidewalks disturbed, shall be paid by the party or parties to whom said permit shall be granted: *Provided,* That said pipe lines shall be used for the purpose of transporting petroleum and petroleum products, and for no other purpose whatsoever. (Feb. 18, 1935, 49 Stat. 26, ch. 10, § 1.)

§ *130h. Same; regulation and rental.*—All the construction and use provided for in section 130g shall be under such regulations and rentals as the Commissioners of the District of Columbia may make and establish in connection therewith. (Feb. 18. 1935. 49 Stat. 26, ch. 10, § 2.)

§ *130i. Same; permission not to affect title.*—No permission granted or enjoyed under sections 130g or 130h shall vest any title or interest in or to the land within the above-mentioned street. (Feb. 18, 1935, 49 Stat. 26, ch. 10, § 3.)

§ *130j. Same; right of repeal reserved.*—Congress reserves the right to amend, alter, or repeal sections 130g–130i of this title. (Feb. 18, 1935, 49 Stat. 26, ch. 10, § 4.)

§ *130k. Pipe lines for use of Smoot Sand and Gravel Company; installation authorized.*—The Commissioners of the District of Columbia are hereby authorized and empowered to grant permission to the Smoot Sand and Gravel Corporation, a corporation organized and existing under the laws of the State of Delaware, the owner of squares 705, 707, and east of 708, and part of square 708, in the District of Columbia, its successors and assigns, to lay down, construct, maintain, and use pipe lines for the carriage of petroleum and petroleum products from any point or points within any such square or such part of square, in and through Half Street, First Street, P Street, Q Street, R Street, Potomac Avenue, reservation 246 and reservation 247, to any point or points within any such square or such part of square, or to the pierhead line of the Anacostia River. (Apr. 25, 1935, 49 Stat. 162, ch. 84, § 1.)

§ *130l. Same; regulation and rental.*—All the construction and use provided for in section 130k shall be under such regulations and rentals as the Commissioners of the District of Columbia may make and establish in connection therewith, and all plans and specifications for such construction shall be subject to their approval. The Commissioners of the District of Columbia shall have full authority to designate the location and to cause such repairs or relocation of said pipe lines as the public necessity may require, any such repairs or relocation to be at the expense of the Smoot Sand and Gravel Corporation, its successors, or assigns. (Apr. 25, 1935, 49 Stat. 162, ch. 84, § 2.)

§ *130m. Same; permission not to affect title.*—No permission granted or enjoyed under section 130k or 130*l* shall vest any right, title, or interest in or to the land within the streets or reservations referred to in section 130k hereof. (Apr. 25, 1935, 49 Stat. 163, ch. 84, § 3.)

§ *130n. Same; right of repeal reserved.*—The right to alter, amend, or repeal sections 130k–130m of this title is hereby expressly reserved. (Apr. 25, 1935, 49 Stat. 163, ch. 84, § 4.)

§ *130o. Philadelphia, Baltimore and Washington Railroad Company; abandonment of substation authorized; repeal of certain laws.*—Sections 1–3 of the act approved February 3, 1909 (35 Stat. 593, c. 61), are hereby repealed; and, upon the completion by it of the substitute facilities authorized by section 2 hereof, The Philadelphia, Baltimore and Washington Railroad Company is authorized, without any further or other authority, to abandon and remove the Seventh Street substation built and maintained by it pursuant to the requirements of said act of February 3, 1909, and to abandon the ticket agency and baggage accommodations maintained by it pursuant to the requirements of said act. (July 25, 1935, 49 Stat. 497, ch. 415, § 1.)

§ *130p. Waiting room on platform authorized.*—In lieu of the said substation and facilities maintained at the intersection of Seventh Street and C Street Southwest, in the city of Washington. The Philadelphia, Baltimore and Washington Railroad Company is authorized to construct and maintain on the train platform an enclosed waiting room for passengers, with convenient means of ingress and egress leading from and to the street level below. (July 25, 1935, 49 Stat. 498, ch. 415, § 2.)

§ *130q. Reversion of property to District of Columbia.*—The area in square south of 463 on the map of the city of Washington heretofore used for station purposes shall revert to the District of Columbia upon the completion of these improvements: *Provided,* That the said Philadelphia, Baltimore and Washington Railroad Company shall construct and maintain thereon, subject to the approval of the Commissioners of the District of Columbia, adequate walkways to the adjacent streets. (July 25, 1935, 49 Stat. 498, ch. 415, § 3.)

§ *130r. Right of repeal reserved.*—Congress reserves the right to alter, amend, or repeal this act. (July 25, 1935, 49 Stat. 498, ch. 415, § 4.)

§ *130s. Decatur Corporation; authority to lay pipe lines.*—The Commissioners of the District of Columbia are hereby authorized and empowered to grant permission to the Decatur Corporation, a corporation organized in the State of Delaware, owner of that part of square 1067, bounded by L Street Southeast on the north, Fourteenth Street Southeast on the west, Fifteenth Street Southeast on the east, and to the right-of-way of The Philadelphia, Baltimore and Washington Railroad on the south, in the city of Washington in the District of Columbia, its successors and assigns, to lay down, construct, maintain, and use not more than five pipe lines for the carriage of petroleum products from a point or points north of said railroad right-of-way within square 1067, in and through Fifteenth Street Southeast due south to the pier-head line of the Anacostia River. (Aug. 27, 1935, 49 Stat. 895, ch. 753, § 1.)

§ *130t. Same; regulations and rentals.*—All the construction and use provided for in section 130s shall be under such regulations and rentals as the Commissioners of the District of Columbia may make and establish in connection therewith and all plans and specifications for such construction shall be subject to their approval. The Commissioners of the District of Columbia shall have full authority to designate the location and to cause such repairs or relocation of said pipe lines as the public necessity may require, any such repairs or relocation to be at the expense of the Decatur Corporation, its successors or assigns. (Aug. 27, 1935, 49 Stat. 895, ch. 753, § 2.)

§ *130u. Same; title and interest.*—That no permission granted or enjoyed under sections 130s or 130t shall vest any title or interest in or to the land within Fifteenth Street Southeast. (Aug. 27, 1935, 49 Stat. 896, ch. 753, § 3.)

§ *130v. Same; amendment.*—The right to alter, amend, or repeal sections 130s–130u is hereby expressly reserved. (Aug. 27, 1935, 49 Stat. 896, ch. 753, § 4.)

§ *107. Construction, maintenance, and use of certain pipe lines for petroleum and petroleum products.*—The Commissioners of the District of Columbia are hereby authorized and empowered to grant permission to the Steuart Brothers, Incorporated, a corporation organized in the State of Delaware, owner of that part of square 1024, bounded by L Street Southeast on the north, Twelfth Street Southeast on the west, Thirteenth Street Southeast on the east, and the right-of-way of The Philadelphia, Baltimore and Washington Railroad on the south, in the city of Washington, in the District of Columbia, its successors and assigns, to lay down, construct, maintain, and use not more than five pipe lines for the carriage of petroleum and petroleum products from a point or points north of said railroad right-of-way within the square 1024, in and through Thirteenth Street Southeast due south to the Anacostia River. (June 20, 1936, 49 Stat. 1541, ch. 620, § 1.)

§ *107a. Same; regulation by Commissioners.*—All the construction and use provided for in section 107 of this

title shall be under such regulations and rentals as the Commissioners of the District of Columbia may make and establish in connection therewith and all plans and specifications for such construction shall be subject to their approval. The Commissioners of the District of Columbia shall have full authority to designate the location and to cause such repairs or relocation of said pipe lines as the public necessity may require, any such repairs or relocation to be at the expense of the Steuart Brothers, Incorporated, its successors or assigns. (June 20, 1936, 49 Stat. 1541, ch. 620, § 2.)

§ *107b. Same; title or interest not vested.*—No permission granted or enjoyed hereunder shall vest any title or interest in or to the land within Thirteenth Street Southeast. (June 20, 1936, 49 Stat. 1541, ch. 620, § 3.)

§ *107c. Same; right of repeal, etc., reserved.*—The right to alter, amend, or repeal sections 107–107b of this title is hereby expressly reserved. (June 20, 1936, 49 Stat. 1541, ch. 620, § 4.)

Chapter 14.—TELEGRAPH AND TELEPHONE COMPANIES

Sec.

43–1401. Additional telegraph and telephone wires prohibited on streets—Extensions.
43–1402. Removal of telephone poles and wires—Area of removal—Duties of Commissioners—Extension of conduits.
43–1403. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telephone companies.
43–1404. Penalties.
43–1405. Erection and maintenance of telephone poles in alleys—Poles outside designated limit—Temporary permits.
43–1406. Regulations for inspection—Ducts for use of fire and police wires.
43–1407. Repairs and renewals.
43–1408. Right to alter or repeal reserved.
43–1409. Removal of telegraph poles and wires—Duties of Commissioners—Extension of conduits.
43–1410. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telegraph companies.
43–1411. Penalties.
43–1412. Erection and maintenance of telegraph poles in alleys—Poles outside designated limits—Temporary permits.
43–1413. Conduits in public parks or reservations.
43–1414. Regulations for inspection—Ducts for use of fire and police wires.
43–1415. Repairs and renewals.
43–1416. Right to alter or repeal reserved—Rights under U. S. C., title 47, sections 1 et seq. preserved.
43–1417. Rights to build and lay conduits not to be paid for in event of condemnation.

§ 43–1401 [26: 171]. Additional telegraph and telephone wires prohibited on streets—Extensions.

The commissioners of the District of Columbia shall not permit or authorize any additional telegraph, telephone, electric lighting or other wires to be erected or maintained on or over any of the streets or avenues of the City of Washington: *Provided,* That the Commissioners of the District may, under such reasonable conditions as they may prescribe, authorize the wires of any electric light company existing on July 18, 1888, and then operating in the District of Columbia, to be laid under any street, alley, highway, footway or sidewalk in the District, whenever in their judgment the public interest may require the exercise of such authority—such privileges as may be granted hereunder to be revocable at the will of Congress without compensation and no such authority to be exercised after the termination of the Fiftieth Congress. (July 18, 1888, 25 Stat. 323, ch. 676.)

CROSS REFERENCES

Conduits in public parks and reservations, § 43–1413.
Jurisdiction and control over public ways, § 7–102 and notes.
Other provisions concerning electrical wiring, § 43–1101 et seq.
Rules and regulations for construction of conduits, §§ 43–1406, 43–1414.
Rules and regulations generally, § 1–226 and notes.

NOTES TO DECISIONS

EXISTING LINES

Under this section the Commissioners of the District might authorize the wires of any "existing telegraph, telephone or electric light company," to be laid under streets and alleys whenever public interest may exercise such authority. *Chesapeake & Potomac Tel. Co.* v. *Manning* (186 U. S. 238, 46 L. Ed. 1144, 22 Sup. Ct. 881).

§ 43–1402 [26: 178]. Removal of telephone poles and wires—Area of removal—Duties of Commissioners—Extension of conduits.

All telephone poles and wires attached thereto not the property of the United States or the District of Columbia existing June 20, 1902, upon the streets and avenues within the section of the District of Columbia bounded by a line beginning at Second and B Streets southeast and running thence along B Street south, Third Street west, Missouri Avenue, Sixth Street west, B Street north, Twenty-third Street west, Rock Creek, Cincinnati Street, Columbia Road, Sixteenth Street west (extended), Park Street, Whitney Avenue, Eleventh Street west, R Street north, New Jersey Avenue, C Street north, and Second Street east to the point of beginning, except as hereinafter provided, shall from time to time, as may be prescribed by the Commissioners of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said Commissioners, and it is hereby made the duty of said Commissioners to enforce compliance with the provisions of sections 43–1402 to 43–1408, inclusive, as expeditiously as may be consistent with the public interests; and the said Commissioners are hereby empowered from time to time to authorize any individual, company, or corporation operating on June 20, 1902, and maintaining a telephone plant or system, partly overhead and partly underground, in the District of Columbia, to extend and enlarge its system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said city and District as may be requisite and necessary for the purposes of sections 43–1402 to 43–1408, inclusive, and for the reception of such other cables and wires as may be reasonably required in the future by the growth of such individual, company, or corporation or to adequately meet the requirements of the public for telephone service. (June 20, 1902, 32 Stat. 393, ch. 1136, § 1.)

NOTES TO DECISIONS

AUTHORITY OF COMMISSIONERS

Commissioners of the District might authorize wires of telephone, telegraph or electric light company to be laid under streets and alleys whenever public interest

may exercise such authority. *Chesapeake & Potomac Tel. Co.* v. *Manning* (186 U. S. 238, 46 L. Ed. 1144, 22 Sup. Ct 881.)

§ 43–1403 [26: 179]. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telephone companies.

From time to time any individual, company, or corporation, maintaining and operating on June 20, 1902, a telephone plant or system in said District, partly overhead and partly underground, shall prepare and submit to the said Commissioners a plan or plans, or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensons, length, and course thereof, and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Commissioners. Said Commissioners are empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval by said Commissioners of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the section in said District described in section 43–1402 the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be, without impairing the efficiency of the telephone service in said District, the individual, company, or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and wires except such as said Commissioners may, in accordance with the provisions of sections 43–1402 to 43–1408, inclusive, permit to remain for the purpose of distributing wires for house connections. (June 20, 1902, 32 Stat. 393, ch. 1136, § 2.)

§ 43–1404 [26: 180]. Penalties.

Any individual, company, or corporation owning and maintaining such poles and wires attached thereto on or over any street or avenue within the section of the District described in section 43–1402 who shall wilfully neglect or refuse to remove the same, as provided in section 43–1403, shall be liable to a penalty of not more than twenty-five dollars for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District of Columbia in any court of competent jurisdiction. (June 20, 1902, 32 Stat. 394, ch. 1136, § 3.)

§ 43–1405 [26: 181]. Erection and maintenance of telephone poles in alleys—Poles outside designated limit—Temporary permits.

Said Commissioners are empowered to authorize the erection and maintenance of poles in the alleys of said city and District and the stringing thereon of telephone conductors from alley poles or housetop fixtures in one square to alley poles or housetop fixtures in another square for the purpose of enabling house connections to be made, and also to authorize the erection of telephone poles in the District of Columbia outside the limits of the section of said District described in section 43–1402 and the stringing thereon of telephone conductors for house connections or for connection with lines outside the District of Columbia; also to authorize the erection of such poles and the stringing thereon of such wires in the streets and avenues of said city and District in the parts thereof in which there are no public alleys, and in such other places as the public interests do not require that the lines be placed underground, or in places where it shall be deemed by said commissioners impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in section 43–1402 said commissioners are also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground, but where the work can not be immediately done because of the greater urgency of work in other localities, or for other reasons satisfactory to said commissioners; but in issuing such temporary permits said commissioners shall bear in mind the purpose and policy of sections 43–1402 to 43–1408, inclusive, which is to cause to be removed from the streets and avenues within the section of said District described in section 43–1402 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telephone service in said District and without denying to the public reasonable telephone facilities at all times. (June 20, 1902, 32 Stat. 394, ch. 1136, § 4.)

§ 43–1406 [26: 182]. Regulations for inspection—Ducts for use of fire and police wires.

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of sections 43–1402 to 43–1408, inclusive, shall be subject to such reasonable regulations as the Commissioners of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires: *Provided,* That in all conduits so constructed such space shall be furnished to the District of Columbia as may be necessary for its fire-alarm or police-patrol wires or cables, carrying low potential currents of electricity, free of charge: *And provided further,* That the number of ducts so reserved in any one conduit shall not be more than three. (June 20, 1902, 32 Stat. 395, ch. 1136, § 5.)

CROSS REFERENCE

See note to § 43–1401.

§ 43–1407 [26: 183]. Repairs and renewals.

The said commissioners are empowered to authorize any such individual, company, or corporation owning and operating on June 20, 1902, any lines of street poles and wires and any alley poles or alley-pole line within the District of Columbia and outside

of the section described in section 43–1402 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for the purpose of making house connections or for connecting with telephone lines outside the District of Columbia. (June 20, 1902, 32 Stat. 395, ch. 1136, § 6.)

§ 43–1408 [26: 184]. Right to alter or repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 43–1402 to 43–1408, inclusive. (June 20, 1902, 32 Stat. 395, ch. 1136, § 7.)

§ 43–1409 [26: 185]. Removal of telegraph poles and wires—Duties of Commissioners—Extension of conduits.

All telegraph poles and the wires attached thereto, not the property of the United States or the District of Columbia, upon the streets, avenues and alleys on March 3, 1905 within the fire limits of the District of Columbia, except as hereinafter provided, shall from time to time, as may be prescribed by the commissioners of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said commissioners, and it is hereby made the duty of said commissioners to enforce compliance with the provisions of sections 43–1409 to 43–1417, inclusive, as expeditiously as may be consistent with the public interests; and the said commissioners are hereby empowered, from time to time, to authorize any company or corporation on March 3, 1905, or thereafter operating and maintaining a telegraph plant or system in the District of Columbia to locate and construct a system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said District, as may be requisite and necessary for the purpose of sections 43–1409 to 43–1417, inclusive, and for the reception of such other conduits, cables, and wires as may be reasonably required in the future by the growth of such company or corporation or its assigns, or to adequately meet the requirements of the public for telegraph service. (Mar. 3, 1905, 33 Stat. 984, ch. 1415, § 1.)

CROSS REFERENCE

See note to § 43–1401.

§ 43–1410 [26: 186]. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telegraph companies.

From time to time, any company or corporation, or its assigns, on March 3, 1905, or thereafter maintaining and operating a telegraph plant or system in said District, shall prepare and submit to the said commissioners a plan or plans or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensions, length, and course thereof; and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Commissioners. Said Commissioners are empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval by said Commissioners of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the said limits described in section 43–1409, or in such part thereof as said Commissioners shall require and direct, the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be without impairing the efficiency of the telegraph service in said District, the company or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and the wires thereon, except such as said commissioners may, in accordance with the provisions of sections 43–1409 to 43–1417, inclusive, permit to remain for the purpose of distributing wires for house or other connections. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 2.)

§ 43–1411 [26: 187]. Penalties.

Any company or corporation now or hereafter owning and maintaining such poles and wires attached thereto on or over any street or avenue within the said limits described in section 43–1409, which shall willfully neglect or refuse to remove the same, as provided in section 43–1409, shall be liable to a penalty of not more than twenty-five dollars for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District of Columbia in any court of competent jurisdiction. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 3.)

§ 43–1412 [26: 188]. Erection and maintenance of telegraph poles in alleys—Poles outside designated limits—Temporary permits.

Said Commissioners are empowered to authorize the erection and maintenance of poles in the alleys of said District, and the stringing thereon of wires or conductors for telegraph purposes from alley poles or house-top fixtures in one square to alley poles or house-top fixtures in another square for the purpose of enabling house connections to be made, and to authorize the erection of poles and the stringing thereon of wires on and upon the streets and avenues of said District in the parts thereof in which there are no public alleys and in such places as the public interests do not require that the lines be placed underground, or in places where it shall be deemed by said commissioners impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in section 43–1409 said commissioners are also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground, where the work can not be immediately done because of the greater urgency of work in other localities, or for other reasons satisfactory to said commissioners; but in issuing such temporary permits said commission-

ers shall bear in mind the purpose and policy of sections 43–1409 to 43–1417, inclusive, which is to cause to be removed from the streets and avenues within the said limits described in section 43–1409 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telegraph service in said District and without denying to the public reasonable telegraph facilities. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 4.)

§ 43–1413 [26: 189]. Conduits in public parks or reservations.

Any officer of the United States Government charged with the care, maintenance, and supervision of any public park or reservation may grant permission to any company or corporation maintaining and operating a telegraph plant or system in said District on March 3, 1905, or thereafter, upon application being made therefor, to construct conduits, subsidiaries, or manholes in said park or reservation, under such reasonable regulations as said officer may prescribe, unless, in the judgment of said officer, said construction will result in injury to the United States or its properties. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 4a.)

CROSS REFERENCE

Jurisdiction and control of public parks and reservations, § 8–101 et seq.

§ 43–1414 [26: 190]. Regulations for inspection—Ducts for use of fire and police wires.

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of sections 43–1409 to 43–1417, inclusive, shall be subject to such reasonable regulations as the Commissioners of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires: *Provided,* That in all underground conduits so constructed such space shall be furnished to the said District of Columbia and the United States as may be necessary for their telegraph, fire alarm, and police-patrol wires or cables carrying low potential currents of electricity, free of charge: *And provided further,* That the number of ducts so reserved in any one conduit shall not be more than two. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 5.)

CROSS REFERENCE

Rules and regulations, see notes to § 43–1401.

§ 43–1415 [26: 191]. Repairs and renewals.

The said commissioners are empowered to authorize any such company or corporation owning and operating lines of street poles and wires on March 3, 1905, or thereafter and any alley poles or alley-pole line or house-top wires within the said District and outside of the limits described in section 43–1409 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for their telegraphic purposes. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 6.)

§ 43–1416 [26: 192]. Right to alter or repeal reserved—Rights under U. S. C., title 47, section 1 et seq. preserved.

Congress reserves the right to alter, amend, or repeal sections 43–1409 to 43–1417, inclusive, but nothing herein shall abridge or lessen the rights granted telegraph companies under title 47, section 1 et seq. of the Code of the Laws of the United States of America. (Mar. 3, 1905. 33 Stat. 986, ch. 1415, § 7.)

§ 43–1417 [26: 193]. Rights to build and lay conduits not to be paid for in event of condemnation.

If at any time the District of Columbia or the National Government shall acquire, by purchase, condemnation proceedings, or otherwise, the property of any telegraph company in the District of Columbia, nothing shall then be paid for the rights accorded under sections 43–1409 to 43–1417, inclusive, to build and lay such conduits. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 8.)

Chapter 15.—WATER SUPPLY, ASSESSMENTS, AND RATES

Sec.

43–1501. Water mains, pipes, and fire plugs—Commissioners to have power to erect.
43–1502. Water department—Operations of, to be under direction of Engineer's Office.
43–1503. Water supply—Rules and regulations.
43–1504. Fiscal year of water department.
43–1505. Water-main taxes and rents to be uniform.
43–1506. Water registrar.
43–1507. Prevention of water waste.
43–1508. Use of Potomac water for mechanical and manufacturing purposes.
43–1509. Water supply in large quantities to be determined by meters maintained by consumers.
43–1510. Water mains and service sewers erected at discretion of Commissioners—Costs assessed against abutting property.
43–1511. Assessments for water mains.
43–1511a. Increased rate of assessment for laying mains.
43–1512. Assessor to give notice of assessments.
43–1513. Water-main and service sewer assessments payable in three installments.
43–1514. Assessment of property in county of Washington for water mains and service sewers.
43–1515. Relevying assessments when assessments declared void.
43–1516. Disposal of funds received by collector of taxes.
43–1517. Definition—Service sewer.
43–1518. Refund of overpaid assessments.
43–1519. Refund of water rents erroneously paid.
43–1520. Water rents—Rates.
43–1520a. Increase in water rents.
43–1521. Commissioners to have authority to collect water rates in advance.
43–1522. Water rates not to be a source of revenue.
43–1523. Water tax to be a fund to defray cost of water distribution.
43–1524. Water rents from Washington Aqueduct to be applied to improvement of same.
43–1525. Fire plug tax.
43–1526. Rates.
43–1527. To cease upon introduction of water.
43–1528. Levy upon discontinuance of water service.
43–1529. Water not to be diverted beyond district.
43–1530. Commissioners authorized to deliver water in nearby Maryland—Contract.
43–1531. Delivery of water to Arlington County, Virginia.
43–1531a. Delivery of water to Falls Church, Virginia, and adjacent areas—Installation expenses—Payments for water—Revocation of permit.
43–1531b. Investigation of distribution systems outside District of Columbia.
43–1531c. Acquiring of lands for pipe lines authorized.

Sec.
43–1532. Acquisition of land and right of way for pipe lines.
43–1533. Potomac water to be furnished to charitable institutions without charge.
43–1534. Unlawful tapping of water pipe—Penalty.
43–1535. Chief of Engineers to inform United States attorney for District of Columbia of all violations.
43–1536. Penalty for damaging or defacing water pipes.
43–1537. Mains or pipes—Laying for use of public buildings.
43–1538. Unauthorized opening.
43–1539. District of Columbia water system defined.
43–1540. Loans authorized to expand water system.

CROSS REFERENCES

Annual payment of $1,000,000 by United States to the water fund of the District, see § 47–2501a.

§ 43–1501 [20: 1371]. Water mains, pipes, and fireplugs—Commissioners to have power to erect.

The Commissioners of the District of Columbia shall have the power to lay water mains and water pipes and to erect fire plugs and hydrants wherever the same may be in their judgment necessary for the public safety, comfort, or health. (R. S., D. C., § 204; June 17, 1890, 26 Stat. 159, ch. 428.)

CROSS REFERENCES

Annual estimate of expenses, § 47–210.

Construction of sewers and water-mains under District of Columbia Alley Dwelling Act, § 5–103.

Cutting trenches or removing materials from public highways, reservations, § 7–615.

Fees for connections to sewers, water-main, gas-main or other underground structure, § 1–726.

Jurisdiction and control over public ways, § 7–102 and note.

NOTES TO DECISIONS

IN GENERAL

By this act Congress enacted that the Commissioners of the District shall have the power to lay water mains, pipes, fireplugs, and hydrants for the public safety, comfort, or health. *Parsons* v. *District of Columbia* (170 U. S. 45, 42 L. Ed. 943, 18 Sup. Ct. 521); *Wight* v. *Davidson* (181 U. S. 371, 45 L. Ed. 900, 21 Sup. Ct. 616.)

§ 43–1502 [20: 1372]. Water department — Operations of to be under direction of Engineer's Office.

The operations of the water department of the District of Columbia shall be under the direction of the engineer's office of the District, subject to the control of the commissioners. (July 1, 1882, 22 Stat. 143, ch. 263, § 2.)

§ 43–1503 [20: 1373]. Water supply—Rules and regulations.

Full power is given to the commissioners to supply the inhabitants of the District with the Potomac water from the aqueduct mains or pipes laid in the streets and avenues by the United States; and to make all laws and regulations for the proper distribution of the same, subject to the provisions of this chapter, and to the control of the Chief of Engineers, as provided in title 40, section 51, of the Code of Laws of the United States. The supply of Potomac water may be extended to points in the District beyond the limits of Washington upon like terms and conditions as are provided by law for the supply of the same in that city. (R. S., D. C., § 195; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3; June 10, 1879, 21 Stat. 9, ch. 16; Feb. 25, 1885, 23 Stat. 319, ch. 145; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCES

General limitation on power of Commissioners, § 1–801.
Rules and regulations generally, § 1–226.

NOTES TO DECISIONS

JURISDICTION

United States possesses complete jurisdiction, both of a political and municipal nature, over the District of Columbia. *Parsons* v. *District of Columbia* (170 U. S. 45, 42 L. Ed. 943, 18 Sup. Ct. 521).

§ 43–1504 [20: 1374]. Fiscal year of water department.

The fiscal year of the water department of the District of Columbia shall conform to the regular fiscal year of the General Government; the rates shall be levied and collected annually. (July 1, 1882, 22 Stat. 144, ch. 263, § 2.)

§ 43–1505 [20: 1375]. Water-main taxes and rents to be uniform.

Water-main taxes and water rents shall be uniform in said District. (June 10, 1879, 21 Stat. 9, ch. 16.)

§ 43–1506 [20: 1376]. Water registrar.

The water registrar shall perform such duties connected with the water department of the District as may be proper and necessary, under the direction of the commissioners. He shall give bonds for the faithful performance of his duty in the sum of ten thousand dollars. (Leg. Assem., Aug. 23, 1871, ch. 108, § 16; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

COMPILER'S NOTE

The acts of 1874 and 1878 are the organic acts of those years, and the sections referred to are those which confer upon and define the powers of the Commissioners.

CROSS REFERENCE

General limitations on power of Commissioners, § 1–801.

§ 43–1507 [20: 1377]. Prevention of water waste.

In order to prevent unnecessary waste of Potomac water, and in order to more fully enforce the laws in relation to the distribution of the same, the Chief of Engineers is authorized, after giving notice, to shut off the water when such notice shall be disregarded from any places where a waste of water is occurring. (R. S., D. C., § 214.)

§ 43–1508 [20: 1378]. Use of Potomac water for mechanical and manufacturing purposes.

The use of Potomac water for mechanical and manufacturing purposes, or for private fountains, street and pavement washers, shall be allowed only when, in the opinion of the Chief of Engineers, it will not be detrimental to the general distribution of water in the District of Columbia. (R. S., D. C., § 215; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

§ 43–1509 [20: 1379]. Water supply in large quantities to be determined by meters maintained by consumers.

The supply of water to all manufacturing establishments, hotels, livery-stables, and other places re-

quiring a large quantity, shall be determined by meters erected and maintained at the expense of the consumer. (R. S., D. C., § 216.)

§ 43–1510 [20: 1380]. Water mains and service sewers erected at discretion of Commissioners—Costs assessed against abutting property.

The Commissioners of the District of Columbia are authorized and directed, whenever in their judgment the same may be necessary for the public safety, health, comfort, or convenience, to construct water mains and service sewers in any street, avenue, road, or alley in the District of Columbia; and the assessor of said District shall levy assessments for the same against abutting property in the amount and manner hereinafter prescribed. (Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 1.)

CROSS REFERENCES

Jurisdiction and control over public ways, § 7–102 and notes.

Laying pipes in streets under the control of the United States, § 7–1204.

Laying water mains and sewers on permit plan, §§ 7–608, 7–609.

Special assessments generally, § 47–1101 et seq.

§ 43–1511 [20: 1381]. Assessments for water mains.

For laying or constructing water mains in the District of Columbia assessments shall be levied at the rate of three dollars per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a water-main shall be laid, and for laying or constructing service sewers in the District of Columbia assessments shall be levied at the rate of one dollar per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a sewer shall be laid: *Provided,* That assessments for water mains and service sewers in the case of lots or parcels of land not more than one hundred feet in depth shall be levied upon the fronts or rears of such lots or parcels of land, and not upon both the fronts and rears of such lots or parcels of land; but lots or parcels of land more than one hundred feet in depth, except corner lots, shall be assessed upon both their fronts and rears when water-mains or service sewers are laid abutting the same: *Provided,* That corner lots shall be assessed for water-mains and service sewers only on their short fronts with a depth of not exceeding one hundred feet; any excess of the other front over one hundred feet shall be subject to assessment, as hereinbefore provided: *Provided,* That the areas of all lots or parcels of land which have been assessed for water mains by the square foot under any previous Act of Congress, or of the late legislative assembly of the District of Columbia, shall not be again assessed for water mains: *Provided further,* That when the Commissioners of the District of Columbia shall deem it advantageous to lay water mains or service sewers on each side of any street, avenue, road, or alley assessments shall be levied at the rate, within the time and in the manner in this section provided for, against the lots abutting the side of the street, avenue, road, or alley in which the water-main or service sewer is laid. (Aug. 11, 1894, 28 Stat. 275, ch. 253; Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 2; Dec. 22, 1927, 45 Stat. 11, ch. 5; July 3, 1930, 46 Stat. 989, ch. 848.)

AMENDMENTS

Act of 1904 replaced the act of 1894 and included assessments for service sewers as well as water-mains.

Act of 1927 provided that rates of assessment in effect on June 30, 1927, for laying or constructing water mains and service sewers in the District of Columbia under provisions of act of 1904 should continue in effect during the remainder of the fiscal year 1928 and thereafter.

Act of 1930 increased the rate previously in effect.

CROSS REFERENCE

See note to § 43–1510.

INCREASED ASSESSMENTS FROM JULY 1, 1941

Assessment established at $1.90 per linear foot, see § 43–1511a.

NOTES TO DECISIONS UNDER PRIOR ACT

ASSESSMENT IN EXCESS OF COST

Assessment exceeding actual cost of the work is not bad where the laying of the main was a part of a water-system and the assessment included a fund to keep the system in efficient repair. *Parsons* v. *District of Columbia* (170 U. S. 45, 42 L. Ed. 943, 18 Sup. Ct. 521).

FRONTAGE RULE INAPPLICABLE

If the paving of an avenue be treated as an original improvement, converting a highway into a paved city street, its constitutional infirmities are emphasized by reason of the existence of physical conditions forbidding any equal, fair, or equitable application of the frontage rule of taxing benefits. If considered as a repair of the avenue, in the form of repaving, its validity must be condemned on theory that it taxes individual property fronting on the improvement for all or fixed portion of the expense, to exemption of all other property in the municipality. *Johnson* v. *Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525).

NECESSITY AND BENEFITS OF WORK

This act must be deemed conclusive alike of the question of the necessity of the work, and of the benefits as against abutting property; and to open such questions for review by the courts, on the petition of any and every property holder, would create endless confusion; and when questions submitted to Commission, the inquiry becomes in its nature judicial. *Parsons* v. *District of Columbia* (170 U. S. 45, 42 L. Ed. 943, 18 Sup. Ct. 521); *Wight* v. *Davidson* (181 U. S. 900, 45 L. Ed. 900, 21 Sup. Ct. 616).

POWERS OF CONGRESS

Congress has the power to provide for assessments in the District of Columbia for the opening of streets. *Wight* v. *Davidson* (181 U. S. 371, 45 L. Ed. 900, 21 Sup. Ct. 616).

Congress of the United States has the entire control over the District for every purpose of government. *Sims* v. *Rives* (66 App. D. C. 24, 84 Fed. (2d) 871).

§ 43–1511a. Increased rate of assessment for laying mains.

The rate of assessment for laying or constructing water mains in the District of Columbia under the provisions of section 43–1511, is hereby established at $1.90 per linear foot for any water mains constructed or laid on and after July 1, 1947. (July 16, 1947, 61 Stat. 360, ch. 258, Art. V, § 2.)

§ 43–1512 [20: 1382]. Assessor to give notice of assessments.

The assessor of the District of Columbia shall give notices as herein provided of the levying of assessments for water mains and service sewers. Assessments shall be levied within sixty days after the completion of the main or service sewer, and the owner or

owners affected by such assessments shall be notified that the same have been levied by a notice which shall be served upon the owner of the lot or parcel of land if he or she be a resident of the District of Columbia, and his or her residence be known. If the owner be a nonresident or his or her residence be unknown, the notice shall be served on his or her agent or tenant. The service of such notice, where the owner or his or her agent or tenant resides in the District of Columbia, shall be personal or by leaving the same with some person of suitable age, either a member of his family or in his employ, at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing under oath and filed in the office of the assessor of the District of Columbia. If there be no agent or tenant known to said assessor, and the owner or owners be not residents of the District of Columbia, or if the owner be a resident of the District of Columbia and can not be found therein, and no person of suitable age as aforesaid can be found at his or her residence or place of business, notice shall be given by advertisement once a week for three successive weeks in some daily newspaper published in said District, and in said publication of said notice each several piece of property shall be described in a separate paragraph, and the cost of such advertisement shall be added to the amount of said assessment and collected in the same manner that said assessment is collected. (Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 3.)

CROSS REFERENCE

See note to § 43–1510.

§ 43–1513 [20: 1383]. Water main and service sewer assessments payable in three installments.

Assessments for water mains and service sewers shall be payable in three equal installments, the first of which shall be due and payable without interest within thirty days from date of service of notice or of the last publication of notice as the case may be, the second within one year, and the third within two years from the date of assessment, and interest at the rate of six per centum per annum shall be charged on all amounts which shall remain unpaid at the expiration of thirty days from the date of service of notice or last publication as the case may be; but the owner of the property assessed may, at his option, at any time after the levying of such assessment, pay the same in full: *Provided,* That if any installment of any assessment for water main or service sewer levied under the provisions of sections 43–1510 to 43–1517, inclusive, shall not be paid when due and payable the property against which said assessment was levied may be sold for said delinquent installment at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said instalment shall not have been paid prior to said sale. (Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 4.)

CROSS REFERENCES

Payment of taxes and special assessments on family dwellings, § 47–901 et seq.

See note to § 43–1510.

§ 43–1514 [20: 1384]. Assessment of property in county of Washington for water mains and service sewers.

Property in the county of Washington, not subdivided into blocks or lots, or both, shall not be assessed for water mains or service sewers until subdivided: *Provided,* That where houses are built on any unsubdivided land and connection is made with a water main or service sewer, assessment shall be made as herein provided for in the case of subdivided property by assessing a frontage of fifty feet on each side of said connection with a depth of one hundred feet, except that no double assessment shall be levied; said assessment to be levied within sixty days after said connection is made; and if such unsubdivided land is thereafter subdivided into blocks or lots, such lots shall be assessed as herein provided as to subdivided lands, but the fifty feet on each side of said connection, with a depth of one hundred feet, shall not be again assessed: *Provided further,* That assessments at the rate and in the manner herein provided for shall be levied against each lot or parcel of land abutting any water main or service sewer in all subdivisions of land, within sixty days after the recording of such subdivision in the office of the surveyor of the District of Columbia, except in cases where said lots or parcels of land have been previously assessed for the same main or service sewer. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 5.)

§ 43–1515 [20: 1385]. Relevying assessments when assessments declared void.

The assessor of the District of Columbia is hereby authorized and directed in cases where water-main assessments, or assessments for service sewers, may be quashed, canceled, set aside, or declared void by the District Court of the United States for the District of Columbia, or may otherwise be canceled or set aside, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied, by reason of such tax or assessment not having been authenticated by the proper officer or by reason of a defective return of service of notice, or for any technical reason other than the right of the authorities of the District of Columbia to levy assessment or lay the main or service sewer in respect of which assessment was levied, to relevy such assessment at the rate and in the manner provided for in sections 43–1510 to 43–1517, inclusive: *Provided,* That such reassessment shall be made within sixty days from date of such cancellation. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 7.)

§ 43–1516 [20: 1386]. Disposal of funds received by collector of taxes.

All sums received by the collector of taxes under the provisions of sections 43–1510 to 43–1517, inclusive, on account of assessments levied for the construction of service sewers shall be credited to the appropriation under which the sewer was constructed for the fiscal year in which such sums shall be received. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 8.)

§ 43–1517 [20: 1387]. Definition—Service sewer.

A service sewer within the meaning of the provisions of sections 43–1510 to 43–1517, inclusive, shall

be a sewer with which connection may be directly made for the purpose of providing sewerage facilities to abutting property, and such sewers shall be so indicated on the records of the sewer division of the engineer department of the District of Columbia. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 9.)

§ 43–1518 [20: 1388]. Refund of overpaid assessments.

In all cases where a water-main has heretofore been or may hereafter be laid in a public street or way, and in order to secure the laying of such main the cost or a part thereof has been paid to the District of Columbia prior to the laying of said main by any person or corporation, there shall be repaid from time to time to such person or corporation, out of the collections from the assessment for such main, all of the amounts so paid over and above the assessment chargeable against the land owned or controlled by said person or corporation. (June 2, 1900, 31 Stat. 252, ch. 612, § 2.)

CROSS REFERENCE

Refund of taxes generally, § 47–1017.

§ 43–1519 [20: 1389]. Refund of water rents erroneously paid.

The Commissioners of the District of Columbia are hereby authorized to cause all water rents erroneously paid after March 3, 1905, in the District of Columbia to be refunded in the manner prescribed by law for the refunding of erroneously paid taxes: *Provided,* That application for refund shall be made within two years after such erroneous payment. And after March 3, 1905, the said commissioners are authorized to cause to be refunded in the same manner and subject to the same limitations all money paid for water for any special purpose where the project is abandoned and the water not used, and for tapping water mains and for furnishing stopcock where the service is not rendered and the material is not furnished; and all money refunded under this section shall be paid from and charged to the water fund. (Mar. 3, 1905, 33 Stat. 912, ch. 1406.)

CROSS REFERENCE

Refund of taxes and assessments generally, § 47–1017.

NOTES TO DECISIONS

LIABILITY OF COLLECTOR OF TAXES

Where record showed that protest made upon payment of water bill was handed to water registrar with request that he show protest to commissioners, and there was no showing that collector of taxes took any part in the controversy or committed any of the acts which compelled the payment or that he had any notice that bill was being paid under protest no personal liability rested on collector upon showing that the collection was erroneously made. *Farrell* v. *Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

§ 43–1520 [20: 1390]. Water rents—Rates.

The following schedule of water rents in the District of Columbia shall be fixed by the commissioners of said District:

For the use of water for domestic purposes through unmetered services, $9.85 per annum for all tenements two stories high, or less, with a front width of sixteen feet, or less; for each additional front foot or fraction thereof greater than one-half, 62 cents; and for each additional story or part thereof, one-third of the charges as computed above. For business places that are not required to install meters under existing regulations, the rates in effect June 30, 1930, to be increased by 40 per centum per annum. For the use of water through metered services, a minimum charge of $8.75 per annum for seven thousand five hundred cubic feet of water, and 7 cents per one hundred cubic feet for water used in excess of that quantity. For water for building construction purposes when not supplied through a meter, 6 cents per one thousand brick and 3 cents per cubic yard of concrete, with a minimum charge of $1 for each separate building project. All water required for purposes which are not covered by the foregoing classifications shall be paid for at such rates as may be fixed by the Commissioners of the District of Columbia. (July 3, 1930, 46 Stat. 988, ch. 848.)

INCREASE IN RENTS FROM JULY 1, 1947

Rents increased 25 per centum, see § 43–1520a.

§ 43–1520a. Increase in water rents.

Water rents charged by the District of Columbia for water used in the District of Columbia on and after July 1, 1947, shall be increased 25 per centum over the rents now in effect. Whenever the application of this increase to an existing rate results in a rate with a fractional part of a cent, the rate shall be, if the fraction be one-half cent or more, the nearest higher amount not containing a fraction, and, if the fraction be less than one-half cent, the nearest lower amount not containing a fraction. In computing the rent for the consumption of water in excess of the minimum amount allowed by law for metered service, if the rent is charged for a period beginning prior to July 1, 1947, and ending thereafter, the rent for such excess consumption shall be prorated. (July 16, 1947, 61 Stat. 360, ch. 258, Art. V, § 1.)

§ 43–1521 [20: 1391]. Commissioners to have authority to collect water rates in advance.

The commissioners have authority to provide for the collection of water rates, in advance or otherwise, from the owner or occupants of all buildings or establishments using the water; and to provide for stopping the supply of water to any dwelling or establishment upon a failure to pay the rate, and to carry into full effect the provisions of this chapter. (R. S., D. C., § 197; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

COMPILER'S NOTE

The acts of 1874 and 1878 are the organic acts of those years, and the sections referred to are those which confer upon and define the powers of the Commissioners.

CROSS REFERENCE

General limitation on power of Commissioners, § 1–801.

NOTES TO DECISIONS

LIABILITY OF PRIOR TENANT

A tenant, who became secondarily liable for water bill which accrued during prior tenancy by his failure to give written notice of acquiring control of premises within five days thereof as required by this section and order issued by Commissioners of District of Columbia, was entitled to pay accrued water rent without submitting to

the cutting off of his water supply, and could look to prior tenant for indemnity regardless of prior tenant's lack of consent notwithstanding his protest. *Simmons* v. *Quick* (D. C. Mun. App. 1944, 37 A. 2d 656).

Fact that a tenant, by failing to give written notice of acquiring control of premises within five days thereof as required by this section and order issued by Commissioners of District of Columbia, became secondarily liable for water bill which accrued during a prior tenancy, did not relieve prior tenant of his primary liability. *Simmons* v. *Quick* (D. C. Mun. App. 1944, 37 A. 2d 656).

A tenant who was seeking reimbursement for water bill which accrued during a prior tenancy stood in the shoes of a creditor and could not recover more than was actually due by prior tenant. *Simmons* v. *Quick* (D. C. Mun. App. 1944, 37 A. 2d 656).

A purchaser of property could not be compelled to pay for water used by former occupants of purchased property either by sections 1519 to 1522 of this title regulating water system or regulations issued by commissioners pursuant thereto. *Farrell* v. *Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

SCOPE OF OFFICIAL DUTIES

Commissioners and water registrar, in requiring purchaser of property to pay for water used by former occupants of purchased property, were acting within scope of their official duties, and even though they made a mistake in exercise of judgment or acted on erroneous construction of the law, they could not be held personally liable to purchaser. *Farrell* v. *Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

VOLUNTARY PAYMENT

A tenant who failed to give written notice of acquiring control of premises within five days thereof as required by this section and order issued by Commissioners of District of Columbia, and who was thereafter required to pay water bill which accrued during a prior tenancy upon municipal authorities' threatening suspension of water service, was not a mere "volunteer," so as to preclude recovery from prior tenant. *Simmons* v. *Quick* (D. C. Mun. App. 1944, 37 A. 2d 656).

§ 43–1522 [20: 1392]. Water rates not to be a source of revenue.

The water rates levied in the District of Columbia shall never be a source of revenue other than as a means of keeping up to said District a supply of water, but shall constitute a fund exclusively for the maintenance, management, and repair of the system of water-distribution. (R. S., D. C., § 198; July 12, 1876, 19 Stat. 87, ch. 180, § 18; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

AMENDMENTS

Act of 1876 extended water taxes, water rents, and taxation for water mains, over all parts of the District of Columbia.

Act of 1885 extended points of water supply beyond Washington and Georgetown.

§ 43–1523 [20: 1393]. Water tax to be a fund to defray cost of water distribution.

The water tax authorized to be levied and collected by the provisions of this chapter shall constitute a fund to be used exclusively to defray the cost of distribution of the water, including all necessary fixtures and machines connected with such distribution. (R. S., D. C., § 203.)

§ 43–1524 [20: 1394]. Water rents from Washington Aqueduct to be applied to improvement of same.

All water rents derived from the Washington Aqueduct shall be applied to the improvement and repair of the same, and for no other purpose. (R. S., D. C., § 217.)

§ 43–1525 [20: 1395]. Fire plug tax.

To aid in the erection, maintenance, and efficiency of fire-plugs, a special annual tax may be levied on all buildings in the City of Washington within five hundred feet of any main water-pipe, into which, or the premises connected therewith, the water has not been introduced, and the owners or occupants of which do not pay any annual water-rate in accordance with law. (R. S., D. C., § 205; June 17, 1890, 26 Stat. 159, ch. 428.)

§ 43–1526 [20: 1396]. Rates.

The fire-plug tax shall be levied with reference to the value of the building so taxed, and shall not be more than five dollars nor less than one dollar per year. (R. S., D. C., § 206.)

§ 43–1527 [20: 1397]. To cease upon introduction of water.

Whenever the water is introduced, in conformity with law, into any building or premises, the fire-plug tax thereon shall cease. (R. S., D. C., § 207.)

§ 43–1528 [20: 1398]. Levy upon discontinuance of water service.

Whenever water is discontinued from any building or premises into which it has been introduced, such building shall be subject to the fire-plug tax from the date of the discontinuance of the water. (R. S., D. C., § 208.)

§ 43–1529 [20: 1399]. Water not to be diverted beyond District.

Except as provided in sections 43–1530 and 43–1531 no portion of the water conveyed or to be conveyed through or by means of the Washington Aqueduct, or any appurtenance thereof, shall be diverted to the supply or use of any building, premises or establishment located outside of the limits of the District of Columbia. (Mar. 3, 1893, 27 Stat. 544, ch. 199.)

§ 43–1530 [20: 1400]. Commissioners authorized to deliver water in nearby Maryland—Contract.

For the protection of the health of the residents of the District of Columbia and the employees of the United States Government residing in Maryland near the District of Columbia boundary, the Commissioners of the District of Columbia, upon the request of the Washington Suburban Sanitary Commission, a body corporate, established by chapter 313 of the acts of 1916 of the State of Maryland, or upon the request of its legally appointed successor, are authorized to deliver water from the water-supply system of the District of Columbia to said Washington Suburban Sanitary Commission or its successor for distribution to territory in Maryland within the Washington Suburban Sanitary District as designated in the aforesaid act, or any amendment thereto, and to connect District of Columbia water-mains with water-mains in the state of Maryland at such points at or near the District of Columbia line as may be agreed upon from time to time by the Commissioners of the District of Columbia and the Washington Suburban Sanitary Commission, under the conditions hereinafter named, namely:

That before such connections shall be made the said Washington Suburban Sanitary Commission or its legally-appointed successor shall secure authority from the Legislature of the state of Maryland to enter into an agreement with the said Commissioners of the District of Columbia outlining the conditions under which the service is to be rendered.

The agreement between the Commissioners of the District of Columbia and the said Washington Suburban Sanitary Commission or its legally appointed successor shall provide, among other things—

First. That the meters on each of said connections shall be located within the District of Columbia and shall remain under the jurisdiction of the commissioners of the District of Columbia.

Second. The rates at which water will be furnished, said rates to be based on the actual cost to the United States and the District of Columbia of delivering water to the points designated above, including an interest charge at 4 per centum per annum and a suitable allowance for depreciation.

Third. That payments for water so furnished shall be made through the collector of taxes of the District of Columbia at such times as the Commissioners of the District of Columbia may direct, said payments to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited.

Fourth. That at no time shall the amount of water furnished the said Washington Suburban Sanitary Commission or its successor exceed the amount that can be spared without jeopardizing the interests of the United States or of the District of Columbia.

Fifth. That the Commissioners of the District of Columbia shall have at all times the right to investigate the distribution system in Maryland, and if, in their opinion, there is a wastage of water they shall have the right to curtail the supply to said sanitary district to the amount of such wastage. (Mar. 3, 1917, 39 Stat. 1043, ch. 160; June 30, 1930, 46 Stat. 838, ch. 764; Apr. 14, 1932, 47 Stat. 79, ch. 100.)

COMPILER'S NOTE

This section, after having been amended by the act of June 30, 1930, 46 Stat. 838, ch. 764, was repealed and reenacted as set out in the text by the act of 1932.

§ 43–1531 [20: 1401]. Delivery of water to Arlington County, Virginia.

The Secretary of War is hereby authorized, in his discretion and subject to the approval of the Chief of Engineers, upon the request of the board of supervisors of Arlington County, Virginia, to permit the delivery of water from the Federal water supply pumping station at the Dalecarlia Reservoir to the Arlington County sanitary district, created by an act of the General Assembly of the state of Virginia, of March 15, 1922, and to connect the force main of said pumping station with the water main in Arlington County at the southerly end of the Chain Bridge: *Provided,* That all expenses of installing said connection and its appurtenances and any subsequent changes therein shall be borne by said Arlington County, which shall pay such charges for the use of such water as may be determined from time to time in advance by the Secretary of War, the payments to be made at such time and under such regulations as the Secretary of War may prescribe, all payments for the use of water to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited: *And provided further,* That the Secretary of War may revoke at any time any permit for the use of said water that may have been granted. (Apr. 14, 1926, 44 Stat. 251, ch. 140, § 1.)

§ 43–1531a. Delivery of water to Falls Church, Virginia, and adjacent areas—Installation expenses—Payments for water—Revocation of permit.

The Secretary of War, on the recommendation of the Chief of Engineers, United States Army, and the Board of Commissioners of the District of Columbia, is hereby authorized in his discretion, upon request of the town council of the town of Falls Church, Fairfax County, Virginia, or any other competent State or local authority in the Washington metropolitan area in Virginia, to permit the delivery of water from the District of Columbia water system at the Dalecarlia Filtration Plant, or at other points on said water system to the Falls Church water system for the purpose of supplying water for the use of said town and such adjacent areas as are now or shall hereafter be served by the water system of said town; or to any other competent State or local authority in said metropolitan area in Virginia. The Secretary of War is hereby further authorized, in his discretion and upon the recommendation of the Chief of Engineers, and said Board of Commissioners, to permit the delivery of such water through the water mains of Arlington County by a connection to Arlington mains at the southerly end of Chain Bridge, or to make connections with the Arlington County water system at one or more points along the boundary line of Arlington County: *Provided,* That all expense of installing any such connection or connections or other appurtenances and any subsequent changes therein shall be borne by said town of Falls Church, or such other communities of said metropolitan area requesting such services: *Provided further,* That all payments for water taken directly from the mains of the water supply system of the District of Columbia at the Dalecarlia Filtration Plant, or from other points on said water system, shall be made at such time and in such manner as the Secretary of War and said Board of Commissioners may prescribe; all such payments to be deposited in the Treasury of the United States as other water rents now collected in the District of Columbia are now deposited, but for water as may be supplied through the water mains of Arlington County, as hereinabove authorized, such payments shall be made by said Arlington County in the same manner as payments for water supplied for the use of said Arlington County: *Provided further,* That payment for water delivered to communities in said metropolitan area from or through the water mains of Arlington County shall be made to said county as may be mutually arranged on an equitable basis and as approved by the Secretary of War and said Board of Commissioners: *And provided further,*

That the Secretary of War, directly or upon the request of the Board of Commissioners, may revoke at any time any permit for the use of said water that may have been granted. (June 26, 1947, 61 Stat. 181, ch. 149, § 1.)

§ 43–1531b. Investigation of distribution systems outside District of Columbia.

That the Secretary of War, through the Chief of Engineers, shall have the right at all times to investigate the distribution systems of any community outside the District of Columbia supplied with water from the said District of Columbia water system and if, in his opinion, there is an excessive wastage of water, he shall have the right to curtail the supply to said communities to the amount of such wastage. (June 26, 1947, 61 Stat. 182, ch. 149, § 2.)

§ 43–1531c. Acquiring of lands for pipe lines authorized.

The Secretary of War or the said Board of Commissioners is hereby authorized to acquire by purchase or condemnation all necessary lands, easements, and rights-of-way for pipe lines within the District of Columbia, needed for the purposes of section 43–1531a. (June 26, 1947, 61 Stat. 182, ch. 149, § 3.)

§ 43–1532 [20: 1402]. Acquisition of land and right of way for pipe lines.

The Secretary of War is hereby authorized to acquire by purchase or condemnation all necessary lands, easements, and rights of way for pipe lines within the District of Columbia to connect the force main of said pumping station with the water main in Arlington County as herein authorized. (Apr. 14, 1926, 44 Stat. 252, ch. 140, § 2.)

CROSS REFERENCE

Condemnation generally, § 16–601 and notes.

§ 43–1533 [20: 1403]. Potomac water to be furnished to charitable institutions without charge.

The Commissioners of the District of Columbia are authorized to furnish Potomac water without charge to charitable institutions and such institutions as receive annual appropriations from Congress, to an amount to be fixed in each case by the said commissioners, not to exceed a rate of one hundred gallons per day for each inmate of said institutions; and for all water used beyond such an amount, to be ascertained by water meters installed and maintained at the expense of the consumer, the institution shall be charged at the prevailing rate for the use of water in the District of Columbia, which shall be collected in the manner prescribed for the collection of water rents. The said commissioners are further authorized to furnish Potomac water without charge to churches to an amount to be fixed in each case by the said commissioners, and any amount used in excess of the amount allowed, to be ascertained in the manner aforesaid, shall be charged and collected as hereinbefore described. For the purposes of this section a charitable institution is one whose objects are primarily eleemosynary; and nothing herein contained shall be so construed as to include educational institutions other than charity schools wholly supported by voluntary contributions or institutions supported wholly or in part by Congressional appropriation. (Feb. 23, 1905, 33 Stat. 742, ch. 742, § 1.)

§ 43–1534 [20: 1404]. Unlawful tapping of water pipe—Penalty.

The unlawful tapping of any water pipe laid down in the District by authority of the United States is a misdemeanor and an indictable offense; and any person convicted of such offense in the criminal court of the District shall be subject to a fine not exceeding five hundred dollars, or to imprisonment for a term not exceeding one year. (R. S., D. C., § 218.)

STATUTORY REFERENCE

See U. S. C., title 40, § 56.

§ 43–1535 [20: 1405]. Chief of Engineers to inform United States attorney for District of Columbia of all violations.

It is the special duty of the Chief of Engineers to bring to the notice of the attorney of the United States for the District of Columbia, or to the grand jury, any infraction of section 43–1534. (R. S., D. C., § 219.)

§ 43–1536 [20: 1406]. Penalty for damaging or defacing water pipes.

Every person who maliciously breaks, injures, defaces, or destroys any main or pipe, bend, branch, valve, hydrant, service-pipe, or any other fixture used for the distribution of water throughout the streets and avenues, or for its introduction into the houses, tenements, or buildings of the District of Columbia, shall be punishable by imprisonment in the District jail for not more than two years. (R. S., D. C., § 220; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

COMPILER'S NOTE

The 1885 act provides: "And hereafter the supply of Potomac water may be extended to points in the District beyond the limits of Washington and Georgetown upon like terms and conditions as are provided by law for the supply of the same in those cities."

§ 43–1537 [20: 1407]. Mains or pipes—Laying for use of public buildings.

No greater number of main pipes of the Washington Aqueduct shall be laid at the expense of the United States than are sufficient to furnish the public buildings, offices, and grounds with the necessary supply of water. The cost of any main pipe, for the supply of water to the inhabitants of Washington, must be paid by the District of Columbia, in the manner provided by law. (R. S., U. S., § 1805; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

COMPILER'S NOTE

The 1895 act provides in part: "All general laws, ordinances and regulations of the city of Washington be, and the same are hereby, extended and made applicable to that part of the District of Columbia formerly known as the city of Georgetown."

§ 43–1538 [20: 1408]. Unauthorized opening.

No person, unless by consent of the Chief of Engineers, shall tap or open the mains or pipes laid or hereafter to be laid by the United States, under a penalty of not less than $50 nor more than $500. (R. S., U. S., § 1803.)

§ 43–1539. District of Columbia water system defined.

As used in section 43–1450, unless the context otherwise requires—

(a) "Commissioners" means the Board of Commissioners of the District of Columbia.

(b) "District of Columbia water system" or "water system" means any and all of the facilities used or to be used for the supply of raw or partly purified water wherever situated and all of the facilities used or to be used for the distribution of purified water situated within the District of Columbia which are operated by the District of Columbia Water Division or the Washington Aqueduct Division of the Washington District of the Corps of Engineers, Department of the Army, or both. (June 2, 1950, 64 Stat. 195, ch. 218, § 1.)

§ 43–1540. Loans authorized to expand water system.

(a) The Commissioners of the District of Columbia are hereby authorized to accept loans for the District of Columbia from the United States Treasury and the Secretary of the Treasury of the United States is hereby authorized to lend to the Commissioners of the District of Columbia, such sums as may hereafter be appropriated, to finance the expansion and improvement of the water system when sufficient funds therefor are not available from the District of Columbia water fund established by chapter 15 of title 43: *Provided,* That the total principal amount of loans made under the provisions of this section shall not exceed $23,000,000: *And provided further,* That a loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budget submitted for the District of Columbia for that fiscal year, with a full statement of the work contemplated to be done and the need thereof, and must be specifically approved by the Congress. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the said District of Columbia water fund.

(b) The loans authorized under this section, or any parts thereof, shall be advanced to the Commissioners on their requisitions therefor and shall be available to the Commissioners or the Chief of Engineers, Department of the Army, for the performance of the said expansion and improvement of the water system, and shall be available until expended.

(c) The Secretary of the Treasury of the United States shall be repaid any moneys advanced under this section of this Act, including interest thereon, beginning in fiscal year 1961 and concluding in fiscal year 1980, in such annual amounts as the Congress shall hereafter direct; interest thereon shall begin to accrue as of the dates the respective advancements are credited to the water fund.

(d) Loans made under this section shall be at such rate or rates of interest as would, in the opinion of the Secretary of the Treasury, be the lowest interest rate available to the District of Columbia on the date of the approval of each loan, respectively, were said District authorized by law to issue and sell obligations to the public, at the par value thereof, in a sum or sums equal to the amounts of such loans, maturing serially over a comparable period of years in comparable installments of principal and interest, and secured by a first pledge of and lien upon all the general fund revenues of said District.

(e) Moneys for the payments to the United States Treasury herein required shall be included in the budget estimates of the Commissioners of the District of Columbia, beginning with the budget estimates for fiscal year 1961, and shall be payable from the water fund. (June 2, 1950, 60 Stat. 195, ch. 218, § 2.)

TITLE 44.—RAILROADS AND OTHER CARRIERS

Chap.		Sec.
1.	Railroads	44–101
2.	Street Railways and Bus Lines	44–201
3.	Passenger Motor Vehicles for Hire	44–301
4.	Employers' Liability Act	44–401

Chapter 1.—RAILROADS

Sec.

44–101. Sale of unclaimed freight.
44–102. Disposition of property under court order.
44–103. Disposition of proceeds of sale.
44–104. Philadelphia, Baltimore and Washington Railroad Company—Abandonment of substation authorized—Repeal of certain laws.
44–105. Waiting-room on platform authorized.
44–106. Reversion of property to District of Columbia—Adequate walkways provided.
44–107. Right of repeal reserved.

§ 44–101 [19: 86]. Sale of unclaimed freight.

Whenever any freight, baggage, or other property transported by a common carrier to, or deposited with a common carrier at, any point in the District of Columbia, shall remain unclaimed by the owner or consignee, or the charges thereon shall remain unpaid for the space of six months after arrival at the point to which the same shall have been directed or transported, or after deposit as aforesaid, and the owner or person to whom the same is consigned, or by whom the same shall have been deposited, shall, after notice of such arrival, or after notice to take away such property so deposited, neglect or refuse to receive the same and pay the charges thereon within such period of six months, then it shall be lawful for such carrier to sell such freight, baggage, or other property at public auction, after giving three weeks' notice of the time and place of sale, once a week for three successive weeks, in a newspaper published in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 642.)

§ 44–102 [19: 87]. Disposition of property under court order.

Upon the application of such carrier, verified by affidavit, to the District Court of the United States for the District of Columbia holding a special term, setting forth that the place of residence of the owner or consignee of any such freight, baggage, or other property is unknown, or that such freight, baggage, or other property is of such perishable nature, or so damaged, or showing any other cause that shall render it impracticable to give the notice or delay the sale for the period provided in section 44–101, then it shall be lawful for such court to make an order authorizing the sale of such freight, baggage, or other property upon such terms as to notice as the nature of the case may admit of and to such court shall seem meet: *Provided,* That in case of perishable property the affidavit and proceedings required and authorized by this section may be had before the municipal court in cases where the value of the property involved does not exceed one thousand dollars. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 643; June 30, 1902, 32 Stat. 534, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3. 1921, 41 Stat. 1310, ch. 125, § 1.)

AMENDMENTS

Act of 1902 added at the end of this section of the 1901 act the words "in cases where the value of the property involved does not exceed three hundred dollars."

Act of 1909 changed the name from justice of peace court to municipal court of the District of Columbia.

Act of 1921 amended this section by changing the end thereof from "three hundred dollars" to "one thousand dollars."

§ 44–103 [19: 88]. Disposition of proceeds of sale.

The residue of moneys arising from any such sale, under either section 44–101 or 44–102, after deducting the amount of charges, including charges for transportation, the cost of handling and storage, demurrage, and the costs and expenses of proceedings to authorize the sale, and of advertising and sale, shall be paid to the owner of such freight, baggage, or other property on demand. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 644.)

§ 44–104 [19: 130*o*]. Philadelphia, Baltimore and Washington Railroad Company—Abandonment of substation authorized—Repeal of certain laws.

Upon the completion by it of the substitute facilities authorized by section 44–105 hereof, The Philadelphia, Baltimore and Washington Railroad Company is authorized, without any further or other authority, to abandon and remove the Seventh Street substation built and maintained by it pursuant to the requirements of Act of February 3, 1909 (35 Stat. 593, ch. 63), and to abandon the ticket agency and baggage accommodations maintained by it pursuant to the requirements of said Act. (July 25, 1935, 49 Stat. 497, ch. 415, § 1.)

§ 44–105 [19: 130p]. Waiting room on platform authorized.

In lieu of the said substation and facilities maintained at the intersection of Seventh Street and C Street Southwest, in the City of Washington, The Philadelphia, Baltimore and Washington Railroad Company is authorized to construct and maintain on the train platform an enclosed waiting room for passengers, with convenient means of ingress and egress leading from and to the street level below. (July 25, 1935, 49 Stat. 498, ch. 415, § 2.)

§ 44–106 [19: 130q]. Reversion of property to District of Columbia—Adequate walkways provided.

The area in square south of 463 on the map of the City of Washington heretofore used for station purposes shall revert to the District of Columbia upon

the completion of these improvements: *Provided,* That the said Philadelphia, Baltimore and Washington Railroad Company shall construct and maintain thereon, subject to the approval of the Commissioners of the District of Columbia, adequate walkways to the adjacent streets. (July 25, 1935, 49 Stat. 498, ch. 415, § 3.)

§ 44–107 [19: 130r]. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 44–104 to 44–106. (July 25, 1935, 49 Stat. 498, ch. 415, § 4.)

Chapter 2.—STREET RAILWAYS AND BUS LINES

Sec.
44–201. Competing lines—Certificates of convenience and necessity.
44–202. Street railways to furnish sufficient cars—Power, equipment, appliances, and service—Rules and regulations—Penalties.
44–203. Prosecutions to be by information.
44–204. Fenders required on street cars.
44–205. Glass vestibules to be provided for motormen.
44–206. Construction of duct lines authorized.
44–207. Transfers to be issued only to passenger entitled thereto.
44–208. Reciprocal transfer and trackage agreements.
44–209. Type of rails to be used.
44–210. Underground lines prohibited.
44–211. Removal of disused tracks.
44–212. Free transfers.
44–213. Free transportation of policemen and firemen.
44–214. Reduced fares for school children.
44–215. Annual reports to Congress.

§ 44–201. Competing lines—Certificates of convenience and necessity.

No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia to the effect that the competitive line is necessary for the convenience of the public. (Jan. 14, 1933, 47 Stat. 760, ch. 10, § 4.)

CROSS REFERENCES

Merger of street railroads, § 43–501 et seq.

Powers of Public Utilities Commission, § 43–202 and notes.

PAVING REGULATIONS—REPEAL

All provisions of law making it incumbent upon any street-railway company to bear the expense of policemen at street railway crossings and intersections, the laying of new pavement, the making of permanent improvements, renewals, or repairs to the pavement of streets and public bridges, and the permanent improvements, renewals, or repairs to public bridges over which the streetcar lines operate, are hereby repealed, such repeal to be effective on the date the unification herein authorized becomes operative: *Provided,* That the Capital Transit Company herein provided for shall bear the entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the street or bridge is not being paved, and shall bear one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and shall bear the excess cost of construction and maintenance of public bridges: *Provided further,* That nothing herein contained shall relieve said Capital Transit Company from liability for street paving as owner of real estate apart from right-of-way occupied by its tracks as provided by section 8 of the Act of Congress entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1917, and for other purposes," approved September 1, 1916, as amended to date. (Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

§ 44–202 [26: 122]. Street railways to furnish sufficient cars—Power, equipment, appliances, and service—Rules and regulations—Penalties.

Every street railroad company or corporation owning, controlling, leasing or operating one or more street railroads within the District of Columbia shall on each and all of its railroads supply and operate a sufficient number of cars, clean, sanitary, in good repair, with proper and safe power, equipment, appliances and service, comfortable and convenient, and so operate the same as to give expeditious passage, not to exceed fifteen miles per hour within the city limits or twenty miles per hour in the suburbs, to all persons desirous of the use of the said cars, without crowding said cars. The Public Utilities Commission is hereby given power to require and compel obedience to all of the provisions of this section, and to make, alter, amend and enforce all needful rules and regulations to secure said obedience; and said commission is given power to make all such orders and regulations necessary to the exercise of the powers herein granted to it as may be reasonable and proper; and such railroad companies or corporations, their officers and employees, are hereby required to obey all the provisions of this section, and such regulations and orders as may be made by said commission. Any such company or corporation, or its officers or employees, violating any provision of this section, or any of the said orders or regulations made by said commission, or permitting such violation, shall be punished by a fine of not more than one thousand dollars. And each day of failure or neglect on the part of such company or corporation, its officers or employees, to obey each and all of the provisions and requirements of this section, or the orders and regulations of the commission made thereunder, shall be regarded as a separate offense. (May 23, 1908, 35 Stat. 250, ch. 190, § 16.)

COMPILER'S NOTE

As originally enacted, the words "not to exceed fifteen miles per hour within the city limits or twenty miles per hour in the suburbs" after the words "expeditious passage" were included. These speed limits have been superseded by various traffic regulatory laws. See §§ 40–602 (j), 40–603, 40–605.

CROSS REFERENCES

Cars required to be brought to full stop at certain intersections, § 4–112.

Merger of street-railway corporations operating in District of Columbia, §§ 43–501 to 43–503 and notes.

Other provisions for care, maintenance, and repair of street cars, § 43–208.

Prosecutions hereunder, § 44–203.

NOTES TO DECISIONS

CONSTRUCTION OF ACT

This act does not repeal the Act of Congress March 3, 1905, 33 Stat. 1001 (§ 44–205), but on the contrary both are capable of concurrent enforcement. *Washington R. & Elec. Co.* v. *District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999).

PROSECUTIONS, CORPORATION COUNSEL

Prosecutions under this section should be conducted by the corporation counsel in the name of the District of Columbia. *United States* v. *Capital Trac. Co.* (38 App. D. C. 469).

§ 44–203 [26: 123]. Prosecutions to be by information.

Prosecutions for violations of any of the provisions of sections 44–202, 44–206, and 44–207 shall be on information of the Public Utilities Commission filed in the police court by or on behalf of the commission. (May 23, 1908, 35 Stat. 250, ch. 190, § 17; Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96.)

COMPILER'S NOTE

The 1908 act was worded "provisions of this act." This act contained 18 sections of which four (§§ 4, 15, 16 and 17) are contained in this code as §§ 44–206, 44–207, 44–202, 44–203, respectively.

AMENDMENT

The original act contained the words "Interstate Commerce Commission" which have been replaced herein by the words "Public Utilities Commission" in view of the 1913 act.

CROSS REFERENCES

Criminal offenses generally, § 43–901 et seq.

See notes to § 44–202. *United States* v. *Capital Trac. Co.* (38 App. D. C. 469); *Washington R. & Elec. Co.* v. *District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999).

§ 44–204 [26: 162]. Fenders required on streetcars.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and to enforce all reasonable regulations in respect to requiring street cars operated by other means than horse power in the District of Columbia to be provided with proper fenders for the protection of the lives and limbs of all persons within the District of Columbia. Such power and authority shall extend to the adoption by the said commissioners of any fender or fenders deemed by them to be superior to the fenders now in use as the fender or fenders which shall be used on cars operated within said District: *Provided,* That nothing contained in this section shall operate to relieve any street railway company from liability for accidents on its lines. (Aug. 7, 1894, 28 Stat. 250, ch. 232.)

CROSS REFERENCES

Other provisions for care, maintenance, and repair of street cars, § 43–208.

Rules and regulations generally, § 43–202 and notes.

§ 44–205 [26: 163]. Glass vestibules to be provided for motormen.

Every person or corporation operating street cars in the District of Columbia shall provide each of the same with a glass vestibule, surrounding, as nearly as possible, the place where the motorman, operating said car stands, so that said motorman shall be protected from inclement weather. Every person or corporation who or which shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred nor more than five hundred dollars for each and every day any street car is operated not provided with the vestibule required by this section: *Provided, however,* That the requirements of this section shall not apply to cars operated from the 1st day of April to the 1st day of November of each and every year. (Mar. 3, 1905, 33 Stat. 1001, ch. 1434.)

CROSS REFERENCE

See § 44–204 and notes.

NOTES TO DECISIONS

IN GENERAL

The act is valid and was not impliedly repealed by act May 23, 1908, § 16 (§ 44–202) or act of March 4, 1913, § 8, par. 96 (§§ 43–207, 43–208). *Washington R. & Elec. Co.* v. *District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999).

This act is not void for indefiniteness. *Washington R. & Elec. Co.* v. *District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999).

OPEN VESTIBULE

Vestibule open on each side of platform did not comply with this act. *Washington R. & Elec. Co.* v. *District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999).

§ 44–206 [26: 164]. Construction of duct lines authorized.

The Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway Company, and the Capital Traction Company are hereby permitted to lay duct lines on such streets as may be necessary for the proper operation of their lines, the location of such duct lines to be approved by the Commissioners of the District of Columbia, and the cost thereof shall be borne and paid solely by said street railway companies, and they shall be solely liable for all damages to persons and property occasioned by any construction or work authorized by this section. (May 23, 1908, 35 Stat. 247. ch. 190, § 4.)

CROSS REFERENCES

Easement to Washington Railway and Electric Company over Michigan Avenue, § 7–131.

Merger of street railway corporations operating in District of Columbia, §§ 43–501 to 43–503 and notes.

Prosecutions hereunder, § 44–203.

§ 44–207 [26: 165]. Transfers to be issued only to passenger entitled thereto.

No transfer ticket or written or printed instrument giving or purporting to give the right of transfer to any person or persons from a public conveyance operated upon one line or route of a street railroad or from one car to another car upon the line of any street railroad, shall be issued, sold, or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell, or give away such a transfer ticket or instrument as aforesaid to a person or persons not lawfully entitled thereto, and any person or persons not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage shall be punished by a fine not exceeding twenty-five dollars. (May 23, 1908, 35 Stat. 250, ch. 190, § 15.)

CROSS REFERENCES

Prosecutions hereunder, § 44–203.

Rates and rate making, § 43–401 and notes.

NOTES TO DECISIONS

PROSECUTIONS, CORPORATION COUNSEL

Prosecutions for violating act should be conducted by the corporation counsel in the name of the District of Columbia. *United States* v. *Capital Trac. Co.* (38 App. D. C. 469).

§ 44–208 [26: 167]. Reciprocal transfer and trackage agreements.

Every street railway in the District of Columbia whose lines connect, or whose lines may, after

August 2, 1894, connect, with the lines of any other street railway company, is hereby required to make reciprocal transfer arrangements with such street railway companies, and to furnish such facilities therefor as the public convenience may require, and to enter into reciprocal trackage arrangements with such connecting roads. The schedules and compensation shall be mutually agreed upon between the said railway companies; and in case of failure to reach such mutual agreement, the matter in dispute shall be determined by the District Court of the United States for the District of Columbia, upon petition filed by either party. (Aug. 2, 1894, 28 Stat. 218, ch. 189, § 5.)

COMPILER'S NOTE

This section would seem to be in abeyance due to the merger of street railway corporations operating in the District of Columbia, §§ 43–501 to 43–503 and notes.

CROSS REFERENCE

Joint use of utility facilities, § 43–302 and note.

§ 44–209 [26: 168]. Type of rails to be used.

No other rail than a flat grooved rail made level with the surface of the streets upon each side of the tracks or roadbeds, so that no obstruction shall be presented to vehicles passing over said tracks, shall be laid by any street railway company in the streets of Washington: *Provided,* That the foregoing requirements as to rails and roadbed shall not apply to street railroads outside the City of Washington. (Mar. 2, 1889, 25 Stat. 797, ch. 370; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

AMENDMENT

Act 1895 abolished provisions as to City of Georgetown, and its street regulations were given to Washington.

CROSS REFERENCE

Jurisdiction and control over public ways, § 7–102 and note.

§ 44–210 [5: 332]. Underground lines prohibited.

It shall be unlawful for any street railway company operating its system or parts of its system over any portion of the underground electric lines owned and operated by another street railway company in the City of Washington to continue such operation, or to enter into reciprocal trackage relations with any other company, unless its motive power for the propulsion of its cars shall be the same as that of the company whose tracks are used or to be used. For every violation of sections 44–210 to 44–212 the company violating it shall be subject to a fine of ten dollars for every car operated in violation of the provisions of sections 44–210 to 44–212, said fine to be collected and applied in the same manner as is provided by section 44–211. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 711.)

COMPILER'S NOTE

This section would seem to be in abeyance due to the merger of street railway corporations operating in the District of Columbia, § 43–501 to 43–503 and notes.

§ 44–211 [5: 331]. Removal of disused tracks.

Whenever the track or tracks, or any part thereof, of any street railway company in the District of Columbia shall not have been regularly operated for railway purposes upon a schedule as required by its charter for a period of three months, the Commissioners of said District, in their discretion, may thereupon notify such company to remove said unused tracks and to place the street in good condition; and if such company shall neglect or refuse to remove said tracks and place the street in good condition within sixty days after such notice, the said company shall be deemed guilty of a misdemeanor and shall be liable to a fine of ten dollars for each and every day during which said tracks are permitted to remain upon the street or streets, or said roadway shall remain out of repair, which fine shall be recovered in the police court of said District, in the name of said District, as other fines and penalties are recovered in said court. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 710; June 30, 1902, 32 Stat. 534, ch. 1329.)

AMENDMENT

Act of 1902 amended act of 1901 by striking out the words "approved by the Commissioners" and inserting in lieu thereof the words "as required by its charter."

CROSS REFERENCE

Jurisdiction and control over public ways, § 7–102 and notes.

NOTES TO DECISIONS

ABANDONED STRUCTURES

Abandoned structures in streets or highways are, when ordered removed by competent authority, illegally in such streets or highways. *Capital Transit Co.* v. *Hazen* (68 App. D. C. 91, 93 Fed. (2d) 250).

§ 44–212 [5: 333]. Free transfers.

All street railway companies within the District of Columbia on January 1, 1902, operating their systems, or parts of their systems, in the city of Washington by use of the tracks of one or more of such companies, under a reciprocal trackage agreement, which shall be compelled to discontinue the use of the tracks of another company, shall issue free transfers to their patrons from one system to the other at such junctions of their respective lines as may be provided for by the Commissioners of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 712.)

CROSS REFERENCE

Power of Public Utilities Commission over rates, § 43–401.

§ 44–213 [26: 166]. Free transportation of policemen and firemen.

The several street railway companies in the District of Columbia are authorized and required to transport free of charge all members of the Metropolitan police, crossing police, park police, and fire department of the District of Columbia when in uniform and in the performance of their duties. (Mar. 3, 1915, 38 Stat. 900, ch. 80; Sept. 1, 1916, 39 Stat. 683, ch. 433.)

AMENDMENT

Acts of 1915 and 1916 have the same wording.

CROSS REFERENCE

Rates and rate making, § 43–401 and notes.

FURNISHING TRANSPORTATION FOR PERSONS ON OFFICIAL BUSINESS

The Commissioners are authorized, in their discretion, to furnish necessary transportation in connection with strictly official business of the District of Columbia by the purchase of street car and bus fares from appropriations

contained in this act: *Provided,* That the expenditures herein authorized shall be so apportioned as not to exceed a total of $11,100: *Provided further,* That the provisions of this paragraph shall not include the appropriations herein made for the fire and police departments. (July 15, 1939, 53 Stat. 1010, ch. 281, § 1; June 12, 1940, 54 Stat. 312, ch. 333, § 1.)

§ 44–214 [26: 166a]. Reduced fares for school children.

The Public Utilities Commission of the District of Columbia is empowered and directed to fix reduced fares for school children not over eighteen years of age, going to and from school on street railway and bus lines in the District of Columbia, under such reasonable rules and regulations as the commission may establish: *Provided,* That such reduced fares shall not exceed three cents. (Feb. 25, 1931, 46 Stat. 1419, ch. 302.)

COMPILER'S NOTE

The act of January 14, 1933, 47 Stat. 759, ch. 10, § 1, par. 19, provides: "The Public Utilities Commission shall fix the rate of fare at 3 cents for school children not over eighteen years of age, going to and from public, parochial, or like schools in the District of Columbia, and shall establish rules and regulations governing the use thereof: *Provided,* That upon the acceptance of this agreement by the parties and the completion of the unification, the provisions of the act entitled 'An act to provide for the transportation of school children in the District of Columbia at a reduced fare,' approved February 27, 1931, shall become inoperative." The figure "27" was contained in the original. It obviously should be 25.

CROSS REFERENCE

Rates and rate making, § 43–401 and notes.

§ 44–215 [26: 169]. Annual reports to Congress.

Every street railroad corporation in the District of Columbia, and every such corporation which shall be organized after June 10, 1896, shall, on or before the first day of February in each year, make a report to each the Senate and the House of Representatives, which report shall be sworn to and signed by the president and treasurer of such corporation, and shall cover the period of one year ending the thirty-first day of December previous to the date of making the report. Such report shall state the amount of capital stock, with a list of the stockholders and the amount of stock held by each; the amount of capital stock paid in; the total amount now of funded debt; the amount of floating debt; the average rate per annum of interest on funded debt; amount of dividends declared; cost of roadbed and superstructure, including iron; cost of land, buildings, and fixtures; including land damages; cost of cars, horses, harness, and motors and other machinery; total cost of road and equipment; length of road in miles; length of double track, including sidings; weight of rail, by yard; the number of cars and of horses; the number of motors; the total number of passengers carried in cars; the average time consumed by passenger cars in passing over the road; repairs of roadbed and railway, including iron, and repairs of buildings and fixtures; total cost of maintaining road and real estate; cost of general superintendence; salaries of officers, clerks, agents, and office expenses; wages paid conductors, drivers, engineers, and motor men; water and other taxes; damages to persons and property, including medical attendance; rents, including use of other roads; total expense of operating road, and repairs; receipts from passengers; receipts from all other sources, specifying what, in detail; total receipts from all sources during the year; payments for maintenance and repairs; payments for interest; payments for dividends on stock, amount and rate per centum; total payments during the year; the number of persons injured in life and limb; the cause of the injury, and whether passengers, employees, or other persons. (June 10, 1896, 29 Stat. 320, ch. 395, § 10.)

CROSS REFERENCE

Records and reports of utilities generally, § 43–318.

NOTES TO DECISIONS

REIMBURSEMENT OF DEFICITS

Reimbursement of railway company for deficits incurred in extending bus lines were properly included in gross receipts for tax purposes. *Potomac Elec. Power Co.* v. *Rudolph* (58 App. D. C. 261, 29 Fed. (2d) 634, cert. den. 278 U. S. 656, 73 L. Ed. 565, 49 Sup. Ct. 185).

Chapter 3.—PASSENGER MOTOR VEHICLES FOR HIRE

Sec.
44–301. Passenger motor vehicles for hire to carry insurance—Exceptions—Sinking fund.

§ 44–301 [20: 1731a]. Passenger motor vehicles for hire to carry insurance—Exceptions—Sinking fund.

The Public Utilities Commission of the District of Columbia is hereby directed to require any and all corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, operating, controlling, managing, or renting any passenger motor vehicles for hire in the District of Columbia, except as to operations licensed under paragraph (b) of section 44–2331, and except such common carriers as have been expressly exempted from the jurisdiction of the Commission, to file with the Commission for each motor vehicle to be operated a bond or bonds, policy or policies, of liability insurance or certificate of insurance in lieu thereof in a solvent and responsible surety or insurance company authorized to do business in the District of Columbia, conditioned for the payment to any person of any judgment recovered against such corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, or renters of their cabs, for death or for injury to any person or injury to any property, or both, caused in the operation, maintenance, use, or by reason of the defective construction of such motor cabs or other vehicles. Any such bond or undertaking or policy of liability insurance shall be in such form and on such terms or conditions as the Commission may direct: *Provided,* That such bond or policy may limit the liability of the surety or insurer on any one judgment to $5,000 for bodily injuries or death and $1,000 for damage to or destruction of property, and all judgments recovered upon claims arising out of the same subject of action to $10,000 for bodily injuries or death and $1,000 for damages to or destruction of property, to be apportioned ratably among the judgment creditors according to the

amount of their respective judgments. Any such policy of liability insurance shall be issued only by such insurance companies as may have been authorized to do business in the District of Columbia, and any such bond or undertaking shall be secured by a corporate surety approved by the Superintendent of Insurance of the District of Columbia. No such insurance company or corporate surety shall engage in or conduct the business of insuring or bonding any risk arising out of the operation of any passenger motor vehicle for hire required to be insured or bonded under this section unless the Superintendent of Insurance shall find that the management of such company is capable, by experience or otherwise, of conducting such business in the public interest and unless such insurance company or corporate surety shall possess a certificate of approval issued by said Superintendent for such business. Every such insurance company or corporate surety, whether or not it shall be a mutual company, shall have and shall at all times maintain reserves for losses, unearned premiums, and all other liabilities as will meet the requirements of any regulation issued by the Superintendent of Insurance and applicable to such company or such classifications of companies. The Superintendent of Insurance shall be empowered to make reasonable rules and regulations governing the writing of such insurance and the making of such bonds and the business of insuring or bonding such risks, including the expenses of management, administration, and acquisition of business and the rates to be charged. The Superintendent of Insurance is authorized and empowered, after hearing, to withdraw his certificate of approval of the business of insuring or bonding taxicab risks of any insurance company or corporate surety violating any provision of this Act or of the rules and regulations promulgated hereunder. No such bond or policy of insurance may be canceled unless not less than twenty days prior to such cancelation or termination notice of intention so to do has been filed in writing with the Commission unless cancelation is for nonpayment of premiums, in which event five days' notice as above provided shall be given. It shall be unlawful to operate any vehicle subject to the provisions of this paragraph unless such vehicle shall be covered by an approved bond or policy of liability insurance as provided herein. The Public Utilities Commission shall have the power to make all reasonable rules and regulations which, in its opinion, are necessary to make effective the purposes of this section.

Any owner of a public vehicle required hereby to file a bond or policy of insurance may, in lieu thereof:

(a) File with the Public Utilities Commission a blanket bond, or a blanket policy of liability insurance, in an amount to be approved by said Commission, but not to exceed $75,000, conditioned as required by this chapter, and covering all vehicles lawfully displaying the trade name or identifying the design of any individual, association, company or corporation.

(b) Create and maintain a sinking fund in such amount as the Public Utilities Commission may require, but not in excess of $75,000, and deposit the same, in trust, for the payment of any judgment recovered against such owner, as provided in this chapter, with such person, official or corporation as said commission shall designate.

Provided, That should any such owner elect to comply with the provisions of paragraphs (a) or (b) of this section, such owner shall first file with the Public Utilities Commission an admission of liability, in conformity with the principle of respondent superior for the tortious acts of the driver or drivers of such vehicle or vehicles aforesaid as shall be driven with the trade name or identifying design of such owner.

Any cash or collateral deposit and/or any sinking fund herein provided for shall be exempt from attachment or levy for any obligation or liability of the depositor thereof, save as herein provided.

Within the meaning of this paragraph, the word "owner" shall include any corporation, company, association, joint-stock company or association, partnership or person, and the lessees, trustees or receivers appointed by any court whatsoever, permitting his, their or its trade name and/or identifying design to be displayed upon vehicles governed by this section.

Any violation of this section or of the regulations lawfully promulgated thereunder shall be deemed a misdemeanor and upon conviction shall be punishable by a fine of not more than $300 or by imprisonment for not more than ninety days, and/or cancelation of license.

This section shall become effective sixty days after final passage. (June 29, 1938, 52 Stat. 1233, ch. 809; Dec. 15, 1942, 56 Stat. 1051, ch. 734.)

Compiler's Note

The word "respondent" in the proviso clause probably should be "respondeat."

Amendments

The act of Dec. 15, 1942, cited to text, struck out former fourth sentence of first paragraph and inserted fourth to seventh sentences inclusive, set out above.

Cross References

General provisions concerning powers and duties of Public Utilities Commission, § 43–202.

Rules and regulations by insurance department, § 35–102.

NOTES TO DECISIONS

Display of Insurance Sticker

This section requiring taxicab insurance and the display of a sticker evidencing such insurance is for the protection of pedestrians and others traveling the streets as well as for passengers, and the requirement is not limited to the times when the vehicle is being used or offered for hire. *Stewart* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 247).

Since this section requires taxicab to display current insurance sticker at all times, allegation in information charging failure to display sticker "while transacting business" may be treated as surplusage. *Stewart* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 247).

Notice of Cancelation

Where this section and first insurer's liability policy covering taxicab authorized cancelation only on filing of notice with public utility commission and insured, on obtaining new policy from second insurer, ceased paying premiums on first policy but first insurer had not, at time of taxicab accident, filed cancelation notice with com-

mission, as between the two insurers, the loss should fall on the second insurer. *Amalgamated Casualty Ins. Co.* v. *Winslow,* 1943 (135 F. 2d 663, 77 U. S. App. D. C. 382).

Where this section and first insurer's liability policy covering taxicab authorized cancelation only on filing of notice with public utility commission and insured, on obtaining new policy from second insurer, ceased paying premiums on first policy but first insurer had not, at time of taxicab accident, filed cancelation notice with commission, the first policy had not been canceled as against person injured in taxicab accident and the public. *Amalgamated Casualty Ins. Co.* v. *Winslow,* 1943 (135 F. 2d 663, 77 U. S. App. D. C. 382).

Chapter 4.—EMPLOYERS' LIABILITY ACT

Sec.

44–401. Liability of common carriers for injuries to employees.
44–402. Contributory negligence no bar to recovery.
44–403. Insurance contracts no bar to recovery.
44–404. Suit to be brought within one year.
44–405. Certain prior laws not affected.

§ 44–401 [19: 81]. Liability of common carriers for injuries to employees.

Every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works. (June 11, 1906, 34 Stat. 232, ch. 3073, § 1.)

Compiler's Note

This act was supplemented by act April 22, 1908, ch. 149, 35 Stat. 65, entitled "An act relating to the liability of common carriers by railroad to their employees in certain cases."

Cross References

Actions for wrongful death in general, §§ 16–1201 to 16–1203.

Longshoremen's and Harbor Workers' Compensation Act, § 36–501.

Statutory Reference

See U. S. C., title 45, § 51 et seq.

Cited

United States v. *Chicago, M. & P. S. R. Co.* ((D. C.-Idaho), 218 Fed. 701.)

NOTES TO DECISIONS

In General

Distinction between wording of this act and § 2, 34 Stat. 415. *Baltimore & O. R. Co.* v. *Interstate Commerce Comm.* (221 U. S. 612, 55 L. Ed. 878, 31 Sup. Ct. 621).

This act relates solely to commerce. *Southern R. Co.* v. *Taylor* (57 App. D. C. 21, 16 Fed. (2d) 517, cert. den. 273 U. S. 767, 71 L. Ed. 882, 47 Sup. Ct. 571).

The intent of Congress in the enactment of this statute, was plainly to create liability on the part of the carriers to their employees and to curtail a part of the defenses which were before legal. *Malloy* v. *Northern Pac. R. Co.* ((C. C.-Wash.), 151 Fed. 1019).

Act prospective in operation. *Winfree* v. *Northern P. R. Co.* ((C. C.-Wash.), 164 Fed. 698, affd. 173 Fed. 65, 44 L. R. A. (N. S.) 841 and 227 U. S. 296, 57 L. Ed. 518, 33 Sup. Ct. 273).

This case distinguishes the extent of liability under this act and that of the act of 1908 (U. S. Comp. St. Supp., p. 1148). *Taylor* v. *Southern R. Co.* ((C. C.-Ga.), 178 Fed. 380).

Application of Statute

Where appellant was injured while working in appellee's car barn, he could not recover under § 44–401 of the Code since § 36–501 has become the applicable workman's compensation act for the District and appellee was not a common carrier by railroad and is excepted from the operation of § 36–501. *Keffer* v. *Capital Transit Co.* (C. A., D. C. 1950, 183 F. 2d 808).

Assumption of Risk

This act is so far as assumption of risk is concerned, as applied to the District of Columbia is superseded by section 4 of the act of April 22, 1908. *Washington Terminal Co.* v. *Sampson* (53 App. D. C. 179, 289 Fed. 577).

Assumed risk. *Malloy* v. *Northern Pac. R. Co.* ((C. C.-Wash.), 151 Fed. 1019).

Comparative Negligence

Comparative negligence. *Missouri Pac. R. Co.* v. *Castle* ((C. C. A. 8), 172 Fed. 841).

Constitutionality

Act held unconstitutional in part. *Howard* v. *Illinois Cent. R. Co.* (207 U. S. 463, 52 L. Ed. 297, 28 Sup. Ct. 141).

Constitutionality. *Howard* v. *Illinois C. R. Co.* (207 U. S. 463, 52 L. Ed. 297, 28 Sup. Ct. 141); *Philadelphia, B. & W. R. Co.* v. *Schubert* (224 U. S. 603, 56 L. Ed. 911, 32 Sup. Ct. 589); *Chicago, I. & L. R. Co.* v. *Hackett* (228 U. S. 559, 57 L. Ed. 966, 33 Sup. Ct. 581); *Pedersen* v. *Delaware, L. & W. R. Co.* (229 U. S. 146, 57 L. Ed. 1125, 33 Sup. Ct. 648); *Howard* v. *Illinois Cent. R. Co.* ((C. C.-Tenn.), 148 Fed. 997); *Hall* v. *Chicago, R. I. & P. R. Co.* ((C. C.-Iowa), 149 Fed. 564); *Spain* v. *St. Louis & S. F. R. Co.* ((C. C.-Ark.), 151 Fed. 522); *Lancer* v. *Anchor Line* ((D. C.-N. Y.), 155 Fed. 433); *Smeltzer* v. *St. Louis & S. F. R. Co.* ((C. C.-Ark.), 158 Fed. 649); *United States* v. *Southern R. Co.* ((D. C.-Ala.), 164 Fed. 347); *Oregon R. & N. Co.* v. *Campbell* ((C. C.-Ore.), 177 Fed. 318); *Chicago, M. & St. P. R. Co.* v. *Westby* ((C. C. A. 8), 178 Fed. 619); *Zikos* v. *Oregon R. & Nav. Co.* ((C. C.-Wash.), 179 Fed. 893); *McCabe* v. *Atchison, T. & S. F. R. Co.* ((C. C. A. 8), 186 Fed. 966); *St. Louis, I. M. & S. R. Co.* v. *Conley* ((C. C. A. 8), 187 Fed. 949); *United States* v. *St. Louis, S. W. R. Co.* ((D. C.-Tex.), 189 Fed. 954); *Cain* v. *Southern R. Co.* ((C. C.-Tenn.), 199 Fed. 211).

Constitutional so far as relates to District of Columbia and Territories, in which places section supersedes prior territorial legislation. *El Paso & N. E. R. Co.* v. *Gutierrez* (215 U. S. 87, 54 L. Ed. 106, 30 Sup. Ct. 21); *Butts* v. *Merchants & Miners Transp. Co.* (230 U. S. 126, 57 L. Ed. 1422, 33 Sup. Ct. 964); *Southern Pac. Co.* v. *McGinnis* ((C. C. A. 5), 174 Fed. 649).

Act is valid in District of Columbia and Territories. *El Paso & N. E. R. Co.* v. *Gutierrez* (215 U. S. 87, 54 L. Ed. 106, 30 Sup. Ct. 21); *Pawnee* ((D. C.-Mich.), 205 Fed. 333); *Friday* v. *Santa Fe Cent. R. Co.* (16 N. Mex. 434, 120 Pac. 316, affd. 232 U. S. 694, 58 L. Ed. 802, 34 Sup. Ct. 468); *Gutierrez* v. *El Paso & N. E. R. Co.* (102 Tex. 378, 117 S. W. 426); *Atchison, T. & S. F. R. Co.* v. *Pickens* (Tex. Civ. App.), 118 S. W. 1133); *Missouri, K. & T. R. Co.* v. *Poole* ((Tex. Civ. App.), 123 S. W. 1176); *Missouri, K. & T. R. Co.* v. *Rogers* ((Tex. Civ. App.), 128 S. W. 710); *Atchison, T. & S. F. R. Co.* v. *Tack* ((Tex. Civ. App.), 130 S. W. 596). Contra, *Atchison, T. & S. F. R. Co.* v. *Mills* (49 Tex. Civ. App. 349, 108 S. W. 480).

Statute applicable locally in District of Columbia, though unconstitutional as to the States. *Washington, A. & Mt. V. R. Co.* v. *Downey* (236 U. S. 190, 59 L. Ed. 533, 35 Sup. Ct. 406).

Elevator in Office Building

Railroad company operating elevator in office building held not a "common carrier." *Southern R. Co.* v. *Taylor* (57 App. D. C. 21, 16 Fed. (2d) 517, cert. den. 273 U. S. 767, 71 L. Ed. 882, 47 Sup. Ct. 571).

INSURANCE CONTRACTS

Insurance contracts as a defense. *Philadelphia, B. & W. R. Co.* v. *Schubert* (224 U. S. 603, 56 L. Ed. 911, 32 Sup. Ct. 589).

INTERSTATE COMMERCE

"Interstate" and "intrastate" commerce. *Hall* v. *Louisville & N. R. Co.* ((C. C.-Fla.), 157 Fed. 464).

The question of the creation of right of action, by State of by Federal act, depends on whether the carrier is engaged in interstate or intrastate commerce. *Hall* v. *Louisville & N. R. Co.* ((C. C.-Fla.), 157 Fed. 464).

NOT REPEALED BY EMPLOYERS' LIABILITY ACT

Insofar as it applies to the District of Columbia and the Territories this act was not repealed by the Employers' Liability Act of April 22, 1908, 35 Stat. 65, ch. 149. *Walsh* v. *Alaska S. S. Co.* (101 Wash. 295, 172 Pac. 269).

PERSONAL REPRESENTATIVES

Right of action to personal representatives. *Winfree* v. *Northern Pac. R. Co.* ((C. C. A. 9), 173 Fed. 65, 44 L. R. A. (N. S.) 841, affd. 227 U. S. 296, 57 L. Ed. 518, 38 Sup. Ct. 273).

TERRITORIES

United States District Court in Territory of New Mexico had jurisdiction of cases arising under this act. *Santa Fe Cent. R. Co.* v. *Friday* (232 U. S. 694, 58 L. Ed. 802, 34 Sup. Ct. 468, affg. 16 N. Mex. 434, 120 Pac. 316).

Unconstitutional as applied to Oklahoma. *Chicago, R. I. & P. R. Co.* v. *Holliday* (45 Okla. 536, 145 Pac. 786).

VESSELS

Not applicable to marine torts within admiralty jurisdiction. *Alaska S. S. Co.* v. *McHugh* (268 U. S. 23, 69 L. Ed. 825, 45 Sup. Ct. 396).

This act does not have the same effect as regards ship owners engaged in coastwise trade in Alaska as it does in the District of Columbia. *Alaska S. S. Co.* v. *McHugh* (268 U. S. 23, 69 L. Ed. 825, 45 Sup. Ct. 396).

Act does not apply to vessels generally. *Pawnee* ((D. C.-Mich.), 205 Fed. 333).

Applies to action for death of sailor from injuries received on vessel used as common carrier in Alaska. *Sandstrom* v. *Pacific S. S. Co.* ((C. C. A. 9), 260 Fed. 661).

This act (June 11, 1906), where territorially applicable, embraces carriers by water and modifies or repeals inconsistent admiralty or maritime laws. *Walsh* v. *Alaska S. S. Co.* (101 Wash. 295, 172 Pac. 269).

This act (June 11, 1906), applies to the case of a seaman, employed on a vessel engaged in commerce within the Territory of Alaska and between ports thereof and of the State of Washington, who was injured while unloading a cargo at an Alaskan port. *Walsh* v. *Alaska S. S. Co.* (101 Wash. 295, 172 Pac. 269).

§ 44–402 [19: 82]. Contributory negligence no bar to recovery.

In all actions brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributed negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury. (June 11, 1906, 34 Stat. 232, ch. 3073, § 2.)

STATUTORY REFERENCE

See U. S. C., title 45, § 51 et seq.

NOTES TO DECISIONS

CONSTITUTIONALITY

Constitutionality. *Howard* v. *Illinois C. R. Co.* (207 U. S. 463, 52 L. Ed. 297, 28 Sup. Ct. 141); *Brooks* v. *Southern Pac. Co.* ((C. C.-Ky.), 148 Fed. 986); *Snead* v. *Central of Georgia R. Co.* ((C. C.-Ga.), 151 Fed. 608); *Plummer* v. *Northern Pac. R. Co.* ((C. C.-Wash.), 152 Fed. 206); *Kelley* v. *Great Northern R. Co.* ((C. C.-Minn.), 152 Fed. 211).

CONTRIBUTORY NEGLIGENCE

Contributory negligence and assumed risk. *Powell* v. *Wisconsin Cent. R. Co.* ((C. C. A. 8), 159 Fed. 864).

One is liable for negligence proximately causing the injury, regardless of contributory negligence. *Atchison, T. & S. F. R. Co.* v. *Mills* (53 Tex. Civ. App. 359, 116 S. W. 852).

INTERSTATE COMMERCE

"Interstate" and "intrastate" commerce. *Hall* v. *Chicago, R. I. & P. R. Co.* ((C. C.-Iowa), 149 Fed. 564).

§ 44–403 [19: 83]. Insurance contracts no bar to recovery.

No contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however,* That upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative. (June 11, 1906, 34 Stat. 232, ch. 3073, § 3.)

STATUTORY REFERENCE

See U. S. C., title 45, § 51 et seq.

NOTES TO DECISIONS

IN GENERAL

Act prospective in operation. *Hall* v. *Chicago, R. I. & P. R. Co.* ((C. C.-Iowa), 149 Fed. 564).

RISK

Assumed risk. *Malloy* v. *Northern Pac. R. Co.* ((C. C.-Wash.), 151 Fed. 1019).

§ 44–404 [19: 84]. Suit to be brought within one year.

No action shall be maintained under sections 44–401 to 44–405, inclusive, unless commenced within one year from the time the cause of action accrued. (June 11, 1906, 34 Stat. 232, ch. 3073, § 4.)

STATUTORY REFERENCE

See U. S. C., title 45, § 51 et seq.

NOTES TO DECISIONS

LIMITATION

Limitation fixed by this act governs action against traction company operating in District of Columbia. *Mangum* v. *Capital Trac. Co.* (59 App. D. C. 241, 39 Fed. (2d) 286).

Time limit for action. *Winfree* v. *Northern Pac. R. Co.* ((C. C. A. 9), 173 Fed. 65, 44 L. R. A. (N. S.), 841, affd. 227 U. S. 296, 57 L. Ed. 518, 33 Sup. Ct. 273).

Action for death is barred after one year from date of death. *Sandstrom* v. *Pacific S. S. Co.* ((C. C. A. 9), 260 Fed. 661).

§ 44–405 [19: 85]. Certain prior laws not affected.

Nothing in sections 44–401 to 44–404, inclusive, shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance Act of March 2, 1893, as amended April 1, 1896, and March 2, 1903. (June 11, 1906, 34 Stat. 233, ch. 3073, § 5.)

STATUTORY REFERENCE

See U. S. C., title 45, § 51 et seq.

TITLE 45.—REAL PROPERTY

Chap. Sec.

1. Conveyable estates and methods of conveyance 45–101
2. Interpretation of instruments 45–201
3. Forms—Covenants and warranties 45–301
4. Acknowledgments 45–401
5. Effective date and recording of deeds 45–501
6. Mortgages and deeds of trust 45–601
7. Recorder of Deeds 45–701
8. Estates in land 45–801
9. Landlord and tenant 45–901
10. Powers 45–1001
11. Sale of contingent and limited interests 45–1101
12. Uses and trusts 45–1201
13. Waste 45–1301
14. Real Estate and Business Brokers' License Act 45–1401
15. Ownership by aliens 45–1501
16. Rent control 45–1601
17. Servicemen's Readjustment 45–1701

Chapter 1.—CONVEYABLE ESTATES AND METHODS OF CONVEYANCE

Sec.

45–101. Present, future, vested, and contingent interests conveyed by deed or will.
45–102. Perpetuities—Excepting charitable uses.
45–103. Chattels real.
45–104. Estates created by deed or will.
45–105. Conveyance of land held adversely.
45–106. Conveyance of term in excess of one year must be by deed or will.

§ 45–101 [25: 111]. Present, future, vested, and contingent interests conveyed by deed or will.

Any interest in or claim to real estate whether entitling to present or future possession and enjoyment, and whether vested or contingent, may be disposed of by deed or will, and any estate which would be good as an executory devise, may be created by deed. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 512; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the words "at common law" which came after "would be good as."

CROSS REFERENCES

Conveyance or incumbrance by husband of property acquired after insanity or absence of seven years of wife, § 18–204.

Release of dower by wife under eighteen years of age, § 30–216.

Release of dower of a person non compos mentis, § 21–301.

Statute of frauds, §§ 12–301, 12–303.

NOTES TO DECISIONS

ASSIGNMENTS

Where testatrix devised realty to her daughter for life and then to testatrix's three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part, and if daughter die without issue then to the three sons, their heirs and assigns forever share and share alike, a son's interests, whether contingent or vested, were assignable, but he could assign only that which he had. *Pyne* v. *Pyne* (App. D. C. 1946, 154 F. 2d 297).

Where remainderman's interest was subject to be divested in event of his death, leaving a descendant, prior to death of life tenant, remainderman's assignment of his interest was ineffective as against his descendant on death of remainderman prior to death of the life tenant. *Pyne* v. *Pyne* (App. D. C. 1946, 154 F. 2d 297).

PERMANENCE

Once title vests, it stays vested until it passes by grant, by descent, by adverse possession or by some operation of law such as escheat or forfeiture; but title does not pass by inaction on the part of the owner. *Faulks* v. *Schrider* (69 App. D. C. 137, 99 Fed. (2d) 370).

REVERTER INTERESTS

A possibility of reverter is not an estate under the District Code but it is an interest in property and any interest in property may be disposed of by deed or will. *Scott* v. *Powell* (C. A. D. C. 1950, 182 F. 2d 75, 86 U. S. App. D. C. 277).

§ 45–102 [25: 112]. Perpetuities—Excepting charitable uses.

Except in the case of gifts or devises to charitable uses, every future estate, whether of freehold or leasehold, whether by way of remainder or without a precedent estate, and whether vested or contingent, shall be void in its creation which shall suspend, or may by possibility suspend, the power of absolute alienation of the property, so that there shall be no person or persons in being by whom an absolute fee in the same, in possession, can be conveyed, for a longer period than during the continuance of not more than one or more lives in being and twenty-one years thereafter. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1023.)

NOTES TO DECISIONS

IN GENERAL

Rule against perpetuities held inapplicable. *Hopkins* v. *Grimshaw* (165 U. S. 342, 41 L. Ed. 739, 17 Sup. Ct. 401).

The provisions of this section are made applicable to personalty as well as realty by § 45–823. *Burdick* v. *Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

AGREEMENT OF PARTIES

A decree affecting rights under will will be reversed on agreement of parties to enter decree in accordance with agreement. *McDonald* v. *Maxwell* (56 App. D. C. 287, 12 Fed. (2d) 822).

ALIENATION OF ACCUMULATIONS

There is in the District of Columbia no specific statutory limitation upon restraint on alienation of accumulations. *Burdick* v. *Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

The common law, insofar as it permits accumulation of income from a testamentary trust which is to terminate with the death of the testator's two nieces, involving the accumulation of a huge sum of money for a period probably in excess of sixty years, is obsolete and repugnant to our conditions, and therefore not applicable in the District of Columbia. *Burdick* v. *Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

Under the "common law" of the United States and of the District of Columbia, accumulation of income of a testamentary trust is permitted for as long as the period

of the rule against perpetuities. *Gertman* v. *Burdick,* 1942 (123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, reversing 3 F. Supp. 921, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

The provision of a testamentary trust which did not violate the rule against perpetuities or this section in creating a trust to be effective for 21 years after death of two named nieces of testator, directing that remainder of trust income after the payment of certain annuities should be reinvested by trustee for increase and benefit of trust fund, was valid under the established common law, notwithstanding amount of income directed to be accumulated was quite large. *Gertman* v. *Burdick,* 1942 (123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, reversing 33 F. Supp. 921, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

Alternative Contingency

If the testator distinctly makes his gift over to depend upon what is sometimes called an alternative contingency, or upon either of two contingencies, one of which may be too remote and the other cannot be, its validity depends upon the event. *Wills* v. *Maddox* (45 App. D. C. 128, cert. den. 240 U. S. 640, 61 L. Ed. 541, 37 Sup. Ct. 113).

"Charitable Trust" Defined

One of the distinguishing elements of a charitable trust is the indefiniteness permitted as to beneficiaries. so that a trust to be used for assisting deserving applicants for admission to a home, who are unable to furnish necessary money, is valid. *Washington Loan & Trust Co.* v. *Hammond* (51 App. D. C. 260, 278 Fed. 569).

Class Membership

A life estate left to a class consisting of persons in being but which may open and let in other members who are not in being at the time of the testator's death would be obnoxious to the rule against perpetuities. *Lewis* v. *Cockrell* (D. C., D. C. 1948, 80 F. Supp. 380).

Construction Avoiding Repugnancy

Where will showed that testator intended to create life estate for widow, to be followed by life estates for his two daughters, and that upon daughters' deaths property should pass to testator's grandchildren and trust created by will provided that "the income thereof * * * shall be equally divided between my two daughters * * * and in the event of the death of either or both, to the use and benefit of their respective child or children" the last part of such provision would be construed to read "and in the event of the death of either or both, the remainder to the use and benefit of their respective child or children", particularly where a literal construction would be repugnant to prohibition against unlawful suspension of alienation and to the rule against perpetuities. *Lewis* v. *Cockrell* (D. C., D. C. 1948, 80 F. Supp. 380).

Contingent Remainderman

Where remainder had not vested, the invalidity of prior devise would not benefit contingent remainderman but intestacy would result as to the property covered by the prior devise. *Lewis* v. *Cockrell* (D. C., D. C. 1948, 80 F. Supp. 380).

Devise to Trustees

Devise to trustees held not to create a perpetuity, that is, not to be a limitation upon the property beyond the period of a life or lives in being and twenty-one years. *Ould* v. *Washington Hosp.* (95 U. S. 303, 24 L. Ed. 450).

In suit involving validity of a devise of real estate to foreign cemetery association in trust, for care of lot in District of Columbia, such trust is valid by principle of comity and equity will not allow trust to fail for want of trustee and if necessary will appoint a trustee to carry it into effect. *Iglehart* v. *Iglehart* (26 App. D. C. 209, affd. 204 U. S. 478, 51 L. Ed. 575, 27 Sup. Ct. 329).

Where testator left residuary estate to trustees to invest and reinvest for 21 years after death of two nieces, to pay annuities from the income and reinvest the remainder, the trustees had at all times power to alienate, and the trust did not violate the statute relating to restraint on alienation. *Burdick* v. *Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

Future Interests

Under will creating a trust until 21 years after death of survivor of two named nieces of testator and directing that trust cease at expiration of 21 years after the two lives in being, the future interests created did not violate the "rule against perpetuities." *Gertman* v. *Burdick,* 1942 (123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, reversing 33 F. Supp. 921, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

Gifts to Charitable Uses

"Gifts to charitable uses do not come within the purview of the law against perpetuities." *Washington Loan & Trust Co.* v. *Hammond* (51 App. D. C. 260, 278 Fed. 569).

Incapacity of Ultimate Taker

The capacity of the ultimate takers is irrelevant on the question whether a future estate violates this section, and it is the instrument creating the future estate which must be examined to determine whether the estate violates this section. *Gertman* v. *Burdick,* 1942 (123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, reversing 33 F. Supp. 921, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

This section was not intended to make void in its creation any future estate which is limited to take effect immediately at the expiration of the statutory period for the reason that one of the takers has temporary incapacity to convey. *Gertman* v. *Burdick,* 1942 (123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, reversing 33 F. Supp. 921, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

Under will creating a trust until 21 years after death of survivor of two named nieces of testator and directing that trust cease at expiration of 21 years after the two lives in being, the future interests created did not violate this section merely because, at the termination of the trust, the taker might be an infant who would be a person incapable of alienating an absolute fee. *Gertman* v. *Burdick,* 1942 (123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, reversing 33 F. Supp. 921, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

Partial Validity

Where there is a statutory permissible period, an accumulation of income of a testamentary trust is bad only with respect to the excess, whereas an accumulation that violates the common law of lives in being plus 21 years is void in its entirety. *Gertman* v. *Burdick,* 1942 (123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, reversing 33 F. Supp. 921, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

Where testamentary exercise of power, which created trust for testator's widow for life and then for daughters until they should reach age of 25, was invalid as unduly suspending power of alienation, widow's life interest could not be validated by being separated from other provisions. *Mondell* v. *Thom,* 1944 (143 F. 2d 157, 79 U. S. App. D. C. 145).

Power of Appointment

A testamentary exercise of power of appointment, creating a trust for testator's widow for life and thereafter for daughters until they should reach age of 25, when daughters might take their shares outright, was invalid though widow was alive when donor of power died, since daughter might reach 25 more than 21 years after widow's death. *Mondell* v. *Thom,* 1944 (143 F. 2d 157, 79 U. S. App. D. C. 145).

The rule that facts existing when donee of power dies, exercising the power by will, may be considered in determining whether absolute ownership vests under exercise of power during lives in being, plus 21 years, would not save testamentary exercise of power by one dying in 1942, where beneficiary born in 1940 would not have taken her share by reaching age of 25 within 21 years of her mother's death if mother had died before 1944. *Mondell* v. *Thom,* 1944 (143 F. 2d 157, 79 U. S. App. D. C. 145).

Facts existing when donee of power of appointment dies, exercising the power by will, may be considered in determining whether absolute ownership is to vest under exercise of the power during lives in being, plus 21 years from death of donor. *Mondell* v. *Thom,* 1944 (143 F. 2d 157, 79 U. S. App. D. C. 145).

POWER TO ALIENATE SUSPENDED

Where trustees under a will have at all times the power to alienate, the trust does not violate provisions of this section, and the possibility of suspension of the power of alienation because of infancy or disability of beneficiaries at date of distribution does not invalidate the trust, such suspension being made by law and not by the will. *Burdick* v. *Burdick* (D. C.-D. C.), 33 Fed. Supp. 921).

SECTIONS CONSTRUED

This section and § 669 (§ 27–113) can be harmonized and construed together—this section applying to cases other than those specially provided for in § 669 (§ 27–113). *Iglehart* v. *Iglehart* (204 U. S. 478, 51 L. Ed. 575, 27 Sup. Ct. 329, affg. 26 App. D. C. 209).

TIME WHEN PERIOD BEGINS

In determining validity of exercise of power of appointment, period during which power of alienation might be suspended began at death of donor of the power. *Mondell* v. *Thom,* 1944 (143 F. 2d 157, 79 U. S. App. D. C. 145).

TRUST CREATED BY WILL

Trust created by will held void except as to one provision, as an attempt to create a perpetuity. *Landram* v. *Jordan* (203 U. S. 56, 51 L. Ed. 88, 27 Sup. Ct. 17, affg. 25 App. D. C. 291).

§ 45–103 [25: 113]. Chattels real.

The provisions aforesaid as to future estates shall apply to limitations of chattels real as well as to freehold estates, so that the absolute ownership of a term for years and power to dispose of the same shall not be suspended for a longer period than the absolute power of alienation in respect to a fee simple. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1024.)

§ 45–104 [25: 114]. Estates created by deed or will.

Subject to the provisions aforesaid, a freehold estate as well as a chattel real may be created by deed or will to commence at a future day, absolutely or conditionally; an estate for life may be created in a term for years and a remainder limited thereon; a remainder of freehold or for years, either vested or contingent, may be created expectant on the determination of a term for years, and a fee may be limited on a fee upon a contingency which must happen, if at all, within the period herein prescribed. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1025.)

§ 45–105 [25: 115]. Conveyance of land held adversely.

Any person claiming title to land may convey his interest in the same, notwithstanding there may be an adverse possession thereof. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 513.)

§ 45–106 [25: 116]. Conveyance of term in excess of one year must be by deed or will.

No estate of inheritance, or for life, or for a longer term than one year, in any real property, corporeal or incorporeal, in the District of Columbia, or any declaration or limitation of uses in the same, for any of the estates mentioned, shall be created or take effect, except by deed signed and sealed by the grantor, lessor, or declarant, or by will. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 492; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out at the end thereof the words "and acknowledged in the manner herein provided" and inserting in lieu thereof the words "or by will."

CROSS REFERENCE

Statute of frauds, § 12–301.

NOTES TO DECISIONS

ESTOPPEL

"Where one of two contracting parties has been induced or allowed to alter his position on the faith of a contract within the statute, to such an extent that it would be fraud on the part of the other party to set up its invalidity, courts of equity hold that the clear proof of the contract and of the acts of part performance will take the case out of the operation of the statute, if the acts of part performance were clearly such as to show that they are properly referable to the parol agreement." *Kresge* v. *Crowley* (47 App. D. C. 13).

LEASES—ACKNOWLEDGMENT

Lease for rooms in office building was perfectly valid conveyance as between the parties to it, and the parties to this action, although not acknowledged as required by this section, as amended. *Munsey Trust Co.* v. *Alexander* (59 App. D. C. 369, 42 Fed. (2d) 604).

LEASES—COVENANT OF RENEWAL

Where lessor had only a life estate, the rights under the lease expired with her, and the remaindermen, by accepting rent after her death, are not estopped to defend against the covenant of renewal in the lease. *Velati* v. *Dante* (39 App. D. C. 372, cert. den. 227 U. S. 679, 57 L. Ed. 700, 33 Sup. Ct. 462).

LEASES—NOT UNDER SEAL

Although contract for lease of office rooms was not under seal, it was entitled to specific performance, lessor having spent considerable money in remodeling and lessee having occupied for two years. *Hoffman* v. *F. H. Duehay, Inc.* (62 App. D. C. 206, 65 Fed. (2d) 839).

LEASES—TENANTS IN COMMON

A lease for eight years (with privilege of renewal) by one tenant in common is void as to the other tenants who did not sign and seal the lease. The acknowledgment of the lessor was not and could not have been as agent or attorney for her co-owners. *Velati* v. *Dante* (39 App. D. C. 372, cert. den. 227 U. S. 679, 57 L. Ed. 700, 33 Sup. Ct. 462).

No amount of acquiescence by the remaining tenants could affect their rights, in the absence of power in the lessor to act as trustee for them, in the execution of the lease. *Velati* v. *Dante* (39 App. D. C. 372, cert. den. 227 U. S. 679, 57 L. Ed. 700, 33 Sup. Ct. 462).

PAROL AGREEMENT

An alleged parol agreement by lessor to give lessees after expiration of lease an additional five-year term was not enforceable in absence of evidence of lessor's fraud or execution of the agreement, in view of this section specifying the requirements for a lease for longer than one year and section 301 of title 12 that such a lease shall be an estate by sufferance. *Ross* v. *Brainerd* (D. C. Mun. App. 1947, 54 A. 2d 859).

STATUTORY COMPLIANCE

Measuring the instrument by the statutory requirements, enlightened by the forms set forth, which cannot be disregarded, it is not sufficient to grant or create any estate or use in the property since a deed is a written expression of the act of creating an estate or use in land. *Schooler* v. *Schooler* (C. A. D. C. 1948, 173 A. 2d 299, 84 U. S. App. D. C. 147).

Chapter 2.—INTERPRETATION OF INSTRUMENTS

Sec.
45–201. Words of inheritance unnecessary.
45–202. Words "grant" or "bargain and sell" pass whole estate.
45–203. Remainder to heirs—Rule in Shelley's case abolished.
45–204. Posthumous children.
45–205. Die without issue or without leaving issue refers to time of death.

§ 45–201 [25: 131]. Words of inheritance unnecessary.

No words of inheritance shall be necessary in a deed or will to create a fee simple estate; but every conveyance or devise of real estate shall be construed and held to pass a fee simple estate or other entire estate of the grantor or testator, unless a contrary intention shall appear by express terms or be necessarily implied therein. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 502.)

NOTES TO DECISIONS

WORDS OF LIMITATION

When word "heir" is used in will as one of limitation, it must be given that effect, but contrary is true, if its use in context clearly indicates that it is intended to constitute a disposition by purchase. *Greenwood* v. *Page*, 1944 (138 F. 2d 921, 78 U. S. App. D. C. 166).

§ 45–202 [25: 132]. Words "grant" or "bargain and sell" pass whole estate.

The word "grant," and the phrase "bargain and sell," or any other words purporting to transfer the whole estate shall be construed to pass the whole estate and interest in the property described, unless there be limitations or reservations showing a different intent. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 503; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the words "of the grantor" which appeared after the words "and interest of."

§ 45–203 [25: 133]. Remainder to heirs—Rule in Shelley's case abolished.

Where a remainder shall be limited to the heirs or heirs of the body of a person to whom a life estate in the same premises shall be given, the persons, who, on the termination of the life estate, shall be the heirs or the heirs of the body of such tenant for life shall be entitled to take in fee simple as purchasers by virtue of the remainder so limited. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1027.)

NOTES TO DECISIONS

PRIOR LAW

Where death of decedent occurred in 1900, before enactment of statute, the common-law rule applied. *Noyes* v. *Parker* (68 App. D. C. 13, 92 Fed. (2d) 562).

§ 45–204 [25: 134]. Posthumous children.

Where a future estate shall be limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parent; and a future estate depending on the contingency of the death of any person without heirs, or issue, or children shall be defeated by the birth of a posthumous child of such person. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1028.)

CROSS REFERENCE

Other provisions concerning rights of posthumous children, §§ 18–103, 18–714.

NOTES TO DECISIONS

UNBORN CHILDREN

"A child en ventre sa mère is deemed to be in esse, for the purpose of taking a remainder, or any other estate or interest which is for his benefit, whether by descent, by devise, or under the statute of distribution." *Craig* v. *Rowland* (10 App. D. C. 402).

§ 45–205 [25: 135]. Die without issue or without leaving issue refers to time of death.

In any deed or will of real or personal estate in the District of Columbia, executed after Mar. 3, 1901, the words "die without issue," or the words "die without leaving issue," or the words "have no issue," or other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear in the instrument. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 504.)

NOTES TO DECISIONS

EFFECTIVE DATE OF DEVISE OVER

Under a devise to one person in fee and in case he should die under age and without issue to another in fee, the devise over takes effect upon the death at any time of the first devisee under age and without children. *Herrell* v. *Herrell* (47 App. D. C. 30).

Chapter 3.—FORMS—COVENANTS AND WARRANTIES

Sec.
45–301. Forms of instruments.
45–302. Deeds of corporations—Formal requisites—Acknowledgment.
45–303. Covenant binds covenantor and privies in favor of covenantee and privies without so stating.
45–304. General warranty.
45–305. Special warranty.
45–306. Covenant of quiet enjoyment.
45–307. Covenant against having incumbered land.
45–308. Covenant for further assurances.
45–309. Warranty by life tenant void as to heir.

§ 45–301 [25:141]. Forms of instruments.

The following forms or forms to the like effect shall be sufficient, and any covenant, limitation, restriction, or proviso allowed by law may be added, annexed to, or introduced in the said forms. Any other form conforming to the rules herein laid down shall be sufficient:

FEE SIMPLE DEED

This deed, made this ——— day of ———, in the year ———, by me, ———, of ———, witnesseth, that in consideration of (here insert consideration), I, the said ———, do grant unto (here insert grantee's name), of ———, all that (here describe the property).

Witness my hand and seal. ——— ———. [Seal.]

DEED BY HUSBAND AND WIFE

This deed, made this ——— day of ———, in the year ———, by us, ——— and ———, his wife, of ———, witnesseth, that in consideration of ———, we, the said ——— and his wife, do grant unto ———, or ———, and so forth.

Witness our hands and seals. ——— ———. [Seal.]
——— ———. [Seal.]

DEED OF LIFE ESTATE

This deed, made this ——— day of ———, in the year ———, by me, ———, of ———, witnesseth, that in consideration of ———, I, the said ———, do grant unto ———, of ———, all that (here describe the property), to hold during his life and no longer.

Witness my hand and seal. ——— ———. [Seal.]

DEED OF TRUST TO SECURE DEBTS, SURETIES, OR FOR OTHER PURPOSES

This deed, made this ——— day of ———, in the year ———, by me, ———, of ———, witnesseth, that whereas (here insert the consideration for the deed), I, the said ———, do grant unto ———, of ———, as trustee the following property (here describe it) in trust for the following purposes (here insert the trusts and any covenant that may be agreed upon).

Witness my hand and seal. ——— ———. [Seal.]

FORM OF TRUSTEE'S DEED UNDER A DECREE

This deed, made this ——— day of ———, in the year ———, by me, ———, trustee, of ———, witnesseth: Whereas by a decree of (here insert court) passed on the ——— day of ———, in the cause of ——— versus ———, I, the said ———, was appointed trustee to sell the land decreed to be sold, and have sold the same to ———; and said sale has been ratified by said court, and said ——— has fully paid the purchase money due on said sale; now, therefore, in consideration of the premises, I, the said ———, do grant unto ———, of ———, all the right and title of all the parties to the aforesaid cause, in and to all that (here describe property).

Witness my hand and seal. ——— ———. [Seal.]

EXECUTOR'S DEED

This deed, made this ——— day of ———, in the year ———, witnesseth, that I, ———, of ———, executor of the last will of ———, late of ———, deceased, under a power in said will contained, in consideration of ———, have sold and do hereby grant to ———, of ———, all that (here describe the property).

Witness my hand and seal. ——— ———. [Seal.]

FORM OF MORTGAGE, WITH OR WITHOUT POWER OF SALE

This mortgage, made this ——— day of ———, in the year ———, witnesseth that whereas I, ——— of ———, am indebted unto ———, of ———, in the sum of ———, payable ———, for which I have given to said ——— my (here describe obligation). Now, in consideration thereof, I hereby grant unto the said ——— all that (here describe property), provided that if I shall punctually pay said (notes or other instruments) according to the tenor thereof then this mortgage shall be void. And if I shall make default in such payment the said ——— is hereby authorized and empowered to sell said property at public auction on the following terms (here insert them), and out of the proceeds of sale to retain whatever shall remain unpaid of my said indebtedness and the costs of such sale, and the surplus, if any, to pay to me.

Given under my hand and seal.

——— ———. [Seal.]

FORM OF LEASE

This lease, made this ——— of ———, in the year ———, between ——— of ——— and ———, of ———, witnesseth that the said ——— doth lease unto the said ———, his executor, administrator, and assigns, all that (here describe the property) for the term of ——— years, beginning on the ——— day of ———, in the year ———, and ending on the ——— day of ———, in the year ———, the said ——— paying therefor the sum of ——— on the ——— day of ——— in each and every year (or month, as the case may be).

Witness our hands and seals.

——— ———. [Seal.]
——— ———. [Seal.]

(Mar. 3, 1901, 31 Stat. 1277, ch. 854, ch. 16, subch. 5; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENTS

Act of March 3, 1901, was amended by changing the heading "Deed of live estate" so that it would read "Deed of life estate"; also by striking out the words "and so forth" and inserting in lieu thereof "(here describe the property)."

In this same section the form headed "Deed of trust to secure debts, sureties, or for other purposes" was amended by striking out the words "as trustee."

In this same section the form headed "Executor's deed" was amended by striking out the words "and so forth" and inserting in lieu thereof the words "(here describe the property)."

In this same section the form headed "Form of mortgage, with or without power of sale," was amended by striking out the words "promissory notes or bonds or other instruments" and by inserting after the word "describe," the word "obligation."

CROSS REFERENCES

Release of dower, § 30–216.

Release of dower of a person non compos mentis, § 21–301.

Sales and conveyances of public property, §§ 1–214, 9–301 et seq.

§ 45–302 [25: 142]. Deeds of corporations — Formal requisites—Acknowledgment.

The deed of a corporation shall be executed by having the seal of the corporation attached and being signed with the name of the corporation, by its president or other officer, and shall be acknowledged as the deed of the corporation by an attorney appointed for that purpose, by a power of attorney embodied in the deed or by one separate therefrom, under the corporate seal, to be annexed to and recorded with the deed. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 497; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the word "chief" and inserting in lieu thereof the word "other."

NOTES TO DECISIONS

POWER OF ATTORNEY

Deed of corporation, signed by vice president with power of attorney to act for the corporation, held valid. *Eggleston* v. *Wayland* (56 App. D. C. 77, 10 Fed. (2d) 642).

SEAL OF CORPORATION

Lease containing seal of corporation and signed by its vice president, held valid though not acknowledged. *Munsey Trust Co.* v. *Alexander* (59 App. D. C. 369, 42 Fed. (2d) 604).

§ 45–303 [25: 143]. Covenant binds covenantor and privies in favor of covenantee and privies without so stating.

When, in any deed, the word "covenant" is used, such word shall have the same effect as if the covenant was expressed to be by the covenantor, for himself, his heirs, devisees, and personal representatives, and shall be deemed to be with the grantee or lessee, his heirs, devisees, personal representatives, and assigns. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 505; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

Act of March 3, 1901, began as follows: "When, in a deed conveying real estate, the words 'the said * * * covenants' are used."

NOTES TO DECISIONS

SUBSEQUENT OWNERS

Similar restrictive covenants contained in deeds from the owner of a subdivision to all purchasers, inure to the

benefit of the several purchasers and subsequent owners thereof. *McNeil* v. *Gary* (40 App. D. C. 397).

§ 45–304 [25: 144]. General warranty.

A covenant by the grantor, in a deed conveying real estate, "that he will warrant generally the property hereby conveyed," or a grant of real estate in which the granting words are followed by the words "with general warranty," shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of all persons whomsoever. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 506.)

§ 45–305 [25: 145]. Special warranty.

A covenant by a grantor, in a deed conveying real estate, "that he will warrant specially the property hereby conveyed," or a grant of real estate in which the granting words are followed by the words "with special warranty," shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 507.)

NOTES TO DECISIONS

TRUST DEED COVENANTS

Where grantor executing trust deeds creating junior liens warranted the property against persons claiming through her and covenanted to execute any necessary further assurances, the effect of the covenants in the trust deeds creating the junior liens was limited by their terms and by the fact that the grantor possessed and intended to convey only an equity of redemption from prior trusts. *Thompson* v. *Lawson,* 1942 (132 F. 2d 21, 77 U. S. App. D. C. 31, certiorari denied 63 S. Ct. 1177, 319 U. S. 759, 87 L. Ed. 1711).

WAIVER

A lessor may waive the breach of a specific covenant by delay in enforcement, or by subsequent acceptance of rent. *Klein* v. *Longo* (D. C. Mun. App. 1944, 34 A. 2d 359).

§ 45–306 [25: 146]. Covenant of quiet enjoyment.

A covenant by the grantor, in a deed of land, "that the said grantee shall quietly enjoy said land," shall have the same effect as if he had covenanted that the said grantee, his heirs, and assigns, shall, at any and all times after Mar. 3, 1901, peaceably and quietly enter upon, have, hold, and enjoy the land conveyed by the deed or intended to be so conveyed, with all the rights, privileges, and appurtenances thereunto belonging, and to receive the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim, or demand whatsoever by the said grantor, his heirs or assigns, or any other person or persons whatever. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 508.)

NOTES TO DECISIONS

COMMERCIAL USE

Where landowner, as lessor, entered into a contract of lease for restaurant purposes, he impliedly warranted title and quiet possession, and, in such circumstances, it was not incumbent upon lessee to search lessor's title to determine if there was a covenant in lessor's deed against commercial use but lessee was entitled to rely upon the warranty. *Schwartz* v. *Westbrook* (App. D. C. 1946, 154 F. 2d 854).

§ 45–307 [25: 147]. Covenant against having encumbered land.

A covenant by a grantor, in a deed of land, "that he has done no act to encumber said land," shall be construed to have the same effect as if he had covenanted that he had not done or executed or knowingly suffered any act, deed, or thing whereby the land and premises conveyed, or intended so to be, or any part thereof, are or will be charged, affected, or encumbered in title, estate, or otherwise. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 509.)

§ 45–308 [25: 148]. Covenant for further assurances.

A covenant by a grantor, in a deed of land, "that he will execute such further assurances of said land as may be requisite," shall have the same effect as if he had covenanted that he, his heirs or devisees, will, at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done and executed, all such further acts, deeds, and things, for the better, more perfectly and absolutely conveying and assuring the lands and premises conveyed unto the grantee, his heirs and assigns, as intended to be conveyed, as by the grantee, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 510.)

§ 45–309 [25: 149]. Warranty by life tenant void as to heir.

All warranties which shall be made by any tenant for life, of any lands, tenements or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void and of none effect, and likewise all collateral warranties, of any lands, tenements or hereditaments, by any ancestor, who has no estate of inheritance in possession in the same shall be void against the heir. (4 Ann, ch. 16, § 21, 1705; Kilty Rep., 246; Alex. Br. Stat. 662; Comp. Stat., D. C., 496, § 33.)

COMPILER'S NOTE

This section sets forth a British statute continued in force by virtue of the act of March 3, 1901 (31 Stat. 1189, ch. 854, § 1). It was obviously impossible to modernize the language of this statute.

Chapter 4.—ACKNOWLEDGMENTS

Sec.
45–401. Acknowledgment by attorney.
45–402. Acknowledgment in the District.
45–403. Acknowledgment out of District.
45–404. Acknowledgment in foreign country.
45–405. Acknowledgments in Guam, Samoa, and Canal Zone.
45–406. Acknowledgments in Philippine Islands and Puerto Rico.
45–407. Certain irregular acknowledgments validated.
45–408. Certain defective acknowledgments and executions validated.
45–409. Acknowledgments by married women.

Sec.
45–410. Power of attorney by married woman.
45–411. Absence of acknowledgment.
45–412. Acts of Congress and law of Maryland cumulative as to deeds prior to January 1, 1902.

§ 45–401 [25: 150]. Acknowledgment by attorney.

No deeds of conveyance of either real or personal estate by individuals shall be executed or acknowledged by attorney. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 498.)

NOTES TO DECISIONS

ENTRY INTO POSSESSION

A lease for more than one year will be valid when the tenant enters into possession and expends large sums of money, notwithstanding the invalidity of the lease under the provision of this section that no deed may be executed by attorney. *Kresge* v. *Crowley* (47 App. D. C. 13).

POWER OF ATTORNEY BEFORE 1901 CODE

When power of attorney was given by two persons jointly to acknowledge deed for the grantor, which power was executed by one of them only, such defective acknowledgment was corrected by acts of Congress April 20, 1838, and March 3, 1865. *Hevner* v. *Matthews* (4 App. D. C. 380).

Power of attorney to sell and convey land of married woman and husband and acknowledged by them was valid both by statute and common law. The Civil War did not revoke such power although principals resided in insurrectionary States. *Williams* v. *Paine* (7 App. D. C. 116, affd. 169 U. S. 55, 42 L. Ed. 658, 18 Sup. Ct. 279).

§ 45–402 [25: 151]. Acknowledgment in the District.

Acknowledgment of deeds may be made in the District of Columbia before any judge of any of the courts of said District, the clerk of the District Court of the United States for the District of Columbia, or any notary public, or the recorder of deeds of said District, and the certificate of the officer taking the acknowledgment shall be to the following effect:

I, A B, a notary public (or other officer authorized) in and for the District of Columbia, do hereby certify that C D, party to a certain deed bearing date on the _____ day of _____, and hereto annexed, personally appeared before me in said District, the said C D being personally well known to me as (or proved by the oath of credible witnesses to be) the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this ____ day of _____.

A. B. [Seal.]

(Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 493; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the words "such acknowledgment" and inserted in lieu thereof the words "acknowledgment of deeds."

NOTES TO DECISIONS

EVIDENCE TO IMPEACH—NOTARY TAKING ACKNOWLEDGMENT

The evidence to impeach the acknowledgment to a deed for fraud must be clear and convincing. *Ford* v. *Ford* (27 App. D. C. 401). Quaere: Whether the act of a notary in taking an acknowledgment is a judicial act or merely ministerial. See, however, *Hitz* v. *Jenks* (123 U. S. 297, 31 L. Ed. 156, 8 Sup. Ct. 143).

OMISSION OF WORDS

Quaere: Whether an acknowledgment is sufficient if the words "do hereby certify" as recited in the statute, are omitted. *Ohio Nat. Bank* v. *Berlin* (26 App. D. C. 218).

Also, as to omission of formal statement that grantor acknowledged "the same to be his act and deed." *Ohio Nat. Bank* v. *Berlin* (26 App. D. C. 218).

A deed is fatally defective which omits to state that the grantor was personally known to the officer or that his identity had been proved by the oath of credible witnesses, and which fails to identify the instrument by recital of its date. The recordation of an instrument sc acknowledged is erroneous and of no effect as constructive notice. *Ohio Nat. Bank* v. *Berlin* (26 App. D. C. 218).

PRIMA FACIE PROOF

"The true view is that the certificate of acknowledgment is prima facie proof of the facts it contains, if within the officers' range, but is open to rebuttal, between the parties, by proof of gross concurrent mistake or fraud. In favor of purchasers for valuable consideration without notice, it is conclusive as to all matters which it is the duty of the acknowledging officer to certify, if he has jurisdiction. As to all other persons it is open to dispute." *Ford* v. *Ford* (27 App. D. C. 401).

§ 45–403 [25: 152]. Acknowledgment out of District.

When any deed or contract under seal is to be acknowledged out of the District of Columbia, but within the United States, the acknowledgment may be made before any judge of a court of record and of law, or any chancellor of a State, any judge or justice of the Supreme, District, or Territorial courts of the United States, any justice of the peace or notary public: *Provided,* That the certificate of acknowledgment aforesaid, made by any officer of the State or Territory not having a seal, shall be accompanied by the certificate of the register, clerk, or other public officer that the officer taking said acknowledgment was in fact the officer he professed to be. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 495; June 30, 1902, 32 Stat. 531, ch. 1329; Mar. 3, 1911, 36 Stat. 1167, ch. 231, §§ 289, 291.)

AMENDMENTS

The 1902 amendment amended the Act of Mar. 3, 1901, by striking out the words "relating to land" after the word "seal" and also by striking out a second proviso which stated "that a certificate by any such register, clerk, or other public officer, in the form prescribed by the laws of the State or Territory in which such certificate is made or customarily used therein, shall be a sufficient certificate for the purposes of this section."

Act of March 3, 1911, amended Act of June 30, 1902, by striking out the word "circuit" after the word "Supreme."

§ 45–404 [25: 153]. Acknowledgment in foreign country.

Deeds made in a foreign country may be acknowledged before any judge or notary public, or before any secretary of legation or consular officer, or acting consular officer of the United States, as such consular officer is described in section 51, title 22, of the Code of Laws of the United States; and when the acknowledgment is made before any other officer than a secretary of legation or consular officer or acting consular officer of the United States, the official character of the person taking the acknowledgment shall be certified in the manner prescribed in section 45–403. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 496; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by changing the section numbers of the Code of Laws of the United States.

§ 45–405 [25: 154]. Acknowledgments in Guam, Samoa, and Canal Zone.

Deeds and other instruments affecting land situate in the District of Columbia may be acknowledged in the islands of Guam and Samoa or in the Canal Zone before any notary public or judge, appointed

therein by proper authority, or by any officer therein who has ex officio the powers of a notary public: *Provided,* That the certificate by such notary in Guam, Samoa, or the Canal Zone, as the case may be, shall be accompanied by the certificate of the governor or acting governor of such place to the effect that the notary taking said acknowledgment was in fact the officer he purported to be; and any deeds or other instruments affecting lands so situate, so acknowledged since the 1st day of January, 1905, and accompanied by such certificate shall have the same effect as such deeds or other instruments hereafter so acknowledged and certified. (June 28, 1906, 34 Stat. 552, ch. 3585.)

STATUTORY REFERENCE

This section is in U. S. C., title 48, §§ 1358, 1432.

§ 45–406 [25: 155]. Acknowledgments in Philippine Islands and Puerto Rico.

Deeds and other instruments affecting land situate in the District of Columbia may be acknowledged in the Philippine Islands and Porto Rico before any notary public appointed therein by proper authority, or any officer therein who has ex officio the powers of a notary public: *Provided,* That the certificate by such notary in the Philippine Islands or in Porto Rico, as the case may be, shall be accompanied by the certificate of the executive secretary of Porto Rico, or the governor or Attorney-General of the Philippine Islands to the effect that the notary taking said acknowledgment was in fact the officer he purported to be. (Mar. 22, 1902, 32 Stat. 88, ch. 273; Mar. 2, 1917, 39 Stat. 968, ch. 145, § 54.)

AMENDMENT

Act of March 22, 1902, was amended by striking out the words "or any territory of the United States" after the word "Columbia" and also by changing provision from Attorney General of "Porto Rico" to "Executive-Secretary of Porto Rico."

STATUTORY REFERENCE

This section is in U. S. C., title 48, §§ 742 and 1019.

§ 45–407 [25: 156]. Certain irregular acknowledgments validated.

All acknowledgments of deeds and other instruments of writing under seal made prior to March 3, 1879, in a foreign country, before any secretary of legation, consul, or consular officer of the United States, for lands lying in the District of Columbia, are hereby validated and confirmed, and the same, and the records of the said deeds and instruments, if the said deeds and instruments have been recorded, are declared to be as good and effectual, in behalf of the grantees therein named, and all persons claiming through or under them, as if the said acknowledgments and records had been respectively made and recorded under the provisions of existing laws: *Provided,* That nothing in this section shall be construed to divest just rights already acquired in good faith by creditors of or purchasers from the grantors in such deeds or instruments. (Mar. 3, 1879, 20 Stat. 353, ch. 174.)

§ 45–408 [25: 157]. Certain defective acknowledgments and executions validated.

All deeds and acknowledgments recorded in the land records of the District prior to January 1, 1902, of any of the following designated classes shall, in favor of parties in actual possession, claiming under and through such deeds, be deemed and held and are declared to be of the same effect and validity to pass the fee simple or other estate intended to be conveyed, and bar dower in the real estate therein mentioned, as if such deeds had in all respects been executed, acknowledged, proved, certified, and recorded according to law, namely:

First. All deeds executed and acknowledged by married women, their husbands having signed and sealed the same, for conveying any real estate, or interest therein, situated in the District;

Second. All acknowledgments of deeds by married women, whether they executed the deed or not, for the purpose of releasing their claims to dower in the lands described therein, situated in the District, in which acknowledgments the form prescribed by law was not followed;

Third. All deeds executed and acknowledged by an attorney in fact duly appointed for conveying real estate situated in the District;

Fourth. All deeds executed and acknowledged, or only acknowledged by such attorney in fact, for conveying real estate situated in the District, as to which the acknowledgment was made before officers different from those before whom proof of the power of attorney was made, and as to which the power of attorney was proved before only one justice of the peace;

Fifth. All deeds for the purpose of conveying land situated in the District, acknowledged out of the District, before a judge of a United State court, or before two aldermen of a city, or the chief magistrate of a city, or before a notary public or other officer;

Sixth. All deeds for the purpose of conveying land situated in the District, acknowledged by an attorney in fact, duly appointed, or by an officer of a corporation, duly authorized, who acknowledged the same to be his act and deed, instead of the act and deed of the grantor or of the corporation; and

Seventh. All deeds for the purpose of conveying land situated in the District to which there was not annexed a legal certificate as to the official character of the officer or officers taking the acknowledgment. (R. S., D. C., § 459; Mar. 3, 1901, 31 Stat. 1270, ch. 854, § 515; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

The 1902 amendment added at the end of the paragraph numbered fifth the words "or other officer."

NOTES TO DECISIONS

PRIOR LAW

Under laws of Maryland, in force in the District of Columbia in 1859, it was competent for a married woman to execute with her husband a power of attorney to convey her lands therein, which, when acknowledged by her according to the statute relating to the acknowledgment by married women of deeds conveying their real property in the District, thereby became a valid and sufficient instrument to authorize the conveyance by attorney. *Williams* v. *Paine* (169 U. S. 55, 42 L. Ed. 658, 18 Sup. Ct. 279, affg. 7 App. D. C. 116).

§ 45–409 [25: 158]. Acknowledgments by married women.

In all cases mentioned in section 45–408 the certificate of acknowledgment by a married woman

made prior to April 10, 1869, must show that the acknowledgment was made "apart" or "privily" from her husband, or use some other term importing that her acknowledgment was made out of his presence, and also that she acknowledged or declared that she willingly executed or that she willingly acknowledged the deed, or that the same was her voluntary act, or to that effect. (R. S., D. C., § 460; Mar. 3, 1901, 31 Stat. 1270, ch. 854, § 516; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

The 1902 amendment inserted after the word "woman," the words "made prior to April 10, 1869."

CROSS REFERENCE

See note to § 45–408. *Williams* v. *Paine* (169 U. S. 55, 42 L. Ed. 658, 18 Sup. Ct. 279, affg. 7 App. D. C. 116).

§ 45–410 [25: 159]. Power of attorney by married woman.

When the power of attorney mentioned in section 45–408 was executed by a married women, the same shall be effectual and sufficient if there is such an acknowledgment of the same as would be sufficient, under the provisions of section 45–409 to pass her estate and interest therein were she a party executing the deed of conveyance. (Mar. 3, 1901, 31 Stat. 1270, ch. 854, § 518; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the word "is" and inserting in lieu thereof the word "was," also by striking out the words "this chapter" and inserting in lieu thereof the section numbers corresponding to those given above.

CROSS REFERENCE

See note to § 45–408. *Williams* v. *Paine* (169 U. S. 55, 42 L. Ed. 658, 18 Sup. Ct. 279, affg. 7 App. D. C. 116).

§ 45–411 [25: 160]. Absence of acknowledgment.

No deed or conveyance of squares or lots of public land in the city of Washington, made in pursuance of law prior to January 1, 1902, by the commissioner of public buildings or any other authorized officer, shall be deemed invalid in law for the want of an acknowledgment by the commissioner or other authorized officer before such judicial officers, as deeds of real property made between individuals are required by law to be acknowledged. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 514; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the words "to March third, eighteen hundred and sixty-three" and inserting in lieu thereof the words "to the adoption of this Code (January 1, 1902)."

§ 45–412 [25: 161]. Acts of Congress and law of Maryland cumulative as to deeds prior to January 1, 1902.

In all cases of deeds executed and acknowledged prior to January 1, 1902, the Acts of Congress approved May 31, 1832 (4 Stat. 520, ch. 112), and April 20, 1838 (5 Stat. 226, ch. 57), in reference to the acknowledgment and recording of deeds of lands situated in the District, shall be taken and construed as cumulative with the Acts of Maryland on the same subject in force in the District at the passage thereof, and an acknowledgment made and certified in compliance with any one of said Acts, and before any officer authorized by either of said Acts to take an acknowledgment, whether in or out of the District, shall be good and effectual. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 520; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by inserting before the word "the" the words "in all cases of deeds executed and acknowledged prior to the adoption of this Code (January 1, 1902)."

Chapter 5.—EFFECTIVE DATE AND RECORDING OF DEEDS

Sec.

45–501. When deeds take effect.
45–502. Deed first recorded has priority.
45–503. Instruments not executed or acknowledged according to law not to be recorded.
45–504. Record of deeds as evidence.
45–505. Bonds and contracts.
45–506. Maps and plats not to be recorded.

§ 45–501 [25: 171]. When deeds take effect.

Any deed conveying real property in the District, or interest therein, or declaring or limiting any use or trust thereof, executed and acknowledged and certified as provided in sections 30–216, 45–106, 45–302, 45–401 to 45–404 and delivered to the person in whose favor the same is executed, shall be held to take effect from the date of the delivery thereof, except that as to creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and others interested in said property, it shall only take effect from the time of its delivery to the recorder of deeds for record. (Apr. 29, 1878, 20 Stat. 39, ch. 69; Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 499; June 30, 1902, 32 Stat. 531, ch. 1329.)

COMPILER'S NOTE

In the fourth line, the 1901 code said "provided as aforesaid." The sections thereof that preceded this section were §§ 492–498 which are compiled herein as §§ 30–216, 45–106, 45–302, and 45–401 to 45–404.

AMENDMENT

Act of March 3, 1901 (the 1901 Code) was amended by excluding after the word "effect" the words "and pass the title in the property conveyed to said person from the date of the acknowledgment, provided the same be recorded within three months from said date."

CROSS REFERENCE

Criminal penalty for recording instrument by one who has no color of title, § 22–1302.

NOTES TO DECISIONS

ASSIGNMENT OF RENTS

An assignment of rents is not a transfer of an estate in the land, for the owner may transfer the rents and still retain his entire interests in the land. *Commercial Credit Co.* v. *Campbell* (64 App. D. C. 64, 74 Fed. (2d) 468).

"CREDITORS," CONSTRUED

"Creditors mentioned (in this section) mean creditors who in the interval of time have fastened upon the property for the payment of their debts, and not general creditors." *Crosby* v. *Ridout* (27 App. D. C. 481).

CREDITORS HAVING ACTUAL NOTICE

The delivery of a deed for record is not a prerequisite to its validity as against creditors having actual notice of its existence. *Staples* v. *Warren* (46 App. D. C. 363, distinguishing *Dulany* v. *Morse*, 39 App. D. C. 523) (as to a conveyance constituting a preference under the bankruptcy act).

DEED WITHHELD FROM RECORD

When deed of trust was not recorded until several weeks after the judgment of the bank was recovered, and there was no evidence that the bank ever had actual notice of its existence until after execution was issued and levied, the conveyance would be ineffectual against the bank, or any purchaser at the sale under that judgment. *Hitz* v. *National Metropolitan Bank* (111 U. S. 722, 28 L. Ed. 577, 4 Sup. Ct. 613).

"The fact that a deed once delivered is withheld from record for a long period or until the death of the grantor, either at or without the request of the latter, has no effect to impair its effect as a conveyance of title or to operate any extinguishment." *Walker* v. *Warner* (31 App. D. C. 76), citing *Fitzgerald* v. *Wynne* (1 App. D. C. 107); *Bunten* v. *American Security & Trust Co.* (25 App. D. C. 226).

DELIVERY ESSENTIAL; OBJECT OF ACKNOWLEDGMENT

"The act of delivery is essential to the existence of any deed, bond, or note. Although drawn and signed, so long as it is undelivered, it is a nullity; not only does it take effect only by delivery, but also only on delivery." *Atlas Portland Cement Co.* v. *Fox* (49 App. D. C. 292, 265 Fed. 444, 266 Fed. 1021, quoting from *Young* v. *Clarendon Tp.* 132 U. S. 340, 33 L. Ed. 356, 10 Sup. Ct. 107). "The statute is merely one of notice. As stated by Chief Justice Alvey, in *Fitzgerald* v. *Wynne* (1 App. D. C. 107): 'The great object of the statutes in requiring deeds of conveyance to be acknowledged and recorded is to prevent the practice of fraud upon creditors and purchasers—to furnish the means of notice and protection to innocent third parties.' To prevent fraud and furnish notice when? At the time the credit is extended or the claim reduced to judgment, on the strength of the debtor's apparent title. Not before the title was acquired, but during its record existence."

A deed conveying real property or any interest therein, or declaring or limiting any use or trust thereof, cannot take effect without delivery to the person in whose favor it is executed. *Schooler* v. *Schooler* (C. A. D. C. 1948, 173 A. 2d 299, 84 U. S. App. D. C. 147).

GENERAL INTENT OF REGISTRY

General intent of the statutes of registry is to protect innocent persons against prejudice from secret conveyances, by providing means through which they can know the condition of titles; that where they acquire such knowledge by means other than registry, they do not stand in need of such protection, and do not, as a general rule, come within the purview of the statutes; and that the statutes will be so construed unless their terms exclude such construction. *Manogue* v. *Bryant* (15 App. D. C. 245).

ILLEGAL RECORDING

"The record of an instrument that is not permitted by law to be recorded, or that is not proved for record as required by law, is constructive notice to no one." *Clark* v. *Harmer* (5 App. D. C. 114).

Where trustees released deed of trust securing note held by bank, recording of release did not give such "constructive notice" to bank or its receiver as would start running of limitations against action to recover damages from the trustees individually for alleged wrongful release. *Young* v. *Howard,* 1941 (120 F. 2d 712, 73 App. D. C. 340).

JUDGMENT CREDITORS

"Judgment creditors" are within meaning of the statute, but this applies only to cases where the credit has been extended or judgments have been secured while the record title remained in the debtor. *Atlas Portland Cement* v. *Fox* (49 App. D. C. 292, 265 Fed. 444; for dissenting opinion, see 266 Fed. 1021).

JUDGMENT LIENS

Judgment liens extend to all lands "held under apparently perfect legal title by the judgment debtor at the time of the rendition of the judgment, notwithstanding the same might be subject to some secret trust, capable of being placed upon record." *American Sav. Bank* v. *Eisminger* (35 App. D. C. 51).

NOTICE NOT REQUIRED

"One is not required to take notice of everything which is put upon the records of the Land Office, even concerning his own property. One who has acquired title is entitled to rest upon his rights; nothing afterwards put upon record, otherwise than by himself or his procurement, can legally affect those rights." *Armstrong* v. *Ashley* (22 App. D. C. 368, affd. 204 U. S. 272, 51 L. Ed. 482, 27 Sup. Ct. 270).

NOTICE OF PRIOR EQUITY

"A purchaser with notice of a prior equity superior to the rights of his grantor takes his place and is bound to do that which in equity his grantor was bound to do." *Kresge* v. *Crowley* (47 App. D. C. 13).

NOTICE REQUIRED

"One who deals with land is required to take notice of all conveyances on record at the time at which he deals with it." *Armstrong* v. *Ashley* (22 App. D. C. 368, affd. 204 U. S. 272, 51 L. Ed. 482, 27 Sup. Ct. 270). See also *Sis* v. *Boarman* (11 App. D. C. 116).

PASSAGE OF TITLE

Under District of Columbia law, a deed conveying real property takes effect from the date of the delivery thereof, except that as to creditors, subsequent bona fide purchasers, mortgagees without notice of the deed, and others interested in said property, the deed takes effect from the time of delivery to the recorder of deeds for record. *Owens* v. *Liff* (D. C. Mun. App. 1949, 65 A. 2d 921).

A deed conveying real property takes effect from the date of the delivery thereof and, except as to the statutory limitations, it shall take effect only from the time of its delivery to the recorder of deeds for record. *Glennon* v. *Butler* (D. C. Mun. App. 1949, 66 A. 2d 519).

PARTICULAR FORM NOT REQUIRED

"No particular form or ceremony is essential to the effective delivery of a deed. Words or acts showing an intention that the deed shall be complete and operative constitute a good delivery." *Walker* v. *Warner* (31 App. D. C. 76).

POSSESSION PRIMA FACIE EVIDENCE

Possession by the grantee is prima facie evidence of delivery. *Walker* v. *Warner* (31 App. D. C. 76). See also, *Carusi* v. *Savary* (6 App. D. C. 330).

PRIORITY OF JUDGMENT CREDITOR

A judgment creditor who files a bill in equity to sell the equitable interest of the judgment debtor in real property, has priority over a grantee claiming under a deed executed before (but not filed for record until after) the filing of the bill. *Ohio Nat. Bank* v. *Berlin* (26 App. D. C. 218).

RECORDING AS TO THIRD PARTIES

"The requirement consists in the duty imposed upon the grantee to record, or suffer the penalty prescribed * * * of having the instrument * * * declared a nullity. * * * Though optional with the grantee as to certain parties as to innocent purchasers and creditors it is required for his protection." *Dulany* v. *Morse* (39 App. D. C. 523).

RECORDING OF TRUST DEED FROM STRANGER

Recordation of deed of trust from a stranger to the record title is not constructive notice that the grantor is the grantee of last record owner. *Crosby* v. *Ridout* (27 App. D. C. 481).

SUPERIOR EQUITIES OF PRIOR SPECIFIC LIEN

"A judgment, being but a general lien, must be subordinated to the superior equities of a prior specific lien * * *. The judgment creditor stands in the place of his debtor, and can only take the property of his debtor subject to the equitable charges to which it was justly liable in the hands of the debtor at the time of the rendition of the judgment." *Crosby* v. *Ridout* (27 App. D. C. 481).

SUPERSEDING PRIOR ACT

This section superseded prior recording act and applies to all instruments unrecorded at time of its passage. *Dulany* v. *Morse* (39 App. D. C. 523).

TRUSTEE IN BANKRUPTCY

Trustee in bankruptcy does not, under our recording statutes, take the property as an innocent purchaser, but "subject to all equities, liens, or encumbrances, whether created by operation of law or by the bankrupt, which existed against the property in the hands of the bankrupt." *Crosby* v. *Ridout* (27 App. D. C. 481).

UNEXPRESSED CONDITION

"A deed cannot be delivered to the grantee upon a condition not expressed in the instrument." *Walker* v. *Warner* (31 App. D. C. 76), citing *Newman* v. *Baker* (10 App. D. C. 197); *Bieber* v. *Gans* (24 App. D. C. 517).

§ 45–502 [25: 172]. Deed first recorded has priority.

When two or more deeds of the same property are made to bona fide purchasers for value without notice, the deed or deeds which are first recorded according to law shall be preferred. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 500.)

§ 45–503 [25: 173]. Instruments not executed or acknowledged according to law not to be recorded.

The recorder shall not accept for record or record any instrument which shall not be executed and acknowledged agreeably to law by the person or party therein granting or contracting with respect to his right, title, or interest in the land therein described. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 555; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the ending which stated that "and the knowledge by any person of the fact of such record shall not be either constructive or actual notice of the existence of such instrument."

NOTES TO DECISIONS

ILLEGAL RECORDING

"The record of an instrument that is not permitted by law to be recorded, or that is not proved for record as required by law, is constructive notice to no one." *Clark* v. *Harmer* (5 App. D. C. 114).

INSTRUMENTS TO BE RECORDED

"He is by law required to receive and file, or receive and record * * * such instruments as have been duly executed, and which purport on their face to be of the nature of instruments entitled to be filed or recorded." *Dancy* v. *Clark* (24 App. D. C. 487).

MANDAMUS TO COMPEL RECORDATION

Use of mandamus to compel recordation. *Dancy* v. *Clark* (24 App. D. C. 487).

VALIDITY OF INSTRUMENTS

Recorder has no jurisdiction to pass on validity of instruments presented for record. *Dancy* v. *Clark* (24 App. D. C. 487).

§ 45–504 [25: 174]. Record of deeds as evidence.

The record or a copy thereof of any deed recorded, as mentioned in sections 45–408 and 45–409, shall be evidence thereof, in the same manner and shall have the same effect as if such deed had been originally executed, acknowledged, and recorded according to law. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 519; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the word "and" and substituting the word "or" so that it shall read "the record or a copy."

CROSS REFERENCE

Introduction into evidence, §§ 14–401, 14–402.

§ 45–505 [25: 175]. Bonds and contracts.

Any title bond or other written contract in relation to land may be acknowledged, certified, and recorded in the same manner and with like effect as to notice as deeds for the conveyance of land. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 501; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the words "as deeds for the conveyance of land" which followed the word "manner."

§ 45–506 [25: 176]. Maps and plats not to be recorded.

It shall not be lawful for any person or persons to record any map or plat of the subdivision of land in the District of Columbia in the office of the recorder of deeds for said District, whether such map or plat be attached to a deed or other document or is offered separately for record. (Aug. 24, 1894, 28 Stat. 501, ch. 329.)

CROSS REFERENCE

Maps and plats recorded in surveyor's office, § 1–605 et seq.

Chapter 6.—MORTGAGES AND DEEDS OF TRUST

Sec.

45–601. Mortgages and deeds of trust executed, acknowledged, and recorded same as deeds.
45–602. How to be recorded.
45–603. Estate of mortgagee or trustee conveyed.
45–604. Survival of title.
45–605. In suit for money secured by mortgage or for ejectment, the money due may be paid into court and mortgagee required to release and discharge mortgage.
45–606. In foreclosure suits court may upon motion by defendant, and admission of right of plaintiff, make a final decree without suit being brought to regular hearing.
45–607. Foreclosure—Exceptions to payment.
45–608. Infant trustee or mortgagee may convey on petition to court by mortgagor, beneficiary, or guardian.
45–609. Infant trustee or mortgagee may be compelled by order of court to make conveyance and assurance.
45–610. Mortgagee may redeem prior mortgage.
45–611. Appointment of trustee to sell in event of death of mortgagee or trustee.
45–612. Defenses against foreclosure.
45–613. Replacement of deceased trustee.
45–614. Appointment of new trustee to sell in event of refusal or inability to act or removal of trustee from District, or for other good cause.
45–615. Terms of sale.
45–616. Sale of property and deficiency decree in personam—Same relief in re vendor's lien.
45–617. Creditor buying.
45–618. Expenses and commissions.
45–619. Release after death of mortgagee or trustee.
45–620. Non compos mentis trustee or mortgagee or committee may by order of the chancellor make conveyance or assurance of mortgaged lands.

§ 45–601 [25: 191]. Mortgages and deeds of trust executed, acknowledged, and recorded same as deeds.

Mortgages and deeds of trust to secure debts, conveying any estate in land, shall be executed and may be acknowledged and recorded in the same manner as absolute deeds; and they shall take effect both as between the parties thereto and as to others, bona fide purchasers and mortgagees and creditors, in the

same manner and under the same conditions as absolute deeds. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 521; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, read as follows: "Mortgages and deeds of trust to secure debts, conveying any estate in land, in order to be effectual, shall be executed and recorded in the same manner as absolute deeds; and they shall take effect and pass title to the property conveyed, both as between the parties thereto and as to others, bona fide purchasers and mortgagees and creditors, in the same manner and under the same conditions as absolute deeds."

CROSS REFERENCE

Statute of frauds, §§ 12–301, 12–303.

NOTES TO DECISIONS

Deed declared a mortgage. *Dulany* v. *Morse* (39 App. D. C. 523).

§ 45–602 [25: 192]. How to be recorded.

It shall be the duty of the recorder of deeds to record all such mortgages and deeds of trust in the same manner as absolute deeds. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 523; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the ending which stated "and, after each mortgage, to leave a blank space wherein may be recorded any assignment or release of said mortgage."

§ 45–603 [25: 193]. Estate of mortgagee or trustee conveyed.

The legal estate conveyed to a mortgagee, his heirs and assigns, or to a trustee to secure a debt, his heirs and assigns, shall be construed and held to be a qualified fee simple, determinable upon the release of the mortgage or deed of trust, as hereinafter provided, or the appointment of a new trustee by judicial decree for the causes hereinafter mentioned: *Provided,* That nothing in this section contained shall prevent the passing of an absolute and unqualified estate in fee-simple under a deed made by the mortgagee or trustee in pursuance of the powers conferred by the mortgage or deed of trust. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 522; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by adding proviso.

CROSS REFERENCE

Removal of trustee, see § 45–614.

NOTES TO DECISIONS

MORTGAGEE OUT OF POSSESSION

Mortgagee out of possession has no such interest as will permit him to have partition; "much less is the beneficiary under a deed of trust entitled to have partition; for he has no estate whatever, and no possibility even of a right of possession. Nor has the trustee in the deed any such right * * *." *Sis* v. *Boarman* (11 App. D. C. 116).

POWERS AND DUTIES OF TRUSTEES

Powers and duties of trustees in deeds of trust as to time of sale and price of property are more restricted than trustees for distribution and partition, and the duties of the first type of trustees are measured by the deed of trust. *Anderson* v. *White* (2 App. D. C. 408).

Powers and duties of trustees are measured by terms of instrument appointing them, and they do not have the same discretion in exercise of duties as other trustees. *Wheeler* v. *McBlair* (5 App. D. C. 375, affd. 172 U. S. 643, 43 L. Ed. 1182, 19 Sup. Ct. 882).

RECOVERY OF POSSESSION BY MORTGAGEE

Mortgagee and mortgagor do not stand in relation of landlord and tenant, and mortgagee, after default, may not recover possession under Landlord and Tenant Act of the District, but must bring ejectment or foreclosure. *Willis* v. *Eastern Trust & Banking Co.* (169 U. S. 295, 42 L. Ed. 752, 18 Sup. Ct. 347).

SALE OF MORTGAGED REALTY

A proposed contract of sale of mortgaged realty, in good faith, and in which mortgagor will participate, does not violate this section. *Pearson* v. *Small* (65 App. D. C. 243, 82 Fed. (2d) 849).

SALE UNDER DEED OF TRUST

The exercise of a power of sale under a deed of trust by a trustee who is, or is associated with, the owner of the debt secured, is improper. *Canelacos* v. *Hollway,* 1942 (123 F. 2d 934, 75 U. S. App. D. C. 58, 138 A. L. R. 1010).

A fair sale under deed of trust, to an innocent purchaser for value, should not be set aside because of a trustee's interest in the debt which has been disclosed to the debtor, since under such circumstances there is no good reason for disappointing the reasonable expectations of the purchaser. *Canelacos* v. *Hollway,* 1942 (123 F. 2d 934, 75 U. S. App. D. C. 58, 138 A. L. R. 1010).

Where trustees did not conceal their interest in property from debtor executing deed of trust, sale under deed of trust was well advertised and was conducted by reputable auctioneers, debtor made no objection to sale until nearly five months after sale, but expressed approval to purchasers, innocent purchasers for value and strangers to the trustees were entitled to specific performance of their contract of purchase together with their actual damages, if any, but not punitive damages, and judgment requiring the purchasers to account for rents and profits, less certain compensation and expenses on theory that the sale was void, was erroneous. *Canelacos* v. *Hollway,* 1942 (123 F. 2d 934, 75 U. S. App. D. C. 58, 138 A. L. R. 1010).

TRUSTEE HOLDS LEGAL TITLE

Trustee holds legal title and a deed by it conveyed whatever title it had. *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (199 U. S. 247, 50 L. Ed. 175, 26 Sup. Ct. 25), affg. (23 App. D. C. 587).

"The estate of the trustee is a naked legal title without any beneficial interest whatever * * * and they have always held the legal title in strict subordination to the beneficial interest of the debtor and creditor in the transaction." *Marshall* v. *Kraak* (23 App. D. C. 129).

TRUSTEES SALES FOR PARTITION OR DISTRIBUTION

In making a sale the trustee must not place himself in a position where his personal interest conflicts with his duty. *Jackson* v. *Smith* (254 U. S. 586, 65 L. Ed. 418, 40 Sup. Ct. 10, revg. 48 App. D. C. 565).

Difference between rule applicable to cases of sales by trustees for partition or distribution and sales under ordinary trust to secure loans and enforceable upon stipulated terms. In the former, interests of the beneficiaries are identical, and trustee is charged with absolute duty to arrange and conduct sale; in the latter it is duty of trustee to conduct sale in manner and upon notice prescribed in the trust. *Smith* v. *Jackson* (48 App. D. C. 565, revd. on other grounds, 254 U. S. 586, 65 L. Ed. 418, 40 Sup. Ct. 10).

Sale by a trustee substituted for the survivor of two trustees, who refused to act, is valid, without there being a substitute for the deceased trustee. *Stokes* v. *Hinden* (66 App. D. C. 34, 85 Fed. (2d) 200).

§ 45–604 [25: 194]. Survival of title.

Whenever a mortgage or deed of trust to secure a debt is executed to two or more mortgagees or trustees in fee simple, upon the death of any one or more of them the legal title and the trust attached to it shall be held to survive to the survivor or sur-

vivors and the heirs of the last survivor, subject to the provisions aforesaid. (Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 533.)

NOTES TO DECISIONS

SUBSTITUTED TRUSTEE

The wording indicates no intention that a trustee should be substituted for each of the original Trustees, where there are more than one, but only for the surviving trustee. *Stokes* v. *Hinden* (66 App. D. C. 34, 85 Fed. (2d) 200).

§ 45–605 [25: 195]. In suit for money secured by mortgage or for ejectment, the money due may be paid into court and mortgagee required to release and discharge mortgage.

Where any action shall be brought on any bond for payment of the money secured by mortgage, or performance of the covenants therein contained, or where any action of ejectment shall be brought in any court of record by any mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns, for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit shall be then depending in any court of equity, for or touching the foreclosure or redeeming of such mortgaged lands, tenements, or hereditaments; if the person or persons having right to redeem such mortgaged lands, tenements, or hereditaments, and who shall appear and become defendant or defendants in such action, shall at any time, pending such action, pay unto such mortgagee or mortgagees, or, in case of his, her, or their refusal, shall bring into court where such action shall be depending, all the principal monies and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law or in equity upon such mortgage (such money for principal, interest, and costs to be ascertained and computed by the court where such action is or shall be depending, or by the proper officer by such court to be appointed for that purpose) the monies so paid to such mortgagee or mortgagees, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the court shall and may discharge every such mortgagor, or defendant, of and from the same accordingly; and shall and may, by rule or rules of the same court, compel such mortgagee or mortgagees, at the costs and charges of such mortgagor or mortgagors, to assign, surrender, or reconvey such mortgaged lands, tenements, and hereditaments, and such estate and interest, as such mortgagee or mortgagees have or hath therein, and deliver up all deeds, evidences, and writings, in his, her, or their custody, relating to the title of such mortgaged lands, tenements, and hereditaments, unto such mortgagor or mortgagors, who shall have paid or brought such monies into the court, his, her, or their heirs, executors, or administrators, or to such other person or persons, as he, she, or they, shall for that purpose nominate or appoint. (7 Geo. 2, ch. 20, § 1, 1734; Kilty's Rep. 251; Alex. Br. Stat. 726; Comp. Stat., D. C., p. 395, § 1.)

CROSS REFERENCES

Payments into court, §§ 16–1401 to 16–1403 and notes. See note to § 45–309.

§ 45–606 [25: 196]. In foreclosure suits court may upon motion by defendant, and admission of right of plaintiff, make a final decree without suit being brought to regular hearing.

Where any bill or bills, suit or suits, shall be filed, commenced, or brought in the court of equity, by any person or persons having or claiming any estate, right, or interest, in any lands, tenements, or hereditaments, under or by virtue of any mortgage or mortgages thereof, to compel the defendant or defendants in such suit or suits (having or claiming a right to redeem the same) to pay the plaintiff or plaintiffs in such suit or suits, the principal money and interest due on any such mortgage, or the principal money and interest due on such mortgage, together with any sum or sums of money due on any encumbrance or specialty, charged or chargeable on the equity of redemption thereof, and in default of payment thereof, to foreclose such defendant or defendants of his, her, or their right or equity of redeeming such mortgaged lands, tenements, or hereditaments; such equity court, where such suit or suits shall be depending, upon application made to such court by the defendant or defendants in such suit, having a right to redeem such mortgaged lands, tenements, or hereditaments, and upon his or their admitting the right and title of the plaintiff or plaintiffs in such suit, may and shall at any time or times, before such suit or cause shall be brought to hearing, make such order or decree therein, as such court or courts might or could have made therein, in case such suit or cause had then been regularly brought to hearing before such court or courts; and all parties to such suit or suits shall be bound by such order or decree so made, to all intents and purposes, as if such order or decree had been made, by such court, at or subsequent to the hearing of such cause or suit. (7 Geo. 2, ch. 20, § 2, 1734; Kilty's Rep. 251; Alex. Br. Stat. 727; Comp. Stat. D. C., p. 396, § 2.)

RULES OF CIVIL PROCEDURE

Forms of actions abolished, see Rule 2.

§ 45–607 [25: 197]. Foreclosure — Exceptions to payment.

Sections 45–605, 45–606 or any thing therein contained, shall not extend to any case where the person or persons, against whom the redemption is or shall be prayed, shall (by writing under his, her, or their hands, or the hand of his, her, or their attorney, agent, or solicitor, to be delivered before the money shall be brought into such court at law, to the attorney or solicitor for the other side) insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums, than what appear on the face of the mortgage, or shall be admitted on the other side; nor to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; nor shall be any prejudice to any subsequent mortgagee or mortgagees, or subsequent encumbrancer. (7 Geo. 2, ch. 20, § 3, 1734; Kilty's Rep. 251; Alex. Br. Stat. 728; Comp. Stat., D. C., p. 397, § 3.)

§ 45–608 [25: 198]. Infant trustee or mortgagee may convey on petition to court by mortgagor, beneficiary, or guardian.

It shall and may be lawful to and for any person or persons, under the age of one and twenty years, by the direction of the court of chancery, signified by an order made upon hearing all parties concerned, on the petition of the person or persons for whom such infant or infants shall be seized or possessed in trust, or of the mortgagor or mortgagors, guardian or guardians of such infant or infants, or person or persons entitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any infant or infants are or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such manner as the said court of chancery shall, by such order so to be obtained, direct, to any other person or persons; and such conveyance or assurance so to be had and made, as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said infants or infant were, at the time of making such conveyance, or assurance, of the full age of one and twenty years. (7 Ann, ch. 19, § 1, 1708; Kilty's Rep. 247; Alex. Br. Stat. 679; Comp. Stat., D. C., p. 79, § 13.)

§ 45–609 [25: 199]. Infant trustee or mortgagee may be compelled by order of court to make conveyance and assurance.

All and every such infant or infants, being only trustee or trustees, mortgagee or mortgagees, as aforesaid, shall and may be compelled by such order so, as aforesaid, to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgagees of full age are compellable to convey or assign their trust, estates, or mortgages. (7 Ann. ch. 19, § 2, 1708; Kilty's Rept. 247; Alex. Br. Stat. 680; Comp. Stat. D. C., p. 79, § 14.)

§ 45–610 [25: 200]. Mortgagee may redeem prior mortgage.

If it so happen there be more than one mortgage at the same time made, by any person or persons to any person or persons, of the same lands and tenements, the several late or under mortgagees, his, her, or their heirs, executors, administrators, or assigns, shall have power to redeem any former mortgage or mortgages, upon payment of the principal debt, interest, and costs of suit, to the prior mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns; any thing therein contained to the contrary thereof in any wise notwithstanding. (4 and 5 W. and M., ch. 16, § 4, 1692; Kilty's Rep. 242; Alex. Br. Stat. 579; Comp. Stat., D. C. 237, § 26.)

§ 45–611 [25: 201]. Appointment of trustee to sell in event of death of mortgagee or trustee.

In case of the death of a sole mortgagee or trustee, or the last survivor of several, if the debt secured by the mortgage or deed of trust shall not have been paid, the party entitled thereto may file a petition in the District Court of the United States for the District of Columbia, setting forth under oath the execution of the mortgage or deed of trust, the death of the mortgagee or trustee, and the fact that the debt secured by the said mortgage or deed of trust remains unpaid, and such other fact as may be necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee to execute the trusts of the said mortgage or deed of trust. It shall not be necessary to make the heirs at law or devisees of the deceased mortgagee or trustee parties to such proceeding. The court may thereupon lay a rule upon the debtor or parties whose property is bound by said mortgage or deed of trust, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of such rule, why the prayer of said petition should not be granted. If said party or parties can not be found in said District, service of said rule shall be by publication, according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of said petition, the court may determine in a summary way whether said debt remains unpaid, and if satisfied thereof the said court may, by decree, appoint a new trustee in the place of the deceased mortgagee or trustee, and vest in him all the title at law and in equity, and all the powers that had been conveyed to and vested in the deceased mortgagee or trustee. (Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 534; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by inserting after the words "heirs at law" the words "or devisees."

RULES OF CIVIL PROCEDURE

Forms of actions abolished, see Rule 2.

CITED

Taylor v. *Drury* (56 App. D. C. 266, 12 Fed. (2d) 489).

NOTES TO DECISIONS

IN GENERAL

Quaere: Whether this section and § 538 of the Code (§ 45–614) were intended to supersede the former course of procedure in equity for the removal and appointment of trustees. *Marshall* v. *Kraak* (23 App. D. C. 129).

NEW TRUSTEES APPOINTED

Where trustees appointed under deed of trust died, new trustees were appointed to execute the trusts, and were invested with all the powers which had been conveyed to the deceased trustees. *Dawson* v. *Taylor* (55 App. D. C. 237, 4 Fed. (2d) 430).

NO PROVISION REQUIRING NOTICE

The statute does not contain a provision requiring notice, actual or constructive, to all parties in interest. *Totten* v. *Harlowe* (66 App. D. C. 373, 88 Fed. (2d) 755).

PUBLICATION UPON ABSCONDING TRUSTEE

Publication need not be had upon an absconding trustee, whose whereabouts is unknown. *Marshall* v. *Kraak* (23 App. D. C. 129).

RES JUDICATA

Where mortgagor's successor, in suit by noteholder's successor for appointment of substitute trustee to sell the realty under deed of trust, raised question of laches and opposed appointment of substitute trustee, an unappealed from summary judgment appointing substitute trustee and directing him to sell the realty was res judicata, precluding mortgagor's successor from raising same

question in subsequent suit to enjoin the sale. *Mergardt* v. *Colonial-American Nat. Bank of Roanoke,* 1944 (140 F. 2d 701, 78 U. S. App. D. C. 348).

TRUSTEES' REFUSAL TO PERFORM

Trustees' "refusal or disability to perform the trust is the equivalent in equity of a renunciation of the legal estate." *Marshall* v. *Kraak* (23 App. D. C. 129).

§ 45–612 [25: 202]. Defenses against foreclosure.

If matter of defense against the foreclosure of said mortgage or the enforcement of said deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 535.)

NOTES TO DECISIONS

FORECLOSURE

Foreclosure may be had by proceeding in equity, without calling on trustees to sell under power of sale in deed of trust. *Utermehle* v. *McGreal* (1 App. D. C. 359, revd. on other grounds, 167 U. S. 688, 42 L. Ed. 326, 17 Sup. Ct. 961).

On petition by holder of note secured by mortgage to participate in proceeds of sale of mortgaged property in foreclosure proceedings instituted by holder of other note, the bar of limitation, or lapse of time, does not apply as in case of an action on the note, but to the remedy for the enforcement of an equitable right in land under the mortgage; hence the same period that would bar an ejectment is required. *Cropley* v. *Eyster* (9 App. D. C. 373).

LIMITATIONS OR LACHES

Upon the ground of lapse of time alone, there is no room for the joint application of the statute of limitations and the doctrine of laches where they would conflict with each other, and the equitable doctrine would have the effect of reducing the statutory period of limitations. *Sis* v. *Boarman* (11 App. D. C. 116).

§ 45–613 [25: 203]. Replacement of deceased trustee.

In case of the death of any trustee appointed as aforesaid without having executed the trusts of the mortgage or deed of trust, a like proceeding to that provided for in section 45–611 may be had to appoint a successor to him in the said trusts. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 536.)

§ 45–614 [25: 204]. Appointment of new trustee to sell in event of refusal or inability to act or removal of trustee from District, or for other good cause.

In case of the refusal of any trustee named in a deed of trust to secure a debt to accept the trusts thereby created, or of his resignation of said trust after accepting the same, which is hereby allowed, or of his removal from the District of Columbia, or of his inability to act, or for any other good cause shown, it shall be lawful for any party interested in the execution of such trusts to apply to said court by petition, setting forth the appropriate facts and asking for the appointment of a new trustee in his place, and a like proceeding shall be had for the appointment of such trustee as in the case of the death of a trustee, as directed in sections 45–611 and 45–619 of this title: *Provided*, That any rule to show cause issued in such case shall be served upon the existing trustee, as provided in said sections. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 538; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the words "said trust being executed" and also by striking out at the end of said section the words "well as upon the parties interested in the trust, if he and they can be found within the said District" and inserting in lieu thereof the words "provided in said sections."

CITED

Lee v. *Mitcham* (69 App. D. C. 17, 98 Fed. (2d) 298, 117 A. L. R. 1427).

NOTES TO DECISIONS

DISCRETION OF COURT

Where deed of trust named first and second successor trustees, one of whom was in jail and the other awaiting trial, the court could in its reasonable discretion appoint a new trustee. *Wright* v. *Pitts* (62 App. D. C. 217, 66 Fed. (2d) 197).

EFFECT OF ORDER

Appointment of substitute trustee—conclusiveness of order. *Bowen* v. *Mount Vernon Sav. Bank* (66 App. D. C. 139, 85 Fed. (2d) 396).

LACHES

Alleged laches of noteholder's successor in seeking appointment of substitute trustee to sell property under deed to trust in accordance with a prior decree did not go to court's jurisdiction to order a sale under such decree. *Mergardt* v. *Colonial-American Nat. Bank of Roanoke,* 1944 (140 F. 2d 701, 78 U. S. App. D. C. 348).

PARTY INTERESTED

Where holder of one of 490 notes brings suit to procure substitution of trustees, it was not necessary to have a class or representative suit. *Totten* v. *Harlowe* (66 App. D. C. 373, 88 Fed. (2d) 755).

RES JUDICATA

Where mortgagor's successor, in suit by noteholder's successor for appointment of substitute trustee to sell the realty under deed of trust, raised question of laches and opposed appointment of substitute trustee, an unappealed from summary judgment appointing substitute trustee and directing him to sell the realty was res judicata, precluding mortgagor's successor from raising same question in subsequent suit to enjoin the sale. *Mergardt* v. *Colonial-American Nat. Bank of Roanoke,* 1944 (140 F. 2d 701, 78 U. S. App. D. C. 348).

§ 45–615 [25: 205]. Terms of sale.

If the length of notice and terms of sale are not prescribed by the mortgage or deed of trust, or be not left therein to the judgment or discretion of the mortgagee or trustee, any person interested in such sale may apply to the court, before such sale is advertised, to fix the terms of sale and determine what notice of sale shall be given. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out at the end thereof the words "which terms shall be such as to secure to the creditor the payment of his debt in cash as nearly as may be consistent with justice; and the determination of the court in the premises shall be binding on all parties in interest."

NOTES TO DECISIONS

JUDICIAL SALE DISTINGUISHED

Where trustee appointed by the court to succeed surviving trustee who refused to serve made a sale, such sale was not a judicial sale within meaning of Judicial Sales Act (U. S. C., title 28, §§ 847–849), but a sale in accordance with the terms of the trust and the question of notice is governed by this section. *Stokes* v. *Hinden* (66 App. D. C. 34, 85 Fed. (2d) 200).

§ 45–616 [25: 206]. Sale of property and deficiency decree in personam—Same relief in re vendor's lien.

In all cases of application to said court to foreclose any mortgage or deed of trust, the equity court shall have authority, instead of decreeing that the mortgagor be foreclosed and barred from redeeming the mortgaged property, to order and decree that said property be sold and the proceeds be brought into court to be applied to the payment of the debt secured by said mortgage; and if, upon a sale of the whole mortgaged property, the net proceeds shall be insufficient to pay the mortgage debt, the court may enter a decree in personam against the mortgagor or other party to the suit who is liable for the payment of the mortgage debt for the residue of said debt remaining unsatisfied after applying to said debt the proceeds of such sale: *Provided,* That the complainant would be entitled to maintain an action at law or suit in equity for said residue; which decree shall have the same effect and be enforced by execution in the same manner as a judgment at law. And in suits to enforce a vendor's lien on real estate for unpaid purchase money similar relief may be given by a decree of sale and a decree in personam for the unsatisfied residue of the purchase money due. (Mar. 3, 1901, 31 Stat. 1204, ch. 854, § 95.)

NOTES TO DECISIONS

JUDICIAL SALE DISTINGUISHED

Where trustee under deed of trust obtained leave of court in receivership proceeding to sell real estate, such sale did not constitute a judicial sale. *Huffines* v. *American Security & Trust Co.* (63 App. D. C. 224, 71 Fed. (2d) 345).

PRIOR LAW

Prior to enactment of this act, R. S. § 808 applied to foreclosure of mortgages in the District of Columbia. *Dodge* v. *Freedman's Sav. & Trust Co.* (106 U. S. 445, 27 L. Ed. 206, 1 Sup. Ct. 335); *Shepherd* v. *Pepper* (133 U. S. 626, 33 L. Ed. 706, 10 Sup. Ct. 438).

PURPOSE

This section was intended to empower the court to combine in a single action relief by way of foreclosure and personal judgment. *Hoffman* v. *Sheahin,* 1941 (121 F. 2d 861, 73 App. D. C. 374).

TIME TO ENFORCE LIABILITY

This section does not extend the time for bringing an independent action to enforce personal liability after foreclosure by nonjudicial sale. *Hoffman* v. *Sheahin,* 1941 (121 F. 2d 861. 73 App. D. C. 374).

§ 45–617 [25: 207]. Creditor buying.

If a creditor, for the payment of whose debt property shall be sold under a deed of trust, shall become the purchaser at such sale, he shall be entitled to credit the amount of the purchase money against the debt, and shall be only required to pay to the trustee the excess of the purchase money over his debt, together with such additional amount as may be necessary to defray the expenses of the sale. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 544.)

NOTES TO DECISIONS

CREDITOR AS PURCHASER

When the creditor becomes a purchaser at the sale, he is entitled to credit the amount of the purchase money to the debt. *Orlove* v. *National Sav. & Trust Co.* (68 App. D. C. 387, 98 Fed. (2d) 259); *Kosters* v. *Hoover* (69 App. D. C. 66, 98 Fed. (2d) 595).

LIABILITY FOR PROFITS FROM UNLAWFUL SALE

Attorneys who knowingly confederated with receiver held liable for all profits resulting from purchase at foreclosure sale and resale of property, with interest and costs. *Jackson* v. *Smith* (254 U. S. 586, 65 L. Ed. 418, 41 Sup. Ct. 200, revg. 48 App. D. C. 565).

§ 45–618 [25: 208]. Expenses and commissions.

Among the lawful expenses of a sale under a mortgage or deed of trust is to be allowed a commission on the proceeds of sale to the mortgagee or trustee. Where the mortgage or deed of trust does not fix the rate of commission the mortgagee or trustee shall be allowed a commission of five per centum on the first five hundred dollars and three per centum on the balance of the purchase money actually paid by the purchaser at any sale, and one and one-half per centum on the amount of the purchase money not paid into the hands of the mortgagee or trustee, but credited on the debt, when the creditor becomes a purchaser.

When the property is lawfully advertised for sale under a mortgage or deed of trust, and the sale is prevented by payment of the debt or is suspended or postponed by arrangement between the parties interested, the trustee shall be entitled to a commission of one per centum on the amount of the debt secured in addition to the expenses incurred by him, and he shall be entitled to such allowance as often as such advertisement shall be made necessary by the default of the debtor: *Provided,* That if a sale shall actually take place under any such advertisement, he shall not be entitled to more than one such allowance in addition to his commission on the proceeds of an actual sale. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 545.)

NOTES TO DECISIONS

ALLOCATION

In action to foreclose a trust deed, it was for the District Court to allocate compensation and expenses of receiver who was appointed on defendant's motion, in accordance with justice, unburdened by any fixed rule. *Camp* v. *Canelacos,* 1942 (131 F. 2d 236, 76 U. S. App. D. C. 337).

§ 45–619 [25: 209]. Release after death of mortgagee or trustee.

In case of the death of a sole mortgagee or trustee or the last survivor of several, as aforesaid, if the debt secured by the mortgage or deed of trust shall have been paid, and it is desired by the party paying the same to obtain a deed of release, the said party may file a petition in said District Court of the United States for the District of Columbia, setting forth, under oath, the execution of said mortgage or deed of trust, the death of the mortgagee or trustee, the payment of the debt, and any other fact necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee in the place of the deceased mortgagee or trustee to execute a deed of release of said mortgage or deed of trust. It shall not be necessary to make the heirs or devisees of the deceased mortgagee or trustee a party to such proceeding. The court may thereupon lay a rule upon the creditor secured by said mortgage or deed of trust, unless he shall voluntarily appear and

admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of said rule, why the prayer of the petition should not be granted. If said party can not be found in said District, service of said rule shall be by publication according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of the petition, the court may determine in a summary way whether said debt has been paid, and if satisfied thereof may, by decree, appoint a trustee in the place of the deceased mortgagee or trustee and invest in him the title, in law and in equity, that was in the deceased mortgagee or trustee, for the purpose of executing a deed of release as aforesaid. If matter of defense against the prayer for a release of said mortgage or deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 537; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by inserting after the word "heirs" the words "or devisees."

§ 45–620 [25: 210]. Non compos mentis trustee or mortgagee or committee may by order of the chancellor make conveyance or assurance of mortgaged lands.

It shall and may be lawful to and for any person or persons, being ideot, lunatick, or non compos mentis, or for the committee or committees of such person or persons, in his, her, or their name or names, by the direction of the chancellor, signified by an order made, upon hearing all parties concerned, on the petition of the person or persons, for whom such person or persons, being ideot, lunatick, or non compos mentis, shall be seized or possessed in trust, or of the mortgagor or mortgagors, or of the person or persons intitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any such person or persons being ideot, lunatick, or non compos mentis, is or are, or shall be seized or possessed by way of mortgage, or of the person or persons intitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such manner as the chancellor shall, by such order so to be obtained, direct, to any other person or persons; and such conveyance or assurance, so to be had and made as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said person or persons being ideot, lunatick, or non compos mentis, was or were, at the time of the making such conveyance or assurance, of sane mind, memory, and understanding, and not ideot, lunatick, or non compos mentis, or had by him, her, or themselves executed the same. All and every person and persons being ideot, lunatick, or non compos mentis, and only trustee or trustees, mortgagee or mortgagees, as aforesaid, or the committee and committees of all and every such person and persons, being ideot, lunatick, or non compos mentis, and only such trustee or mortgagee as aforesaid, shall and may be impowered and compelled, by such order so as aforesaid to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgagees of sane memory are compellable to convey, surrender, or assign their trust estates or mortgages. (4 Geo. 2, ch. 10, §§ 1 and 2, 1731; Kilty's Rep. 249; Alex. Br. Stat. 700; Comp. Stat. D. C., p. 78, § 11.)

Chapter 7.—RECORDER OF DEEDS

Sec.
45–701. Appointment and duties.
45–701a. Compensation.
45–701b. Purchase of machines—Personnel.
45–702. Deputy recorder—Duties.
45–703. Second deputy—His duties and powers.
45–704. Vacancy.
45–705. Public records to be open for inspection.
45–706. Typewritten records.
45–707. Certain records to be recopied—Expense.
45–708. Fees of recorder of deeds.
45–709. Fees and emoluments of recorder of deeds deposited with collector of taxes.
45–710. Estimates for annual appropriations—Building, equipment, and supplies.
45–711. Recordation of service and discharge certificates — Fee — Constructive notice — Certified copies.
45–712. Office closed on Saturdays.
45–713. Time extended for recording writings.

§ 45–701 [25: 221]. Appointment and duties.

There shall be a recorder of deeds of the District, appointed by the President, by and with the advice and consent of the Senate, who shall record all deeds, contracts, and other instruments in writing affecting the title or ownership of any real estate or personal property in the District which shall have been duly acknowledged and certified, and who shall perform all requisite services connected therewith, and shall have charge and custody of all the records, papers, and property appertaining to his office. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 548.)

CROSS REFERENCE

Recording instruments relating to personal property, § 42–101 et seq.

RECORDER OF DEEDS, LEASE OF OFFICE SPACE

The recorder of deeds for the District of Columbia is hereby authorized to lease one additional floor in the Century Building, located at 412 Fifth Street Northwest, Washington, District of Columbia, consisting of nine rooms, for the use and occupancy of his office; and he is authorized and directed to pay for said use and occupancy, out of the fees and emoluments of his office, not to exceed $1,500 per annum. (Mar. 4, 1923, 42 Stat. 1531, ch. 292.)

§ 45–701a. Compensation.

After September 29, 1943, the Recorder of Deeds of the District of Columbia, appointed in accordance with section 45–701, shall be paid a salary at the rate of $8,000 per annum. (Sept. 29, 1943, 57 Stat. 569, ch. 249, § 1.)

§ 45–701b. Purchase of machines—Personnel.

The Recorder of Deeds of the District of Columbia is authorized and empowered to purchase such machines and equipment as he may deem necessary or expedient for the efficient, expeditious, and economical recording of all deeds and other instruments of writing entitled by law to be recorded, and to employ such personnel as may be required to operate

the same and to perform necessary services in connection therewith; and all deeds and other instruments of writing entitled by law to be recorded in the Office of the Recorder of Deeds which are recorded by means of such machines or equipment are hereby declared to be legally recorded. (Aug. 4, 1947, 61 Stat. 730, ch. 456.)

§ 45–702 [25: 222]. Deputy recorder—Duties.

The recorder of deeds is authorized to appoint a deputy recorder, and all deeds of conveyance, leases, powers of attorney, and other written instruments required to be filed and recorded, and all copies of instruments and records and certificates authorized by law, filed, recorded, made, and certified by the deputy recorder shall have the same legality, force, and effect as if performed by the recorder. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 549.)

§ 45–703 [25: 223]. Second deputy—His duties and powers.

The recorder of deeds is authorized to appoint a second deputy recorder, who may do and perform any and all acts which the recorder is authorized to do, and all such acts by the said second deputy recorder shall have the same legality, force, and effect as if performed by the recorder; the compensation of said second deputy recorder to be at the rate of $2,000 per annum. And with the approval of the Attorney General of the United States, the recorder of deeds may from time to time fix the number and compensation of all other employees of his office: *Provided,* That the employees of said office shall not be in excess of the number actually necessary for the proper conduct of said office of the recorder of deeds: *Provided, however,* That the compensation of the first deputy recorder of deeds and that of the second deputy recorder of deeds shall not be changed except by Act of Congress. (Mar. 3, 1925, 43 Stat. 1102, ch. 416.)

COMPILER'S NOTE

The act of March 2, 1927, 44 Stat. 1301, provided that for the fiscal year 1928 the personal services in the office of the recorder of deeds should be paid in accordance with the Classification Act. A similar provision for the year 1929 is contained in the act of May 21, 1928, 45 Stat. 649.

§ 45–704 [25: 224]. Vacancy.

In case of a vacancy in the office of the recorder by death, resignation, or other cause the deputy recorder shall act until a recorder shall be duly appointed and qualified. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 550; Apr. 24, 1926, 44 Stat. 322, ch. 176, § 2.)

AMENDMENT

Act of March 3, 1901, was amended by striking out proviso which stated that "no additional expense shall be incurred by the District for said deputy and no other fees shall be allowed than are now provided by law."

§ 45–705 [25: 225]. Public records to be open for inspection.

All public records which have reference to or in any way relate to real or personal property in the District of Columbia, whether the same be in the office of the recorder of deeds or in some other public office in the District of Columbia, shall be open to the public for inspection free of charge. (Mar. 3, 1901, 31 Stat. 1277, ch. 854, § 556.)

§ 45–706 [25: 226]. Typewritten records.

The recorder of deeds is authorized and empowered to purchase and use in his office, for the recording of deeds and other instruments of writing required by law to be recorded in said office, typewriting machines, to be paid for as appropriations may be made from time to time; and all deeds and other instruments of writing entitled by law to be recorded in said office which shall be recorded by typewriting machines are hereby declared to be legally recorded.

The recording of all instruments filed for record in the office of the recorder of deeds shall be done with book typewriter, except in those cases where, on account of the character of the work, the use of a pen shall be found by the recorder to be necessary. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 551; June 27, 1906, 34 Stat. 489, ch. 3553.)

AMENDMENT

Act of March 3, 1901, did not contain the second paragraph of this section.

§ 45–707 [25: 227]. Certain records to be recopied—Expense.

The recorder of deeds of the District of Columbia is authorized and directed to recopy such of the records in his office as may, in his judgment and that of the District Court of the United States for the District of Columbia, or one of its justices appointed by it for that purpose, need recopying in order to preserve the originals from destruction: *Provided,* That the expense thereof shall not in any one fiscal year exceed the sum of one thousand dollars certified to by the said District Court, or by one of its justices appointed by it for that purpose, and audited and allowed by the General Accounting Office. (Feb. 26, 1907, 34 Stat. 994, ch. 1636; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

AMENDMENT

The 1921 act substituted "general accounting office" for "accounting officer of the Treasury."

§ 45–708 [10: 14]. Fees of recorder of deeds.

The legal fees for the services of the recorder shall be as follows:

For filing, recording, and indexing, or for making certified copy of any instrument containing two hundred words or less, $1, and 20 cents for each additional hundred words, to be collected at the time of filing, or when the copy is made.

For each certificate and seal, 50 cents.

For searching records extending back two years or less next preceding current date, 50 cents, and 15 cents for each additional year, to be paid by the party for whom the search may be made.

For recording a plat or survey, 20 cents for each course such survey may contain.

For recording a town plat, 25 cents for each lot such plat may contain.

For taking any acknowledgment, 50 cents.

For filing and indexing a bill of sale of chattels, or a mortgage or deed of trust thereof, or a conditional bill of sale of chattels or any release or satisfaction of any such, $1.50.

For filing and indexing any other paper required by law to be filed in his office, 50 cents.

In addition to the fees herein required, all corporations hereafter incorporated in the District of Columbia shall pay to the recorder of deeds at the time of the filing of the certificate of incorporation 50 cents on each thousand dollars of the amount of capital stock of the corporation as set forth in its said certificate: *Provided, however,* That the fee so paid shall not be less than $50: *Provided further,* That the recorder of deeds shall not file or record any certificate of organization of any incorporation until it has been proved to his satisfaction that all the capital stock of said company has been subscribed for in good faith, and not less than 10 per centum of the par value of the stock has been actually paid in cash, and the money derived therefrom is then in the possession of the persons named as the first board of trustees. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 552; Feb. 4, 1905, 33 Stat. 689, ch. 299; June 17, 1935, 49 Stat. 384, ch. 265.)

AMENDMENTS

The 1905 amendment added the last paragraph.

The 1935 amendment raised the various fees and added the eighth paragraph.

CROSS REFERENCES

Fees for recording instruments relating to personal property, § 42–101 et seq.

Fees under Motor Vehicle Lien Law, § 40–712.

Recording fees under Money Lenders Law, § 26–605.

The last paragraph of this section does not apply to credit unions, § 26–505.

NOTES TO DECISIONS

ENTRANCE FEE

Entrance fee is not a tax, but compensation for a privilege applied for and granted, and it does not represent either property or business being done, it is immaterial that in fixing its amount no apportionment is made between the property owned or the business done within the State and that owned or done elsewhere. *Atlantic Ref. Co.* v. *Virginia* (302 U. S. 22, 82 L. Ed. 24, 58 Sup. Ct. 75).

Entrance fee is not a charge laid upon interstate commerce; nor a charge furtively directed against interstate commerce, and it should apply to foreign corporations as well as domestic. *Atlantic Ref. Co.* v. *Virginia* (302 U. S. 22, 82 L. Ed. 24, 58 Sup. Ct. 75).

This section does not deprive foreign corporation of its property without due process as the entrance fee is not measured by property, either within or without the jurisdiction. *Atlantic Ref. Co.* v. *Virginia* (302 U. S. 22, 82 L. Ed. 24, 58 Sup. Ct. 75).

§ 45–709 [25: 228]. Fees and emoluments of recorder of deeds deposited with collector of taxes.

All of the fees and emoluments of the office of recorder of deeds of the District of Columbia shall be paid at least weekly to the collector of taxes for the District of Columbia for deposit in the Treasury of the United States to the credit of the District of Columbia. (Apr. 24, 1926, 44 Stat. 322, ch. 176, § 1.)

§ 45–710 [25: 229]. Estimates for annual appropriations—Building, equipment and supplies.

The annual estimates of appropriations for the government of the District of Columbia shall include estimates of appropriations for the operation and maintenance of the office of the recorder of deeds. And appropriations are hereby authorized for a suitable record building for the office of the recorder of deeds, and for personal services, rentals, office equipment, office supplies, and such other expenditures as are essential for the efficient maintenance and conduct of such office. (Apr. 24, 1926, 44 Stat. 322, ch. 176, § 2.)

§ 45–711. Recordation of service and discharge certificates—Fee—Constructive notice—Certified copies.

The recorder shall also receive for record and record all certificates of service and certificates of discharge of persons released from active duty in or discharged from the armed forces of the United States, for which no fee shall be charged or collected, but the record of any certificate authorized by this section to be recorded shall not constitute constructive notice of the existence or contents of such certificate. For making certified copies of any of the foregoing certificates from the records in the office of the recorder the usual fees shall be charged. (Apr. 27, 1945, 59 Stat. 100, ch. 101.)

§ 45–712. Office closed on Saturdays.

Notwithstanding the provisions of any other Act, the Office of the Recorder of Deeds for the District of Columbia shall be closed on every Saturday. (Aug. 2, 1946, 60 Stat. 860, ch. 758, § 1.)

§ 45–713. Time extended for recording writings.

Any writing, the time for recording of which expires on a Saturday, or on a Sunday, shall be deemed to have been recorded within the time prescribed if such writing be recorded on the first day thereafter other than Sunday or a legal holiday. (Aug. 2, 1946, 60 Stat. 861, ch. 758, § 2.)

Chapter 8.—ESTATES IN LAND

Sec.
45–801. Estates in District.
45–802. Fee simple estates—Estates tail abolished.
45–803. Absolute or qualified.
45–804. Freeholds—Chattels real—Chattel interests.
45–805. Estates pur autre vie.
45–806. Estates classified—Possession—Expectancy.
45–807. Estate in possession.
45–808. Estate in expectancy.
45–809. Reversions.
45–810. Future estates.
45–811. Remainder and conditional limitation.
45–812. Vested and contingent future estates.
45–813. Alternative future estates.
45–814. Expectant estates not to be defeated.
45–815. Expectant estate descendible and alienable.
45–816. Tenancies in common and joint tenancies.
45–817. Coparcenary estates abolished.
45–818. Estates for years.
45–819. Estates from year to year.
45–820. Estates by sufferance.
45–821. Estates from month to month or from quarter to quarter.
45–822. Estates at will—When terminated.
45–823. Provisions applicable to personal property.

§ 45–801 [25: 261]. Estates in District.

Estates in land in the District shall be estates of inheritance, estates for life, estates for years, estates at will, and estates by sufferance. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1011.)

CROSS REFERENCES

Statute of frauds, §§ 12–301, 12–303.

See §§ 45–106 and 45–904.

§ 45–802 [25: 262]. Fee simple estates—Estates tail abolished.

All estates of inheritance, including such as were formerly estates tail, shall be adjudged estates in fee simple. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1012.)

NOTES TO DECISIONS

FEE TAIL CONVERTED INTO FEE-SIMPLE ESTATE

Devise held to create estate tail, and, therefore, under Maryland Act of 1786, converted into fee simple. *Dengel* v. *Brown* (1 App. D. C. 423).

Devise held to convey fee. *Young* v. *Norris Peters Co.* (27 App. D. C. 140); *Atkins* v. *Best* (27 App. D. C. 148).

Where a will gave to the granddaughter of testatrix real property until she should marry or attain the age of twenty-one years in either of which events, whichever happened first, the property was given to the granddaughter and her children, but if the granddaughter died before she attained the full age of twenty-one years without having been married, or if she married and died without leaving a child or children, then to testatrix' son, and the daughter married at twenty-four, had a son who predeceased her, she took a fee-simple title. *Young* v. *Munsey Trust Co.* (72 App. D. C. 73, 111 Fed. (2d) 514).

§ 45–803 [25: 263]. Absolute or qualified.

An estate in fee simple may be either absolute or qualified, as to one and his heirs during an existing condition of things of uncertain duration. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1013.)

NOTES TO DECISIONS

RECOGNIZED FEES

Qualified, determinable, or defeasible fees were known at common law and are recognized in the District of Columbia. *Roberds* v. *Markham* (D. C. D. C. 1948, 81 F. Supp. 38).

§ 45–804 [25: 264]. Freeholds—Chattels real—Chattel interests.

Estates of inheritance and estates for life shall continue to be denominated freeholds, and estates for years shall be chattels real; estates at will or by sufferance shall be chattel interests, but shall not be liable, as such, to sale under execution; and all estates may be subject to conditions precedent or subsequent. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1014.)

§ 45–805 [25: 265]. Estates pur autre vie.

An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real and be a part of his personal estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1015.)

§ 45–806 [25: 266]. Estates classified—Possession—Expectancy.

Estates are either in possession or in expectancy. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1016.)

§ 45–807 [25: 267]. Estate in possession.

An estate in possession exists when the owner has an immediate right to the possession of the land. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1017.)

§ 45–808 [25: 268]. Estate in expectancy.

An estate in expectancy is either a reversion or a future estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1018.)

§ 45–809 [25: 269]. Reversions.

A reversion is the residue of an estate left in the grantor who has conveyed, or in the heirs of the devisor who has devised a particular estate less than his own, and which residue returns to his or their possession on the expiration of the particular estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1019.)

CROSS REFERENCE

See note to § 16–501. *Camp* v. *Boyd* (35 App. D. C. 159, affd. 229 U. S. 530, 57 L. Ed. 1317, 33 Sup. Ct. 785).

§ 45–810 [25: 270]. Future estates.

A future estate is one limited to commence at a future day, either without the intervention of a precedent estate or after the expiration or determination of a precedent estate created at the same time and by the same conveyance or devise. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1020.)

§ 45–811 [25: 271]. Remainder and conditional limitation.

If it is to commence upon the full expiration of such precedent estate, it is a remainder and may be transferred by that name. If it is to commence on a contingency which, if it happen, will abridge or determine such precedent estate before its expiration, it shall be known as a conditional limitation. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1021.)

CROSS REFERENCE

Proceeding by remainderman to determine whether or not life tenant is still alive, reentry by life tenant, §§ 16–527 to 16–531.

§ 45–812 [25: 272]. Vested and contingent future estates.

A future estate is vested when there is a person in being who would have an immediate right to the possession of the land upon the expiration of the intermediate or precedent estate, or upon the arrival of a certain period or event when it is to commence in possession. It is contingent when the person to whom or the event upon which it is limited to take effect in possession or become a vested estate is uncertain. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1022.)

NOTES TO DECISIONS

ADVERBS OF TIME CONSTRUED

"Adverbs of time—as where, there, after, from, etc.—in a devise of a remainder are construed to relate merely to the time of the enjoyment of the estate, and not the time of the vesting in interest." *Green* v. *Gordon* (38 App. D. C. 443). See also *Vogt* v. *Vogt* (26 App. D. C. 46); *Johnson* v. *Washington Loan & Trust Co.* (33 App. D. C. 242, affd. 224 U. S. 224, 56 L. Ed. 741, 32 Sup. Ct. 421); *Breneman* v. *Herdman* (35 App. D. C. 27).

CONSTRUCTION

A construction which may lead to intestacy is not favored. *Caine* v. *Payne* (C. A. D. C. 1950, 182 F. 2d 246, 86 U. S. App. D. C. 404).

Following the material tenor of the language, the use of the words "survivors" or "survivor" refers not to survival at the time of testator's own death, but means survivorship among the nephews at the time of the death of the sister or niece, the immediate precedent beneficiary in point of time. The court must construe the will so that the intent of testator will have vitality. *Caine* v. *Payne* (C. A. D. C. 1950, 182 F. 2d 246, 86 U. S. App. D. C. 404).

CONTINGENT ESTATE

Where interest devised to grandniece followed a life estate to testator's widow, it was a "remainder," and where it was to become effective only on the death of testator's two daughters without descendants it was a "contingent remainder," and where only one daughter had died without descendants such contingent remainder had not vested, and until it had, the grandniece could take nothing. *Lewis* v. *Cockrell* (D. C., D. C. 1948, 80 F. Supp. 380).

EXPRESS OR IMPLIED TERMS

Where "the absolute power of disposal was given in express and unequivocal terms, or clearly and unmistakably implied, to the first taker, the remainder over was void." *Montgomery* v. *Brown* (25 App. D. C. 490).

INTERPRETATION

Adverbs of time, as "after", etc., are to be construed to relate to the time of the enjoyment of the estate and not to the time of vesting of an interest. *District of Columbia* v. *Clark* (C. A. D. C. 1948, 175 F. 2d 821, 84 U. S. App. D. C. 88).

LIMITATIONS

In terms of the law of future interests, there are alternative limitations and supplanting limitations. The former requires survival of the remaindermen to the end of the preceding interests. The latter does not necessarily require such survival. It imposes a condition, the happening of which replaces the remaindermen with another. *Scott* v. *Powell* (C. A. D. C. 1950, 182 F. 2d 75, 86 U. S. App. D. C. 277).

REMAINDER INTERESTS TAXABLE

Under the statutory definition of vested interests, the interests herein presented are vested remainders. Simultaneously, the remainder interests are subject to be divested should the remaindermen, or any of them, fail to survive the life estate. Such interests are subject to taxation. *Keep* v. *District of Columbia* (C. A. D. C. 1950, 181 F. 2d 789, 86 U. S. App. D. C. 206).

SUBSTITUTION OF REMAINDERMAN

Where testatrix devised realty to her sister for life, then to her daughter for life, and then to testatrix's three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part and if daughter should die without issue then to the three sons, their heirs and assigns forever share and share alike, and in any case, if the three sons should die leaving a descendant or descendants, the descendent or descendants to take the share his, her, or their parent would have taken had he lived, as to one-fourth of property, each designated remainderman took a contingent remainder subject to be divested in event of his death leaving a descendant prior to death of second life tenant, so that son's descendant became substituted remainderman when he died before event which constituted contingency on which his interest depended. *Pyne* v. *Pyne* (App. D. C. 1946, 154 F. 2d. 297).

VESTED AND CONTINGENT ESTATES DISTINGUISHED

Distinction between vested and contingent remainder. *Fields* v. *Gwynn* (19 App. D. C. 99). See also *O'Brien* v. *Dougherty* (1 App. D. C. 148); *Richardson* v. *Penicks* (1 App. D. C. 261); *Marshall* v. *Augusta* (5 App. D. C. 183); *Craig* v. *Rowland* (10 App. D. C. 402); *Hauptman* v. *Carpenter* (16 App. D. C. 524); *Green* v. *Gordon* (38 App. D. C. 443).

To same effect as original annotation, see *Reeves* v. *American Security & Trust Co.*, 1940 (115 F. 2d 145, 72 App. D. C. 403, certiorari denied 61 S. Ct. 318, 311 U. S. 710, 85 L. Ed. 461).

VESTED ESTATE

Where testator devised his residuary estate to his wife for life and on her death to testator's daughters in fee simple share and share alike and "in the event that either of them be then dead unto the survivor of them", the daughters acquired a "vested interest" and not a "contingent interest" within section 47–1607 which recognizes and taxes separately vested interest and contingent interest. *O'Neill* v. *District of Columbia*, 1942 (132 F. 2d 601, 77 U. S. App. D. C. 79).

Where testatrix devised realty to her daughter for life and then to testatrix's three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part, and directed that, if daughter should die without issue, then to testatrix's three sons, their heirs and assigns forever share and share alike, the sons each had a vested remainder in one-fourth of property and contingent remainder in one-twelfth. *Pyne* v. *Pyne* (App. D. C. 1946, 154 F. 2d 297).

Where testatrix devised realty to her sister for life, then to her daughter for life, and then to testatrix's three sons and the issue of daughter, if any, in fee simple, the issue to take a one-fourth part and, if daughter should die without issue, then to the three sons, their heirs and assigns forever share and share alike, and in any case, if the three sons should die leaving a descendant or descendants, the descendant or descendants to take the share his, her, or their parent would have taken had he lived, as to three-fourths of property on death of testatrix, each designated remainderman took a vested remainder in fee simple subject to be divested in event of his death leaving a descendant prior to death of second life tenant and upon the event of divestment, the substituted remainderman took the remainder. *Pyne* v. *Pyne* (App. D. C. 1946, 154 F. 2d 297).

Under will giving life estate in testamentary trust created therein to testator's stepdaughter, and providing that remainder should be divided, in equal shares, among testator's nephews and nieces listed in will, with the further provision that "the child or children of any one or more of said nephews and nieces deceased taking the parents' share," each nephew and niece named in will, who survived testator, took a "vested remainder interest" upon testator's death, and not a "contingent remainder interest." *American Sec. & Trust Co.* v. *Sullivan* (D. C., D. C. 1947, 72 F. Supp. 925).

A future estate is vested when there is a person in being who would have an immediate right to possession upon the expiration of the intermediate or preceding estate, or upon the arrival of a certain period or event when it is to commence in possession. *District of Columbia* v. *Clark* (C. A., D. C. 1948, 175 F. 2d 821, 84 U. S. App. D. C. 88).

VESTED REMAINDERS

There may be vested remainders in equitable estates as well as in legal estates. *District of Columbia* v. *Clark* (C. A. D. C. 1948, 175 F. 2d 821, 84 U. S. App. D. C. 88).

VESTING FAVORED

"The law favors the vesting of estates, and is inclined to treat conditions as subsequent rather than precedent." *Green* v. *Gordon* (38 App. D. C. 443).

Estates will be held to vest at the earliest possible moment, in absence of testamentary intent to contrary. *Green* v. *Gordon* (38 App. D. C. 443).

§ 45–813 [25: 273]. Alternative future estates.

Two or more future estates may be created to take effect in the alternative, so that if the first in order shall fail to vest the next in succession may be substituted for it and take effect accordingly. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1026.)

§ 45–814 [25: 274]. Expectant estates not to be defeated.

No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate, by disseizin, forfeiture, surrender, merger, or otherwise, except when such destruction is expressly provided for or authorized in the creation of such expectant estate; nor shall an expectant estate thus liable to be defeated be on that ground adjudged void in its creation. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1029.)

NOTES TO DECISIONS

DOWER RIGHTS IN EXPECTANT ESTATE

This section and § 1030 (§ 45–815) do not change the common-law rule that a widow is not entitled to dower in lands to which her husband had a remainder in fee, if he predeceases the life tenant. *Tolty* v. *Tolty* (40 App. D. C. 587).

ESTATE SUBJECT TO DIVESTMENT

Where testatrix devised realty to her sister for life, then to her daughter for life, and then to testatrix's three sons and the issue of daughter, if any, in fee simple, the issue to take a one-fourth part and, if daughter should die without issue, then to the three sons, their heirs and assigns forever share and share alike, and in any case, if the three sons should die leaving a descendant or descendants, the descendant or descendants to take the share his, her, or their parent would have taken had he lived, as to three-fourths of property on death of testatrix, each designated remainderman took a vested remainder in fee simple subject to be divested in event of his death leaving a descendant prior to death of second life tenant and upon the event of divestment, the substituted remainderman took the remainder. *Pyne* v. *Pyne* (App. D. C. 1946, 154 F. 2d 297).

SUBSTITUTION OF REMAINDERMAN

Where testatrix devised realty to her sister for life, then to her daughter for life, and then to testatrix's three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part and if daughter should die without issue then to the three sons, their heirs and assigns forever share and share alike, and in any case, if the three sons should die leaving a descendant or descendants, the descendant or descendants to take the share his, her, or their parent would have taken had he lived, as to one-fourth of property, each designated remainderman took a contingent remainder subject to be divested in event of his death leaving a descendant prior to death of second life tenant, so that son's descendant became substituted remainderman when he died before event which constituted contingency on which his interest depended. *Pyne* v. *Pyne* (App. D. C. 1946, 154 F. 2d 297).

§ 45–815 [25: 275]. Expectant estate descendible and alienable.

Expectant estates shall be descendible, devisable, and alienable in the same manner as estates in possession. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1030.)

CROSS REFERENCE

See notes to § 45–814.

NOTES TO DECISIONS

ASSIGNMENTS

Where testatrix devised realty to her daughter for life and then to testatrix's three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part, and if daughter die without issue then to the three sons, their heirs and assigns forever share and share alike, a son's interests, whether contingent or vested, were assignable, but he could assign only that which he had. *Pyne* v. *Pyne* (App. D. C. 1946, 154 F. 2d 297).

§ 45–816 [25: 276]. Tenancies in common and joint tenancies.

Every estate granted or devised to two or more persons in their own right, including estates granted or devised to husband and wife, shall be a tenancy in common, unless expressly declared to be a joint tenancy; but every estate vested in executors or trustees, as such, shall be a joint tenancy, unless otherwise expressed. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1031; June 30, 1902, 32 Stat. 538, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by adding at the end thereof the words "unless otherwise expressed."

NOTES TO DECISIONS

PRIOR LAW

Construction of conveyance to two or more persons prior to adoption of code, see *O'Brien* v. *Dougherty* (1 App. D. C. 148) (devise to a class); *Carroll* v. *Reidy* (5 App. D. C. 59) (to husband and wife as tenants in common); *Alsop* v. *Fedarwisch* (9 App. D. C. 408); *Seitz* v. *Seitz* (11 App. D. C. 358).

Where the death of the testator occurred before the enactment of the code, the common law applied. *Noyes* v. *Parker* (68 App. D. C. 13, 92 Fed. (2d) 562).

Conveyances to husband and wife, their heirs and assigns forever, prior to adoption of this section, created a tenancy by the entirety, unaffected by the married woman's act. *Blount* v. *United States* (59 Ct. Cls. 328).

ESTATES BY ENTIRETIES

Estates by the entireties still exist in the District of Columbia in both personalty and realty. *Flaherty* v. *Columbus* (41 App. D. C. 525). See also *Marshall* v. *Lane* (27 App. D. C. 276), reforming a deed to create tenancy in common instead of estate of entireties. See opinion of Hoehling J., in *Settle* v. *Settle* (56 App. D. C. 50, 8 Fed. (2d) 911, 43 A. L. R. 1079), holding that conveyance to husband and wife "as joint tenants" creates tenancy by entireties.

This section does not abolish common-law tenancies by entireties. *Settle* v. *Settle* (56 App. D. C. 50, 8 Fed. (2d) 911, 43 A. L. R. 1079).

Land, which was conveyed to husband and wife as joint tenants, was held by husband and wife as "tenants by the entirety". *Herb* v. *Gerstein* (D. C., D. C. 1941, 41 F. Supp. 634).

Husband was entitled to maintain in his own name a suit against tenant for possession of an apartment in a building which he and his wife had purchased as tenants by the entirety. *Sandler* v. *Wertlieb* (D. C. Mun. App. 1948, 60 A. 2d 222).

PRIOR LAW

Prior to enactment of this section on January 1, 1902, there was in force in District of Columbia a common law rule that a conveyance or devise to two or more persons, whether as a class or by name, without sufficient indication in instrument of intention that they were to hold in severalty, should be construed as creating a joint tenancy and not a tenancy in common. *American Sec. & Trust Co.* v. *Sullivan* (D. C., D. C. 1947, 72 F. Supp. 925).

TENANCIES IN COMMON

Where brother and sister were engaged in a joint business venture regarding a piece of property, the title being in her name solely as a matter of convenience, they were in effect tenants in common. *Sheehy* v. *O'Donoghue* (68 App. D. C. 127, 94 Fed. (2d) 252).

A tenant in common owns an undivided interest in the property, and such tenants have no separate estate or interest in any distinct portion of the property over which they have simultaneously rights of property, each being interested according to the extent of his share in every part of the whole property and its proceeds. *Deming* v. *Turner* (D. C., D. C. 1945, 63 F. Supp. 220).

Where testamentary trust created by will directing that children of deceased remainderman should take share that parents would have taken was created after January 1, 1902, children of a deceased remainderman took share of their parent as "tenants in common", and not as "joint tenants", and, hence, upon one of the children subsequently dying before life tenant, estate of the deceased child would take same equal share as surviving child or children would take. *American Sec. & Trust Co.* v. *Sullivan* (D. C., D. C. 1947, 72 F. Supp. 925).

§ 45–817 [25: 277]. Coparcenary estates abolished.

There shall be no estate in coparcenary in the District, and where two or more persons inherit from an intestate they shall be tenants in common. (Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 956.)

CROSS REFERENCES

See § 45–816.
See notes to § 45–101.

§ 45–818 [25: 278]. Estates for years.

An estate for a determined period of time is an estate for years. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1032.)

NOTES TO DECISIONS

LEASES

A lease for a term of years creates an estate in the grantee, and the rent reserved may be a lump sum, payable either at the commencement of the term or at its end, subject to such conditions as the lease imposes. *Isquith* v. *Athanas* (D. C. Mun. App. 1943, 33 A. 2d 733).

An ordinary lease of tenancy for years must be certain as to commencement, duration and termination or be capable of being made certain by reference to some collateral event or thing which in itself is certain. *Smith's Transfer & Storage Co.* v. *Hawkins* (D. C. Mun. App. 1946, 50 A. 2d 267).

Where lease provided that it should continue for one year and if at end of that period war of United States with Germany and Japan had not been terminated, lease should continue until "end of war" with Germany and Japan as determined by proclamation of President of United States or by joint resolution of Congress, the lease provided for termination by collateral event which was certain to happen and therefore the lease did not terminate at end of the primary term. *Smith's Transfer & Storage Co.* v. *Hawkins* (D. C. Mun. App. 1946, 50 A. 2d 267).

§ 45–819 [25: 279]. Estates from year to year.

An estate expressed to be from year to year shall be good for one year only. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1033.)

NOTES TO DECISIONS

HOLDING OVER

A lease for one year, with a provision that unless the premises are vacated on the day of the expiration of the term, the lessee shall become a tenant for another year, creates a tenancy for one year only, and the tenant holding over becomes a tenant at sufferance. *Morse* v. *Brainerd* (42 App. D. C. 448). See also *Soper* v. *Myers* (45 App. D. C. 286).

§ 45–820 [25: 280]. Estates by sufferance.

All estates which by construction of the courts were estates from year to year at common law, as where a tenant goes into possession and pays rent without an agreement for a term, or where a tenant for years, after the expiration of his term, continues in possession and pays rent and the like, and all verbal hireings by the month or at any specified rate per month, shall be deemed estates by sufferance. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1034; June 30. 1902, 32 Stat. 538, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the word "hirlings" and inserting in lieu thereof the word "hireings."

CROSS REFERENCE

Statute of frauds, § 12–301.

NOTES TO DECISIONS

COMMON LAW

At common law a "tenant by sufferance" had no estate in premises, was not in privity with landlord, could not maintain action of trespass against landlord, was entitled to no notice to quit, was not liable for rent, and had little more than right to insist he was not trespasser. *Hampton* v. *Mott Motors* (D. C. 1943, 32 A. 2d 247).

At common law, a tenant holding over and paying rent became a "tenant from year to year" and the holding over was impliedly subject to all covenants of expired lease. *Hampton* v. *Mott Motors* (D. C. 1943, 32 A. 2d 247).

CREATION OF NEW TENANCY

Where landlord obtained a judgment which established her right to possession under sections 1601 et seq. of this title and tenant was granted a stay by the court conditioned upon payment of rent, and thereafter tenant bargained with landlord for additional time upon condition that rent would be paid and that it would be the last extension, tenant could not thereafter assert that landlord had created a new tenancy and had abandoned her right to enforce judgment of possession by accepting rent for the extended period. *Trammell* v. *Estep* (D. C. Mun. App. 1945, 42 A. 2d 501).

EXPIRATION OF LEASE

Where in lease tenant agreed to pay insurance, and paid same beyond term of lease, such payment did not extend the lease and he was tenant by sufferance. *Forster* v. *Eliot* (52 App. D. C. 107, 282 Fed. 735).

Tenants in possession of property under a lease which had expired were tenants by sufferance. *Weaver* v. *Koester* (54 App. D. C. 80, 294 Fed. 1011).

Tenant under six months' lease becomes tenant by sufferance on its expiration, notice of renewal having been verbal and not written. *National Cafés* v. *Elite Laundry Co.* (57 App. D. C. 178, 18 Fed. (2d) 828).

Tenant on expiration of one-year lease became tenant by sufferance, and entitled to thirty days' notice to vacate. *H. L. Rust Co.* v. *Drury* (62 App. D. C. 329, 68 Fed. (2d) 167).

A tenant who remained in possession paying rent after expiration of written lease became a "tenant by sufferance", not within common-law meaning of term, and hence such tenancy could be terminated by either party upon 30 days' notice. *Hampton* v. *Mott Motors* (D. C. 1943, 32 A. 2d 247).

The fact that tenant continued in possession of premises after expiration of term lease did not create a "tenancy by sufferance" so as to require landlord to give 30 day notice, where landlord brought action for possession immediately upon expiration of term and continuation in possession was result of temporary injunction order obtained by tenant and landlord rejected rent offered by tenant, notwithstanding landlord accepted damages for wrongful suing out of temporary restraining order. *Bell* v. *Westbrook* (D. C. Mun. App. 1947, 50 A. 2d 264).

The fact that landlord called tenant a "tenant by sufferance" in complaint in action for possession of premises filed immediately upon expiration of term lease, did not create a "tenancy by sufferance" so as to require landlord to first give tenant a 30 day notice since quoted term was a legal conclusion. *Bell* v. *Westbrook* (D. C. Mun. App. 1947, 50 A. 2d 264).

LEASE COVENANTS

A holding over by tenant after expiration of lease is subject to all covenants and terms of original lease applicable to new situation. *Hall* v. *Henry J. Robb, Inc.* (D. C. 1943, 32 A. 2d 707).

Where tenant held over for about 30 months after expiration of written lease, and tenancy could have been terminated on 30 days' notice tenancy created by holding over was impliedly subject to covenant of lease imposing upon tenant liability for cost of needful repairs. *Hampton* v. *Mott Motors* (D. C. 1943, 32 A. 2d 247).

A covenant in a lease against assigning or subletting without landlord's consent is for benefit of landlord because it is regarded as for his interest to determine who shall be his tenant. *Keroes* v. *Westchester Apartments* (D. C. Mun. App. 1944, 36 A. 2d 263).

NATURE OF SECTION

This section is mandatory and neither parties nor courts are at liberty to disregard its express policy. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

PART OF LEASE

This section was as much a part of lease which tenant claimed to have renewed by holding over after expiration thereof and paying rent as though this section had been written into lease. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

RENEWAL OF LEASE

Under the rule that an election by tenant to renew a lease should precede or be concurrent with expiration of lease and not depend upon after events except insofar as they may reflect the understanding of the parties with respect to a precedent act, the fact that tenant remained in possession after expiration of lease and paid rent shed little light upon his intention to exercise option to renew, and, in absence of other evidence, such holding over presumptively created a mere tenancy by sufferance. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

TENANT HOLDING OVER

A tenant holding over and paying rent becomes a "tenant by sufferance" in sense only that his tenancy may be terminated by tenant or landlord on 30 days' notice in accordance with section 45–904. *Hampton* v. *Mott Motors* (D. C. 1943, 32 A. 2d 247).

A lapse of two weeks between the expiration of the lease and the filing of the suit is not sufficient to establish a tenancy by sufferance under the terms of the statute. *Williams* v. *John S. Donohoe & Sons, Inc.* (D. C. Mun. App. 1949, 68 A. 2d 239).

TERMINATION BY SUBLETTING

Where tenant under verbal hiring by the month removed herself from rented apartment and sublet it to another with landlord's consent for a designated period, after expiration of such period, landlord was entitled to possession of the apartment on ground that tenant was violating "obligation of tenancy" within Emergency Rent Act, § 45–1605 (b). *Keroes* v. *Westchester Apartments* (D. C. Mun. App. 1944, 36 A. 2d 263).

In absence of restrictions, a tenant under lease for definite term may sublet the premises; but, where tenant has only an estate at sufferance, if tenant sublets contrary to landlord's wishes, landlord may terminate the tenancy immediately. *Keroes* v. *Westchester Apartments,* (D. C. Mun. App. 1944, 36 A. 2d 263).

VERBAL RENTING BY MONTH

This section of the code provides that all verbal hirings by the month, or at any specified rate per month, shall be deemed estates by sufferance. *Boss* v. *Hagan* (49 App. D. C. 106, 261 Fed. 254, 8 A. L. R. 1508).

Tenancy under verbal hiring by the month, though deemed a tenancy at sufferance by this section is not an estate at sufferance within strict meaning of the common-law term, but is more in the nature of an estate from month to month, or an estate at will, and until the Emergency Rent Act, § 45–1605 (b), became effective was determinable at any time. *Keroes* v. *Westchester Apartments* (D. C. Mun. App. 1944, 36 A. 2d 263).

Tenant holding apartment under verbal hiring by the month was a "tenant at sufferance". *Westchester Apartments* v. *Keroes* (D. C. 1943, 32 A. 2d 869); *Keroes* v. *Westchester Apartments* (D. C. Mun. App. 1944, 36 A. 2d 263).

§ 45–821 [25: 281]. Estates from month to month or from quarter to quarter.

An estate may be from month to month or from quarter to quarter, or, as otherwise expressed, it may be by the month or by the quarter, if so expressed in writing. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1035.)

§ 45–822 [25: 282]. Estates at will—When terminated.

An estate at will is one held by the joint will of lessor and lessee, and which may be terminated at any time, as herein elsewhere provided, by either party; and such estate shall not exist or be created except by express contract: *Provided, however,* That in case of a sale of real estate under mortgage or deed of trust or execution, and a conveyance thereof to the purchaser, the grantor in such mortgage or deed of trust, execution defendant, or those in possession claiming under him, shall be held and construed to be tenants at will, except in the case of a tenant holding under an unexpired lease for years, in writing, antedating the mortgage or deed of trust. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1036.)

CROSS REFERENCES

Forcible entry and detainer, §§ 11–735 to 11–739, 22–3102.

See §§ 45–903 and 45–910.

CITED

McDonald v. *Maxwell* (56 App. D. C. 287, 12 Fed. (2d) 822).

NOTES TO DECISIONS

CONSTRUCTION

Where plaintiff fails to bring defendant within the statutory definition of a tenant at will, he will not prevail. *Spruill* v. *Brooks* (D. C. Mun. App. 1949, 68 A. 2d 204).

LESSEE AFTER FORECLOSURE

Lessee of property sold under foreclosure proceedings becomes the tenant of the purchaser. *Bliss* v. *Duncan* (44 App. D. C. 93).

NOTICE AND TIME TO REMOVE PEACEABLY

Congress did not intend a remedy too expeditious to be fair, and recognized the justice of giving a former owner of real estate, or his tenant, when sold out under a mortgage or deed of trust, a reasonable notice and time peaceably to remove himself and his belongings from the property sold. *Thornhill* v. *Atlantic Life Ins. Co.* (63 App. D. C. 184, 70 Fed. (2d) 846).

RIGHT TO POSSESSION

Where plaintiff sued for possession of property purchased at foreclosure sale against defendant who had previously owned the property but had defaulted on the second trust note, the defense that when the deed of trust was foreclosed defendants automatically became tenants at will under § 45–822 and could not be ousted by reason of § 45–1605 is not applicable since the property did not constitute housing accommodations within the meaning of § 45–1611. *Surratt* v. *Real Estate Exchange, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 587).

§ 45–823 [25: 283]. Provisions applicable to personal property.

All the provisions of this chapter and of sections 45–102 to 45–104, 45–203, 45–204, shall apply to personal property generally except where from the nature of the property they are inapplicable. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1036, as added by June 30, 1902, 32 Stat. 538, ch. 1329.)

COMPILER'S NOTE

This section was originally an amendatory section to prior section in relation to "estates at will."

Chapter 9.—LANDLORD AND TENANT

Sec.

45–901. When notice to quit not necessary.
45–902. Notices to quit—Month to month.
45–903. Tenancy at will—Notice for termination.
45–904. Tenancy by sufferance—When terminated.
45–905. Notice not to be recalled.
45–906. Service of notice.
46–907. Refusal to quit, double rent.
45–908. Agreement as to notice.
45–909. Recovery of real and personal property leased together.

Sec.
45–910. Ejectment or summary proceedings.
45–911. Arrears of rent and double rent.
45–912. Consolidation of actions.
45–913. Procedure to eject married woman who is a tenant.
45–914. Plea of title.
45–915. Landlord's lien for rent.
45–916. Lien—How enforced.
45–917. How attachment enforced.
45–918. Property subject to lien for rent not to be taken on execution without first paying all rent due.
45–919. Distress not void because of irregularity—Party not trespasser ab initio—Special damages only recoverable—Tender of amends defeats recovery.
45–920. Fraudulent removal, conveyance, or concealment of property to defeat lien subjects guilty party to forfeiture of double value of such property.
45–921. Representatives of life tenant may recover from under-tenant proportion of rent.
45–922. Debt may be brought for instalments of rent under lease for life.
45–923. Action of case for use and occupation—Parol agreement evidence of quantum of damages.
45–924. Lunatic, entitled to renewal of lease, or his guardian or committee, under order of court, may surrender lease—Also make new lease.
45–925. Lease made pursuant to section 45–924 valid.
45–926. Accruals from renewals of leases, property of lunatic—Unapplied part at death of lunatic treated as real property, unless lunatic be tenant for life, then personal property.
45–927. Lunatic or infant, or guardian or committee, under order of court, may surrender and take new leases.
45–928. Expenses and costs of renewal chargeable against interest of infant or lunatic.
45–929. Renewed leases shall be to the same uses, trusts, charges, incumbrances, devises, and conditions as surrendered leases were.
45–930. Surrendered and renewed lease of lunatic or infant valid.
45–931. Surrender for new lease good without surrender of under leases—Under leases continue unaffected—All rights and remedies to continue.
45–932. Assignee of reversion.
45–933. Grants of remainders, reversions, and rents good without attornment—Payment of rent without notice valid.
45–934. Fraudulent attornment void—Possession not changed by such attornment—Attornment pursuant to judgment excepted.

§ 45–901 [25: 311]. When notice to quit not necessary.

When real estate is leased for a certain term no notice to quit shall be necessary, but the landlord shall be entitled to the possession, without such notice, immediately upon the expiration of the term. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1218.)

CROSS REFERENCES

Proceedings in ejectment apply to landlord and tenant, § 16–512.

See note to § 45–819.

See § 45–908.

NOTES TO DECISIONS

EXPIRATION OF TERM

The fact that landlord who immediately brought at expiration of term lease, an action for recovery of possession of leased premises, accepted damages from tenant for wrongful suing out of order temporarily restraining landlord from further proceeding with the action, did not constitute waiver of landlord's right to sue for recovery of premises. *Bell* v. *Westbrook* (D. C. Mun. App. 1947, 50 A. 2d 264).

Landlord who filed on January 2, 1946, a suit for possession of premises was not required to first give a 30 day notice to quit, notwithstanding term lease expired December 31, 1945, since January 1, 1946, being a legal holiday, this section authorizing recovery of possession without notice immediately upon expiration of term was complied with. *Bell* v. *Westbrook* (D. C. Mun. App. 1947, 50 A. 2d 264).

Where tenants claimed that landlord did not forcibly evict them from the premises, did not file suit for possession until two weeks after the lease had expired, and that the tenants continued to furnish heat and hot water for entire building, and that these acts created a tenancy by sufferance entitling them to a thirty-day notice to quit, the claims were without merit under the provisions of the statute. *Williams* v. *John S. Donohue & Sons, Inc.* (D. C. Mun. App. 1949, 68 A. 2d 239).

When real estate is leased for a certain term, no notice to quit is necessary and the landlord is entitled to possession immediately upon the expiration of the term. *Alpert* v. *Wolf* (D. C. Mun. App. 1950, 73 A. 2d 525).

SUBTENANT, NOTICE TO

Where lessee of one portion of premises occupied, added space as subtenant of second lessee, and by supplemental agreement with landlord proposed to occupy added space under covenants of original lease if second lessee vacated, and both leases expired before second lessee vacated, and lessor did not recognize lessee as a tenant of added space by accepting rent from him for such space, lessee occupied added space as a subtenant holding over, and since second lessee had no right to a 30 day notice to vacate, his lease having expired, lessee, as subtenant, also was without right to such notice. *Thayer* v. *Brainerd* (D. C. Mun. App. 1946, 47 A. 2d 787).

§ 45–902 [25: 312]. Notices to quit—Month to month.

A tenancy from month to month, or from quarter to quarter, may be terminated by a thirty days' notice in writing from the landlord to the tenant to quit, or by such a notice from the tenant to the landlord of his intention to quit, said notice to expire, in either case, on the day of the month from which such tenancy commenced to run. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1219.)

NOTES TO DECISIONS

ASSIGNMENTS

Landlord who without knowledge of dealings between tenant and corporation accepted corporate checks for rent was not thereby bound by transactions between tenant and corporation, and where there was no written assignment of rental agreement with tenant to corporation and landlord had never accepted corporation as a tenant, service of notice on tenant was sufficient to terminate lease as well as sublease expressly made subject thereto. *Haje's, Inc.* v. *Wire* (D. C. Mun. App. 1948, 56 A. 2d 158).

DATE NOTICE TERMINATES

While the landlord is not required to specify in the notice the date of the termination of the notice, having done it he is bound by that date. *Merritt* v. *Thompson* (53 App. D. C. 233, 289 Fed. 631).

DESCRIPTION OF PROPERTY

A notice to quit which describes the property in the same manner as in defendant's lease, and which gives more than 30 days' notice, held to be sufficient. *Bliss* v. *Duncan* (44 App. D. C. 93).

DISMISSAL OF COMPLAINT

In proceeding in landlord and tenant court, where informality of pleading has always been the rule, to recover demised premises on the sole ground that tenancy had been terminated by notice failure of complaint to show that premises were exempt from § 45–1601 et seq. did not require dismissal. *U. S.* v. *Wittek* (D. C. Mun. App. 1946, 48 A. 2d 805, reversed and remanded, 69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1406, remanded 171 F. 2d 8, 83 U. S. App. D. C. 377).

Where complaint alleged termination of tenancy by notice and sought recovery of demised premises, even if premises were housing accommodations governed by § 45–1601 et seq., it was still possible that plaintiff could have stated a cause of action by alleging that tenants had violated a condition of their tenancy, and proper procedure was to grant motion to dismiss with leave to amend. *U. S.* v. *Wittek* (D. C. Mun. App. 1946, 48 A. 2d 805, reversed and remanded 69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1406, remanded 171 F. 2d 8, 83 U. S. App. D. C. 377).

DUE NOTICE TERMINATES

A landlord is not required to specify, in notice to quit premises leased from month to month date of expiration of notice, but must give notice running for full 30-day period, excluding date of service, and expiring on day of month from which tenancy commenced to run. *Young* v. *Baugh* (D. C. Mun. App. 1944, 35 A. 2d 242, appeal dismissed, 39 A. 2d 478).

In fixing time when landlord's notice to tenant to quit leased premises expires, law does not take cognizance of fractions of a day or minute. *Young* v. *Baugh* (D. C. Mun. App. 1944, 35 A. 2d 242, appeal dismissed, 39 A. 2d 478).

An agreement whereby property was conveyed to holder of a deed of trust did not affect lease of the premises previously made by owner, but the title taken was subject to the lease, in absence of foreclosure of the deed of trust, even though the lease was not of record, and to terminate the tendency it was necessary that notice to quit expire on the day on which the tenancy commenced to run. *Knowles* v. *Mosher* (D. C. Mun. App. 1946, 45 A. 2d 755).

MOOT QUESTIONS

When real estate is leased for a certain time, no notice to quit is necessary and the landlord is entitled to possession immediately upon the expiration of the term. It is not the duty of the court to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue. Moreover, it has often been decided where possession of land was involved under an alleged lease that the question becomes moot after the expiration of such lease. *Alpert* v. *Wolf* (D. C. Mun. App. 1950, 73 A. 2d 525).

RECEIPT OF RENT AFTER NOTICE

"The receipt of rent by a landlord, after notice to quit, of rent for a new term or part thereof, amounts to a waiver of his right to demand possession under that notice * * *. But the receipt of rent for the current month, pending the notice to quit, cannot have that effect." *Byrne* v. *Morrison* (25 App. D. C. 72).

Acceptance of rent to November 30 is not a waiver of a notice to quit expiring on December 1. *McCoy* v. *Duehay* (51 App. D. C. 363, 279 Fed. 1001). See *Byrne* v. *Morrison* (25 App. D. C. 72).

A notice to quit served on November 27, 1944, on a monthly tenant whose tenancy ran from the first day of the month would expire January 1, 1945, and acceptance of rent to January 1, 1945, after service of notice would not waive or invalidate such notice. *Moncure* v. *Curry* (D. C. Mun. App. 1945, 42 A. 2d 143).

Whether landlord's agent had authority to accept rent paid after service of notice to quit would be immaterial unless payment was for rent beyond termination date of the notice. *Moncure* v. *Curry* (D. C. Mun. App. 1945, 42 A. 2d 143).

The acceptance of rent by landlord from month to month tenant only for a period during the running of notice to quit was not a waiver of such notice.—*Pointer* v. *Shepard* (D. C. Mun. App. 1946, 49 A. 2d 659).

REVIEW

In action by landlord against one alleged to be a monthly tenant for possession of realty, appellate court could not pass on validity of defense of acceptance of a month's rent after service of notice to quit in absence of statement of proceedings and evidence showing when tenancy began to run or when notice to quit expired, since acceptance of rent to date of such expiration would not waive or invalidate notice. *Moncure* v. *Curry* (D. C. Mun. App. 1945, 42 A. 2d 143).

THIRTY-DAY NOTICE

Thirty-day notice, expiring on the day of the month from which the tenancy is alleged by defendant to run, is sufficient, whether estate be from month to month or by sufferance. *McCoy* v. *Duehay* (51 App. D. C. 363, 279 Fed. 1001).

Sundays and half holidays on Saturdays under section 1389 (§ 28–616) are not excluded in computing the time given in the notice. *McCoy* v. *Duehay* (51 App. D. C. 363, 279 Fed. 1001).

Notice is not bad because it gives 31 days' notice. *McCoy* v. *Duehay* (51 App. D. C. 363, 279 Fed. 1001), citing *Boss* v. *Hagan* (49 App. D. C. 106, 261 Fed. 254).

A notice dated and served July 1, requiring tenant to vacate on July 31, is insufficient. "By the rule of interpretation, excluding the first day and including the last, there was not full 30 days." *Merritt* v. *Thompson* (53 App. D. C. 233, 289 Fed. 631).

Where monthly tenancy commenced on December 15, 1942, landlord's notice, dated June 11, 1943, and served on tenant on June 12, directing him to vacate and quit leased premises 30 days after June 15, 1943, and adding that notice expired July 15, 1943, was not defective as commencing after June 15, less than 30 days before July 15. *Klein* v. *Miles* (D. C. Mun. App. 1944, 35 A. 2d 243).

A tenant from month to month is entitled to full 30 days' notice to quit. *Klein* v. *Miles* (D. C. Mun. App. 1944, 35 A. 2d 243).

A landlord's notice to quit, dated and served on month to month tenant June 30, 1943, and demanding that tenant quit leased premises at end of 30 days after beginning of next month's tenancy on July 1, 1943, complied with this section requiring 30 days' written notice to quit, expiring on day of month from which tenancy commenced to run, so as to entitle landlord to possession after August 1, on which date notice expired. *Young* v. *Baugh* (D. C. Mun. App. 1944, 35 A. 2d 242, appeal dismissed, 39 A. 2d 478).

A notice to quit served on tenant on or about May 14, 1946, requiring month to month tenant to vacate "on or before" July 1, 1946, was not defective because of use of words "on or before", since notice did not require tenant to quit before July 1. *Gordon* v. *Tino* (D. C. Mun. App. 1946, 50 A. 2d. 593).

Where month to month tenancy began on the third of the month, and rent was payable on that day, a notice to quit signed by both landlords, dated and served on October 18, 1946, requiring tenants to vacate premises on the third day of December, 1946, satisfied provision of this section respecting notice to terminate tenancy from month to month. *Wynn* v. *Washington* (D. C. Mun. App. 1947, 53 A. 2d 275).

Thirty days' notice to tenant in defense housing project, written on a letterhead of the National Capital Housing Authority and signed by property manager of project, was sufficient though dispossessory proceedings were brought by the United States, rather than by the Authority. *Wittek* v. *U. S.* (D. C. Mun. App. 1947, 54 A. 2d 747, reversed 171 F. 2d 8, 83 U. S. App. D. C. 377, certiorari granted, 69 S. Ct. 737, 336 U. S. 931, 93 L. Ed. 1092; reversed and remanded 69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1406).

With respect to 30-day notice of termination of month to month tenancy, that midnight lying midway between the last day of the terminal month and the first day of the new month must be the termination of the thirtieth day of notice. *Zoby* v. *Kosmadakes* (D. C. Mun. App. 1948, 61 A. 2d 618).

Tenant may be given more than 30 days' notice of termination of month to month tenancy without affecting validity of notice. *Zoby* v. *Kosmadakes* (D. C. Mun. App. 1948, 61 A. 2d 618).

Where tenant complained that the notice to quit was not in accordance with the statute, and the facts show that counting in the usual way from June 1 to July 31 was the sixtieth day, and since the notice required only that the tenant vacate the premises "at the end of" such sixty days, it is clear that the notice gave far more than the thirty days required and fully complied with the Code. *Alpert* v. *Wolf* (D. C. Mun. App. 1950, 73 A. 2d 525).

§ 45–903 [25: 313]. Tenancy at will—Notice for termination.

A tenancy at will may be terminated by thirty days' notice in writing by either landlord or tenant. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1220.)

NOTES TO DECISIONS

Notice to Former Owner

Congress did not intend a remedy too expeditious to be fair, and recognized the justice of giving a former owner of real estate, or his tenant, when sold out under a mortgage or deed of trust, a reasonable notice and time to peaceably remove himself and his belongings from the property sold. *Thornhill* v. *Atlantic Life Ins. Co.* (63 App. D. C. 184, 70 Fed. (2d) 846).

Unlawful Eviction

The eviction of tenant at will without statutory 30-day notice was unlawful and justified award of damages. *Northeast Auto Wreckers* v. *Sanford* (D. C. Mun. App. 1945, 43 A. 2d 292).

§ 45–904 [25: 314]. Tenancy by sufferance—When terminated.

A tenancy by sufferance may be terminated at any time by a notice in writing from the landlord to the tenant to quit the premises leased, or by such notice from the tenant to the landlord of his intention to quit on the 30th day after the day of the service of the notice. If such notice expires before any periodical instalment of rent fall due, according to the terms of the tenancy, the landlord shall be entitled to a proportionate part of such instalment to the date fixed for quitting the premises. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1221.)

Cross References

See note to § 12–301. *Standard Sav. Bank* v. *Stone* (52 App. D. C. 42, 280 Fed. 1016).

See note to § 45–819. *Morse* v. *Brainerd* (42 App. D. C. 448).

NOTES TO DECISIONS

Acceptance of Rent

Where rental check was sent back and forth several times but was never accepted or redeposited, the question whether these series of events constituted acceptance of the rent and hence that notice to quit became ineffective, was properly submitted to the jury. *Rubenstein* v. *Swagart* (D. C. Mun. App. 1950, 72 A. 2d 690).

Construction With Other Laws

Prior to enactment of District of Columbia Emergency Rent Act, § 45–1601 et seq., landlord could have evicted tenant by sufferance at any time and without any reason merely by serving on tenant a 30-day notice to quit followed with possessory action but said § 45–1601 et seq., restrict landlord's rights and protect tenant from eviction except on one of grounds specified. *Westchester Apartments* v. *Keroes* (D. C. 1943, 32 A. 2d 869).

A roomer, although a tenant under section 1611 (f) of Title 45, was not a tenant for other purposes, and was not entitled to benefit of this section requiring a notice to quit for termination of a tenancy. *Tamamian* v. *Gabbard* (D. C. Mun. App. 1947, 55 A. 2d 513).

Description of Property

Notice to quit, served on tenant at sufferance who had sublet premises for definite period with landlord's consent on ground that tenant was violating obligation of tenancy within § 45–1605 three weeks before any such alleged violation occurred, was premature, and had no anticipatory effect to reach future violations. *Westchester Apartments* v. *Keroes* (D. C. 1943, 32 A. 2d 869).

A tenant who remained in possession paying rent after expiration of written lease became a "tenant by sufferance", not within common-law meaning of term, and hence such tenancy could be terminated by either party upon 30 days' notice. *Hampton* v. *Mott Motors* (D. C. 1943, 32 A. 2d 247).

Expiration of Notice

An agreement whereby property was conveyed to holder of a deed of trust did not affect lease of the premises previously made by owner, but the title taken was subject to the lease, in absence of foreclosure of the deed of trust, even though the lease was not of record, and to terminate the tenancy it was necessary that notice to quit expire on the day on which the tenancy commenced to run. *Knowles* v. *Mosher* (D. C. Mun. App. 1946, 45 A. 2d 755).

Holding Over

Tenant continuing in possession and paying rent under an expired lease becomes a tenant at sufferance and such tenancy is impliedly subject to the provisions of the expired lease. *Friedman* v. *Sherman* (D. C. Mun. App. 1950, 74 A. 2d 57).

Improvements

Where tenant of a row house, shortly before expiration of five-year lease, made improvements on the property at a cost of more than $200, but the only improvement landlord was cognizant of was the painting of front porch by tenant, such repairs were not sufficient to have bound tenant for a renewal term of five years, and hence did not constitute notice to landlord that tenant was exercising option contained in lease to renew for a five-year period, and landlord was at liberty, after expiration of lease, to terminate the tenancy and recover possession for landlord's personal occupancy. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Master and Servant Relationship

Where the servant was to do certain work, and while performing the same he was to occupy the premises without charge, the relationship was master and servant, not landlord and tenant. *Turner* v. *Mertz* (55 App. D. C. 177, 3 Fed. (2d) 348, 39 A. L. R. 1140).

A landlord's notice to quit to tenant by sufferance, stating that notice expired on 30th day after day of service of notice, substantially complied with this section. *Globe Clothing Shop* v. *Skolnick* (D. C. Mun. App. 1946, 50 A. 2d 271).

A notice to tenant by sufferance to quit addressed to "Globe Clothing Shop" was not defective for failure to designate tenant as corporation, partnership, or individual, where notice was personally served on tenant and tenant was not misled by notice. *Globe Clothing Shop* v. *Skolnick* (D. C. Mun. App. 1946, 50 A. 2d 271).

Notice Generally

A notice to terminate a tenancy by sufferance is sufficient which requires tenant to quit "at the end of 30 days from the date of service" upon him, instead of on the thirtieth day thereafter. *Hayden* v. *Filippone* (51 App. D. C. 246, 278 Fed. 329).

To terminate a tenancy by sufferance, landlord must give tenant a 30-day notice to vacate, but such notice does not need to assign any reason. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Where tenant held over after expiration of lease and landlord desired premises for personal occupancy, 30-day notice to vacate was sufficient to terminate the tenancy notwithstanding that notice did not specify any one of the several grounds which, under the Emergency Rent Control Act, § 45–1605, are made conditions to the right of a landlord to regain possession of residential property. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Where one-year lease of rooming house gave lessor or his assignee right to terminate lease if property was sold during term of lease by giving lessee 90-days notice, it unambiguously provided for 90 days notice only during year lease was in effect, and tenant by holding over and paying rent after lease expired became "tenant by sufferance" and was entitled only to the usual 30-day notice. *Arsenault* v. *Angle* (D. C. Mun. App. 1945, 43 A. 2d 709).

Where landlord gave tenant permission to install an air cooling system for leased premises and thereafter gave tenant "permission to use" certain space not covered by

lease for purpose of installing parts of the air cooling machinery, the language used did not create a "tenancy by sufferance" so as to require landlord to give tenant a 30 day notice to quit after expiration of lease with respect to the space permissively used. *Thayer* v. *Brainerd* (D. C. Mun. App. 1946, 47 A. 2d 787).

Where evidence was insufficient to establish that tenant had any special form of lease, he was merely a tenant at sufferance, and a notice to quit which expired 30 days from December 20 was valid although tenancy commenced on first of the month. *Sandler* v. *Wertlieb* (D. C. Mun. App. 1948, 60 A. 2d 222).

NOTICE IN WRITING

A notice served on tenant personally, wherein he is described as "Wm." instead of Richard, and giving him the required length of time in which to vacate is sufficient under this section. "The proceedings in landlord and tenant cases are informal, and if the substantial rights of both parties are preserved, a departure from strict procedure may be ignored." *Creel* v. *Adams* (49 App. D. C. 306, 265 Fed. 456).

To terminate a tenancy by sufferance, notice in writing must be given. *Beyer* v. *Smith* (59 App. D. C. 32, 32 Fed. (2d) 423, cert. den. 280 U. S. 557, 74 L. Ed. 613, 50 Sup. Ct. 17).

PURPOSE OF NOTICE

The purpose of a thirty days' notice to quit is to terminate a tenancy and upon the expiration of the time fixed in the notice to quit, the tenancy no longer exists *Rubenstein* v. *Swagart* (D. C. Mun. App. 1950, 72 A. 2d 690).

PROPERTY USED FOR BUSINESS PURPOSES

Where plaintiff served defendant notice to quit using language of statute, and said also, "The said premises being necessary for me for my immediate personal occupancy"; such notice is sufficient whether the property was being used for business purposes or not. *Weaver* v. *Koester* (54 App. D. C. 80, 294 Fed. 1011).

WAIVER OF POSSESSION

The receipt of rent by a landlord for a new term or parts thereof after service of a notice to quit amounts to a waiver of his rights to demand possession under the notice. *Christopher* v. *Shapiro* (D. C. Mun. App. 1950, 76 A. 2d 781).

§ 45–905 [25: 315]. Notice not to be recalled.

Neither landlord nor tenant, after giving notice as aforesaid, shall be entitled to recall the notice so given without the consent of the other party, but after the expiration of the notice given by the tenant as aforesaid the landlord shall be entitled to the possession as if he had given the proper notice to quit; and after the expiration of the notice given by the landlord as aforesaid the tenant shall be entitled to quit as if he had given the proper notice of his intention to quit. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1222; June 30, 1902, 32 Stat. 542, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by inserting after the word "if," the word "he."

§ 45–906 [25: 316]. Service of notice.

Every notice to the tenant to quit shall be served upon him personally, if he can be found, and if he can not be found it shall be sufficient service of said notice to deliver the same to some person of proper age upon the premises, and in the absence of such tenant or person to post the same in some conspicuous place upon the leased premises. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1223.)

CITED

Hirsh v. *Block* (50 App. D. C. 56, 267 Fed. 614).

NOTES TO DECISIONS

DELIVERY TO ADULT

Where one of the landlords went to rented dwelling and inquired for month to month tenant, and, upon being told that she was not at home, delivered 30-day notice to quit to an adult person who came to the door, there was good service of such notice. *Pointer* v. *Shepard* (D. C. Mun. App. 1946, 49 A. 2d 659).

DELIVERY TO MINOR SON

A notice delivered by landlord to tenant's son, 17 years of age, at her request, and the same delivered to her by the boy, is served substantially in compliance with the statute. *Hockman* v. *Shreve* (50 App. D. C. 140, 269 Fed. 482).

DELIVERY TO TENANT'S WIFE

A landlord left notice to quit with tenant's wife, with a request that she deliver it to him, which was done. "There is nothing in this (section) which requires that the landlord in person or an officer shall make the service. It may be made by any person acting for the landlord. In this case the wife, at the request of the landlord, handed the notice to the tenant, and thus he was personally served. * * * In the case of a notice to quit, service by any person is enough, so long as the tenant receives the notice in time to allow the statutory period of vacate." *Hardebeck* v. *Hamilton* (50 App. D. C. 113, 268 Fed. 703).

POSTING ON PREMISES

Where attempt was made at 10:30 p. m. to serve on tenant a notice to quit and another attempt was made at 11 p. m. same evening, and an earlier attempt would have proved unsuccessful and notice to quit was tacked on door of premises, service of notice was sufficient. *Lynch* v. *Bernstein* (D. C. Mun. App. 1946, 48 A. 2d 467).

REGISTERED MAIL

Landlord could select Post Office Department as his delivering agent for service of a notice to quit upon tenant by the employment of registered mail, prescribing delivery to addressee only with demand for a return receipt, so long as such method resulted in notice being served personally upon tenant. *Craig* v. *Heil* (D. C. Mun. App. 1946, 47 A. 2d 871).

SERVICE, GENERALLY

Where one of the landlords personally handed month to month tenant a 30-day notice to quit, there was good service notwithstanding that tenant, after reading notice, stated she would not accept it and handed it back. *Pointer* v. *Shepard* (D. C. Mun. App. 1946, 49 A. 2d 659).

Service of notice to quit upon tenant need not be made by landlord in person but may be made by any person acting for landlord so long as tenant receives notice in time to allow him the statutory period to vacate, the same exactness not being required in serving such a notice as in serving a summons. *Craig* v. *Heil* (D. C. Mun. App. 1946, 47 A. 2d 871).

Deputy marshal was entitled to make the service upon the person obviously in charge of the premises, particularly when that person told him he was authorized by the tenant to accept service. *Rubenstein* v. *Swagart* (D. C. Mun. App. 1950, 72 A. 2d 690).

The Code describes the manner in which a notice to quit must be served to constitute valid service in this jurisdiction. There is nothing which requires that the landlord in person, or an officer, shall make the service. It may be made by any person acting for the landlord. *Glenn* v. *Mindell* (D. C. Mun. App. 1950, 74 A. 2d 835).

Where appellant argues that the party who actually made the service should have been produced and that in his absence testimony was incompetent, the argument is completely without substance in the absence of a statute or decision which requires such mode of proof. *Glenn* v. *Mindell* (D. C. Mun. App. 1950, 74 A. 2d 835).

§ 45–907 [25: 317]. Refusal to quit, double rent.

If the tenant, after having given notice of his intention to quit as aforesaid, shall refuse, without reason-

able excuse, to surrender possession according to such notice, he shall be liable to the landlord for rent at double the rate of rent payable according to the terms of tenancy for all the time that the tenant shall so wrongfully hold over, to be recovered in the same way as the rent accruing before the termination of the tenancy. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1224.)

§ 45–908 [25: 318]. Agreement as to notice.

Nothing herein contained shall be construed as preventing the parties to a lease, by agreement in writing, from substituting a longer or shorter notice to quit than is above provided or to waive all such notice. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1236.)

NOTES TO DECISIONS

AGREEMENT AS TO NOTICE

Provision of lease that tenant, if not in default, was entitled to not less than 30 days' notice to vacate, which notice was to be given, in writing, at least 30 days before the tenancy was intended to be terminated, was a valid contract substitution for section 902 of this title pertaining to notice to terminate a tenancy from month to month. *Zoby* v. *Kosmadakes* (D. C. Mun. App. 1948, 61 A. 2d 618).

FAILURE OF RENT—NOTICE WAIVED

Defendant agreed that in the event he should not pay the rent when due he should not be entitled to any notice to quit, the usual thirty days' notice being expressly waived; such contract was specifically authorized by this section. *H. L. Rust Co.* v. *Drury* (62 App. D. C. 329, 68 Fed. (2d) 167).

WAIVER OF NOTICE

A notice to quit is a condition precedent to the filing of an action by landlord to obtain premises from tenant but is not jurisdictional and may be waived when tenancy is created or at any later time. *Morris* v. *Breaker* (D. C. Mun. App. 1944, 38 A. 2d 632; *Craig* v. *Heil* (D. C. Mun. App. 1946, 47 A. 2d 871).

In landlord's action to recover premises from tenant where tenant testified that she had waived service of a notice to quit, tenant waived defense of failure of landlord to serve such notice. *Morris* v. *Breaker* (D. C. Mun. App. 1944, 38 A. 2d 632).

In landlord's action to recover premises, landlord's failure to give notice to quit is not an automatic defense and can be waived or relinquished. *Morris* v. *Breaker* (D. C. Mun. App. 1944, 38 A. 2d 632).

Where lease provided that no notice to quit should be necessary if default in rent occurred, but in landlord's suit for possession, a confession of judgment and stipulation was filed permitting tenant to continue in possession and providing a new method of rent payment, the lease, including the waiver clause, remained in force and tenant was not entitled to a 30-day notice to quit before a new suit for possession could be filed against him.—*Klein* v. *Insurance Bldg.* (D. C. Mun. App. 1946, 46 A. 2d 368).

Where in District of Columbia Municipal Court question whether 30 days' notice to quit had been waived by tenant was raised by pleadings but no evidence of waiver was adduced at trial, tenant's failure to call absence of proof to trial court's attention was equivalent to waiver or at least waiver of proof of notice. *Zindler* v. *Buchanon* (D. C. Mun. App. 1948, 61 A. 2d 616).

§ 45–909 [25: 319]. Recovery of real and personal property leased together.

Whenever real and personal property shall be leased together, as, for example, a house with the furniture contained therein, the landlord, either in an action of ejectment or in the summary proceeding for possession, before the municipal court provided for in sections 11–701 to 11–749 of this Code may have a judgment for recovery of the personalty as well as for the recovery of the realty. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1235; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

Act of March 3, 1901, was amended by changing name of court from justice of peace to municipal court.

§ 45–910 [25: 320]. Ejectment or summary proceedings.

Whenever a lease for any definite term shall expire, or any tenancy shall be terminated by notice as aforesaid, and the tenant shall fail or refuse to surrender possession of the leased premises, the landlord may bring an action of ejectment to recover possession in the District Court of the United States for the District of Columbia; or the landlord may bring an action to recover possession before the municipal court, as provided in sections 11–701 to 11–749 of this Code. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1225; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

Act of March 3, 1901, was amended by changing name of court from "justice of peace" to "municipal court."

CROSS REFERENCES

Jurisdiction of municipal court, § 11–735.
See § 45–822.

NOTES TO DECISIONS

CONTINUING BREACH OF LEASE

Keeping the same dog in leased apartment with knowledge of landlord from beginning of tenancy and for nearly five years thereafter would not constitute a continuing breach. *Stewart* v. *Shannon & Luchs Co.* (D. C. Mun. App. 1946, 46 A. 2d 863).

EMERGENCY RENT CONTROL ACT

The effect of Emergency Rent Control Act, § 45–1605, restricting landlord's right to recover possession of housing accommodations is to create a noncontractual statutory right of possession in tenant, continuing at his option beyond expiration of his lease or rental agreement by depriving landlord, unless he claims under one of the permitted grounds, of right to maintain an action for possession. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Under the Emergency Rent Control Act, § 45–1605, the procedure in landlord's action against tenant for possession of premises, except for restrictions as to grounds upon which landlord may claim right of possession, remains the same as it was previously. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

EVIDENCE

In landlord's action to recover possession of storeroom from tenant after expiration of lease, testimony as to landlord's reasons for seeking of possession was inadmissible. *Fowel* v. *Continental Life Ins. Co.* (D. C. Mun. App. 1947, 55 A. 2d 205).

IMPROVEMENTS

Where tenant of a row house, shortly before expiration of five-year lease, made improvements on the property at a cost of more than $200, but the only improvement landlord was cognizant of was the painting of front porch by tenant, such repairs were not sufficient to have bound tenant for a renewal term of five years, and hence did not constitute notice to landlord that tenant was exercising option contained in lease to renew for a five-year period, and landlord was at liberty, after expiration of lease, to terminate the tenancy and recover possession for landlord's personal occupancy. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

JURISDICTION

Jurisdiction of the municipal court over summary suits to recover possession of real property under this section is limited explicitly to actions by landlord against tenant. *Spruill* v. *Brooke* (D. C. Mun. App. 1949, 68 A. 2d 204).

NONPAYMENT OF RENT

A landlord could not dispossess tenant for nonpayment of rent and at the same time collect rent from tenant for period extending beyond time of filing of action. *Gunn* v. *Brown* (D. C. Mun. App. 1948, 59 A. 2d 518).

NOTICE TO FORMER OWNER

Congress did not intend a remedy too expeditious to be fair, and recognized the justice of giving a former owner of real estate, or his tenant, when sold out under a mortgage or deed of trust, a reasonable notice and time to peaceably remove himself and his belongings from the property sold. *Thornhill* v. *Atlantic Life Ins. Co.* (63 App. D. C. 184, 70 Fed. (2d) 846).

PARTIES

Where tenant terminated his tenancy by notice acceptable to landlord but tenant's estranged wife remained in possession of premises, landlord's action to recover possession of premises was properly brought against the tenant and it was not necessary that the tenant's estranged wife, who was not a party to lease, should be named as defendant. *Scott* v. *H. G. Smithy Co.* (D. C. Mun. App. 1947, 53 A. 2d 45).

PERSONS BOUND BY JUDGMENT

Where owners of building, who had received from former landlord assignments in blank of various leases, directed that blanks be filled up in name of owners' building manager, thereby making him landlord, a judgment in a possessory action by manager against a tenant would be binding on owners. *Koehne* v. *Harvey* (D. C. Mun. App. 1946, 45 A. 2d 780).

QUESTIONS FOR JURY

In action by landlord for possession of leased apartment, tenant's testimony that prior to execution of lease, the landlord through its agent knew that tenant intended keeping dog on premises and assured tenant that it would be all right, that from beginning of tenancy and for nearly five years dog was kept on premises with knowledge of landlord who without objection accepted rent during that time, raised issue for jury of whether landlord had waived covenant in lease against keeping animals in apartment. *Stewart* v. *Shannon & Luchs Co.* (D. C. Mun. App. 1946, 46 A. 2d 863).

Evidence showing the circumstances surrounding the signing of the lease should have been admitted, at least tentatively, by the trial judge in order for him to determine whether such evidence should have gone before the jury. *Newlin* v. *Weaver Brothers* (D. C. Mun. App. 1949, 69 A. 2d 500, rehearing denied 70 A. 2d 61, aff'd 74 A. 2d 65).

Where in an action on the breach of a lease on the ground that tenant had kept a dog in violation of the lease, a question of fact for the jury was presented where tenant claims as evidence of the waiver of the breach that the landlord accepted rent with the knowledge that a dog was being kept by the tenant. *Newlin* v. *Weaver Brothers, Inc.* (D. C. Mun. App. 1949, 69 A. 2d 500, rehearing denied 70 A. 2d 61, aff'd 74 A. 2d 65).

REAL PARTY IN INTEREST

Where leases were assigned to manager of building as landlord under express instructions of owners of building, in light of this section giving landlord right to sue for possession and in light of holding that manager was real landlord, manager was "real party in interest" within meaning of rule 17a restricting right to maintain suit to real party in interest. *Koehne* v. *Harvey* (D. C. Mun. App. 1946, 45 A. 2d 780).

WAIVER OF COVENANT

Though oral testimony may not be used to vary the terms of a written lease, such testimony is admissible on the question of whether a written covenant has been waived by an oral estoppel or some other act inconsistent with reliance upon the covenant. *Newlin* v. *Weaver Brothers, Inc.* (D. C. Mun. App. 1949, 69 A. 2d 500, rehearing denied 70 A. 2d 61, aff'd 74 A. 2d 65).

WITHDRAWAL OF PERMISSION

Where lease prohibited keeping of dogs in apartment but landlord conditionally granted tenants permission to keep dog subject to withdrawal if other tenants complained, tenants' refusal to remove dog when permission was withdrawn entitled landlord to recover possession. *Shay* v. *Randall H. Hagner & Co.* (D. C. Mun. App. 1944, 34 A. 2d 358).

Where lease contained covenant prohibiting keeping of dogs, and provided that waiver of breach of covenant could not be construed as waiver of covenant, even though landlord conditionally granted permission to tenants to keep dog, the covenant was not waived and could be enforced by action for possession of premises on withdrawal of permission. *Shay* v. *Randall H. Hagner & Co.* (D. C. Mun. App. 1944, 34 A. 2d 358).

§ 45–911 [25: 321]. Arrears of rent and double rent.

In either case the landlord may join with his claim for recovery of the possession of the leased premises a claim for all arrears of rent accrued to the termination of the tenancy, and, when the tenant has given the notice, for double rent from the termination of the tenancy to the verdict, or judgment, if the trial be by the court and for damages for waste: *Provided,* That in such action before the municipal court the amount so claimed shall be within its jurisdiction. If judgment for possession be rendered in favor of the plaintiff, he shall be entitled, at the same time, to a judgment for said arrears of rent, and for said double rent, as the case may be, to the date of the verdict or judgment as aforesaid, and for damages for waste. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1226; June 30, 1902, 32 Stat. 542, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENTS

Act of March 3, 1901, was amended by striking out the words "for possession" following the words "by the court."

Act of February 17, 1909, changed name from "justice of peace" to "municipal court."

NOTES TO DECISIONS

LESSEE BREACHING COVENANT

Where lessee had breached covenant against subletting and lessor returned check for rent payment but lessee had continued in possession, lessor was entitled to a judgment for possession and rent. *Merritt* v. *Kay* (54 App. D. C. 152, 295 Fed. 973).

LIABILITY FOR RENT

Rent as it fell due became a debt which tenant was bound to pay unless the parties entered into a contrary agreement supported by consideration. *Crowder* v. *Lackey* (D. C. Mun. App. 1946, 46 A. 2d 699).

In an action for rent, in the absence of warranty, deceit, or fraud, the tenant has the duty to examine the premises and determine its adaptability for the desired use and there is no duty on the part of the landlord to ascertain the weight of a particular type of a machine which defendant desires to install on the premises. *Soresi* v. *Repetti* (D. C. Mun. App. 1950, 76 A. 2d 585).

MONEY JUDGMENT

The recovery of a money judgment for rent in landlord's action for possession of leased premises on ground of nonpayment of rent is but incidental to the main action, which remains basically one for possession. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

PLEADING

Although proceedings in landlord and tenant actions are informal, tenant is entitled to be informed by complaint

of nature of recovery sought against him. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

TENDER OF RENT

Landlord's prior refusal of proffered rent would not constitute a waiver which would entitle tenant, when sued for possession because of nonpayment of rent, to a trial on the merits without tendering the rent due, in absence of agreement supported by consideration that tenant could remain in possession without charge. *Crowder* v. *Lackey* (D. C. Mun. App. 1946, 46 A. 2d 699).

In action for possession of real property based on nonpayment of rent, defendant had right to defeat action by tendering the rent at the hearing. *Crowder* v. *Lackey* (D. C. Mun. App. 1946, 46 A. 2d 699).

§ 45–912 [25: 322]. Consolidation of actions.

If actions be brought separately, either in said District Court of the United States for the District of Columbia or in the municipal court, for arrears of rent and for the possession, they may be afterwards consolidated and one judgment rendered in them for the possession and also for the rent. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1227; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

Act of February 17, 1909, changed name from "justice of peace" to "municipal court."

§ 45–913 [25: 323]. Procedure to eject married woman who is a tenant.

In all cases in which a married woman is or shall hereafter be a tenant of real estate in this District, and has defaulted in the payment of rent therefor or has made other default, it shall be lawful for the landlord to make such re-entry or bring such action for recovery of the demised premises as he or she might do if the lessee were a feme sole and had contracted for the payment of said rents or the performance of other acts and to suffer such re-entry to be made upon default therein. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1169.)

§ 45–914 [25: 324]. Plea of title.

If, in an action in the municipal court to recover possession the defendant shall plead a title in himself or in some person under whom he claims, not derived from the plaintiff, the further proceeding therein shall be as directed in sections 11–701 to 11–749 of this Code. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1228; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

Act of February 17, 1909, changed name from "justice of peace" to "municipal court."

§ 45–915 [25: 325]. Landlord's lien for rent.

The landlord shall have a tacit lien for his rent upon such of the tenant's personal chattels, on the premises, as are subject to execution for debt, to commence with the tenancy and continue for three months after the rent is due and until the termination of any action for such rent brought within said three months. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1229.)

NOTES TO DECISIONS

AMOUNT OF LIEN

Although four months' rent was due operation of landlord's lien was properly restricted to three months' rent under this section creating lien. *Klein* v. *Insurance Bldg.* (D. C. Mun. App. 1946, 46 A. 2d 368).

TIME OF ATTACHMENT OF LIEN

A landlord's statutory lien exists independently of the several means of enforcement which section 45–916 permits. *Moses* v. *Labofish,* 1942 (132 F. 2d 16, 76 U. S. App. D. C. 401).

BANKRUPTCY OF TENANT

A landlord's statutory lien is not a "lien by legal proceedings" within 11 U. S. C. § 107, subd. 2, providing that liens obtained through legal proceedings against a person who is insolvent within four months prior to filing of petition in bankruptcy shall be void. *Moses* v. *Labofish,* 1942 (132 F. 2d 16, 76 U. S. App. D. C. 401).

Where landlord brought action to recover possession of premises and rent due and recovered judgment under which levy was made on chattels which had been removed from leased premises after commencement of action, but, before the chattels were offered for sale, tenant filed voluntary petition in bankruptcy, the landlord's statutory lien and right to priority of payment out of proceeds was not impaired by the Bankruptcy Act, 11 U. S. C. §§ 1 et seq. *Moses* v. *Labofish,* 1942 (132 F. 2d 16, 76 U. S. App. D. C. 401).

CLAIM IN BANKRUPTCY

A landlord has a lien for rent on property of a bankrupt on leased premises, which may be enforced by making claim in bankruptcy. *In re Caplan* ((D. C.-Md.), 23 Fed. (2d) 680).

DURATION OF LIENS

Landlord's lien, once it attached, continued to attach no matter in whose hands the chattels may have come, unless displaced by removal of goods or sale in regular course of business, and sale of stock in mass which was not removed did not displace the lien. *Fowler* v. *Rapley* (15 Wall. (82 U. S.) 328, 21 L. Ed. 35).

Under this section, landlord acquired a statutory lien on personal property of tenant on premises from time of execution of lease and lien continued in full force for a period of three months after rent was due and until termination of any action to recover on lease. *Moses* v. *Labofish,* 1942 (132 F. 2d 16, 76 U. S. App. D. C. 401).

The landlord's lien in District of Columbia is not dormant, but is in effect from the time personal chattels are brought upon leased premises and can only be displaced by a sale of the goods in the ordinary course of trade followed by their removal from the premises. *Munday* v. *Bricklayers, Masons & Plasterers Intern. Union of America* (D. C. Mun. App. 1946, 47 A. 2d 398).

Landlord's lien attached to rug on office floor when it was brought on to premises by tenant and continued throughout period of tenancy. *Munday* v. *Bricklayers, Masons & Plasterers Intern. Union of America* (D. C. Mun. App. 1946, 47 A. 2d 398).

LIEN SURRENDER OF LEASE

Surrender of lease and wrongful eviction of tenant by landlord as a defense to action for rent, see *Okie* v. *Person* (23 App. D. C. 170). See also *Richmond* v. *Cake* (1 App. D. C. 447); *Hume* v. *Riggs* (12 App. D. C. 355).

PRIORITY

Lien of landlord, so far as respects chattels on the premises, was entitled to priority over deeds of trust, unless the statutory lien was displaced. *Beall* v. *White* (94 U. S. 382, 24 L. Ed. 173).

When the landlord is attempting to enforce a lien against chattels of lessee, which chattels were purchased on a conditional sales contract, his lien must be consistent with title and he cannot prevail against vendor of chattels even though conditional sales contract was not recorded. *Stern Co.* v. *Rosenberg* (67 App. D. C. 99, 89 Fed. (2d) 843).

Where lease provided that no notice to quit should be necessary if default in rent occurred, but in landlord's suit for possession a confession of judgment and stipulation was filed permitting tenant to continue in possession and providing a new method of rent payment, the landlord's lien for three months' rent subsequently accruing was superior to lien under chattel deed of trust executed more than two months after the tenancy commenced. *Klein* v. *Insurance Bldg.* (D. C. Mun. App. 1946, 46 A. 2d 368).

Under this section, the landlord's lien takes priority over lien of a subsequently executed chattel deed of trust. *Klein* v. *Insurance Bldg.* (D. C. Mun. App. 1946, 46 A. 2d 368).

PROPERTY COVERED

Where sale of rug on office floor to tenant's secretary was not made in ordinary course of trade and rug was not removed from premises, though no rent was due when sale was made, rug was subject to landlord's lien for three months' rent which subsequently accrued. *Munday* v. *Bricklayers, Masons & Plasterers Intern. Union of America* (D. C. Mun. App. 1946, 47 A. 2d 398).

SECURED LIEN

Landlord to whom chattels are delivered as security for payment of rent "had a lien on the property for the payment of his rent, which was something more than the tacit lien given to a landlord by the statute" and his possession cannot be disturbed without previous payment of the claim. *Brown* v. *Petersen* (25 App. D. C. 359).

TIME OF ATTACHMENT OF LIEN

Landlord's lien attached to chattel the moment it was placed upon the premises, and as long as it remained on premises the lien continued until each instalment of rent became due and for three months thereafter, and then ceased as to that instalment. *Webb* v. *Sharp* (13 Wall. (80 U. S.) 14, 20 L. Ed. 478).

The landlord's lien for rent commences with the tenancy, and is superior to chattel mortgage given by tenant thereafter. *Spilman* v. *Geiger* (61 App. D. C. 164, 58 Fed. (2d) 890).

Landlord's statutory lien attaches at the moment chattels of tenants come upon leased premises. *Moses* v. *Labofish,* 1942 (132 F. 2d 16, 76 U. S. App. D. C. 401).

§ 45–916 [25: 326]. Lien—How enforced.

The said lien may be enforced—

First. By attachment, to be issued upon affidavit that the rent is due and unpaid; or, if it be not due, that the defendant is about to remove or sell some part of said chattels.

Second. By judgment against the tenant and execution, to be levied on said chattels, or any of them, in whosesoever hands they may be found.

Third. By action against any purchaser of said chattels, with notice of the lien, in which action the plaintiff may have judgment for the value of the chattels purchased by the defendant not exceeding the rent in arrear. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1230.)

CROSS REFERENCE

See note to § 45–915.

§ 45–917 [25: 327]. How attachment enforced.

Such attachment may be issued in any action for the recovery of the possession of the leased premises by the landlord, in which the rent in arrear, or double rent, or both, shall be claimed as aforesaid, and it shall be lawful for any officer to whom the writ of attachment shall be delivered to be executed to break open an outer or inner door when necessary to the execution of the same. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1231.)

§ 45–918 [25: 328]. Property subject to lien for rent not to be taken on execution without first paying all rent due.

No goods or chattels whatsoever, lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall before the removal of such goods from off the said premises, by virtue of such execution or extent, pay to the landlord of the said premises, or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution: *Provided,* The said arrears of rent do not amount to more than three months' rent, and in case the said arrears shall exceed three months' rent, then the said party, at whose suit such execution is sued out, paying the said landlord, or his bailiff, three months' rent, may proceed to execute his judgment as he might have done before the making of this section; and the marshal is hereby impowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the execution money. (8 Ann, ch. 14, § 1, 1709; Kilty's Rep. 248; Alex. Br. Stat. 681; Comp. Stat. D. C., 325, § 41.)

CROSS REFERENCE

See note to § 45–309.

§ 45–919 [25: 329]. Distress not void because of irregularity—Party not trespasser ab initio—Special damages only recoverable—Tender of amends defeats recovery.

Where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her, or their agents; the distress itself shall not be therefore deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers ab initio; but the party or parties aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass or on the case at the election of the plaintiff or plaintiffs: *Provided always,* That where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs: *Provided nevertheless,* That no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining, his, her, or their agent or agents, before such action brought. (11 Geo. 2, ch. 19, §§ 19 and 20, 1738; Kilty's Rep. 251; Alex. Br. Stat. 741, 742; Comp. Stat. D. C., 334, §§ 66, 67.)

§ 45–920 [25: 330]. Fraudulent removal, conveyance, or concealment of property to defeat lien subjects guilty party to forfeiture of double value of such property.

If any tenant or lessee shall fraudulently remove and convey away his or her goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same; all and every person or persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and

chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her or them respectively carried off or concealed as aforesaid; to be recovered by action of debt in any court of record. (11 Geo. 2, ch. 19, § 3, 1738; Kilty's Rep. 251; Alex. Br. Stat. 732; Comp. Stat. D. C., 329, § 53.)

§ 45–921 [25: 331]. Representatives of life tenant may recover from under-tenant proportion of rent.

Where any tenants for life shall happen to die before or on the day, on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life shall and may in an action on the case recover of and from such under-tenant or under-tenants of such lands, tenements, or hereditaments, if such tenant for life die on the day on which the same was made payable the whole, or if before such day then a proportion, of such rent according to the time such tenant for life lived, of the last year, or quarter of a year or other time in which the said rent was growing due as aforesaid, making all just allowances or a proportionable part thereof respectively. (11 Geo. 2, ch. 19, § 15, 1738; Kilty's Rept. 251; Alex. Br. Stat. 739; Comp. Stat. D. C. 333, § 64.)

§ 45–922 [25: 332]. Debt may be brought for instalments of rent under lease for life.

It shall and may be lawful for any person or persons, having any rent in arrear, or due upon any lease or demise for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner they might have done, in case such rent were due, and reserved upon a lease for years. (8 Ann, ch. 14, § 4, 1709; Kilty's Rept. 248; Alex. Br. Stat. 682; Comp. Stat. D. C., 325, § 42.)

§ 45–923 [25: 333]. Action of case for use and occupation—Parol agreement evidence of quantum of damages.

It shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff in such action shall not therefor be nonsuited, but may make use thereof as an evidence of the quantum of the damages to be recovered. (11 Geo. 2, ch. 19, § 14, 1738; Kilty's Rep. 251; Alex. Br. Stat. 738; Comp. Stat. D. C., 333, § 63.)

§ 45–924 [25: 334]. Lunatic, entitled to renewal of lease, or his guardian or committee, under order of court, may surrender lease—Also make new lease.

In all cases where any lunatic is or shall be intitled, or has right to renew any lease or leases made or granted, or to be made or granted, for the life or lives of one or more person or persons, or for any term or number of years, absolute or determinable on the death of one or more person or persons, or otherwise; it shall and may be lawful to and for such lunatic, or his or her guardian or guardians, committee or committees, of his estate, in his, her, or their name or names, by the direction of the chancellor, signified by an order made on hearing all parties concerned, upon petition, in a summary way, from time to time, to accept of a surrender or surrenders of such lease or leases; and to make and execute to any person or persons, bodies politic, or corporate or collegiate, aggregate or sole, a new lease or leases of the premises comprised in such lease or leases so to be surrendered by virtue of this section, for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof, or otherwise, as the chancellor for the time being, by any such order, so to be obtained as aforesaid, shall direct. (11 Geo. 3, ch. 20, § 1, 1771; Kilty's Rep. 253; Alex. Br. Stat. 791; Comp. Stat. D. C., 336, § 74.)

§ 45–925 [25: 335]. Lease made pursuant to section 45–924 valid.

All and every such lease or leases so to be made or executed as aforesaid, shall be and be deemed as good and valid, and effectual in the law, to all intents and purposes, as if such lunatic was at the time of making or executing thereof of sane mind, and had executed the same in his or her own proper person. (11 Geo. 3, ch. 20, § 2, 1771; Kilty's Rep. 253; Alex. Br. Stat. 791; Comp. Stat. D. C., 336, § 75.)

§ 45–926 [25: 336]. Accruals from renewals of leases, property of lunatic—Unapplied part at death of lunatic treated as real property, unless lunatic be tenant for life, then personal property.

All fines, premiums, foregifts, and sums of money, which shall or may be had, received, or paid for, or on account of the renewing of any such lease or leases as aforesaid, shall (after a deduction of all necessary incident charges and expenses) be paid to the guardian or guardians, committee or committees, of the said lunatic, and be applied and disposed of for the benefit of such lunatic, in such manner as the chancellor shall direct: but, upon the death of such lunatic or lunatics, all such sum or sums of money as shall arise by such fines, premiums, or foregifts, or so much as shall remain unapplied for the benefit of such lunatic or lunatics, at his, her or their death, shall, as between the representatives of the real and personal estates of all such lunatics, be considered as real estate, unless such lunatic or lunatics shall be tenants for life only; and then the same shall be considered as personal estate. (11 Geo. 3, ch. 20, § 3, 1771; Kilty's Rep. 253; Alex. Br. Stat. 792; Comp. Stat. D. C., 336, § 76.)

§ 45–927 [25: 337]. Lunatic or infant, or guardian or committee, under order of court, may surrender and take new leases.

In all cases where any person under the age of twenty-one years, or any lunatick, is or shall become interested in or intitled to any lease or leases made or granted, or to be made or granted, by any person

or persons, bodies politick, corporate or collegiate, aggregate or sole, for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons or otherwise, it shall and may be lawful for such person under the age of twenty-one years, or for his or her guardian or guardians, or other person or persons on his or her behalf, and for such lunatick, or his or her guardian or guardians, committee or committees of the estate, or other person or persons on his or her behalf, to apply to the court of chancery by petition or motion, in a summary way, and by the order and direction of the said court made, upon hearing all parties concerned, such person under the age of twenty-one years, and such lunaticks, or person or persons appointed by the said courts respectively, by deed or deeds only, shall and may be enabled, from time to time, to surrender such lease or leases, and accept and take, in the name, and for the benefit of such person under the age of twenty-one years, or lunatick, one or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this section for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof respectively, or otherwise as the said court shall respectively direct. (29 Geo. 2, ch. 31, § 1, 1756; Kilty's Rep. 253; Alex. Br. Stat. 788; Comp. Stat. D. C., 335, § 70.)

§ 45–928 [25: 338]. Expenses and costs of renewal chargeable against interest of infant or lunatic.

All and every sum and sums of money and other consideration, paid or advanced by any such guardian, trustee, committee or other person, for or on account of the renewal of any such lease or leases, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant or lunatick for whose benefit the said lease or leases shall be renewed, or shall be a charge and incumbrance upon the leasehold premisses, together with interest for the same, as the said court shall direct and determine. (29 Geo. 2, ch. 31, § 2, 1756; Kilty's Rep. 253; Alex. Br. Stat. 789; Comp. Stat. D. C., 335, § 71.)

§ 45–929 [25: 339]. Renewed leases shall be to the same uses, trusts, charges, incumbrances, devises, and conditions as surrendered leases were.

The respective leases to be so renewed, shall operate, and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises and conditions, as the leases to be, from time to time, surrendered as aforesaid, were or would have been subject to, in case such surrender had not been made. (29 Geo. 2, ch. 31, § 3, 1756; Kilty's Rep. 253; Alex. Br. Stat. 790; Comp. Stat. D. C., 335, § 72.)

§ 45–930 [25: 340]. Surrendered and renewed lease of lunatic or infant valid.

Every such surrender, and such lease or leases granted thereupon, shall be, and be deemed as valid and legal, to all intents and purposes, as if such surrender had been made by and on the behalf of a person of full age, or sane mind. (29 Geo. 2, ch. 31, § 4, 1756; Kilty's Rep. 253; Alex. Br. Stat. 790; Comp. Stat. D. C., 336, § 73.)

§ 45–931 [25: 341]. Surrender for new lease good without surrender of under leases—Under leases continue unaffected—All rights and remedies to continue.

In case any lease shall be duly surrendered, in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall, without a surrender of all the under leases, be as good and valid, to all intents and purposes, as if all the under leases derived thereout had been likewise surrendered at or before the taking of such new lease; and all and every person and persons in whom any estate for life or lives, or for years, shall, from time to time, be vested by virtue of such new lease, and his, her, and their executors and administrators, shall be entitled to the rents, covenants, and duties, and have like remedy for recovery thereof, and the under lessees shall hold and enjoy the messuages, lands, and tenements, in the respective under leases, comprised, as if the original leases, out of which the respective under leases are derived, had been still kept on foot and continued, and the chief landlord and landlords shall have, and be intitled to, such and the same remedy, by distress or entry in and upon the messuages, lands, tenements, and hereditaments comprised in any such under lease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease, out of which such under lease was derived, as they would have had in case such former lease had been still continued, or as they would have had, in case the respective under leases had been renewed under such new principal lease. (4 Geo. 2, ch. 28, § 6, 1731; Kilty's Rep. 249; Alex. Br. Stat. 708; Comp. Stat. D. C., 328, § 50.)

§ 45–932 [25: 342]. Assignee of reversion.

The grantee or assignee of the reversion of any leased premises shall have the same right of action against the lessee, his personal representatives, heirs, or assigns, for rent or for any forfeiture or breach of any covenant or condition in the lease which the grantor or assignor might have had; and the assignee of the lessee shall have the same rights of action against the lessor, his grantee, or assignee, upon any covenants in the lease which the lessee might have had against the lessor. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1234.)

NOTES TO DECISIONS

COVENANT AGAINST ASSIGNING

A covenant in a lease against assigning, being for the benefit of lessor, may be availed of only by him or his representative or assignee. *Mars* v. *Spanos,* 1944 (139 F. 2d 369, 78 U. S. App. D. C. 230).

Where landlord made no objection to assignment of lease to partnership and ratified assignment by accepting from partnership and receiver for partnership business rent for two years as it became due, assignors could not question partnership's ownership of lease on ground that lease prohibited assignment except by consent of landlord. *Mars* v. *Spanos,* 1944 (139 F. 2d 369, 78 U. S. App. D. C. 230).

COVENANT AGAINST SUBLETTING

Covenant against subletting runs with the land and may be enforced by assignee of reversion. *Bailey* v. *Allan E. Walker & Co.* (53 App. D. C. 307, 290 Fed. 282).

EVIDENCE

Defendant could not urge that plaintiff did not have right to bring suit to recover possession of leased premises because there was no proof that lease had been transferred by original lessor to plaintiff, where defendant in answer admitted that he was holding premises as a monthly tenant of plaintiff. *Banks* v. *Torre* (D. C. Mun. App. 1948, 56 A. 2d 52).

NEW OWNERS' ACTION FOR RENT, USE, AND OCCUPATION

When the new owners purchased the property, they acquired the same right of action for rent, or for use and occupation, against the lessee, if holding over his term, which the original owner had. *Selden* v. *Lee* (55 App. D. C. 164, 3 Fed. (2d) 335).

§ 45–933 [25: 343]. Grants of remainders, reversions, and rents good without attornment—Payment of rent without notice valid.

All grants or conveyances of any manors or rents, or of the reversion or remainder of any messuages or lands, shall be good and effectual, to all intents and purposes, without any attornment of the tenants of any such manors, or of the land out of which rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions or remainders shall and may be expectant or depending, as if their attornment had been had and made: *Provided, nevertheless,* That no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor or conusor, or by breach of any condition for nonpayment of rent, before notice shall be given to him of such grant by the conusee or grantee. (4 Ann, ch. 16, §§ 9 and 10, 1705; Kilty's Rep. 246; Alex. Br. Stat. 660, 661; Comp. Stat. D. C., 496, §§ 31 and 32.)

§ 45–934 [25: 344]. Fraudulent attornment void—Possession not changed by such attornment—Attornment pursuant to judgment excepted.

All and every fraudulent attornment and attornments of any tenant or tenants of any messuages, lands, tenements, or hereditaments, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be any wise changed, altered, or affected by any such attornment or attornments: *Provided always,* That nothing herein contained shall extend to vacate or affect any attornment made pursuant to and in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage is become forfeited. (11 Geo. 2, ch. 19, § 11, 1738; Kilty's Rep. 251; Alex. Br. Stat. 737; Comp. Stat. D. C., 332, § 60.)

Chapter 10.—POWERS

Sec.
45–1001. Definition.
45–1002. General power.
45–1003. Special power.
45–1004. Beneficial power.
45–1005. Effect of absolute power to owner of particular estate.
45–1006. Effect of such power to one without particular estate.
45–1007. Effect where no remainder on particular estate.
45–1008. Construction of power to particular tenant to devise the inheritance.
45–1009. Right of grantor to reserve power.
45–1010. Liability of beneficial powers in equity.
45–1011. General powers in trust.
45–1012. Special powers in trust.
45–1013. Trust powers imperative.
45–1014. Selection under trust powers.
45–1015. Group of beneficiaries to take equally unless otherwise directed—Trustee with discretion may allot all to one person.
45–1016. Execution of trust powers for benefit of creditors and assignees.
45–1017. Manner of executing powers.
45–1018. Power by grant may not be executed by will.
45–1019. Instrument will be deemed execution of power if grantee had no other right to make it.

§ 45–1001 [25: 391]. Definition.

A power is an authority to do some act in relation to lands or the creation of estates therein or of charges thereon which the owner granting or reserving such power might himself lawfully perform. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1037.)

CROSS REFERENCE

Power of surviving trustee to execute power of sale, § 18–606.

§ 45–1002 [25: 392]. General power.

A power is general where it authorizes the alienation in fee, by means of a conveyance, will, or charge, of the lands embraced in the power to any alienee whatever. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1038.)

§ 45–1003 [25: 393]. Special power.

A power is special—

First. Where the persons or class of persons to whom the disposition of the lands under the power is to be made are designated.

Second. Where the power authorizes the alienation, by means of a conveyance, will, or charge, of a particular estate or interest less than a fee. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1039.)

§ 45–1004 [25: 394]. Beneficial power.

A general or special power is beneficial where no person other than the grantee has, by the terms of its creation, any interest in its execution. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1040.)

§ 45–1005 [25: 395]. Effect of absolute power to owner of particular estate.

Where an absolute power of disposition, not accompanied by any trust, shall be given to the owner of a particular estate for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers but subject to any future estates limited thereon in case the power should not be executed or the lands should not be sold for the satisfaction of debts. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1041.)

§ 45–1006 [25: 396]. Effect of such power to one without particular estate.

Where a like power of disposition shall be given to any person to whom no particular estate is limited,

such person shall also take a fee, subject to any future estates that may be limited thereon but absolute in respect to creditors and purchasers. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1042.)

§ 45–1007 [25: 397]. Effect where no remainder on particular estate.

In all cases where such power of disposition is given and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1043.)

§ 45–1008 [25: 398]. Construction of power to particular tenant to devise the inheritance.

Where a general and beneficial power to devise the inheritance shall be given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning and subject to the provisions of sections 45–1005 to 45–1007. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1044.)

§ 45–1009 [25: 399]. Right of grantor to reserve power.

The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another, and every power thus reserved shall be subject to the provisions of this chapter as if granted to another. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1045.)

§ 45–1010 [25: 400]. Liability of beneficial powers in equity.

Every special and beneficial power shall be liable, in equity, to the claims of creditors, and the execution of the power may be decreed for the benefit of the creditors entitled. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1046.)

§ 45–1011 [25: 401]. General powers in trust.

A general power is in trust when any person or class of persons other than the grantee of such power is designated as entitled to the proceeds, or any portion of the proceeds or other benefits to result from the alienation of the lands, according to the power. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1047.)

§ 45–1012 [25: 402]. Special powers in trust.

A special power is in trust—

First. When the disposition which it authorizes is limited to be made to any person or class of persons other than the grantee of such power.

Second. When any person or class of persons other than the grantee is designated as entitled to any benefit from the disposition or change authorized by the power. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1048.)

§ 45–1013 [25: 403]. Trust powers imperative.

Every trust power, unless its execution or nonexecution is made expressly to depend on the will of the grantee, is imperative and imposes a duty on the grantee the performance of which may be compelled in equity for the benefit of the parties interested. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1049.)

§ 45–1014 [25: 404]. Selection under trust powers.

A trust power does not cease to be imperative where the grantee has the right to select any and exclude others of the persons designated as the objects of the trust. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1050.)

§ 45–1015 [25: 405]. Group of beneficiaries to take equally unless otherwise directed—Trustee with discretion may allot all to one person.

Where a disposition under a power is directed to be made to or among or between several persons, without any specifications of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion. But when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1051.)

§ 45–1016 [25: 406]. Execution of trust powers for benefit of creditors and assignees.

The execution in whole or in part of any trust power may be decreed in equity for the benefit of the creditors or assignees of any person entitled to compel its execution when the interest of the objects of such trust is assignable. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1052.)

§ 45–1017 [25: 407]. Manner of executing powers.

No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power if the person executing the power were the actual owner. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1053.)

NOTES TO DECISIONS

ASSIGNMENT BY CONTRACT

Where power of appointment could be exercised only by will, attempt to assign part of donee's interest by a contract was invalid. *Mondell* v. *Thom,* 1944 (143 F. 2d 157, 79 U. S. App. D. C. 145).

§ 45–1018 [25: 408]. Power by grant may not be executed by will.

Where a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be a will duly executed; and where a power is confined to a disposition by grant it can not be executed by will, although the disposition is not intended to take effect until after the death of the party executing the power. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1054.)

CROSS REFERENCE

Wills, §§ 19–107 and 19–203.

§ 45–1019 [25: 409]. Instrument will be deemed execution of power if grantee had no other right to make it.

Every instrument executed by the grantee of a power conveying an estate or creating a charge, which such grantee would have no right to convey or create unless by virtue of his power, shall be deemed

a valid execution of the power, although such power be not recited or referred to therein. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1055.)

Chapter 11.—SALE OF CONTINGENT AND LIMITED INTERESTS

Sec.
45–1101. Sale of contingent interests.
45–1102. Application for sale by verified bill in equity showing all facts.
45–1103. Proceeds of sale of contingent interest held as real property.
45–1104. Sale of all limited interests.

§ 45–1101 [25: 421]. Sale of contingent interests.

Where real estate is limited to one or more for life, with a contingent limitation over to such issue of one or more of the tenants for life as shall be living at the death of their parent or parents, and the deed or will does not prohibit a sale, said court may, on the application of the tenants for life, and if the court shall be of opinion that it is expedient to do so, order a sale of such estate and decree to the purchaser an absolute and complete title in fee simple. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 97.)

NOTES TO DECISIONS

AUTHORITY OF COURT

This section clothed the court with authority to sell a restricted and particular class of limited estates, and was therefore special legislation, the specific provisions of which had to be given effect as against the more general and more comprehensive provisions of § 100 (§ 45–1104) on the same subject matter. *Simon* v. *Simon* (58 App. D. C. 158, 26 Fed. (2d) 530).

BOND OF TRUSTEE

Bond of trustee for sale of property of a minor for reinvestment purposes may not be attacked as invalid by the surety. *United States ex rel. Hine* v. *Morse* (218 U. S. 493, 54 L. Ed. 1123, 31 Sup. Ct. 37, revg. 29 App. D. C. 433).

§ 45–1102 [25: 422]. Application for sale by verified bill in equity showing all facts.

Any application for such sale shall be by bill, verified by the oath of the party or parties, in which all the facts shall be distinctly set forth upon the existence of which it is claimed that such sale should be decreed, which facts shall be proved by competent testimony. All of the issue embraced in the limitation who are in existence at the time of the application shall be made parties defendant, together with all who would take the estate in case the limitation over should never vest; and minors of the age of fourteen years or more shall answer in proper person under oath, as well as by guardian ad litem, and all evidence shall be taken upon notice to the parties and the guardian ad litem. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 98.)

§ 45–1103 [25: 423]. Proceeds of sale of contingent interest held as real property.

The proceeds of sale of said real estate shall be held under the control and subject to the order of the court, and shall be invested under its order and supervision upon real and personal security, and the same shall, to all intents and purposes, be deemed real estate and stand in the place of the real estate from the sale of which they are derived, and as such be subject to the limitations of the deed or will. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 99.)

§ 45–1104 [25: 424]. Sale of all limited interests.

Wherever one or more persons shall be entitled to an estate for life or years, or a base or qualified fee simple, or any other limited or conditional estate in lands, and any other person or persons shall be entitled to a remainder or remainders, vested or contingent, or an interest by way of executory devise in the same lands, on application of any of the parties in interest the court may, if all the parties in being are made parties to the proceeding, decree a sale or lease of the property, if it shall appear to be to the interest of all concerned, and shall direct the investment of the proceeds so as to inure in like manner as provided by the original grant to the use of the same parties who would be entitled to the land sold or leased; and all such decrees, if all the persons are parties who would be entitled if the contingency had happened at the date of the decree, shall bind all persons, whether in being or not, who claim or may claim any interest in said land under any of the parties to said decree, or under any person from whom any of the parties to such decree claim, or from or under or by the original deed or will by which such particular, limited, or conditional estate, with remainders or executory devises, were created. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 100.)

CROSS REFERENCE

See notes to § 45–1101. *United States ex rel. Hine* v. *Morse* (218 U. S. 493, 54 L. Ed. 1123, 31 Sup. Ct. 37, revg, 29 App. D. C. 433); *Simon* v. *Simon* (58 App. D. C. 158, 26 Fed. (2d) 530).

NOTES TO DECISIONS

PRIOR TO ENACTMENT OF CODE

Equity had no jurisdiction to decree sale of lands of a lunatic for the purpose of better investment. *Clark* v. *Mathewson* (7 App. D. C. 382).

Chapter 12.—USES AND TRUSTS

Sec.
45–1201. The legal estate in cestui que use.
45–1202. Where several are jointly seized of lands to the use of any so seized, the latter shall be deemed to have the possession and seizin of same.
45–1203. Purchaser for value.

§ 45–1201 [25: 481]. The legal estate in cestui que use.

Where lands, tenements, or hereditaments are conveyed or devised to one person, whether for years or for a freehold estate, to the use of or in trust for another, no estate or interest, legal or equitable, shall vest in the trustee, but the person entitled, according to the true intent and meaning of such instrument, to the actual possession of the property and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein of the same quality and duration and subject to the same conditions as his beneficial interest, except where the title of such trustee is not merely nominal but is connected with some power of actual disposition or management of the property conveyed. (Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1617.)

CROSS REFERENCE

Fraudulent conveyances, §§ 12–401 to 12–403.

§ 45–1202 [25: 482]. Where several are jointly seized of lands to the use of any so seized, the latter shall be deemed to have the possession and seizin of same.

Where divers and many persons be, or hereafter shall happen to be jointly seized of and in any lands, tenements, rents, reversions, remainders, or other hereditaments, to the use, confidence, or trust of any of them that be so jointly seized, in every such case those person or persons which have or hereafter shall have any such use, confidence, or trust in any such lands, tenements, rents, reversions, remainders, or hereditaments, shall from henceforth have, and be deemed and adjudged to have only to him or them that have, or hereafter shall have such use, confidence, or trust, such estate, possession, and seizin, of and in the same lands, tenements, rents, reversions, remainders, and other hereditaments, in like nature, manner, form, condition, and course, as he or they had before in the use, confidence, or trust of the same lands, tenements, or hereditaments; saving and reserving to all and singular persons, and bodies politick, their heirs, and successors, other than those person or persons which be seized, or hereafter shall be seized of any lands, tenements, or hereditaments, to any use, confidence, or trust, all such right, title, entry, interest, possession, rents, and action, as they or any of them had, or might have had before the year 1535. (27 Hen. 8, ch. 10, § 2, 1535; Kilty's Rep. 231; Alex. Br. Stat. 294; Comp. Stat. D. C., 537, § 2.)

CROSS REFERENCE

See note to § 45–309.

§ 45–1203 [25: 483]. Purchaser for value.

No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration and without notice of such trust; and where an express trust is created, but is not contained or declared in the conveyance to the trustee, such conveyance shall be deemed absolute in favor of purchasers from the trustee for value and without notice of the trust. (Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1618.)

Chapter 13.—WASTE

Sec.

45–1301. Writ of waste—Lease forfeited for waste and lessee pays treble damages.
45–1302. Waste not to be committed except with license in writing—Damages and amerciament for waste.
45–1303. Reversioner may forfeit lease for waste of tenant, though he has assigned to another.
45–1304. Joint tenant or tenant in common against cotenant.

§ 45–1301 [25: 491]. Writ of waste—Lease forfeited for waste and lessee pays treble damages.

A man from henceforth shall have a writ of waste in the chancery against him that holdeth by law, or otherwise for term of life, or for term of years, or a woman in dower; and he which shall be attainted of waste, shall leese the thing that he hath wasted, and moreover shall recompense thrice so much as the waste shall be taxed at. (6 Edw. 1, ch. 5, § 1, 1278; Kilty's Rep. 211; Alex. Br. Stat. 83; Comp. Stat. D. C., 319, § 21.)

CROSS REFERENCE

See note to § 45–309.

NOTES TO DECISIONS

IMPLIED COVENANT

The covenant not to commit, or suffer waste to be committed, is implied in every lease. *Klein* v. *Longo* (D. C. Mun. App. 1944, 34 A. 2d 359).

QUESTIONS OF FACT

Whether a tenant by breach of covenant to make repairs has committed waste is a question of fact for trial court. *Klein* v. *Longo* (D. C. Mun. App. 1944, 34 A. 2d 359).

WAIVER

A lessor may waive the breach of a specific covenant by delay in enforcement, or by subsequent acceptance of rent. *Klein* v. *Longo* (D. C. Mun. App. 1944, 34 A. 2d 359).

Where breach of an express covenant followed by other instances of abuse to property by tenant results in injury to reversion, the waiver implied by acceptance of rent and failure to terminate tenancy upon breach of covenant does not exclude covenant from consideration when issue in action to recover possession is whether conduct of tenant over a period of years justifies finding that waste has been committed. *Klein* v. *Longo* (D. C. Mun. App. 1944, 34 A. 2d 359).

WASTE

Acts constituting a breach of an express covenant, which are of such a nature that when followed by other instances of abuse of the property by the tenant result in injury to the reversion, constitute "waste". *Klein* v. *Longo* (D. C. Mun. App. 1944, 34 A. 2d 359).

Breach of covenant to make repairs by failure to replace broken hinge of gate, to reset a fallen fence, to mend broken plaster, or to repaper walls, supplemented by acts evidencing a wanton disregard of landlord's rights, authorized a finding that "waste" has been committed, notwithstanding that each breach of itself might have been too inconsequential to justify a forefeiture of tenant's term. *Klein* v. *Longo* (D. C. Mun. App. 1944, 34 A. 2d 359).

§ 45–1302 [25: 492]. Waste not to be committed except with license in writing—Damages and amerciament for waste.

Fermors, during their terms, shall not make waste, sale or exile of house, or woods, nor of any thing belonging to the tenements, that they have to ferm, without special license had by writing of covenant, making mention, that they may do it; which thing if they do, and thereof be convict, they shall yield full damage, and shall be punished by amerciament grievously. (52 Hen. 3, ch. 23, § 2, 1267; Kilty's Rep. 209; Alex. Br. Stat. 46–47; Comp. Stat. D. C., 318, § 19.)

§ 45–1303 [25: 493]. Reversioner may forfeit lease for waste of tenant, though he has assigned to another.

Because that diverse people in times past have let their lands and tenements to divers persons, that is to say, some for term of life or of another man's life, and some for term of years, the said tenants have oftentimes let and granted their estate which they had in the same lands and tenements, to many persons, to the intent that they in the reversion, that is to say, their lessors, their heirs, or their assigns, might not have knowledge of their names, and after the said first tenants continually occupy the said lands and tenements, and thereof take the profits to their proper use, and in the said lands and tenements commit waste and destruction, to the disherit-

ance of them in the reversion: It is ordained and established, that they in the reversion in such case may have and maintain a writ of waste against the said tenants for term of life, of another's life, or for years, and so recover against them the place wasted, and their treble damages, for the waste by them done, as they ought to have done for the waste committed by them before the said grant and lease of their estate. Provided always, that this ordinance hold not place, but where the first tenants before the lease and grant of their said estates, in the manner and form abovesaid, were unpunishable of waste; and also where after the said grant and lease the said first tenants of the said lands and tenements take the profits at the time of the waste done, to their own proper use. (11 Hen. 6, ch. 5, § 1, 1433; Kilty's Rep. 227; Alex. Br. Stat. 243; Comp. Stat. D. C., 320, § 26.)

§ 45–1304 [25: 494]. Joint tenant or tenant in common against cotenant.

Any joint tenant or tenant in common may maintain an action for waste committed by his cotenant, or in a suit for a partition, or a sale for purpose of partition may have said waste charged against the share of the cotenant committing the same. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1622.)

Chapter 14.—REAL ESTATE AND BUSINESS BROKERS' LICENSE ACT

Sec.
45–1401. Enactment and prohibition clause.
45–1402. Definitions—Exceptions.
45–1403. Real Estate Commission created—Membership—Seal—Records—Compensation.
45–1404. Qualifications for license.
45–1405. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.
45–1406. Procedure when license refused.
45–1407. Details relating to license.
45–1408. Suspension or revocation of license—Causes enumerated.
45–1409. Hearing before suspension—Court review—Appeal.
45–1410. Provisions applicable to nonresident brokers and salesmen.
45–1411. Power to obtain evidence.
45–1412. Further exemptions—Exceptions.
45–1413. List of licensees to be published.
45–1414. Fraudulent transfers or loans.
45–1415. License revoked on conviction of crime.
45–1416. Penalties—Prosecutions.
45–1417. Bond required for renewal of licenses.
45–1418. Saving clause.

§ 45–1401 [20: 1970]. Enactment and prohibition clause.

That on and after ninety days from the date of enactment of this chapter it shall be unlawful in the District of Columbia for any person, firm, partnership, copartnership, association, or corporation (foreign or domestic) to act as a real-estate broker, real-estate salesman, business-chance broker or business-chance salesman, or to advertise or assume to act as such, without a license issued by the Real Estate Commission of the District of Columbia. (Aug. 25, 1937, 50 Stat. 787, ch. 760, § 1; Aug. 10, 1939, 53 Stat. 1352, ch. 664, § 2.)

AMENDMENT

The 1939 amendment added the words "or business-chance salesman."

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Exempted from operation of Money Lender License Law, § 26–610.

NOTES TO DECISIONS

CONSTRUCTION

The provisions of this chapter must be construed in light of purpose of this chapter and evils it was designed to protect against. *Eberman* v. *Massachusetts Bonding & Ins. Co.* (D. C. Mun. App. 1945, 41 A. 2d 844).

PURPOSE

The protection of public interest is the basis for exercise of police power in enactment of this chapter. *Eberman* v. *Massachusetts Bonding & Ins. Co.* (D. C. Mun. App. 1945, 41 A. 2d 844).

§ 45–1402 [20: 1971]. Definitions—Exceptions.

Whenever used in this chapter "real-estate broker" means any person, firm, association, partnership, or corporation (foreign or domestic) who, for another and for a fee, commission, or other valuable consideration, or who, with the intention or in the expectation or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, lists for sale, sells, exchanges, purchases, rents, or leases or offers or attempts or agrees to negotiate a sale, exchange, purchase, lease, or rental of an estate or interest in real estate, or collects or offers or attempts or agrees to collect rent or income for the use of real estate, or negotiates or offers or attempts or agrees to negotiate, a loan secured or to be secured by a mortgage, deed of trust, or other encumbrance upon or transfer of real estate, or who is engaged in the business of erecting houses or causing the erection of houses for sale on his, their, or its land and who sells, offers, or attempts to sell such houses, or who, as owner or otherwise and as a whole or partial vocation, sells, or through solicitation, advertising, or otherwise, offers or attempts to sell or to negotiate the sale of any lot or lots in any subdivision of land comprising ten lots or more: *Provided, however,* That this definition shall not apply to the sale of space for advertising of real estate in any newspaper, magazine, or other publication. A "business-chance broker" within the meaning of this chapter is any person, firm, partnership, association, copartnership, or corporation who for a compensation or valuable consideration sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the good will of a business for others.

"Real-estate salesman" means a person employed by a licensed real-estate broker to list for sale, sell, or offer for sale, to buy or offer to buy, or to negotiate the purchase or sale, or exchange of real estate, or to negotiate a loan on real estate, or to lease or rent or offer to lease, rent, or place for rent, any real estate, or collect or offer or attempt to collect rent or income for the use of real estate.

"Business-chance salesman" means any person employed by a licensed business-chance broker to list for sale, sell, or offer for sale, to buy or offer to buy, to lease or offer to lease, or to negotiate the purchase or sale or exchange of a business, business opportunity, or good will of an existing business for or in behalf of such business-chance broker.

Persons employed by a licensed broker in a clerical capacity or in subordinate positions who receive a fixed compensation and who receive no additional commission or compensation for specific acts of renting or leasing real estate and who do not sell or exchange, or offer or attempt to sell or exchange, real estate or a business, business opportunity, or the good will of a business shall not be required to obtain licenses.

One act for a compensation or valuable consideration of buying or selling real estate for or of another, or offering for another to buy, sell, or exchange real estate, or leasing, renting, or offering to lease or rent real estate, or negotiating or offering to negotiate a loan secured by a mortgage, deed of trust, or other encumbrance upon or transfer of real estate, except as herein specifically excepted, shall constitute a person, firm, partnership, copartnership, association, or corporation performing, or offering, or attempting to perform any of the acts enumerated herein, a real-estate broker, unless such act shall be performed or offered or attempted to be performed by a person for and in behalf of a real-estate broker in which event such act shall constitute such person a real-estate salesman.

One act for a compensation or valuable consideration of buying, selling or leasing or exchanging a business, business opportunity, or the good will of a business for or of another, or offering for another to buy, sell, exchange, or lease a business, business opportunity, or the good will of a business, except as herein specifically excepted, shall constitute the person, firm, partnership, copartnership, association, or corporation performing or offering or attempting to perform any of the acts enumerated herein, a business-chance broker, unless such act shall be performed or offered or attempted to be performed by a person for or on behalf of a business-chance broker, in which event such act shall constitute such person a business-chance salesman.

The provisions of this chapter shall not apply to receivers, referees, administrators, executors, guardians, trustees, or other persons appointed or acting under the judgment or order of any court; or public officers while performing their official duty, or attorneys at law in the ordinary practice of their profession; nor to any person, copartnership, association, or corporation, who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, or to the regular officers and employees thereof, with respect to the property so owned or leased, where such acts are performed in the regular course of, or as an incident to, the management of such property and the investments therein, except as otherwise provided in this chapter.

Every provision of this chapter applying specifically to an applicant or application for a license as a real-estate broker or a real-estate salesman, and to a real-estate license, and to a licensee licensed as a real-estate broker or a real-estate salesman, and to anyone acting in the capacity of a real-estate broker or a real-estate salesman without a license, shall likewise apply in a similar manner, respectively, to every applicant and application for a license as a business-chance broker or a business-chance salesman, and to every business-chance license, and to every licensee licensed as a business-chance broker or a business-chance salesman, and to anyone acting in the capacity of a business-chance broker or a business-chance salesman without a license. (Aug. 25, 1937, 50 Stat. 787, ch. 760, § 2; Aug. 10, 1939, 53 Stat. 1352, ch. 664, § 3.)

AMENDMENT

The 1939 amendment added in the first paragraph the words beginning "or who is engaged" and continuing to the colon before the words "Provided, however"; deleted the following words which concluded the first paragraph, "as a whole or partial vocation"; deleted the following words which concluded the second paragraph, "for or in behalf of such real-estate broker"; added the third paragraph; deleted from the fourth paragraph the words "as collectors, or in similar subordinate and administrative positions" and inserted in lieu thereof the words that now follow the word "capacity" and conclude the paragraph except the last seven words; added in the fifth paragraph the words "or negotiating or offering to negotiate a loan secured by a mortgage, deed of trust, or other incumbrance upon or transfer of real estate" and the words beginning "unless such act" and concluding the said paragraph; added the sixth paragraph; added in the seventh paragraph the words beginning "nor to any person" and concluding the said paragraph; and, added the eighth paragraph.

CROSS REFERENCE

Other exemptions, § 45–1412.

NOTES TO DECISIONS

ACTS

Under this chapter limiting the causes for suspension or revocation of a license to obtaining a broker's license by false or fraudulent representations, and "where the licensee, in performing or attempting to perform any of the acts mentioned herein", has done certain things, the "acts" referred to are those activities set forth in this section defining the meaning of real estate broker and real estate salesman, which activities deal with sale, purchase, or rental of realty and negotiation of loans on realty by one who acts for another and for a consideration. *Eberman* v. *Massachusetts Bonding & Ins. Co.* (D. C. Mun. App. 1945, 41 A. 2d 844).

RELATIONSHIP OF PARTIES

In action to recover secret profit allegedly made by broker in purchasing plaintiff's property on broker's own account and reselling it at a profit, evidence required denial of recovery on ground that there was no evidence establishing relationship of real estate broker and client between the parties. *Urciolo* v. *O'Connor* (App. D. C. 1945, 149 F. 2d 386).

Where salesman employed by broker was entitled to one-half of the commissions on all sales either made or procured by him, a fiduciary relationship existed with the necessary incidents of good faith and mutual trust, and right of salesman to commission must be determined on such basis rather than the basis of rival or competing brokers. *Henderson* v. *Porter* (D. C. Mun. App. 1947, 52 A. 2d 779).

§ 45–1403 [20: 1972]. Real Estate Commission created—Membership—Seal—Records—Compensation.

There is hereby created the Real Estate Commission of the District of Columbia. The Commissioners

of the District of Columbia shall appoint two persons, not more than one of whom shall have been actively engaged in or closely connected with the business or vocation of real-estate broker or real-estate salesman within five years immediately prior to appointment, who shall serve as members of said Real Estate Commission of the District of Columbia. In addition thereto, the assessor of the District of Columbia shall serve, ex-officio, as a member of said Real Estate Commission but without added compensation for his services as such. One member of said Commission shall be appointed for a term of one year; one member shall be appointed for a term of two years, and until their successors are appointed and qualified; thereafter the term of the members of said Commission shall be for three years and until their successors are appointed and qualified. Members to fill vacancies shall be appointed for the unexpired term. The Commissioners of the District of Columbia may remove members of the Real Estate Commission at any time for cause.

The assessor, ex-officio, shall be the chairman of said Real Estate Commission, which is hereby authorized and empowered to elect a treasurer of said Commission and to do all things necessary and convenient for carrying into effect the provisions of this chapter and the rules and regulations promulgated from time to time by the Commissioners.

The Commissioners of the District of Columbia shall employ and remove at their pleasure a secretary and such assistants as shall be deemed necessary to discharge the duties imposed by the provisions of this chapter and shall prescribe their duties and fix their compensation in accordance with the provisions of the Classification Act of 1923, as amended.

The Commissioners of the District of Columbia shall provide for the use of the Real Estate Commission such office space, furniture, stationery, fuel, light, and other proper conveniences as shall be reasonably necessary for carrying out the provisions of this chapter.

The Commission shall adopt a seal with such design as it may prescribe engraved thereon by which it shall authenticate its proceedings. Copies of all records and papers in the office of the Commission, duly certified and authenticated by the seal of said Commission, shall be received in evidence in all courts equally and with like effect as the original. The Commission shall keep a record of all its proceedings and a complete stenographic record of all hearings authorized under this chapter.

All records kept in the office of the Commission under authority of this chapter shall be open to public inspection under reasonable rules and regulations to be prescribed by the Commission.

The compensation of members of the Commission, except the ex officio member, shall be $10 each for personal attendance at each meeting, but shall not exceed for any member $1,500 per annum.

The payment of such allowance shall be made from any unexpended balance in the treasury of said Commission remaining on June 30 of the year during which the services have been rendered, and if the unexpended balance is insufficient to meet the total amount of such allowance the rate of compensation shall be reduced to a rate which will permit payment from such unexpended balance. Such expenses shall in no event exceed the total receipts; and if at the close of each fiscal year any funds unexpended in excess of the sum of $1,000 shall be paid into the treasury of the United States to the credit of the District of Columbia: *Provided,* That no expenses incurred under this chapter shall be a charge against the funds of the United States or the District of Columbia.

All fees and charges payable under the provisions of this chapter shall be paid to the treasurer of the Commission. The Commission is hereby authorized to refund any license fee or tax, or portion thereof, erroneously paid or collected under this chapter.

It shall be the duty of the auditor of the District of Columbia to audit the accounts of the Commission at the end of each fiscal year and make a report thereof in writing to the Commissioners of the District of Columbia. The said auditor shall have free access to all books of accounts, papers, and records of the said Commission.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce, revise, or repeal whatever reasonable regulations may be necessary to carry out the provisions of this chapter. (Aug. 25, 1937, 50 Stat. 788, ch. 760, § 3; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 4.)

AMENDMENT

The 1939 act amended the seventh paragraph to read as it now appears. This paragraph in the 1937 act read as follows, "Each member of the Commission, except the ex-officio member, shall receive an allowance at the rate of $10 for each day of seven hours such member is actually engaged in the performance of duties as a member of the Commission: *Provided, however,* That no member shall receive in any one year a sum greater than $2,000."

CROSS REFERENCES

Classification Act of 1923, U. S. C., title 5, ch. 13.
Nonresident brokers and salesmen, § 45–1410.
Persons exempted from operation of this act, §§ 45–1402, 45–1412.
Refund of fees and taxes generally, § 47–1017 and notes.
Refunds of fees when license refused, § 47–1018.
Rules and regulations for obtaining copy of stenographic notes of proceedings, § 45–1409.
Rules and regulations generally, § 1–226 and notes.

§ 45–1404 [20: 1973]. Qualifications for license.

No license under the provisions of this chapter shall be issued to any person who has not attained the age of twenty-one years, nor to any person who cannot read, write, and understand the English language; nor until the Commission has received satisfactory proof that the applicant is trustworthy and competent to transact the business of a real-estate broker or real-estate salesman or business-chance broker or business-chance salesman in such a manner as to safeguard the interests of the public: *Provided, however,* That a salesman shall have six months from the date of the issuance of his original license to prove his competency, and failure to prove his competency to the satisfaction of the Commission within that period will automatically cancel his original license or any renewal thereof.

In determining competency, the Commission shall require proof that every applicant for a license has a general and fair understanding of the obligations between principal and agent, as well as of the provisions of this chapter; and that an applicant for a license as a real-estate broker has a fair understanding of the general purposes and effect of deeds, mortgages, and contracts for the sale or leasing of real estate, and of elementary real-estate practices; and that an applicant for a license as a business-chance broker has a fair understanding of the general purposes and effect of bills of sale, chattel mortgages and trusts, and the provisions of the law governing sales in bulk.

No license shall be issued to any person, firm, partnership, copartnership, association, or corporation whose application has been rejected in the District of Columbia or any State within three months prior to date of application, or whose real-estate license has been revoked in the District of Columbia or any State within one year prior to date of application. (Aug. 25, 1937, 50 Stat. 789, ch. 760, § 4; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 5.)

AMENDMENT

The 1939 amendment added the words "or business-chance broker or business-chance salesman" and the proviso in the first paragraph; rearranged the wording of the first part of the second paragraph and added the words beginning "and that an applicant," the second time the said words appear, and concluding the said paragraph.

CROSS REFERENCE

Disqualification for conviction of crime, § 45–1415.

§ 45–1405 [20: 1974]. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.

Every applicant for a license under the provisions of this chapter shall apply therefor in writing upon blanks furnished by the Real Estate Commission.

The application of every person for a real-estate broker's license or a real-estate salesman's license shall be accompanied by the recommendation of at least two residents of the District of Columbia, real-estate owners, who have owned real estate in the District of Columbia for a period of at least one year and who are not related to the applicant but who have personally known the applicant for a period of at least six months prior to the date of application, which recommendation shall certify that the applicant bears a good reputation for honesty, truthfulness, fair dealing, and competency, and recommend that a license be granted to the applicant.

The application of every firm, partnership, copartnership, association, or corporation for a real-estate broker's license shall state the location of the place or places for which said license is desired and set forth the period of time, if any, which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding date of application, accounting for such entire period. Such applications shall also state the name and residence of each individual member or officer of said applicant who actively participates in the brokerage business thereof.

The application of every individual member or officer of a firm, partnership, copartnership, association, or corporation for a real-estate broker's license shall state the full name and residence address of the applicant and the full name and business address of the firm, partnership, copartnership, association, or corporation with which he is or will be associated, the length of time he has been so associated, and in what capacity. Such application shall also state the period of time, if any, during which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have resided and all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding date of application, accounting for such entire period.

The application of each person for an individual real-estate broker's license shall state the full name of the applicant, his business address, and residence address. Such application shall also state the period of time, if any, during which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have resided and all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding the date of application, accounting for such entire period.

The application of every person for a real-estate salesman's license shall state the full name of the applicant, his residence address, and the name and business address of the real-estate broker by whom he is or will be employed. Such application shall also state the period of time, if any, during which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have resided and all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding the date of application, accounting for such entire period. Such application shall be accompanied by a written statement by the broker by whom the applicant is employed or is about to be employed, stating that in his opinion the applicant is honest, truthful, and of good reputation, and recommending that the license be granted to the applicant.

Every application for a license under the provisions of this chapter shall be sworn to by the applicant and shall be accompanied by the license fee herein prescribed. In the event that the Commission does not approve the application for a license the fee shall be returned to the applicant.

Every application for a license shall be accompanied by a bond in the sum of $2,500 in the case of a broker and $1,000 in the case of a salesman, running to the District of Columbia executed by a surety company duly authorized to do business in the District of Columbia: *Provided, however,* That no bond shall be required of any firm, partnership, copartnership, association, or corporation when the applica-

tion of every member or officer of such firm, partnership, copartnership, association, or corporation actively participating in the brokerage business thereof is accompanied by a bond as provided for in this section. Said bond shall be in form approved by the Commission, and conditioned that the applicant shall conduct himself and his business in accordance with the requirements of this chapter; and for his failure so to do any person aggrieved thereby shall have, in addition to his right of action against the principal thereof, a right to bring suit against the surety on said bond either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, representation, transaction, or conduct of the principal which may be prohibited by this chapter or enumerated as one of the causes for suspension or revocation of a license granted hereunder. If a recovery be had on any bond the licensee shall restore the bond to its original amount.

Nothing in this chapter shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

No suit or action against the surety on any such bond shall be brought later than one year from the accrual of the cause of action thereon. The surety may terminate its liability under such bond by giving thirty days' written notice thereof, served either personally or by registered mail, to the principal and to the Commission; and upon giving such notice the surety shall be discharged from all liability under such bond for any act or omission of the principal occurring after the expiration of thirty days from the date of service of such notice. Unless on or before the expiration of such period the principal shall duly file a new bond in like amount and conditioned as the original in substitution of the bond so terminated, the license of the principal shall likewise terminate upon the expiration of such period. Upon making any payment on account of its bond, the surety shall immediately notify the Commission.

In the event the surety becomes insolvent or a bankrupt, or ceases to do business or ceases to be authorized to do business in the District of Columbia, the principal shall, within ten days after notice thereof, given by the Commission, duly file a new bond in like amount and conditioned as the original and if the principal shall fail so to do the license of such principal shall terminate.

The Commission, with due regard to the paramount interest of the public, may require other reasonable proof of the honesty, truthfulness, and integrity of the applicant. (Aug. 25, 1937, 50 Stat. 789, ch. 760, § 5; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 6.)

AMENDMENT

The 1939 amendment deleted the words "executed by two good and sufficient sureties to be approved by the Commission, or" following the word "Columbia" as said word first appears in the eighth paragraph; and, added the eleventh paragraph.

CROSS REFERENCE

Refund of fees generally, § 47–1018.

NOTES TO DECISIONS

BOND, ACTIONS ON

That plaintiffs recovered various sums on account of rents collected for them by decedent but never accounted for by decedent in an action on bond under this section given by decedent did not bar plaintiffs from asserting an equitable lien on the amount of a special rent account in the hands of decedent's administratrix as a trust fund, in view of provision of this section that the aggrieved person's remedy against the surety is in addition to his right of action against the principal, since remedies were cumulative and nothing less than complete satisfaction of plaintiffs' claims would operate as a bar. *Brown* v. *Christman,* 1942 (126 F. 2d 625, 75 U. S. App. D. C. 203).

RECOVERY ON BOND

A salesman of real estate broker who dealt with him as employer or business associate could not recover from surety on broker's bond the balance of commissions which broker failed to pay to salesman, since this section providing for bond to protect "any person aggrieved" by broker's conduct which constitutes fraudulent or dishonest dealings, limits recovery on bond to members of the public. *Eberman* v. *Massachusetts Bonding & Ins. Co.* (D. C. Mun. App. 1945, 41 A. 2d 844).

No liability exists on the bond since no obligation arises on the part of a broker to repay until demand is made. Moreover, the regulations of Real Estate Commission cannot be extended to the surety. *Cundiff* v. *Wills* and *Martin* v. *Wills* (D. C. Mun. App. 1950, 76 A. 2d 55).

§ 45–1406 [20: 1975]. Procedure when license refused.

The Commission, after an application in proper form has been filed, shall, before refusing to issue a license, set the application down for a hearing and determination as provided in section 45–1409. (Aug. 25, 1937, 50 Stat. 791, ch. 760, § 6.)

§ 45–1407 [20: 1976]. Details relating to license.

The Commission shall cause to be issued to each licensee a license in such form and size as shall be prescribed by the Commission. Every license shall show the name and address of the licensee, and if licensee is a member or officer of a firm, partnership, copartnership, association, or corporation, the full name and address of such firm, partnership, copartnership, association, or corporation shall also be shown on said license. Licenses issued to real-estate salesmen shall in addition show the name and address of the real-estate broker by whom the said salesmen is or will be employed. Each license shall have imprinted thereon the seal of the Commission, and in addition to the foregoing shall contain such matter as shall be prescribed by the Commission. The license of each real-estate salesman shall be delivered or mailed to the real-estate broker by whom such real-estate salesman is employed and shall be kept in the custody and control of such broker. It shall be the duty of each real-estate broker to conspicuously display his license in his place of business.

At any time within six [6] months, but not thereafter, after the issuance of an original license the Commission may, upon its own motion, and shall, upon the verified complaint, in writing, of any person, provided such complaint, or such complaint together with evidence, documentary or otherwise, presented therewith, shall make out a prima facie case that the licensee is unworthy to hold such license, notify the licensee, in writing, that the

question of his honesty, competency, truthfulness, and integrity will be reopened and determined de novo. Such written notice may be served by delivery thereof personally to the licensee or by mailing same by registered mail to the last known business address of the licensee. Thereupon the Commission may require and procure further proof of the licensee's trustworthiness and competency, and if such proof shall not be satisfactory such license shall be recalled and shall thereafter be null and void. Upon the recall of any such license it shall be the duty of the licensee to surrender to the Commission such license.

The fee for an original broker's license and every renewal thereof shall be $30: *Provided, however,* That the fee for an original broker's license and every renewal thereof for individual members, partners, and officers of firms, partnerships, and corporations shall be $30 for the first member, partner, or officer to be designated by the firm, partnership, or corporation and $10 for each additional member, partner, or officer of such firm, partnership, or corporation.

No fee shall be charged for any original license or renewal thereof issued to any firm, partnership, copartnership, association, or corporation all of whose members or officers actively participating in the brokerage business thereof have been issued a broker's license.

The fee for an original real-estate salesman's license and every annual renewal thereof shall be $10.

The fees provided herein for any original license shall be reduced by one-half in all cases where the application for such original license is filed between January 1 and July 1 of any year.

Every license shall expire on the 1st day of July of each year, except that the original or initial licenses, first issued under the provisions of this chapter shall expire on the 1st day of July, 1938, subject, however, to revocation as hereinbefore provided.

The Commission shall cause to be issued a new license for each ensuing year, in the absence of any reason or condition which might warrant the refusal of the granting of a license, upon receipt of the written request of the applicant and the annual fee therefor, as herein required: *Provided, however,* That an applicant who, on or before July 1, fails to file said written request and pay the annual fee must comply with all the provisions of this chapter applicable to an original applicant except that the Commission may waive the requirement of furnishing proof of competency. The revocation of a broker's license shall automatically suspend every salesman's license granted to any person by virtue of his employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. Such new license shall be issued without charge if granted during the same license year in which the original license is granted.

No person, firm, partnership, copartnership, association, or corporation engaged in the business or acting in the capacity of a real-estate broker or a real-estate salesman, or a business-chance broker or a business-chance salesman, within the District of Columbia shall bring or maintain any action in the courts of the District of Columbia for the collection of compensation for any services performed as a real-estate broker or a real-estate salesman or a business-chance broker or business-chance salesman, or enforcement of any contract relating to real estate without alleging and proving that such person, firm, partnership, copartnership, association, or corporation was a duly licensed real-estate broker or real-estate salesman, or business-chance broker or business-chance salesman, at the time the alleged cause of action arose.

Every broker licensed hereunder shall maintain a place of business in the District of Columbia. If a broker maintains more than one place of business within the District of Columbia, a duplicate license shall be issued to such broker for each branch office maintained; and there shall be no fee charged for any such duplicate license.

When a broker changes the location of his principal place of business he must immediately notify the Commission in writing and return to the Commission his license together with the licenses of all salesmen in his employ, and the Commission shall issue a new license to the broker and to each of the salesmen without charge. Failure to notify the Commission and to return his license when the location of his principal place of business is changed, will automatically cancel the broker's license and the licenses of all salesmen in his employ. However, new licenses for the unexpired term may be issued by the Commission without the payment of any additional fee, provided a written request therefor accompanied by a new bond is filed.

When any real-estate salesman shall be discharged or shall terminate his employment with the real-estate broker by whom he is employed it shall be the duty of such real-estate broker to immediately deliver or mail by registered mail to the Commission such real-estate salesman's license. The real-estate broker shall at the time of delivering or mailing such real-estate salesman's license to the Commission, address a communication by registered mail to the last-known residence address of such real-estate salesman, which communication shall advise such real-estate salesman that his license has been delivered or mailed to the Commission. A copy of such communication to the real-estate salesman shall accompany the license when mailed or delivered to the Commission. It shall be unlawful for any real-estate salesman to perform any of the acts contemplated by this chapter, either directly or indirectly, under authority of said license from and after three days following such delivery or mailing of the said license by said broker to the Commission.

When a salesman shall be discharged or shall terminate his employment with the broker by whom he is employed, it shall be the duty of such salesman to immediately notify the Commission, and it shall be unlawful for him to perform any of the acts contemplated by this chapter either directly or indirectly from and after such termination of employment

until such time as he has been employed by another licensed broker and a license has been reissued him by the Commission.

There shall be no additional fee for the reissuance of a salesman's license necessitated by the change of employers nor shall such change work a revocation or require a renewal of the salesman's bond.

A license issued to an individual cannot be transferred to another individual. However, an individual licensed as a broker may, upon written request to the Commission, change his status to that of an individual broker or to that of a partner of a partnership, or to that of an officer of a corporation, for any unexpired term of his license, without the payment of any additional fee, and such change shall not work a revocation or require a renewal of the bond of any such broker. This provision shall not be applicable to any real-estate broker in respect to a change of license to that of a business chance broker or vice versa.

No license shall be issued to any firm, partnership, association, or corporation unless every individual member, partner or officer of such firm, partnership, association, or corporation who actively participates in the brokerage business thereof is licensed as a broker. (Aug. 25, 1937, 50 Stat. 791, ch. 760, § 7; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 7.)

AMENDMENT

The 1939 amendment deleted the figure "$50" and inserted in lieu thereof the figure "$30," and added the rest of the third paragraph; added the sixth paragraph; added the proviso on the end of the first sentence of the eighth paragraph; added the words "or a business-chance broker or a business-chance salesman" as they appear in the ninth paragraph; deleted the words "real estate" as they appeared in the 1937 act as the second and third words of the first sentence and the third and fourth words of the second sentence of the tenth paragraph; reworded the eleventh paragraph to provide as it now appears, the former paragraph having provided that notice be given "by each licensee" and not having provided for a new bond; and, added the thirteenth, fifteenth, and sixteenth paragraphs.

CROSS REFERENCES

Refund of fees, § 45–1403 and notes.
Revocation or suspension of licenses, § 45–1408.

NOTES TO DECISIONS

PROOF OF LICENSE

In action for real estate broker's commission on sale of realty, where answer admitted allegation that broker was duly licensed, testimony of broker that he was licensed was sufficient proof without production of the license. *McManus* v. *Newcomb* (D. C. Mun. App. 1948, 61 A. 2d 36).

§ 45–1408 [20: 1977]. Suspension or revocation of license—Causes enumerated.

The Commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, provided such complaint or such complaint together with evidence, documentary or otherwise, presented in connection therewith, makes out a prima facie case, investigate the conduct of any real-estate broker or real-estate salesman, or business-chance broker or business-chance salesman, and shall have the power to suspend or to revoke any license issued under the provisions of this chapter, at any time where the licensee has by false or fraudulent representation obtained a license, or where the licensee, in performing or attempting to perform any of the acts mentioned herein, has—

(a) Made any substantial misrepresentation;

(b) Made any false promises of a character likely to influence, persuade, or induce;

(c) Pursued a continued and flagrant course of misrepresentation, or making of false promises through agents or salesmen, or advertising or otherwise;

(d) Acted for more than one party in a transaction without the knowledge of all parties for whom he acts;

(e) Accepted a commission or valuable consideration as a real-estate salesman or as a business-chance salesman for the performance of any of the acts specified in this chapter from any person, except the broker under whom he is licensed;

(f) Represented or attempted to represent a real-estate broker or a business-chance broker other than the employer, without the express knowledge and consent of the employer;

(g) Failed, within a reasonable time, to account for or to remit any money, valuable documents, or other property coming into his possession which belong to others;

(h) Demonstrated such unworthiness or incompetency to act as a real-estate broker or real-estate salesman or a business-chance broker or a business-chance salesman as to endanger the interests of the public;

(i) While acting or attempting to act as agent or broker, purchased or attempted to purchase any property or interest therein for himself, either in his own name or by use of a straw party, without disclosing such fact to the party he represents;

(j) Been guilty of any other conduct, whether of the same or a different character from that hereinbefore (prior to Aug. 25, 1937) specified, which constitutes fraudulent or dishonest dealing;

(k) Used any trade name or insignia of membership in any real-estate organization of which the licensee is not a member;

(*l*) Disregarded or violated any provisions of this chapter;

(m) Guaranteed or authorized or permitted any broker or salesman to guarantee future profits which may result from the resale of real property, or a business, business opportunity, or the goodwill of any existing business;

(n) Placed a sign on any property offering it for sale or for rent or offering it for sale or rent without the written consent of the owner or his authorized agent;

(*o*) Accepted a compensation from more than one party to a transaction without the knowledge of all the parties to the transaction; or

(p) Failed to restore the bond to its original amount after a recovery on the bond as provided in section 45–1405. (Aug. 25, 1937, 50 Stat. 793, ch. 760, § 8; Aug. 10, 1939, 53 Stat. 1356, ch. 664, § 8.)

AMENDMENT

The 1939 amendment added the words "or business-chance broker or business-chance salesman" in the first paragraph; added the words "or as a business-chance

salesman," and deleted the words "except an employer who is a licensed real-estate broker" and inserted in lieu thereof the last eight words in paragraph (e); added the word "or a business-chance broker" in paragraph (f); deleted the word "salesman" and inserted in lieu thereof the words "real-estate salesman or a business-chance broker or a business-chance salesman" in paragraph (h); inserted paragraph (i) in lieu of the former paragraph which read, "Paid or offered to pay a commission or valuable consideration to any person for acts or services in violation of this act, with knowledge of such violation or where reasonable diligence has not been exercised to acquire such knowledge;" added the words "or a business, business opportunity, or the goodwill of any existing business" at the end of paragraph (m); changed the verbs in paragraph (m) and (n) from the present to the past participle; and, inserted paragraph (o) in lieu of the former paragraph which read, "Soliciting, selling, or offering for sale real property by offering free lots, or conducting lotteries, or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property." (See second paragraph of § 45–1414 added thereto by the 1939 act which made this deletion.)

CROSS REFERENCES

Recall of license, § 45–1407.

Revocation of license for conviction of crime, § 45–1415.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.

NOTES TO DECISIONS

AMOUNT OF RECOVERY

Where broker makes a secret profit at expense of principal, the principal is entitled only to the net, rather than the gross profit realized by broker. *Jay* v. *General Realties Co.* (D. C. Mun. App. 1946, 49 A. 2d 752).

Where broker secretly purchased property for herself without informing principal and later resold property at a profit, broker was entitled to credit for $650 paid for repairs and for $400 paid as commission on resale of the property. *Jay* v. *General Realties Co.* (D. C. Mun. App. 1946, 49 A. 2d 752).

The seller is not entitled by reason of the false representation of the broker to be put in a better position than she would have been had his representation been true. *Murphy* v. *O'Donnell* (D. C. Mun. App. 1949, 63 A. 2d 340).

COMMISSION

Where salesman employed by broker was entitled to one-half of the commissions on all sales either made or procured by him, a fiduciary relationship existed with the necessary incidents of good faith and mutual trust, and right of salesman to commission must be determined on such basis rather than the basis of rival or competing brokers. *Henderson* v. *Porter* (D. C. Mun. App. 1947, 52 A. 2d 779).

Where salesman was employed on commission basis by broker, salesman would be entitled to commission where he initiated the negotiations and consented that broker might conduct them because of his greater experience and broker agreed that salesman would receive his share of commission in event sale should be made. *Henderson* v. *Porter* (D. C. Mun. App. 1947, 52 A. 2d 779).

That subsection (n) of this section authorized the suspension or revocation of broker's license for offering property for sale without written consent from owner did not prevent broker from recovery of commissions in such a case where owners had entered into a contract for sale of the property with purchaser produced by broker. *Murphy* v. *Mallos* (D. C. Mun. App. 1948, 59 A. 2d 514).

In a broker's suit against the purchaser who took subject to the present lease, such a lease did not obligate the purchaser to pay the rental commission which the former owners had agreed to pay where the purchaser never assumed any obligation to pay the broker. An agreement merely to take land subject to a specified encumbrance is not an agreement to assume and pay the encumbrance and there must be words importing that he will pay the debt to make him personally liable. *Schwartz* v. *Brown* (D. C. Mun. App. 1949, 62 A. 2d 298).

CONSENT OF OWNER

Under this section, no broker may offer property for sale or rent without the written consent of the owner or his authorized agent. *Coldicott* v. *W. C. & A. N. Miller Development Co.* (D. C. Mun. App. 1946, 47 A. 2d 518).

DUTY OF BROKER

A broker owes his principal the highest fidelity and is bound to inform him fully of every development affecting his interest and particularly not to take any step secret or otherwise from which he may reap a personal profit at the expense of the principal. *Jay* v. *General Realties Co.* (D. C. Mun. App. 1946, 49 A. 2d 752).

Generally speaking, a broker who has secured his employment by a false representation, or who has by false representation induced his principal to accept an offer, is not entitled to a commission. The law requires the utmost good faith on the part of a broker in his dealings with his principal. *Ellis* v. *Morgan* (D. C. Mun. App. 1949, 65 A. 2d 797).

Where broker received deposit from plaintiff as down payment, he was not only an agent but also a trustee of the funds deposited and as such he was subject to the duty to act solely for the benefit of his principal. One may not be an agent of both parties to a transaction without making full disclosure to both and obtaining their consent. *Keith* v. *Berry* (D. C. Mun. App. 1949, 64 A. 2d 300).

LISTING CARD

The listing card usually constitutes agreement between property owner and broker, and unless it is superseded by some later writing, or otherwise modified by the parties, it evidences the understanding between them. *Coldicott* v. *W. C. & A. N. Miller Development Co.* (D. C. Mun. App. 1946, 47 A. 2d 518).

MISREPRESENTATION

Where seller informed broker that if she sold she would have to have another place and signed deed when broker said he had another available apartment, which in fact was unavailable, broker is liable for his misrepresentation. *Murphy* v. *O'Donnell* (D. C. Mun. App. 1949, 63 A. 2d 340).

QUESTION OF FACT

Where broker contended that he secured suitable accommodations and seller arbitrarily refused them, a question of fact was presented. *Murphy* v. *O'Donnell* D. C. Mun. App. 1949, 63 A. 2d 340).

RECOVERY OF COMMISSION

To be entitled to recover commission, broker must produce a purchaser who is ready, able and willing to buy on the terms authorized by the principal. Purchaser's signature on contract is some evidence of willingness to proceed but not that he is financially able or ready to do so. *Long* v. *Murchison* (D. C. Mun. App. 1948, 62 A. 2d 370).

RECOVERY OF SECRET PROFIT

In action to recover secret profit allegedly made by broker in purchasing plaintiff's property on broker's own account and reselling it at a profit, evidence required denial of recovery on ground that there was no evidence establishing relationship of real estate broker and client between the parties. *Urciolo* v. *O'Connor* (App. D. C. 1945, 149 F. 2d 386).

In principal's action against broker for secret profit realized by broker in purchasing property herself through straw men without informing principal and later reselling it at a profit, evidence sustained findings that broker had purchased the property herself through straw men without informing principal. *Jay* v. *General Realties Co.* (D. C. Mun. App. 1946, 49 A. 2d 752).

§ 45–1409 [20: 1978]. Hearing before suspension—Court review—Appeal.

The Commission shall, before denying an application for license, or before suspending or revoking

any license, set the matter down for a public hearing, and at least ten days prior to the date set for the hearing it shall notify the applicant or licensee in writing of any charges made and shall afford said applicant or licensee an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the applicant or licensee or by mailing same by registered mail to the last-known business address of such applicant or licensee. If said applicant or licensee be a salesman the Commission shall also notify the broker employing him, or whose employ he is about to enter, by mailing notice by registered mail to the broker's last-known address. The hearing on such charges shall be at such time and place as the Commission shall prescribe. The Commission shall have the power to issue subpenas or take testimony of any person by deposition in the same manner as prescribed by law in judicial procedure in the District Court of the United States for the District of Columbia in civil cases. It shall also have the power to require the production of books, records, papers, and documents by subpena or otherwise. Any party to any hearing before the Commission shall have the right to the attendance of witnesses in his behalf at such hearing upon making request therefor to the Commission and designating the person or persons sought to be subpenaed. If the Commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to said applicant, and if the Commission shall determine that any licensee is guilty of a violation of any of the provisions of §§ 45–1401 to 45–1418 this chapter, his or its licenses shall be suspended or revoked. All evidence before and findings of fact made by the Commission and questions of law involved in any final decision or determination of the Commission shall be subject to review by the District Court of the United States for the District of Columbia upon a writ of certiorari, mandamus, appeal, or by any other method permissible under the rules and practices of said court or the laws of the District of Columbia, and the said court may make such further orders with respect thereto as justice may require: *Provided, however,* That application is made by the aggrieved party to the court within thirty days after any determination by the Commission or within sixty days after formal request shall be made upon it for action. Such application shall operate as a stay of any action or finding of the Commission revoking or suspending a license, and until final decision by the District Court of the United States for the District of Columbia such licensee shall have the right to continue in business.

An appeal may be taken from the judgment of the said court on any such appeal on the same terms and conditions as an appeal is taken in civil actions.

Any party to the proceedings desiring it shall be furnished with a copy of such stenographic notes, upon the payment to the Commission of such reasonable fee as it shall, by general rule or regulation, prescribe. (Aug. 25, 1937, 50 Stat. 794, ch. 760, § 9.)

CROSS REFERENCE

Rules and regulations generally, § 45–1403 and note.

§ 45–1410 [20: 1979]. Provisions applicable to nonresident brokers and salesmen.

A nonresident of the District of Columbia may become a real-estate broker or a real-estate salesman in the District of Columbia by conforming to all of the conditions of this chapter, except that the application of such person for a license need not be accompanied by the recommendation of real-estate owners in the District of Columbia prescribed in paragraph 2 of section 45–1405, but in lieu thereof the Commission shall require the filing of like recommendations by similarly qualified real-estate owners of property in the state, territory, or county of such applicant's residence, and with the further exception that a nonresident of the District of Columbia need not maintain a place of business within the District of Columbia if he is licensed in and maintains a place of business in the state in which he resides.

(2) The Commission may recognize, in lieu of the recommendation and statements otherwise required by this chapter to accompany an application for a license, the valid and existing license issued to a nonresident to act as a real-estate broker or salesman by any state having a law for the licensing of such brokers and salesmen similar to this chapter, upon payment of the license fee prescribed by this chapter and the filing by the applicant with the commission of a duly authenticated copy of applicant's license issued by such state: *Provided, however,* That every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper courts of the District of Columbia by the service of any process or pleadings authorized by the laws of the United States applying to the District of Columbia on the secretary of the Commission, said consent stipulating and agreeing that such service of such process or pleadings on said secretary shall be taken and held in all courts to be as valid and binding as if due or personal service had been made upon said applicant in the District of Columbia. Said instrument containing such consent shall be duly acknowledged and if made by a corporation shall be authenticated by the seal thereof. All such applications, except from individuals, shall be accompanied by a duly certified copy of the resolution of the proper officers or managing board, authorizing the proper officer to execute the same. In case any process or pleadings mentioned in this chapter are served upon the secretary of the Commission, it shall be by duplicate copies, one of which shall be filed in the office of the Commission and the other immediately forwarded by registered mail to the residence address given by the applicant against which said process or pleadings are directed: *And provided further,* That every nonresident of the District of Columbia shall file a bond in form and contents the same as is required of applicants under section 45–1405. (Aug. 25, 1937, 50 Stat. 795, ch. 760, § 10; Aug. 10, 1939, 53 Stat. 1357, ch. 664, § 9.)

AMENDMENT

The 1939 amendment added the words beginning "and with the further" and concluding the first paragraph.

§ 45–1411 [20: 1980]. Power to obtain evidence.

Each member of the Commission and its duly authorized representatives may administer oaths to witnesses.

In case of the refusal of any person to comply with any subpena issued hereunder or to testify to any matter regarding which he may lawfully be interrogated, the District Court of the United States for the District of Columbia, or any judge thereof, on application of any member of the Commission, shall issue an order requiring such person to comply with such subpena and to testify or either, and any failure to obey such order of the court may be punished by the court as a contempt thereof. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 11.)

§ 45–1412 [20: 1981]. Further exemptions—Exceptions.

It shall not be necessary for any trustee or auctioneer acting under authority of a power of sale in a mortgage, deed of trust, or similar instrument securing the payment of a bona fide debt nor any bank, trust company, building and loan association, insurance company, or any land-mortgage or farm-loan association, organized under the laws of the United States, when engaged in the transaction of business within the scope of its corporate powers and provided by law, to obtain a license under this chapter.

The exemption contained in this section shall not apply to any bank, trust company, building and loan association, insurance company, or any land-mortgage or farm-loan association, which for another and for a compensation, performs any of the acts defined herein as the acts of a real-estate broker or business-chance broker in connection with any property, wherein such bank, trust company, building and loan association, insurance company, land-mortgage or farm-loan association has no fiduciary interest such as receiver, referee, administrator, executor, guardian, or trustee. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 12; Aug. 10, 1939, 53 Stat. 1357, ch. 664, § 10.)

AMENDMENT

The 1939 amendment added the second paragraph.

CROSS REFERENCE

Other exemptions, § 45–1402.

§ 45–1413 [20: 1982]. List of licensees to be published.

The Commission shall publish at least annually a list of the names and addresses of all licensees licensed by it under the provisions of this chapter and of all persons whose license has been suspended or revoked within one year, together with a succinct report of its work during the year. Such list shall be mailed by the Commission to any person in the District of Columbia upon request. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 13.)

§ 45–1414 [20: 1983]. Fraudulent transfers or loans.

It shall be unlawful for any person, firm, association, partnership, or corporation to enter into or become a party to any contract, agreement, or understanding, or in any manner whatsoever to consider, combine, conspire, or act with another or others, (a) to execute a deed conveying real property in the District of Columbia that is not a bona-fide sale but is instead a simulated sale of such property executed for the purpose and with the intent of misleading others as to the value of such property, and which in fact does so mislead and/or defraud others, to their detriment; or (b) to execute a mortgage or deed of trust upon real property situated in the District of Columbia that does not in fact represent security for a bona-fide indebtedness, but which is in reality a simulated transaction, executed for the purpose and with the intent of misleading or deceiving others as to the value of the property and which does mislead, deceive, or defraud others to their detriment.

It shall be unlawful within the District of Columbia for any person, firm, partnership, association, or corporation, foreign or domestic, either as owner or otherwise, to offer, give, award, or promise, or to use any method, scheme or plan offering, giving, awarding, or promising free lots in connection with the sale or the offering for sale or an attempt to sell or negotiate the sale of any real estate or interest therein, wherever situated, for the purpose of attracting, inducing, persuading, or influencing a purchaser or a prospective purchaser; or to offer, promise, or give prizes of any name or nature for attendance at or participation in any sale of real estate, by auction or otherwise.

It shall be unlawful for any person, firm, partnership, association, or corporation knowingly to pay a fee, commission, or compensation to anyone for the performance within the District of Columbia of any service or act defined in this chapter as the act of a real-estate broker, real-estate salesman, business-chance broker, or business-chance salesman, who was not duly licensed as such at the time such service or act was performed: *Provided,* That this paragraph shall not apply to the division of commission by a broker licensed hereunder with a nonresident cooperating broker. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 14; Aug. 10, 1939, 53 Stat. 1357, ch. 664, § 11.)

AMENDMENT

The 1939 amendment added the second and third paragraphs.

NOTES TO DECISIONS

REMEDY OF NONRESIDENT CO-OPERATING BROKER

Under this section, only a District of Columbia broker is authorized to share a commission with a nonresident co-operating broker, and hence nonresident real estate broker could not recover from one who was not a licensed broker, but only a salesman a percentage of commission received from a sale of property in the District. *Metzler* v. *Edwards* (D. C. Mun. App. 1947, 53 A. 2d 42).

Provision of this section permitting a broker duly licensed in the District of Columbia to share commission on the sale of real estate with a nonresident co-operating broker establishes that agreements to that effect are not in contravention of public policy and gives, not only a right to a co-operating nonresident broker, but an enforceable remedy as well, and such agreements are enforceable in local courts, notwithstanding prohibition under section 1407 of this title against the maintenance of suits in local courts by an unlicensed broker to recover a commission. *Metzler* v. *Edwards* (D. C. Mun. App. 1947, 53 A. 2d 42).

§ 45–1415 [20: 1984]. License revoked on conviction of crime.

Where during the term of any license issued by the Commission the licensee shall be convicted in a court of competent jurisdiction in the District of Columbia or any State (including Federal courts) of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses and a duly certified or exemplified copy of the record in such proceedings shall be filed with the Commission, the Commission shall revoke forthwith the license by it theretofore issued to the licensee so convicted.

In the event that any licensee shall be indicted in the District of Columbia or any State or Territory (including Federal courts) for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or like offense or offenses, and a certified copy of the indictment be filed with the Commission, or other proper evidence thereof be to it given, the Commission shall have authority, in its discretion, to suspend the license issued to such licensee pending trial upon such indictment.

No license shall be issued by the Commission to any person known by it to have been, within five years theretofore, convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses, or to any copartnership of which such person is a member, or to any association or corporation of which said person is an officer, director, or employee, or in which as a stockholder such person has or exercises a controlling interest either directly or indirectly. In the event of the revocation or suspension of the license issued to any member of a copartnership, or to any officer of an association or corporation, the license issued to such copartnership, association, or corporation, shall be revoked by the Commission, unless, within a time fixed by the Commission, where a copartnership, the connection therewith of the member whose license has been revoked shall be severed and his interest in the copartnership and his share in its activities brought to an end, or where an association or corporation, the offending officer shall be discharged and shall have no further participation in its activity. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 15.)

CROSS REFERENCE

Revocation or suspension of license generally, § 45–1408 and notes.

§ 45–1416 [20: 1985]. Penalties—Prosecutions.

Any person or corporation violating any provision of this chapter shall upon conviction thereof, if a person, be punished by a fine of not more than $500, or by imprisonment for a term not to exceed six months, or by both such fine and imprisonment, in the discretion of the court; and, if a corporation, be punished by a fine of not more than $1,000. Any officer, director, employee, or agent of a corporation, or member, employee, or agent of a firm, partnership, copartnership, or association, who shall personally participate in or be accessory to any violation of this chapter by such firm, partnership, copartnership, association, or corporation, shall be subject to the penalties herein prescribed for individuals.

This chapter shall not be construed to release any person, partnership, association, or corporation from civil liability or criminal prosecution under the laws applying to the District of Columbia.

All prosecutions for violation of this chapter shall be begun in the police court of the District of Columbia in the name of the District of Columbia and under the direction and charge of the corporation counsel of the District of Columbia. The corporation counsel of the District of Columbia and his assistants shall also be counsel for the Commission in all suits to which it may be a party, and shall advise the Commission and at its request attend any and all hearings which it may hold in the performance of its duties hereunder. (Aug. 25, 1937, 50 Stat. 797, ch. 760, § 16.)

§ 45–1417 [20: 1985a]. Bond required for renewal of licenses.

No license heretofore issued under the authority of this chapter, where the application therefor was accompanied by a bond which does not conform with the requirements of said chapter as amended hereby, shall be reissued or renewed unless the application for such reissuance or renewal shall be accompanied by a bond in accordance with this chapter as amended by this Act. (Aug. 10, 1939, 53 Stat. 1358, ch. 664, § 12.)

COMPILER'S NOTE

The words "This Act" refer to the act of August 10, 1939, cited to the text of the various sections of this chapter which it amends.

§ 45–1418 [20: 1986]. Saving clause.

If any section, subsection, sentence, clause, phrase, or requirement of this chapter is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions thereof. The Congress of the United States hereby declares that it would have passed this chapter, and each section, subsection, sentence, clause, phrase, and requirement thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or requirements be declared unconstitutional or invalid. (Aug. 25, 1937, 50 Stat. 798, ch. 760, § 17.)

Chapter 15.—OWNERSHIP BY ALIENS

Sec.
45–1501. Ownership of real estate by aliens.
45–1502. Real estate—Ownership by alien individuals or corporation.
45–1503. Corporations controlled by aliens.
45–1504. Forfeiture.
45–1505. Ownership by foreign governments or representatives.

§ 45–1501. Ownership of real estate by aliens.

The act entitled "An Act to better define and regulate the rights of aliens to hold and own real estate in the Territories," approved March 2, 1897, be, and the same is hereby, amended so as to extend to aliens the same rights and privileges concerning the acquisition, holding, owning, and disposition of real estate

in the District of Columbia as by that act are conferred upon them in respect of real estate in the Territories of the United States. All laws and parts of laws so far as they conflict with the provisions of this section are hereby repealed. (February 23, 1905, 33 Stat. 733, ch. 733.)

STATUTORY REFERENCES

The act of Congress above referred to appears in the United States Code as §§ 71–77 of Title 8.

The act of Oct. 14, 1940, 54 Stat. 1171, ch. 876, § 503 (U. S. C., Supp., Title 8, § 903) reads as follows: "If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any Department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person, regardless of whether he is within the United States or abroad, may institute an action against the head of such Department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the District in which such person claims a permanent residence for a judgment declaring him to be a national of the United States. * * *"

CROSS REFERENCE

Heirship, § 18–110.

§ 45–1502. Real estate—Ownership by alien individuals or corporation.

It shall be unlawful for any person not a citizen of the United States or who has not lawfully declared his intention to become such citizen, or for any corporation not created by or under the laws of the United States or of some State or Territory of the United States, to hereafter acquire and own real estate, or any interest therein, in the District of Columbia, except such as may be acquired by inheritance: *Provided,* That the prohibition of this section shall not apply to cases in which the right to hold and dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries, which rights, so far as they exist by force of any such treaties, shall continue to exist so long as such treaties are in force, and no longer, and shall not apply to the ownership of foreign legations or the ownership of residences by representatives of foreign governments or attachés thereof. (Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 396.)

COMPILER'S NOTE

This section has been modified as to alien individuals by the act of Feb. 23, 1905, 33 Stat. 733, ch. 733.

NOTES TO DECISIONS

SETTING ASIDE JUDGMENT

A stipulation that tenant who was granted 60-day stay of execution would consent to judgment for landlords suing for possession of leased housing accommodations, would not be set aside for newly discovered evidence that landlords were aliens incapable of owning realty in District of Columbia, where one landlord had declared his intention of becoming a citizen, and the record intimated that the other landlord was an attaché of a foreign legation. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

VOIDABLE TITLE

Under this section, title of alien to land in District of Columbia is merely voidable and is not void until such time as the land is forfeited by due process of law. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

§ 45–1503. Corporations controlled by aliens.

No corporation or association of which over fifty per centum of the stock is or may be owned by any person or persons, corporation or corporations, association or associations not citizens of the United States shall hereafter acquire or own any real estate hereafter acquired in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 397; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the words "more than twenty" and inserting in lieu thereof the words "over fifty."

§ 45–1504. Forfeiture.

All property acquired or held or owned in violation of the provisions of this chapter shall be forfeited to the United States, and it shall be the duty of the United States attorney for the District to enforce every such forfeiture by bill in equity or other proper process. And in every such suit or proceeding that may be commenced to enforce the provisions of this chapter it shall be the duty of the court to determine the very right of the matter, without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights either of the United States or of the other parties concerned. (Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 398.)

§ 45–1505. Ownership by foreign governments or representatives.

An act entitled "An Act to restrict the ownership of real estate in the Territories to American citizens, and so forth," approved March 3, 1887, be so amended that the same shall not apply to or operate in the District of Columbia, so far as relates to the ownership of legations, or the ownership of residences by representatives of foreign governments, or attaches thereof. (Mar. 9, 1888, 25 Stat. 45, ch. 30.)

STATUTORY REFERENCE

See U. S. C., title 8, § 82.

Chapter 16.—RENT CONTROL

Sec.
45–1601. Purposes—Time limit.
45–1602. Maximum rent ceilings and minimum service standards.
45–1603. General adjustment of maximum rent ceilings.
45–1604. Petition for adjustment.
45–1605. Prohibitions.
45–1606. Administrator.
45–1607. Obtaining information.
45–1608. Procedure.
45–1609. Court review.
45–1610. Enforcement—Penalties.
45–1611. Definitions.

§ 45–1601. Purposes—Time limit.

(a) It is hereby found that the national emergency and the national-defense program (1) have aggravated the congested situation with regard to housing accommodations existing at the seat of government; (2) have led or will lead to profiteering and other speculative and manipulative practices by some owners of housing accommodations; (3) have rendered or will render ineffective the normal operations of a free market in housing accommoda-

tions; and (4) are making it increasingly difficult for persons whose duties or obligations require them to live or work in the District of Columbia to obtain such accommodations. Whereupon it is the purpose of this chapter and the policy of the Congress during the existing emergency to prevent undue rent increases and any other practices relating to housing accommodations in the District of Columbia which may tend to increase the cost of living or otherwise impede the national-defense program.

(b) The provisions of this chapter, and all regulations, orders, and requirements thereunder, shall terminate on March 31, 1951; unless the Congress shall by joint resolution insert a later date, except that as to offenses committed, or rights or liabilities incurred, prior to such expiration date, the provisions of this chapter and such regulations, orders, and requirements, shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense. (Dec. 2, 1941, 55 Stat. 788, ch. 553, § 1, as amended Dec. 3, 1945, 59 Stat. 592, ch. 514; June 29, 1946, 60 Stat. 340, ch. 521; Aug. 1, 1947, 61 Stat. 713, ch. 429; Mar. 30, 1948, 62 Stat. 100, ch. 163; April 29, 1948, 62 Stat. 205, ch. 243, § 1; March 31, 1949, 63 Stat. 30, ch. 45; April 19, 1949, 63 Stat. 48, ch. 73, § 1; June 30, 1950, 64 Stat. 310, ch. 428, § 1.)

AMENDMENTS

Subsec. (b) amended by act of June 30, 1950, cited to text, which substituted "January 31, 1951, unless the Congress shall by joint resolution insert a later date" for "June 30, 1950".

Subsec. (b) amended by act of March 31, 1949, cited to text, which substituted "April 30, 1949" for "March 31, 1949", and by act of April 19, 1949, cited to text, which substituted "June 30, 1950" for "April 30, 1949".

Subsec. (b) amended by the act of April 29, 1948, cited to text, which substituted "March 31, 1949" for "April 30, 1948".

Subsec. (b) amended by the act of March 30, 1948, cited to text, which substituted "April 30, 1948" for "March 31, 1948".

Subsec. (b) amended by the act of Aug. 1, 1947, cited to text, which substituted "March 31, 1948" for "December 31, 1947".

Subsec. (b) amended by the act of June 29, 1946, cited to text, which substituted "December 31, 1947" for "December 31, 1946".

Subsec. (b) amended by the act of Dec. 3, 1945, cited to text, which substituted "December 31, 1946" for "December 31, 1945".

EXCEPTIONS

Section 7 of the Act of April 19, 1949, cited to text, provided as follows:

"SEC. 7. Nothing in this Act shall be construed as authorizing or permitting the recontrol of any housing accommodations which have been heretofore decontrolled."

NOTES TO DECISIONS

GENERALLY

This chapter is justified by public crisis in housing caused by great influx of wartime employees. *Heindrich* v. *Dimas-Aruti* (D. C. Mun. App. 1945, 42 A. 2d 138).

CONSTITUTIONALITY

The amendatory Rent Act did not in any way impair the rights and obligations of appellant's contract of purchase and therefore appellant was not deprived of any vested right. *Kahn* v. *Wall* (D. C. Mun. App. 1949, 68 A. 2d 862).

Argument that the sixty-five percent clause is discriminatory class legislation and therefore void is without foundation because Congress has the power to make reasonable classifications in order to effectuate the purposes of the act. *Kahn* v. *Wall* (D. C. Mun. App. 1949, 68 A. 2d 862).

Retroactive or retrospective laws are not forbidden by the Constitution merely because of such feature. Assuming that the amendatory Rent Act may be classed as retrospective legislation, it cannot be on that count alone declared unconstitutional. *Kahn* v. *Wall* (D. C. Mun. App. 1949, 68 A. 2d 862).

We do not think that the office of the Administrator of Rent Control is the proper place for an attack on the constitutionality of the Rent Act. *Block* v. *Tenants* (D. C. Mun App. 1949, 70 A. 2d 59).

CONSTRUCTION

This chapter must be liberally construed to effect its obvious purpose and afford relief from conditions which would otherwise impede the war effort. *Moore* v. *Coates* (D. C. Mun. App. 1944, 40 A. 2d 68).

This chapter was enacted to prevent injustices which would be expected to flow from acutely overcrowded conditions of a wartime capital, and it should be reasonably construed so as to accomplish its purposes. *Gould* v. *Butler* (D. C. 1943, 31 A. 2d 867); *Mayer* v. *Buchanan* (D. C. Mun. App. 1946, 50 A. 2d 595).

The District Emergency Rent Act was designed as a model, pre-war, temporary, emergency measure to forestall the skyrocketing of rentals of housing accommodations for defense workers, then concentrating in the District of Columbia. The act is directed primarily at private landlords. *United States* v. *Wittek,* 1949 (69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1906).

Rent Act must be considered as a whole and its sections must be read in connection with each other. *Dunning* v. *Randall Hagner Co.* (D. C. Mun. App. 1949, 63 A. 2d 770).

CONSTRUCTION WITH OTHER LAWS

If § 15–201 regarding issuance of execution was in conflict with this chapter which was subsequently adopted, to the extent of the conflict said § 15–201 was required to give way to this chapter. *Myers* v. *H. L. Rust Co.,* 1943 (134 F. 2d 417, 77 U. S. App. D. C. 218).

The provisions of this chapter supersede older code enactments wherever there is conflict between them. *Lingo* v. *Wolfe* (D. C. Mun. App. 1944, 37 A. 2d 270).

PURPOSE

This chapter is designed to prevent increases in cost of living and other impediments to the national defense program, and the purpose of this chapter is to freeze landlord-tenant relationships existing at the time of the adoption of this chapter. *Myers* v. *H. L. Rust Co.,* 1943 (134 F. 2d 417, 77 U. S. App. D. C. 218).

This chapter was not intended to restore possession to occupant, who had violated obligations, against owner of premises who in good faith sought to recover possession of property for immediate and personal use as a dwelling. *Leonardo* v. *Leonardo,* 1944 (145 F. 2d 849, 79 U. S. App. D. C. 258).

Though this chapter was enacted primarily for benefit of tenants, it did not intend that rights given tenants should be used to frustrate rights reserved to landlord, and where rights of purchaser of leased property to be used for purchaser's residence were clearly established, tenant must yield regardless of hardships involved. *Arsenault* v. *Angle* (D. C. Mun. App. 1945, 43 A. 2d 709).

This chapter was passed primarily for protection of tenants, but did not intend to prevent free sale of dwelling property and did not intend that rights given tenant should be used to frustrate rights reserved to landlord. *National Metropolitan Bank of Washington* v. *Judge* (D. C. Mun. App. 1944, 37 A. 2d 446); *Hicks* v. *Bigelow* (D. C. Mun. App. 1948, 55 A. 2d 924).

It is practically inconceivable that Congress would have subjected its government-owned low-rent housing program in the District to the additional controls prescribed by the District of Columbia Emergency Rent Act. *United States* v. *Wittek,* 1949 (69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1906).

The claim that the act is unconstitutional because the emergency ceased to exist is without merit, for it must be assumed that Congress, by its latest extension, found a continuing existence of the emergency justifying continued existence of the act. The court is not prepared by the process of judicial notice to override a judgment of Congress so recently exercised. *Kahn* v. *Wall* (D. C. Mun. App. 1949, 68 A. 2d 862).

§ 45–1602. Maximum rent ceilings and minimum service standards.

(1) On and after the thirtieth day following the enactment of this chapter, subject to such adjustments as may be made pursuant to sections 45–1603 and 45–1604, maximum-rent ceilings and minimum-service standards for housing accommodations excluding hotels, in the District of Columbia shall be the following:

(a) For housing accommodations rented on January 1, 1941, the rent and service to which the landlord and tenant were entitled on that date.

(b) For housing accommodations not rented on January 1, 1941, but which had been rented within the year ending on that date, the rent and service to which the landlord and tenant were last entitled within such year.

(c) For housing accommodations not rented on January 1, 1941, nor within the year ending on that date, the rent and service generally prevailing for comparable housing accommodations as determined by the Administrator.

(2) On and after the thirtieth day following the enactment of this chapter, the landlord or other person in charge of and conducting any hotel in the District of Columbia shall post in a conspicuous place in each room thereof used for living or dwelling purposes, a card or sign plainly stating the rental rate per day of such room, and a copy of such rates for each room shall be filed with the Administrator. Subject to such adjustment as the Administrator may determine to be necessary in order that said rates shall conform to the standard set forth in this section and to such adjustment as may be made pursuant to sections 3 and 4, said rates when posted and filed with the Administrator, shall constitute the maximum-rent ceiling for the housing accommodations specified: *Provided,* That the transient rates so posted shall not exceed the established or standard rate charged by the landlord as of January 1, 1941, except that after written notice by the landlord to the Administrator such landlord may make such addition or deduction to or from such rate as will compensate for (1) a substantial change since January 1, 1941, in maintenance or operating costs or expenses, or (2) a substantial capital improvement or alteration made since January 1, 1941, and such addition or deduction shall be subject to review by the Administrator, and he may by order adjust such maximum-rent ceiling to provide the rental rate generally prevailing for comparable housing accommodations as determined by the Administrator. Posted rates shall conform to the following:

(a) In the case of apartment units, the rental rate shall be that which the landlord was entitled to receive on January 1, 1941, except in those instances where it is shown that a special rate less than the established or standard rate charged by the landlord as of January 1, 1941, was being charged, a rate may be posted at such established or standard rate: *Provided,* That the rate being charged the current occupant shall not be increased.

(b) Where apartment units are changed from furnished to unfurnished, or vice versa, the rate shall be that charged by the landlord for comparable housing accommodations on January 1, 1941: *Provided,* That no such change may be made without the consent of the current occupant, if there be one.

(c) Where housing accommodations are changed from permanent to transient use, the rate shall not exceed that posted for comparable accommodations.

(d) In the case of a hotel not in operation January 1, 1941, the rental rates posted shall be the rates generally prevailing for comparable housing accommodations.

(e) For the purposes of this section, the term "hotel" means an establishment operating under a hotel license and occupied by an appreciable number of persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service.

(3) After April 30, 1948, the provisions of this chapter shall not apply to the following housing accommodations, and no maximum rent ceilings or minimum service standards shall be prescribed with respect thereto:

(a) Any housing accommodations in hotels, which accommodations are used exclusively for transient occupancy, that is, for living quarters for nonresidents upon a short-time basis;

(b) Any housing accommodations the construction of which was completed after March 31, 1948, or which are additional housing accommodations created by conversion after March 31, 1948, except as hereinafter provided;

(c) Nonhousekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house, but only if (A) no more than two paying tenants, not members of the landlord's immediate family, live in such dwelling unit, and (B) the remaining portion of such dwelling unit is occupied by the landlord or his immediate family.

(4) Any housing accommodations resulting from any conversion created on or after May 1, 1949, shall continue to be housing accommodations subject to maximum rent ceilings and minimum service standards unless the Administrator issues an order decontrolling them, which he shall issue if he finds that the conversion resulted in additional, self-contained family units as defined by regulations issued by him.

(5) (a) After June 30, 1950, the provisions of this chapter shall not apply to, and no maximum rent ceiling or minimum service standards shall be prescribed for, any furnished nonhousekeeping housing accommodations which are rented as rooms without kitchen privileges or facilities for cooking (but not in a suite of two or more rooms), and when and for such period as any of the housing accommodations in any building used as a rooming house are

decontrolled under this paragraph (a) the provisions of this chapter shall not apply to, and no maximum rent ceilings or minimum service standards shall be prescribed for, such building.

(b) After June 30, 1950, self-contained family units (as defined by regulations issued by the Administrator) located in hotels shall continue to be housing accommodations subject to maximum rent ceilings and minimum service standards unless the Administrator issues an order decontrolling them, or any of them, which he shall issue if he finds that such hotel is primarily engaged in furnishing accommodations for transients. (Dec. 2, 1941, 55 Stat. 788, ch. 553, § 2; April 29, 1948, 62 Stat. 205, ch. 243, § 2; April 19, 1949, 63 Stat. 49, ch. 73, §§ 2, 3 and 5; June 30, 1950, 64 Stat. 321, ch. 428, § 2.)

AMENDMENTS

The act of June 30, 1950, cited to text, added subsection (5).

The act of April 19, 1949, cited to text, amended subsection (2) (e), added the words "except as hereinafter provided" to subsection (3) (b), and added subsection (4).

The act of April 29, 1948, cited to text, added subsection (3).

EXCEPTIONS

Section 7 of the act of April 19, 1949, cited to text, provided as follows:

"SEC. 7. Nothing in this Act shall be construed as authorizing or permitting the recontrol of any housing accommodations which have been heretofore decontrolled."

NOTES TO DECISIONS

ADMINISTRATOR'S DETERMINATION

Under this section requiring, for accommodations not rented during 1940, the rent and service generally prevailing for comparable accommodations "as determined by the Administrator," 1944 order of Administrator fixing rent ceiling for particular premises, and prescribing future minimum service standard therefor, was not retroactive, and hence no rent ceiling existed until determined by the Administrator, but until then rights of lessor and lessee were fixed by the lease. *Moore* v. *Coates* (D. C. Mun. App. 1944, 40 A. 2d 68).

The Rent Administrator's order determining rental was of no effect, and he properly set it aside on discovering that, contrary to landlord's representation, premises were rented on rental freeze date; landlord's remedy being to seek adjustment rather than determination of rent. *Gould* v. *Delsnider* (D. C. Mun. App. 1945, 42 A. 2d 140, 81 U. S. App. D. C. 54, reversed, 1946, 154 F. 2d 844, 81 U. S. App. D. C. 54).

Under this chapter, no maximum rent ceiling existed until determined by Rent Administrator, and until then the rights of the parties were those fixed by their lease agreement. *Wilkerson* v. *Montgomery* (D. C. Mun. App. 1946, 47 A. 2d 102).

Under this chapter, Rent Administrator cannot set aside a valid and subsisting lease between parties providing for lower rentals than rent ceiling established by Administrator. *Hildebrand* v. *Nee* (D. C. Mun. App. 1947, 54 A. 2d 640).

After Administrator of Rent Control had determined rent ceiling for particular premises, he was without jurisdiction to order that such determination constituted fair and reasonable rent as of beginning of tenancy or to order refund by landlord and rule that upon payment of such refund, landlord should not be liable for damages or penalties. *Kern* v. *Cogswell* (D. C. Mun. App. 1948, 59 A. 2d 793).

The ruling of the Administrator that since the records of expenses for the year 1941 had become unavailable, he was entitled to take a later year as a base and compare subsequent years with such base year, was error. The Administrator may not substitute 1945 or any other year for the base year for this would amount to an administrative amendment of an act of Congress. *Corey* v. *Fitzgerald* (D. C. Mun. App. 1950, 73 A. 2d 230).

The Rent Administrator acted beyond his scope of authority when he ordered that there was no proper reason for the subdivision of housing accommodations into two units when in fact for some time there have been and are actually two tenants in occupancy and by improvements landlord has provided accommodations which now lend themselves better than before to double or even triple occupancy. *Block* v. *Means* (D. C. Mun. App. 1949, 64 A. 2d 163).

The order of the Rent Administrator fixing the rent ceiling made under § 45–1602 (1) (c) of Rent Act is not appealable. A finding of fact is not an appealable order. *Weiner* v. *McMahon* (D. C. Mun. App. 1949, 67 A. 2d 525).

There is nothing in the Rent Act to compel an owner to continue to re-rent his property for housing purposes, and when a vacancy occurs, he may remove it from the rental market, occupy it himself, re-lease it or convert it to commercial use. But when the landlord permits its actual use as housing accommodations, even though the lease may state otherwise and even though the property was once free from rent control, the Rent Act applies. *White* v. *Allen* (D. C. Mun. App. 1949, 70 A. 2d 252, see also 71 A. 2d 613).

Where proceedings before Administrator were under § 2 (1) (c) of the Rent Act, under which the Administrator determined the rent ceilings for housing accommodations not rented on January 1, 1941, no appeal lies from such determination. *White* v. *Allen* (D. C. Mun. App. 1949, 70 A. 2d 252, see also 71 A. 2d 613).

ADOPTION OF CEILING

A general order of Administrator of Rent Control requiring landlords to file petitions for determination of maximum rent ceilings, and reciting that, until further notice, Administrator will assume, but not concede, that first rent collected by landlord is fair and reasonable, was not an adoption of rent then charged as a "maximum rent ceiling", and landlord's petition for court review of adjustment of rent or service on basis of such order was properly dismissed. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

CEILING RENT AS RETROACTIVE

Where premises were not rented during 1940, lessee could not recover excess of rent paid for 1942 and 1943 over the ceiling fixed by Rent Administrator in 1944 for such premises. *Moore* v. *Coates* (D. C. Mun. App. 1944, 40 A. 2d 68).

Under this section requiring for accommodations not rented during 1940 the rent and services generally prevailing for comparable accommodations, "as determined by the Administrator", an order by Administrator fixing maximum rent ceiling for particular premises effective March 16, 1943, was intended to apply only prospectively, and hence tenant could not recover excess of rent paid prior to effective date of order over ceiling fixed by Rent Administrator. *Dekelbaum* v. *Lloyd* (D. C. Mun. App. 1945, 41 A. 2d 174).

Rent Administrator's interpretation of maximum rent regulation as authorizing only prospective rent adjustments was entitled to persuasive weight in determining whether rent adjustment order should have been made retroactive. *Dekelbaum* v. *Lloyd* (D. C. Mun. App. 1945, 41 A. 2d 174).

An order of Rent Administrator fixing maximum rent ceiling on apartment, which was entered after commencement of action to recover amount paid in excess of rent ceiling, had no retroactive effect. *Wilkerson* v. *Montgomery* (D. C. Mun. App. 1946, 47 A. 2d 102).

CONSTRUCTION WITH OTHER LAWS

Without an existing maximum rent ceiling or maximum service standard as defined in this section, a proceeding for adjustment under § 45–1604 was unauthorized, and the procedural and review provisions of §§ 45–1608 and 45–1609 were inapplicable. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113)

Section 1608 of this title expressly provides that under stated circumstances, without action of Rent Administrator, the findings and recommended order of examiner in

proceeding under section 1604 of this title relating to adjustment of rent ceiling and service standards may be deemed findings and order of Administrator, does not require that examiner's findings and order in proceeding under subsection (1) (c) of this section, for establishment of minimum service standard, be regarded as a determination by Administrator, without action on Administrator's part. *Sager* v. *Parker* (D. C. Mun. App. 1947, 55 A. 2d 349).

EQUITABLE ESTOPPEL

Where landlord petitioned under Section 4 of Rent Act for an adjustment and where Administrator made no determination, such act did not preclude landlord from asserting a defense to tenant's suit for damages that the examiner's recommended order was not a sufficient basis for tenant's suit. The principles of equitable estoppel do not apply where the legal position first asserted is not successfully maintained. *Parker* v. *Sager* (C. A. D. C. 1949, 174 F. 2d 657, 85 U. S. App. D. C. 4).

EVIDENCE

Trial court, in considering motion to dismiss, was entitled to take into account the text of the Rent Administrator's findings and also defendant's affidavit. *Banks* v. *Thorwarth* (D. C. Mun. App. 1949, 68 A. 2d 906).

FINDINGS OF EXAMINER

Plaintiff was not bound in the present action by the rent examiner's findings where the finding was made by a rent examiner and the record does not show consideration and approval of such findings by the Administrator himself. *Banks* v. *Thorwarth* (D. C. Mun. App. 1949, 68 A. 2d 906).

FURNISHED PREMISES

Where tenant rents unfurnished premises at ceiling price and rents furniture from a third person in a bona fide arrangement which is not designed to evade section 45–1601 et seq., landlord would have a valid defense against a claim of violation thereof. *Fulton R. Gordon, Inc.* v. *Schram* (D. C. Mun. App. 1945, 44 A. 2d 662).

Landlord whose rent ceiling is fixed on basis of unfurnished rental cannot evade regulation against increase in rent without prior approval of Rent Administrator by renting property furnished. *Fulton R. Gordon, Inc.* v. *Schram* (D. C. Mun. App. 1945, 44 A. 2d 662).

GRADUATED RENTALS

Where lease for a term of years provided for a fixed rental for the full term payable monthly on a graduated scale beginning at $125 per month, the monthly payment of $125, payable at time of effective date of this chapter which "froze" rent as of that date, was not a "monthly rental" which controlled rent for remainder of term. *Isquith* v. *Athanas* (D. C. Mun. App. 1943, 33 A. 2d 733).

MAXIMUM RENT

Rental payable for housing accommodations rented on January 1, 1941, became by this section maximum rent, and no landlord may collect more without official action by Rent Administrator. *Gould* v. *Delsnider* (D. C. Mun. App. 1945, 42 A. 2d 140, 81 U. S. App. D. C. 54).

NEW HOUSING ACCOMMODATIONS

Where new housing accommodation was not rented on critical date under this chapter, rent payable under lease was controlling and valid for period prior to administrator's finding as to rent generally prevailing for comparable housing accommodations. *Delsnider* v. *Gould* (App. D. C. 1946, 154 F. 2d 844).

Where premises rented on critical date under this chapter, was a frame building described as a "shack", and after that date a new owner installed water, plumbing and electricity and a bathroom with tub and overhanging shower, finished walls, installed electric refrigerator and electrically controlled kerosene furnace, rebuilt front entrance, planted flowers in yard and made repairs and completely furnished the house except for silver and linen, the completely equipped and furnished house was a new "housing accommodation" within subsection (1) (A–C) of this section which was not rented on critical date so that ceiling rent was the rent generally prevailing for comparable housing accommodations. *Delsnider* v. *Gould* (App. D. C. 1946, 154 F. 2d 844).

Where defendant on rent freeze date was renting apartment unfurnished and subsequently sublet apartment to plaintiffs completely furnished and supplied with various services, the accommodations sublet to plaintiffs were new accommodations to which ceilings on old accommodations did not apply, and, in absence of a determination of a rent ceiling for such new accommodations, the agreement of the parties controlled as to amount of rent payable, precluding an action by plaintiffs for overceiling rents. *James* v. *Noorbolm* (D. C. Mun. App. 1946, 47 A. 2d 105).

Painting interior and exterior, replacing gutters and downspout, installing new hot water heater and gas range, and repairing and finishing floor did not constitute complete rehabilitation of leased premises, or "substantial capital improvements" or create "new housing accommodations" authorizing overceiling rent. *Mayer* v. *Buchanan* (D. C. Mun. App. 1946, 50 A. 2d 595).

What constitutes new housing accommodations so as to authorize overceiling rent, as distinguished from improvements to old accommodations within this section is ordinarily question of fact, but becomes question of law where evidence is compelling one way or the other. *Mayer* v. *Buchanan* (D. C. Mun. App. 1946, 50 A. 2d 595).

Where landlord removed a staircase and built a bathroom and made other improvements but did not make room for a larger number of tenants, the accommodations did not differ sufficiently to constitute new or different housing accommodations from that previously rented. *Block* v. *Means* (D. C. Mun. App. 1949, 64 A. 2d 163).

The change in the use of space from occupancy by a number of roomers to occupancy of the same space as an apartment by one or more persons, without more, results as a matter of law in the creation of new housing accommodations under the statute. All the circumstances surrounding the change, including details of the use of the space and services rendered should be considered whereupon it becomes a question of fact. *Banks* v. *Thorwarth* (D. C. Mun. App. 1949, 68 A. 2d 906).

The question whether accommodations involved are new, or are old ones with substantial capital improvement, is a question of fact for a jury. *Sawyer* v. *Warner* (D. C. Mun. App. 1948, 63 A. 2d 653).

OWNER'S RESPONSIBILITIES

If a rent ceiling is automatically created by statute prior to determination by Administrator of Rent Control, owner must determine for himself the rent he may charge and service he must furnish, and assume responsibility for violation of rent ceiling or minimum service standards, making him liable civilly, though not criminally. *Moore* v. *Coates* (D. C. Mun. App. 1944, 40 A. 2d 68).

When a maximum rent ceiling is established for particular housing accommodations, landlord is entitled to charge and receive that amount and no more regardless of number of occupants, unless order fixing ceiling provides for a carrying rent dependent upon number of occupants. *Glassman* v. *Graver* (D. C. Mun. App. 1948, 56 A. 2d 160).

RES JUDICATA

An order of the Administrator would not be res judicata or give rise to the application of the doctrine of estoppel by judgment under the circumstances here presented. *Banks* v. *Thorwarth* (D. C. Mun. App. 1949, 68 A. 2d 906).

SERVICE STANDARD

Where rental schedule filed by landlord under this section listed "storage locker" as one of services supplied the tenants, this section, if it had effect of requiring continuance by landlord of the "service" of furnishing storage facilities, did not place a greater responsibility on landlord for care of goods stored than that expressly agreed upon by the parties. *Barclay, Inc.*, v. *Maxfield* (D. C. Mun. App. 1946, 48 A. 2d 768, 53 A. 2d 276).

The word "entitled" in provision of this section and § 45–1610 (a) authorizing tenant to recover damages from landlord upon proof of failure to furnish minimum service standard to which tenant was entitled on freeze date

under this chapter, means having a right to, and indicates that service standard consists only of services tenant was entitled to as of right on freeze date, and not those which were furnished gratuitously or as a matter of courtesy. *Roumel* v. *Goldberg* (D. C. Mun. App. 1946, 46 A. 2d 114).

In order to entitle tenant to recover damages from landlord for violation of minimum service standard under this section and § 45–1610, such service need not be specifically contracted for in lease or rental agreement. *Roumel* v. *Goldberg* (D. C. Mun. App. 1946, 46 A. 2d 114).

In landlord's action for possession of leased premises and for money judgment for rent, landlord's alleged failure to make repairs did not constitute a defense on ground that such failure violated "minimum service standard" under this section, where no services from the landlord were required under any criteria for minimum service permitted under this section. *Mitchell* v. *David* (D. C. Mun. App. 1947, 51 A. 2d 375).

The minimum service standard under subsection (1) (c) of this section is a question of fact to be determined by Administrator of Rent Control, and his determination is not an exact computation but is his judgment based on his view of evidence before him. *Sager* v. *Parker* (D. C. Mun. App. 1947, 55 A. 2d 349, affirmed, 1949, 174 F. 2d 657, 85 U. S. App. D. C. 4).

A determination of minimum service standard under subsection (1) (c) of this section by an examiner could not be accepted by Rent Administrator without his personal consideration of evidence on which examiner arrived at his conclusion, notwithstanding that examiner's order stated that it would be deemed to be that of Administrator unless written request for review was filed within fixed time or unless a rehearing or extension of time was granted within discretion of examiner or Administrator. *Sager* v. *Parker* (D. C. Mun. App. 1947, 55 A. 2d 349, affirmed, 1949, 174 F. 2d 657, 85 U. S. App. D. C. 4).

UNIT FOR RENT CEILINGS

The unit for which a rent ceiling is fixed by the Emergency Rent Act is not the real estate or the premises but the combination of real estate, all personal property, all facilities and all services connected with the use or occupancy and for which rent was payable. *Delsnider* v. *Gould* (App. D. C. 1946, 154 F. 2d 844). See also, *James* v. *Noorbolm* (D. C. Mun. App. 1946, 47 A. 2d 105).

§ 45–1603. General adjustment of maximum rent ceilings.

Whenever in the judgment of the Administrator a general increase or decrease since January 1, 1941, in taxes or other maintenance or operating costs or expenses has occurred or is about to occur in such manner and amount as substantially to affect the maintenance and operation of housing accommodations generally or of any particular class of housing accommodations, he may by regulation or order increase or decrease the maximum-rent ceiling or minimum-service standard, or both, for such accommodations or class thereof in such manner or amount as will in his judgment compensate, in whole or in part, for such general increase or decrease. Thereupon such adjusted ceiling or standard shall be the maximum-rent ceiling or minimum-service standard for the housing accommodations subject thereto. (Dec. 2, 1941, 55 Stat. 789, ch. 553, § 3.)

§ 45–1604. Petition for adjustment.

(a) Any landlord or tenant may petition the Administrator to adjust the maximum-rent ceiling applicable to his housing accommodations on the ground that such maximum-rent ceiling is, due to peculiar circumstances affecting such housing accommodations, substantially higher or lower than the rent generally prevailing for comparable housing accommodations; whereupon the Administrator may by order adjust such maximum-rent ceiling to provide the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

(b) Any landlord may petition the Administrator to adjust the maximum-rent ceiling or minimum-service standard, or both, applicable to his housing accommodations to compensate for (1) a substantial rise, since January 1, 1941, in taxes or other maintenance or operating costs or expenses, or (2) a substantial capital improvement or alteration made since January 1, 1941; whereupon the Administrator may by order adjust such maximum-rent ceiling or minimum-service standard in such manner or amount as he deems proper to compensate therefor, in whole or in part, if he finds such adjustment necessary or appropriate to carry out the purposes of this chapter: *Provided,* That no such adjusted maximum-rent ceiling or minimum-service standard shall permit the receipt of rent in excess of the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

Provided further, That the Administrator may by order adjust the maximum rent ceiling or minimum service standard hereunder although the landlord fails to produce evidence of facts occurring in the period from January 1, 1941, to December 31, 1945, if the landlord proves circumstances which in the opinion of the Administrator excuse the failure to produce evidence of such facts.

(c) Any tenant may petition the Administrator on the ground that the service supplied to him is less than the service established by the minimum-service standard for his housing accommodations, but in the case of a hotel, is less than the established or standard service supplied as of January 1, 1941; whereupon the Administrator may order that the service be maintained at such minimum-service standard, or that the maximum-rent ceiling be decreased to compensate for a reduction in service, as he deems necessary or appropriate to carry out the purposes of this chapter.

(d) Any landlord may petition the Administrator for permission to reduce the service supplied by him in connection with any housing accommodations; whereupon the Administrator, if he determines that the reduction of such services is to be made in good faith for valid business reasons and is not inconsistent with carrying out the purposes of this chapter, may, by order, reduce the minimum-service standard applicable to such housing accommodations and adjust the maximum-rent ceiling downward in such amount as he deems proper to compensate therefor.

(e) Any tenant may petition the Administrator to adjust the maximum-rent ceiling applicable to his housing accommodations on the ground that such maximum-rent ceiling permits the receipt of an unduly high rent; whereupon the Administrator may by order adjust such maximum-rent ceiling in such manner or amount, as shall, in his judgment, effectuate the purposes of this chapter and provide a fair and reasonable rent for such housing accommodations.

(f) A petition made pursuant to this section shall be subject to the provisions of sections 45–1608 and 45–1609. Any adjusted maximum-rent ceiling or minimum-service standard ordered pursuant to this section shall be the maximum-rent ceiling or minimum-service standard for the housing accommodations subject thereto; except that in the event that the adjustment order is stayed or set aside by the court in accordance with section 45–1609, the maximum-rent ceiling and minimum-service standard theretofore applicable to such housing accommodations under this chapter shall remain in full force and effect. (Dec. 2, 1941, 55 Stat. 790, ch. 553, § 4; June 30, 1950, 64 Stat. 310, ch. 428, § 3.)

AMENDMENTS

The act of June 30, 1950, cited to text, added the proviso in subsection (b).

NOTES TO DECISIONS

ADMISSIBILITY OF EVIDENCE

A landlord, basing his right under subsection (b) of this section to increased ceilings for rents because of increased costs, must show an increase in present and anticipated future costs, and records showing costs of landlord's predecessor are entirely competent to make such a showing, if the landlord shows that such records are applicable to himself. *Stokes* v. *Realest Corp.* (D. C. Mun. App. 1948, 60 A. 2d 532).

Facts agreed to by petitioner's counsel but which did not appear in the examiner's statement of evidence or in any other evidentiary form in the record and carrying neither the approval nor certification of the Rent Administrator, are not part of the record and cannot be considered on appeal. *Bailey* v. *Maple* (D. C. Mun. App. 1948, 63 A. 2d 333).

ADMINISTRATOR'S DETERMINATION

Ruling of Administrator that since the records of expenses for the year 1941 had become unavailable, he was entitled to take a later year as a base and compare subsequent years with such base year, was error. The Administrator may not substitute 1945 or any other year for the base year, for this would amount to an administrative amendment of an act of Congress. *Corey* v. *Fitzgerald* (D. C. Mun. App. 1950, 73 A. 2d 230).

ADOPTION OF CEILING

A general order of Administrator of Rent Control requiring landlords to file petitions for determination of maximum rent ceilings, and reciting that, until further notice, Administrator will assume, but not concede, that first rent collected by landlord is fair and reasonable, was not an adoption of rent then charged as a "maximum rent ceiling", and landlord's petition for court review of adjustment of rent or service on basis of such order was properly dismissed. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

Where petitioner did not submit rent schedule for approval but instead accepted previously approved schedules, as the legal rent ceilings, and abided by those schedules, the established rent ceilings were legal, at least from the time of acquisition of the property by the present landlord. *Fairmac Corp.* v. *Roberts* (D. S. Mun. App. 1949, 67 A. 2d 684).

CAPITAL IMPROVEMENT

Moneys spent for new electric refrigerators and for installation of an oil burner are not such expenditures as to be considered capital improvements. *Sharpe* v. *Goldwyn* (D. C. Mun. App. 1949, 65 A. 2d 185).

The term "substantial capital improvement" means a substantial betterment from the viewpoint of housing accommodations and not necessarily from the viewpoint of the landlord's investment. A replacement of the coal and heating unit with an oil burning unit does not constitute a substantial capital improvement. *Rosen* v. *Powers* (D. C. Mun. App. 1949, 65 A. 2d 200).

COMMERCIAL AND NONCOMMERCIAL PORTIONS

Where there is a single tendency and nothing in the record to show that either landlord or tenant ever regarded it as divisible, no separate toilet facilities for the housing and alleged commercial part thereof, only one heating unit, one meter for electricity, gas and water, it was error for Rent Administrator to rule that the unit was both a commercial and housing accommodation. *Wayne* v. *Burke* (D. C. Munn. App. 1949, 63 A. 2d 669).

CONCLUSIVENESS OF FINDINGS

An administrator is not bound to follow an earlier ruling which he considered improper. *Bailey* v. *Maple* (D. C. Mun. App. App. 1948, 63 A. 2d 333).

CONSTRUCTION WITH OTHER LAWS

Without an existing maximum rent ceiling or maximum service standard as defined in § 45–1602, a proceeding for adjustment under this section was unauthorized, and the procedural and review provisions of §§ 45–1608 and 45–1609 were inapplicable. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

DISMISSAL

Where it appears that after reversal of the original judgment and remand, there was a lapse of eleven months before case was calendared for trial, under rule 37 (e) of the Municipal Courts, defendant was entitled at most to a dismissal without prejudice. If an order of dismissal had been entered, plaintiff would be free to file action anew since dismissal would not have been an adjudication on the merits, and defendant was not prejudiced by denial of motion to dismiss. *Clarke* v. *Cleckley* (D. C. Mun. App. 1950, 71 A. 2d 616).

Landlord's contention that there is no authority in law for dismissal of the petition except for want of prosecution is clearly without merit. Where petitioner fails to show a basis for relief, the administrator must of necessity deny relief. Whether such denial takes the form of a dismissal or otherwise is immaterial. *Rosen* v. *Powers* (D. C. Mun. App. 1949, 65 A. 2d 200).

EQUITABLE ESTOPPEL

Where landlord petitioned under Section 4 of Rent Act for an adjustment, and where Administrator made no determination, this did not preclude landlord from asserting a defense to tenant's suit for damages that the examiner's recommended order was not a sufficient basis for tenant's suit. The principles of equitable estoppel do not apply where the legal position first asserted is not successfully maintained. *Parker* v. *Sager* (C. A., D. C. 1949, 174 F. 2d 657, 85 U. S. App. D. C. 4).

EXPENSE RATIO

Where examiner averaged the expenses for the years 1942 through 1947, inclusive, and had allowed a sufficient rental increase to make up for the excess of such averaged operating expenses over the operating expenses for 1941, such method was improper because it failed to take into account the various items of operating expenses for the base year and intervening years. *Shapiro* v. *Bombardier* (D. C. Mun. App. 1949, 63 A. 2d 772).

FINDINGS CONCLUSIVE

Where the Rent Administrator, upon review of the findings of the examiner, states his findings of fact or affirms the facts as found, such findings are conclusive if supported by substantial evidence. *Winkler* v. *Ballard* (D. C. Mun. App. 1949, 63 A. 2d 669).

FINDINGS OF FACT

Where, after remand of the case by the court, the examiner went to the premises and inspected them in the presence of the landlord, the actual appearance and condition of the units certainly constituted evidence which probably spoke louder and clearer on the issue than would any other type of evidence. Accordingly, the findings must be sustained. *Block* v. *Tenants* (D. C. Mun. App. 1949, 70 A. 2d 59).

In a petition for increased rent because of increased operating costs and substantial rise in taxes, Administrator was justified in using the fiscal year basis rather than the calendar year. *Dysert* v. *Ring Management Company* (D. C. Mun. App. 1949, 69 A. 2d 655).

The basis of calculation used by the Rent Administration must be in sufficient detail so that the parties may, if they desire, raise suitable objections before the Administrator and on appeal. The basis of calculations used in different cases must be reasonably consistent and if a different method is used in an individual case, reasons for such change in method must be shown. *Ostrow* v. *Horning, Inc.* (D. C. Mun. App. 1949, 69 A. 2d 277).

Where the Administrator, by reference in his findings to page numbers of the record, has made the actual figures used by the examiner or Administrator easily ascertainable, it is sufficient to indicate the basis of calculation of formula adopted by the Administrator. *Dysert* v. *Ring Management Company* (D. C. Mun. App. 1949, 69 A. 2d 655).

Evidence substantiated findings of Administrator that a distinction exists between apartments on the one hand ad hotel rooms for transit guests on the other, and that the cost of supplying maid service, linen, etc. is approximately the same for different rooms regardless of size, location, or relative rental value, and that room rent as distinguished from apartment rent had been customarily increased on a flat dollarwise basis. *Sulzer* v. *Bellevue Inc.* (D. C. Mun. App. 1949, 66 A. 2d 407).

Whether, as a result of peculiar circumstances, the rent ceilings are substantially lower than the rent generally prevailing for comparable housing accommodations is a question to be decided by the Rent Administrator. *Fairmac Corp.* v. *Roberts* (D. C. Mun. App. 1949, 67 A. 2d 684).

Administrator, under the statute, may not use different methods in ordering rent increases in different cases except where a reasonable basis exists for such variations. *Sulzer* v. *Bellevue Inc.* (D. C. Mun. App. 1949, 68 A. 2d 407).

Grounds for Increase

Landlords are entitled to receive increased rentals due to increased price levels only, and not because of other elements, such as those making up for deferred maintenance. *Proctor* v. *Miller* (D. C. Mun. App. 1949, 63 A. 2d 665).

Housing and Rent Act

The authority of Congress to enact legislation for control of rents in the states is not the same exercised in controlling rents in the District of Columbia, and the Housing and Rent Acts of 1947 and 1948, 50 U. S. C. App. §§ 1894, 1901, authorizing a 15 percent increase in rent when voluntarily agreed to by landlord and tenant is not unconstitutional because specially made inapplicable to the District of Columbia. *Thorn* v. *Miller* (D. C. Mun. App. 1948, 60 A. 2d 223).

In enacting the Housing and Rent Acts of 1947 and 1948, 50 U. S. C. App. §§ 1894, 1901, Congress did not intend thereby to amend this chapter to authorize a 15 percent increase in rent where voluntarily agreed to between landlord and tenant by written lease. *Thorn* v. *Miller* (D. C. Mun. App. 1948, 60 A. 2d 223).

Insufficiency of Petition

Burden was on the petitioner to supply a full and complete statement of all the evidence introduced at the hearing. If such statement failed to supply several necessary elements which may or may not have been included in the evidence, the Administrator might assume that any statement of evidence not submitted contained substantial support for the findings of fact and recommended order of the examiner. *Crisp* v. *Giles* (D. C. Mun. App. 1949, 65 A. 2d 204).

Where petition failed to state the total rents collected by the landlord before petition was filed or those authorized by the Rent Administrator's order, and was otherwise incomplete, decision of Administrator will be affirmed. *Crisp* v. *Caldwell* (D. C. Mun. App. 1949, 65 A. 2d 206).

Minimum Service

Where Rent Administrator had refused to grant relief on tenant's petition charging landlord with failing to maintain minimum service and tenant did not seek review of that determination, the same matter could not be reexamined in action against landlord for damages for failure to maintain minimum service. *Hicks* v. *Behrend* (D. C. Mun. App. 1944, 40 A. 2d 78).

If a tenant feels that landlord fails to comply with minimum service standard, tenant may seek relief before Rent Administrator or he may bring a court action for double value of services refused or for $50, whichever is greater, but he cannot pursue his remedy before Administrator and, failing in that, retry the same issues in action for damages. *Hicks* v. *Behrend* (D. C. Mun. App. 1944, 40 A. 2d 78).

Though Administrator committed an error in his findings, it was harmless where petitioner alleged that there had been a diminution in the minimum service standard on ground that owners had withdrawn a resident manager, and instead of paying rent on the premises to the manager the petitioner was thereafter compelled to pay it at a downtown office. Moreover no evidence was submitted as to how much the rental value of the apartment was reduced. *Newberry* v. *H. L. Rest Company* (D. C. Mun. App. 1949, 65 A. 2d 342).

Nature of Proceeding

Landlord's petition filed with Rent Administrator for an increase in rentals to compensate for increased maintenance, operating costs, taxes, and capital improvements was not in the nature of an "in rem" action, but designation of the proceedings by an examiner of the Rent Administration as an in rem action, if error, was harmless. *Stokes* v. *Realest Corp.* (D. C. Mun. App. 1948, 60 A. 2d 532).

Operating Expenses or Costs

Legal fees paid to an attorney for the dissolution of a corporation formerly owning the building, and expenditures for refinancing the mortgage thereon, are not operating expenses. *Sharpe* v. *Goldwyn* (D. C. Mun. App. 1949, 65 A. 2d 185).

Peculiar Circumstances

"Peculiar circumstances" means unusual or special circumstances which keep the landlord and tenant from bargaining freely and does not include improvements in streets, paving or planting of shrubbery, etc. *Bailey* v. *Maple* (D. C. Mun. App. 1948, 63 A. 2d 333).

Peculiar circumstances are those which negate the existence of ordinary bargaining considerations or are abnormal circumstances not generally present in a normal rental bargain. *Fairmac Corp.* v. *Roberts* (D. C. Mun. App. 1949, 67 A. 2d 684).

Peculiar circumstances are those which negate the existence of ordinary bargaining considerations or are abnormal circumstances not generally present in a normal rental bargain. *Cox* v. *Cogswell* (D. C. Mun. App. 1949, 69 A. 2d 659).

Prerequisites for Petition

Prerequisite to a § 4 proceeding for adjustment is a rent ceiling in effect and without such a ceiling, the petition for adjustment does not apply. Section 4 clearly covers improvements made after rent ceiling are in effect. *Cox* v. *Cogswell* (D. C. Mun. App. 1949, 69 A. 2d 659).

Question of Fact

An acceptance comprehends receipt of something and intention to retain it, and that intention is usually a question of fact. It is always a question of fact where, from other uncontroverted facts relative to intention, contradictory inferences may be drawn. *Little* v. *French* (D. C. Mun. App. 1950, 71 A. 2d 534).

In an action for possession of the apartment for landlord's immediate and personal use, trial judge was correct when he refused to take from the jury the question as to whether the landlord had accepted rent payments for period after the expiration of the notice to quit. *Little* v. *French* (D. C. Mun. App. 1950, 71 A. 2d 534).

RENTAL AND EXPENSE RATIO

Subsection (b) of this section providing that any landlord may petition Rent Administrator to adjust maximum-rent ceiling or minimum service standard applicable to his accommodations to "compensate" for substantial rise in taxes or other maintenances or operating costs or expenses or a substantial capital improvement or alteration, was not intended to make up for past losses, but to permit administrator to maintain in whole or in part same ratio between rentals and expenses as existed on freeze date, or to balance rentals with expenses. *Stokes* v. *Realest Corp.* (D. C. Mun. App. 1948, 60 A. 2d 532).

Administrator is not concerned with net income from housing accommodations but only with increase in rent sufficiently to compensate in whole or in part for increased operating expenses. *Hall* v. *Ring Management Company* (D. C. Mun. App. 1948, 63 A. 2d 656).

Where petitioner rested entire case on position that since 1947 operating expenses exceeded those of 1940 by more than 25 percent, the rental should be similarly increased, such a contention is erroneous since it is not the yardstick laid down by the Rent Act. To compensate the landlord properly, a comparison between a dollar increase in expenses and a similar dollar increase in rentals must be made. *Crips* v. *Giles* (D. C. Mun. App. 1949, 65 A. 2d 204).

The Rent Administrator is not to adjust rent on a net income basis. Therefore, on a petition for the adjustment of rent on account of increased costs, the previous increases allowed on a different basis are neither relevant nor material. *Rosen* v. *Powers* (D. C. Mun. App. 1949, 65 A. 2d 200).

Where Rent Administrator averaged expenses for the years 1941 to 1947 inclusive, deducted the 1941 expenses from such average and granted a sufficient rent increase to produce the difference, it is improper and orders based thereon must be reversed. (*Proctor* v. *Miller* (D. C. Mun. App. 1949, 63 A. 2d 665).

Rent Act makes no provision for a fair return to the landlord and we have ruled that net income is not a proper basis for adjustment of rents. *Cox* v. *Cogswell* (D. C. Mun. App. 1949, 69 A. 2d 659).

RENT FOR COMPARABLE ACCOMMODATIONS

Where premises rented on critical date under Emergency Rent Act, was a frame building described as a "shack", and after that date a new owner installed water, plumbing and electricity and a bathroom with tub and overhanging shower, finished walls, installed electric refrigerator and electrically controlled kerosene furnace, rebuilt front entrance, planted flowers in yard and made repairs and completely furnished the house except for silver and linen, the completely equipped and furnished house was a new "housing accommodation" within Emergency Rent Act which was not rented on critical date so that ceiling rent was the rent generally prevailing for comparable housing accommodations. *Delsnider* v. *Gould* (App. D. C. 1946, 154 F. 2d 844).

Under subsection (a) of this section, authority of the administrator to adjust rents is not based merely upon peculiar circumstances, but is limited to adjustments only when the rent ceiling is due to peculiar circumstances affecting the complained of housing accommodations substantially higher or lower than the rent prevailing for comparable housing accommodations. *Thorn* v. *Miller* (D. C. Mun. App. 1948, 60 A. 2d 223).

Where petitioner had received two increases, making rent ceiling not greatly disproportionate to ceiling on neighboring property, and fixed with tenant's consent, Administrator is not bound to grant additional increase. *Bailey* v. *Maple* (D. C. Mun. App. 1948, 63 A. 2d 333).

Where an increase was granted for some apartments, including that of the petitioner, to compensate for increased expenditures made on the entire apartment house, such a result could be justified only if there were a finding that the 1950 rentals for some of the apartments were, due to peculiar circumstances, substantially lower than the rentals generally prevailing for comparable housing accommodations. Since no such finding was made, the Administrator was without power to act. *Newberry* v. *H. L. Rest Company* (D. C. Mun. App. 1949, 65 A. 2d 342).

Increases may be granted where a proper showing is made that costs and expenses have increased and where a finding is made, based upon substantial evidence, that the new schedules do not exceed those existing for comparable housing accommodations. *Ostrow* v. *Horning, Inc.* (D. C. Mun. App. 1949, 69 A. 2d 277).

Where only a portion of the units in a building are involved, there is no reason why they should not be compared with other units in the same building since units such as these are likely more comparable to other units in the same building than to units in another building in another location. *Block* v. *Tenants* (D. C. Mun. App. 1949, 70 A. 2d 59).

SUBSTITUTION OF PARTIES

Where a new landlord appears during the pendency of a proceeding, a substitution of parties may be made, even on appeal, because the fundamental issue is whether the expenses of the operation of the property, regardless of ownership, have increased. *Dysert* v. *Ring Management Company* (D. C. Mun. App. 1949, 69 A. 2d 655).

SUBSTITUTION OF PARTIES

Records show that the Rent Administrator was fully justified in his finding that the landlord's records for recent years were not kept according to sound accounting principles. Where it is apparent that the accountant's statement was prepared from such records, such evidence is insufficient. *Rosen* v. *Powers* (D. C. Mun. App. 1949, 65 A. 2d 200).

§ 45–1605. Prohibitions.

(a) It shall be unlawful, regardless of any agreement, lease, or other obligation heretofore or hereafter entered into, for any person to demand or receive any rent in excess of the maximum-rent ceiling, or refuse to supply any service required by the minimum-service standard, or otherwise to do or omit to do any act in violation of any provision of this chapter or of any regulation, order, or other requirements thereunder, or to offer or agree to do any of the foregoing. Nothing herein shall be construed to require the refund of any rent paid or payable for the use or occupancy of housing accommodations prior to the 30th day following the enactment of this chapter.

(b) No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled, unless—

(1) The tenant is (a) violating an obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or any regulation or order thereunder applicable to the housing accommodations involved or an obligation to surrender possession of such accommodations) or (b) is committing a nuisance or using the housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes, or

(2) The landlord seeks in good faith to recover possession of the property for his immediate and personal use and occupancy as a dwelling, *Provided,* That in the case of housing accommodations in a structure or premises owned or leased by a cooperative corporation or association no such action or proceeding under this paragraph or paragraph (3) of this section shall be maintained unless stock or membership in the cooperative corporation or asso-

ciation has been acquired by persons who are or were tenants in occupancy of at least 65 per centum of the dwelling units in the structure or premises at the time said cooperative corporation or association either (1) acquired or leased said structure or premises, or (2) entered into a contract or option to acquire or lease said structure or premises, whichever date is earliest, and who as such stockholders or members are entitled to possession of their respective dwelling units in the structure or premises by virtue of proprietary leases or otherwise, and this provision shall apply whether such corporation or association acquired or leased such structure or premises or entered into a contract or option to do so prior to or after the effective date of this amendatory Act or unless as the holder of stock or membership acquired in the cooperative corporation or association prior to March 1, 1949, a stockholder or member was entitled to possession of a dwelling unit in the structure or premises by virtue of a proprietary lease or otherwise, or

(3) The landlord has in good faith contracted in writing to sell the property for immediate and personal use and occupancy as a dwelling by the purchaser and that the contract of sale contains a representation by the purchaser that the property is being purchased by him for such immediate and personal use and occupancy, or

(4) The landlord seeks in good faith to recover possession for the immediate purpose of substantially altering, remodeling, or demolishing the property and replacing it with new construction, the plans for which altered, remodeled, or new construction having been filed with and approved by the Commissioners of the District of Columbia, or

(5) The housing accommodations are nonhousekeeping, furnished, accommodations located within a single dwelling unit not used as a rooming or boarding house as defined by this chapter and the remaining portion of which dwelling unit is occupied by the lessor or his immediate family, or

(6) The landlord, being a recognized school or an accredited nonprofit university, has a bona fide need for the premises for educational, research, administrative, or dormitory use.

(c) It shall be unlawful for any person to remove, or attempt to remove, from any housing accommodations the tenant or occupant thereof or to refuse to renew lease or agreement for the use of such accommodations because such tenant or occupant has taken or purposes to take action authorized or required by this chapter or any regulation, order, or requirement thereunder. (Dec. 2, 1941, 55 Stat. 791, ch. 553, § 5; Sept. 26, 1942, 56 Stat. 759, ch. 564, § 1; Aug. 1 1947, 61 Stat. 721, ch. 442; April 19, 1949, 63 Stat. 49, ch. 73, § 4.)

AMENDMENTS

The Act of April 19, 1949, cited to text, added the proviso in subsection (b) (2).

The Act of Aug. 1, 1947, cited to text, added paragraph 6 to subsec. (b).

The act of Sept. 26, 1942, cited to text, amended section by striking period at end of par. (4) of subsec. (b) and inserting in lieu thereof a comma and the word "or", and by adding par. (5) to subsec. (b).

EXCEPTIONS

Section 7 of the act of April 19, 1949, cited to text, provided as follows:

"SEC. 7. Nothing in this Act shall be construed as authorizing or permitting the recontrol of any housing accommodations which have been heretofore decontrolled."

NOTES TO DECISIONS

BAD FAITH

In action by landlord to recover possession of rooming house, petition of landlord filed with rent administrator for an increase of rent could not form basis of a charge of bad faith on part of landlord as attempting to evade this chapter. *Downs* v. *Karsh* (D. C. 1943, 33 A. 2d 620).

The issue of good faith is usually one of fact. Ill will on the part of the landlord toward a tenant, while properly considered as bearing on the landlord's good faith, does not necessarily establish bad faith as a matter of law. *McMahon* v. *Weiner* (D. C. Mun. App. 1949, 67 A. 2d 682).

CEILING PREVAILING AT HEARING DATE

Where order of Rent Administrator stated that maximum rent ceiling on premises was determined to be $135 per month effective January 26, 1943, the order did not have effect of determining the rent ceiling prevailing on the property at the hearing date. *Hicks* v. *Behrend* (D. C. Mun. App. 1944, 40 A. 2d 78).

CHOICE OF OCCUPANCY

This chapter does not prevent an owner from occupying his own premises provided such occupancy is sought in good faith and not for purpose of evading this chapter. *Colwell* v. *Stonebraker* (D. C. 1943, 31 A. 2d 866).

This chapter does not prevent an owner from occupying his own premises provided such occupancy is sought in good faith and not for purpose of evading this chapter. *Shaffer* v. *Bowes* (D. C. 1943, 31 A. 2d 690).

Where defendant occupied room having lowest rental in house at time plaintiff leased entire premises for purpose of making her home there and renting other rooms in house, and plaintiff requested defendant to move to another room as plaintiff desired possession of that room because it was best room from which to operate premises, plaintiff was entitled to possession of such room notwithstanding this chapter. *Shaffer* v. *Bowes* (D. C. 1943, 31 A. 2d 690).

Where owner has several properties available, and it is necessary for him to occupy one, and thereby remove a tenant by sufferance, choice of which property he shall occupy is for owner. *Downs* v. *Karsh* (D. C. 1943, 33 A. 2d 620); *McSweeney* v. *Wilson* (D. C. Mun. App. 1946, 48 A. 2d 469).

Under this chapter where owner has several properties available, choice of which one he shall occupy is for him, provided such occupancy is sought in good faith and not for purpose of defeating this chapter. *Colwell* v. *Stonebraker* (D. C. 1943, 31 A. 2d 866); *Shaffer* v. *Bowes* (D. C. 1943, 31 A. 2d 690); *Staves* v. *Johnson* (D. C. Mun. App. 1945, 44 A. 2d 870).

CONSENT JUDGMENT

Where tenant, in landlord's action to recover premises, consented to entry of judgment for landlord after a hearing on the merits, judgment was valid and tenant's subsequent motions to quash writ of restitution and for an indefinite stay of execution were properly overruled. *Morris* v. *Breaker* (D. C. Mun. App. 1944, 38 A. 2d 632).

A writ of restitution would not be quashed for failure of clerk of court to give tenant notice of entry of judgment, where trial court ordered judgment for landlords suing for possession of premises, pursuant to stipulation by which tenant receiving 60-day stay of execution consented to judgment for landlords. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

A stipulation that tenant who was granted 60-day stay of execution would consent to judgment for landlords suing for possession of leased housing accommodations, would not be set aside for newly discovered evidence that

landlords were aliens incapable of owning realty in District of Columbia, where one landlord had declared his intention of becoming a citizen, and the record intimated that at least one of the landlords was an attaché of a foreign legation. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

CONSTITUTIONALITY

Subsection (b) of this section does not violate U. S. Const. Amend. 5. *Walsh* v. *Cooper* (D. C. 1943, 31 A. 2d 883).

CONSTRUCTION

Court, in construing this section with reference to right of landlord to bring an action against tenant for possession, cannot imply congressional intent to require notice by landlord to tenant stating reasons for terminating tenancy or attach any condition to the right to bring suit which Congress did not authorize. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

The privileges reserved to owners by this chapter must be reasonably construed and enforced. *Heindrich* v. *Dimas-Aruti* (D. C. Mun. App. 1945, 42 A. 2d 138).

Rent Act must be considered as a whole and its sections must be read in connection with each other. *Dunning* v. *Randall Hagner Co.* (D. C. Mun. App. 1949, 63 A. 2d 770).

Actual use of the premises as housing accommodations governs, even though a lease may employ terms other than housing accommodations and indicate a different use intention as in case of property zoned for commercial use. Lease provisions, like the ones here involved, are subservient to the provisions of the Act. *White* v. *Allen* (D. C. Mun. App. 1949, 70 A. 2d 252, see also 71 A. 2d 613).

CREATION OF NEW TENANCY

Where landlord obtained a judgment which established her right to possession under § 45–1601 et seq. and tenant was granted a stay by the court conditioned upon payment of rent, and thereafter tenant bargained with landlord for additional time upon condition that rent would be paid and that it would be the last extension, tenant could not thereafter assert that landlord had created a new tenancy and had abandoned her right to enforce judgment of possession by accepting rent for the extended period. *Trammell* v. *Estep* (D. C. Mun. App. 1945, 42 A. 2d 501).

DEFENSE HOUSING PROJECT

This chapter did not apply to defense housing project which had been erected by Navy Department in Washington so as to require United States bringing dispossess proceedings to allege grounds of possession required by subsection (b) of this section, since this chapter does not specifically mention the United States as a landlord, and since statutes which in general terms divest pre-existing rights or privileges may not be applied to the sovereign without express words to that effect. *Wittek* v. *U. S.* (D. C. Mun. App. 1947, 54 A. 2d 747 reversed 171 F. 2d 8, 83 U. S. App. D. C. 377, certiorari granted 69 S. Ct. 737, 336 U. S. 93, 93 L. E. 1092, reversed and remanded 69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1406).

ESTOPPEL

In landlord's action to recover possession, where judgment for possession was entered on December 2, 1941, the fact that tenant had received benefit of stipulation staying execution of judgment to January 31, 1942, did not "estop" tenant from claiming benefit of this chapter which was approved on December 2, 1941, since it was intervention of this chapter which changed the relationship of the parties. *Myers* v. *H. L. Rust Co.*, 1943 (134 F. 2d 417, 77 U. S. App. D. C. 218).

EVIDENCE

In possessory action, evidence that landlord on leasing city dwelling for one year informed tenant that landlord wished dwelling back at expiration of year on July 31, 1942, and that landlord's period of occupancy of farm was to expire at end of 1942, sustained determination that landlord sought possession in "good faith" for personal use within this chapter. *Gould* v. *Butler* (D. C. 1943, 31 A. 2d 867).

Evidence that landlord, when leasing property for precisely one year, made it plain that at expiration of lease he wished premises back, reiterated it almost two months before expiration of lease, and sued for possession two months after expiration of lease, sustained determination that landlord required property for "immediate" use, within this chapter. *Gould* v. *Butler* (D. C. 1943, 31 A. 2d 867).

In landlord's action to recover possession of premises for personal use as dwelling, that rent of selected premises is low when contrasted with that of similar housing units, availability of other quarters, objection to or even ill will toward particular tenant, are matters properly admitted in evidence as bearing on "good faith" of landlord, but no one, or all in combination, necessarily constitute "bad faith". *Colwell* v. *Stonebraker* (D. C. 1943, 31 A. 2d 866).

In landlord's action to recover possession of apartment for her personal use, evidence that gasoline rationing made it impossible for landlord's husband to continue to commute from their home to his office in the apartment building supported finding of "good faith" of landlord in seeking possession of apartment. *Colwell* v. *Stonebraker* (D. C. 1943, 31 A. 2d 866).

Where tenant submitted question of landlord's failure to maintain minimum service to Rent Administrator, it was tenant's duty to present all evidence bearing on the question and fact that certain matters existing at date of hearing before Administrator were not mentioned in petition before Administrator would not authorize action for damages. *Hicks* v. *Behrend* (D. C. Mun. App. 1944, 40 A. 2d 78).

Where landlord sues for possession of dwelling house, claiming that she required property for immediate purpose of making substantial alterations and remodeling, evidence as to whether landlord could obtain from War Production Board necessary priority orders for the work, was sufficient for jury and would not justify ruling as matter of law that there was not good faith in landlord's claim or that her need for property was not immediate within this section. *Klein* v. *Hilton* (D. C. Mun. App. 1944, 40 A. 2d 77).

Under subsection (b) (1) of this section landlord seeking possession of dwelling house, claiming that she required property for immediate purpose of making substantial alterations and remodeling, was not required to prove that she could obtain from the War Production Board the necessary priority orders for the work. *Klein* v. *Hilton* (D. C. Mun. App. 1944, 40 A. 2d 77).

In action by landlord to recover possession of apartment for his immediate and personal use, where landlord's good faith is an issue, evidence of the existence of other available apartments in the building is admissible. *Abbott* v. *Fant* (D. C. Mun. App. 1944, 38 A. 2d 618).

Evidence sustained plaintiff's claim that possession of dwelling was sought for her own immediate personal use as a residence under exception to this section. *Miller* v. *Prophet* (D. C. Mun. App. 1944, 37 A. 2d 450).

Evidence sustained finding that religious corporation, which sought to recover house from tenant for use for students to whom corporation was obligated to provide free food and shelter, sought recovery of premises in good faith as required by this section. *Hoffman* v. *Apostolic Works* (D. C. Mun. App. 1945, 43 A. 2d 848).

In action by purchaser of leased rooming house for possession thereof for her own residence purposes after expiration of one-year lease under which tenant was holding over as tenant by sufferance, testimony concerning price paid for rooming house business by tenant and amount thereof she had recouped was properly excluded as having no bearing on question of plaintiff's good faith, legality of notice of termination of tenancy, or any other question. *Arsenault* v. *Angle* (D. C. Mun. App. 1945, 43 A. 2d 709).

Evidence of ill will toward a tenant is properly received in evidence in determining whether landlord seeks possession in good faith, within meaning of subsection (b) (2) of this section, or whether his dominant purpose is to rid himself of a tenant he considers undesirable. *Staves* v. *Johnson* (D. C. Mun. App. 1945, 44 A. 2d 870).

Evidence tending to show animosity toward tenant and her children and a desire that they leave the property was sufficient to sustain trial court's finding of lack of good faith of landlord in attempting to recover possession of leased premises allegedly for his personal use, so as to justify denial of possession to landlord under subsection (b) (2) of this section. *Staves* v. *Johnson* (D. C. Mun. App. 1945, 44 A. 2d 870).

Under subsection (b) (2) of this section, good faith is ordinarily a question of fact, and finding of good faith or lack thereof when supported by substantial evidence will not be disturbed. *Black* v. *Tamamian* (D. C. Mun. App. 1946, 49 A. 2d 547).

Where prior judgment had determined that landlord did not seek possession of housing accommodation in good faith under subsection (b) (2) of this section, evidence of new facts arising since prior suit concerning mainly health of landlord's wife and increasingly injurious effect on her health of lack of adequate and comfortable sleeping quarters sustained finding that possession in subsequent action was sought by landlord in good faith for his immediate personal use and occupancy. D. C. Code 1940, § 45–1605 (b) (2). Id.

Evidence authorized finding that landlord required premises for his own use and occupancy within provisions of this section and was entitled to possession. *Craig* v. *Heil* (D. C. Mun. App. 1946, 47 A. 2d 871).

The fact that a house is not available for occupancy as a family residence until extensive alterations and repairs are completed is a matter of evidence to be considered, along with other evidence, in determining the good faith of an owner seeking possession. *Brauer* v. *O'Daniel* (D. C. Mun. App. 1946, 47 A. 2d 89).

In action by owner against occupant to recover possession of a four-story, 14-unit, walkup apartment building, which owner had allegedly purchased for use as a residence, evidence that, though some apartments in building had been vacant for several months, owner had made no attempt to rent them out, was an element properly considered by the jury as indicative of owner's state of mind, in determining the question of his good faith. *Brauer* v. *O'Daniel* (D. C. Mun. App. 1946, 47 A. 2d 89).

In landlord's suit to recover possession of house, complaint describing defendant as a tenant at sufferance and evidence showing that he was a tenant by the month did not disclose a fatal variance. *Gordon* v. *Tino* (D. C. Mun. App. 1946, 50 A. 2d 593).

In landlord's action to recover rent on basis of ceiling fixed by Rent Administrator, trial court should have admitted evidence of lease which provided for lower monthly rental and which gave lessee option to extend lease upon same terms for two year period, and copy of a letter exercising renewal option, and determined whether alleged original lease was valid and whether option to extend had been validly exercised. *Hildebrand* v. *Nee* (D. C. Mun. App. 1947, 54 A. 2d 640).

In action for possession of premises for personal use of landlord court properly refused to permit tenant to show ownership of premises in some one else where it was alleged and undisputed that the plaintiff was landlord and that the defendant was plaintiff's tenant. *Mancuso* v. *Santucci* (D. C. Mun. App. 1948, 60 A. 2d 697).

In action by landlord to recover possession of premises for personal use evidence as to whether the landlord would rent to tenant the house next door which landlord owned and which was vacant was properly excluded as irrelevant. *Mancuso* v. *Santucci* (D. C. Mun. App. 1948, 60 A. 2d 697).

Evidence was insufficient to show that former owners and their son to whom dwelling house was conveyed were engaged in conspiracy to evict tenant which would prevent son who was purportedly engaged to be married from taking possession for his own occupancy. *Resnick* v. *Hammond* (D. C. Mun. App. 1948, 61 A. 2d 495).

Evidence sustained finding that owner of apartment in co-operative building sought possession of apartment in good faith for personal use. *Hicks* v. *Bigelow* (D. C. Mun. App. 1948, 55 A. 2d 924).

Evidence entitled purchaser of the perpetual use and equity contract to the rights of a landlord within the Rent Act when the substantial nature of these rights, rather than the form of the transaction, is considered. *Abbott* v. *Bralove* (D. C. D. C. 1948, 81 F. Supp. 532; affirmed 176 F. 2d 64, 85 U. S. App. D. C. 189).

Where landlord sued for possession, the situation disclosed a genuine issue as to whether landlord sought the premises in good faith for immediate personal use and was a material factual issue. The court must disregard the tenants' affidavits which were based on information and belief and did not conform to the rules. *Dewey* v. *Clark* (C. A. D. C. 1950, 180 F. 2d 766, 86 U. S. App. D. C. 137).

The trial court, on timely motion of the tenant, should have taken evidence on the question of whether the tenant voluntarily surrendered possession of the premises and if it held that the surrender was not voluntary but resulted from the previous judgment or from actions of the landlord based thereon, the court should have ordered restitution of their premises to the tenant. *Quick* v. *Paregol* (D. C. Mun. App. 1949, 68 A. 2d 211).

Even though the evidence complained of may not have been admissible on other grounds, it was clearly admissible in support of the counterclaim on the question as to whether there had been an evasion of the Rent Act. *White* v. *Allen* (D. C. Mun. App. 1949, 70 A. 2d 252, see also 71 A. 2d 613).

Examination of Witnesses

Where landlord sought possession of a dwelling house in order to demolish a building and erect an apartment building thereon, denying cross-examination of plaintiff as to whether she had materials available and subcontracts arranged for the construction of the proposed apartment building in order to shed light on the issue of plaintiff's good faith, was error. *Tatum* v. *Townsend* (D. C. Mun. App. 1948, 61 A. 2d 478).

Forcible Entry and Detainer

Subsection (b) of this section, prohibiting suit for possession by landlord except for specified reasons, is inapplicable to forcible entry and detainer action. *Brooks* v. *Trigg* (D. C. Mun. App. 1947, 51 A. 2d 302).

Furnished Premises

Where tenant rents unfurnished premises at ceiling price and rents furniture from a third person in a bona fide arrangement which is not designed to evade section 45–1601 et seq., landlord would have a valid defense against a claim of violation of the rent act. *Fulton R. Gordon, Inc.* v. *Schram* (D. C. Mun. App. 1945, 44 A. 2d 662).

Landlord whose rent ceiling is fixed on basis of unfurnished rental cannot evade regulation against increase in rent without prior approval of Rent Administrator by renting property furnished. *Fulton R. Gordon, Inc.* v. *Schram* (D. C. Mun. App. 1945, 44 A. 2d 662).

Good Faith

The fact that owners suing to recover possession of residential property under this chapter desired their married daughter and her two children to live with them, and that if they found rooms available after they took possession they would rent such rooms to others, did not impugn their "good faith." *Klein* v. *Fields* (D. C. 1943, 32 A. 2d 398).

Under this chapter, in determining question of landlord's "good faith" in seeking possession of premises, state of mind, intent, and purposes of landlord as reflected in the evidence may be considered. *Gould* v. *Butler* (D. C. 1943, 31 A. 2d 867).

In examining question of good faith of landlord in seeking possession of premises under this chapter all circumstances should be considered which will shed light on whether a proper case for possession has been established. *Gould* v. *Butler* (D. C. 1943, 31 A. 2d 867).

Evidence supported finding that owners of dwelling house were acting in good faith in filing proceeding under this chapter to gain possession of dwelling for their immediate personal use and as a dwelling. *De Bobula* v. *Coppedge* (D. C. Mun. App. 1944, 40 A. 2d 255).

Where substantial evidence supported finding that owners of leased premises, suing for possession, were seeking to occupy their own property as a dwelling, owners'

good faith as affecting their rights under this section was an issue of fact for trial judge. *Heindrich* v. *Dimas-Aruti* (D. C. Mun. App. 1945, 42 A. 2d 138).

Purchaser of residential property having established that he sought possession in good faith for his personal occupancy as a dwelling, was entitled to recover possession from vendor's tenant who had received the notice of termination of lease provided for therein. *Mason* v. *Curro* (D. C. Mun. App. 1945, 41 A. 2d 164).

"Good faith", within subsection (b) (2) of this section, means generally that the landlord honestly intends to actually occupy the premises, that occupancy for his own use is primary motive, and that he is not guided by an ulterior motive to evade or defeat the purposes of this chapter. *Staves* v. *Johnson* (D. C. Mun. App. 1945, 44 A. 2d 870).

"Good faith", within subsection (b) (2) of this section, does not exist if the landlord's dominant purpose is to evict the tenant. *McSweeney* v. *Wilson* (D. C. Mun. App. 1946, 48 A. 2d 469).

In landlord's suit to recover possession of house, whether landlords in good faith desired to obtain possession of house for personal use as a dwelling was a question for jury. *Gordon* v. *Tino* (D. C. Mun. App. 1946, 50 A. 2d 593).

This chapter does not undertake to regulate profits on the sale of property, and fact that co-operative group had paid a large profit on the purchase of building had no bearing on personal good faith of the purchaser of a co-operative apartment in seeking to evict a tenant in possession in order to obtain apartment for personal occupancy. *Hicks* v. *Bigelow* (D. C. Mun. App. 1948, 55 A. 2d 924).

The fact that cooperative apartment plans may have the incidental effect of ousting present tenants by sufferance is not evidence of bad faith on the part of the purchasers of individual apartments, nor can such effect be, per se, construed as evidence of an intentional evasion of the Rent Act. *Abbot* v. *Bralove* (D. C. D. C. 1948, 81 F. Supp. 532, aff'd 176 F. 2d 64, 85 U. S. App. D. C. 189).

In a suit for possession for immediate and personal use, the crucial issue whether landlord seeks possession in good faith is an extraordinary issue of fact since it involves the state of mind or motives rather than the ascertainment of a fact in the ordinary sense. *Dewey* v. *Clark* (C. A., D. C. 1950, 180 F. 2d 766; 86 U. S. App. D. C. 137).

In a suit for possession, the presence of the question of good faith as a crucial issue should cause the court to hesitate more than ordinarily before concluding that it is in a position to deny a trial. *Dewey* v. *Clark* (C. A. D. C. 1950, 180 F. 2d 766, 86 U. S. App. D. C. 137).

Immediate and Personal Use

The word "immediate", as used in this chapter permitting landlord to obtain possession in good faith for his immediate and personal use and occupancy as a dwelling need not always mean desperate. *Gould* v. *Butler* (D. C. 1943, 31 A. 2d 867).

Where landlord, suing hold-over tenant at sufferance for possession of leased property used as rooming house, did not say that he required property for his immediate personal use and occupancy as dwelling, but said that he proposed to continue operation thereof as rooming house, trial judge properly refused to oust tenant. *Lingo* v. *Wolfe* (D. C. Mun. App. 1944, 37 A. 2d 270).

An intent to use part of residence as a dental office or to rent parts to roomers does not negative honest purpose to use and occupy premises as owner's dwelling as ground for dispossessing tenants, notwithstanding this section. *Heindrich* v. *Dimas-Aruti* (D. C. Mun. App. 1945, 42 A. 2d 138).

In suit by owner against occupant to recover possession of a four-story, 14-unit, walkup apartment building which owner allegedly purchased for use as a residence, evidence justified finding that need of owner was bona fide and immediate, within meaning of subsection (b) (2, 4) of this section. *Brauer* v. *O'Daniel* (D. C. Mun. App. 1946, 47 A. 2d 89).

Prohibitions of this section provide protection for tenants by preventing their arbitrary ouster during the critical housing shortage, but this section containing the prohibitions does not ignore the rights of an owner who brings himself within provisions of this section and shows a real, immediate need for his own property. *Brauer* v. *O'Daniel* (D. C. Mun. App. 1946, 47 A. 2d 89).

A landlord could not maintain a suit to recover possession of a dwelling house on the ground that she desired possession for her immediate and personal use, where she did not become owner of the premises and did not become landlord until nearly a month after filing of the original complaint, notwithstanding she was equitable owner when the original complaint was filed. *Dewey* v. *Clark* (D. C. Mun. App. 1948, 61 A. 2d 475, 67 A. 2d 291, reversed on other grounds, 180 F. 2d 766, 86 U. S. App. D. C. 137); *Thompson* v. *Clark* (D. C. Mun. App. 1948, 61 A. 2d 477, 67 A. 2d 291, reversed on other grounds, 180 F. 2d 766, 86 U. S. App. D. C. 137).

Where landlord, suffering from an incurable disease, sued for possession of another apartment in the same building for the use of her personal nurse whom she needed close by to minister to her in her illness, she is entitled to possession even though apartment is not to be actually occupied by landlord. *Manogue* v. *Heilbroner* (D. C. Mun. App. 1949, 63 A. 2d 876).

Improvements

Where tenant of a row house, shortly before expiration of five-year lease, made improvements on the property at a cost of more than $200, but the only improvement landlord was cognizant of was the painting of front porch by tenant, such repairs were not sufficient to have bound tenant for a renewal term of five years, and hence did not constitute notice to landlord that tenant was exercising option contained in lease to renew for a five-year period, and landlord was at liberty, after expiration of lease, to terminate the tenancy and recover possession for landlord's personal occupancy. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Inapplicable to United States

The District of Columbia Emergency Rent Act does not apply to government-owned, defense housing in the District. *United States* v. *Wittek*, 1949 (69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1906).

Lease Violations

A tenant may not create new tenancy by removing from leased property and placing it completely in charge of sublessees in violation of terms of lease, as this chapter protects only actual tenants, not mere middlemen. *Hall* v. *Henry J. Robb, Inc.* (D. C. 1943, 32 A. 2d 707).

Where tenants brought their dogs into building after effective date of this chapter, right to keep dogs on leased premises was neither a "privilege" nor a "facility" within this chapter, and therefore this chapter did not preclude landlord from exercising right under lease to revoke permission to keep dogs. *Mee* v. *Marlyn Apartment Co.* (D. C. 1943, 31 A. 2d 864).

Under this section, administrator may determine rent ceiling only on property which was not rented on maximum rent date of January 1, 1941, or within the preceding year. *Hicks* v. *Behrend* (D. C. Mun. App. 1944, 40 A. 2d 78).

A tenant's removal from leased property and subletting thereof in its entirety was breach of lease prohibiting subletting in whole or part, though lease had expired and tenant was holding over, so that landlord was entitled to recover possession of property. *Hall* v. *Henry J. Robb, Inc.* (D. C. 1943, 32 A. 2d 707).

Where lease expressly limited use of premises to use as a dwelling only, its use as a dwelling and for dressmaking without objection from landlords over a long period prior to enactment of this chapter, which was limited in its scope to property rented for living or dwelling purposes, neither took the premises out of the scope of this chapter, nor constituted a violation of her tenancy. *Carow* v. *Bishop* (D. C. Mun. App. 1946, 50 A. 2d 598).

A tenant who permitted some of her immediate family to live in leased premises and who had kept roomers, but who never removed furniture from leased premises and who was there daily and had access to all rooms, although she had purchased another house, did not thereby violate rental agreement prohibiting subletting. *Simmons* v. *Weinsoff* (D. C. Mun. App. 1948, 58 A. 2d 497).

LEASE, VALIDITY OF

Rent Act is primarily concerned with protecting a tenant's right to possession so long as he pays rent and does not violate obligations of tenancy, and in maintaining rent ceilings and required standards. The Act provides means for enforcing these purposes, but to declare a lease made in violation of a general order void in its entirety and to hold that landlord has no rights under it would add a new penalty not provided by the Act. *Amos* v. *Cummings* (D. C. Mun. App. 1949, 67 A. 2d 87).

MALICIOUS PROSECUTION

Complaint alleging that after rent had been reduced to comply with this chapter, four suits had been instituted against plaintiff by or on behalf of defendants to recover possession of house and that all four suits were brought maliciously without just cause and in bad faith, stated a claim on which relief might be granted. *Soffos* v. *Eaton* (App. D. C. 1945, 152 F. 2d 682).

A complaint which alleged that tenant left leased premises as result of stipulation signed by himself and his attorney and in compliance with resulting judgment in landlord's action under this chapter to secure possession, and which further alleged that landlord's statement in regard to his intention to immediately occupy designated premises as a dwelling were fraudulent, could not be upheld as stating a cause of action for "malicious prosecution," where it appeared that the action upon which suit was based terminated in landlord's favor. *Simpkins* v. *Brooks* (D. C. Mun. App. 1946, 49 A. 2d 549).

MANDATORY INJUNCTION

In suit for mandatory injunction requiring defendants to restore possession of an apartment, record supported findings that plaintiffs had breached obligation under verbal understanding pursuant to which they took possession, that defendants had given written notice to quit, and that defendants sought in good faith to recover possession of property for immediate and personal use as a dwelling. *Leonardo* v. *Leonardo,* 1944 (145 F. 2d 849, 79 U. S. App. D. C. 258).

NOTICE TO QUIT

Notice to quit, served on tenant at sufferance who had sublet premises for definite period with landlord's consent on ground that tenant was violating obligation of tenancy within this section three weeks before any such alleged violation occurred, was premature, and had no anticipatory effect to reach future violations. *Westchester Apartments* v. *Keroes* (D. C. 1943, 32 A. 2d 869).

In landlord's action to recover premises for his own use, defenses that court had no jurisdiction because landlord had served no notice to quit and that tenant's waiver of such notice had been conditioned upon ability to find new quarters which she failed to do, could have been raised at trial, and when advanced respectively on motion to quash writ of restitution and on motion for indefinite stay of execution, were too late. *Morris* v. *Breaker* (D. C. Mun. App. 1944, 38 A. 2d 632).

Where tenant held over after expiration of lease and landlord desired premises for personal occupancy, 30-day notice to vacate was sufficient to terminate the tenancy notwithstanding that notice did not specify any one of the several grounds which, under this section, are made conditions to the right of a landlord to regain possession of residential property. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

This section does not require that tenant be given a notice stating grounds upon which landlord claims right to possession before an action for possession is instituted. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Where one-year lease unambiguously gave lessor or his assignee right to terminate lease if property was sold during term of lease by giving lessee 90 days' notice, refusal to admit testimony to explain terms of lease, in action by purchaser of premises for possession thereof, to show that lessee was entitled to 90 days' notice to vacate where he held over after expiration of one year's tenancy and continued to pay rent, was not error. *Arsenault* v. *Angle* (D. C. Mun. App. 1945, 43 A. 2d 709).

A roomer if he had failed to pay rent was not entitled to protection of this chapter and could be evicted without notice. *Tamamian* v. *Gabbard* (D. C. Mun. App. 1947, 55 A. 2d 513).

Notice to quit rented premises was not ineffective because served upon only one tenant the other being in a foreign country, where defendants not only were cotenants of the property but also partners in a rooming house venture conducted thereon. *Tatum* v. *Townsend* (D. C. Mun. App. 1948, 61 A. 2d 478).

Notice to quit rented premises was not ineffective because served upon only one tenant the other tenant being in a foreign country, where the evidence indicated that the notice reached the wife of the other tenant, who was also his attorney in fact. *Tatum* v. *Townsend* (D. C. Mun. App. 1948, 61 A. 2d 478).

NUISANCE

Where the complaint charged specifically that defendant was creating a nuisance by permitting a fire hazard in that she permitted the gas range to remain lighted during absence from premises, it was improper to consider in proof of the nuisance charge, the several incidents of burning of food which occurred while she was present in the apartment. *Reese* v. *Wells* (D. C. Mun. App. 1950, 73 A. 2d 899).

ORDINARY WEAR AND TEAR

Where it was determined that the premises were housing accommodations under the Rent Act and there was no covenant regarding repairs, landlord could not recover for repairs due to ordinary wear and tear. *Friedman* v. *Sherman* (D. C. Mun. App. 1950, 74 A. 2d 57).

PERSONS ENTITLED TO SUE

Husband was entitled to maintain in his own name a suit against tenant for possession of an apartment in a building which he and his wife had purchased as tenants by the entirety. *Sandler* v. *Wertlieb* (D. C. Mun. App. 1948, 60 A. 2d 222).

PLEADING

In action by landlords, who were husband and wife, to obtain possession of housing accommodations from tenants, where the landlords held the property as tenants by the entirety, verification of complaint by husband only was sufficient. *Wynn* v. *Washington* (D. C. Mun. App. 1947, 53 A. 2d 275).

A complaint by landlord for possession of apartment alleging that tenants had refused to allow landlord to rent part of apartment to a suitable person in accordance with their agreement and with order of Rent Control Administrator stated a cause of action. *Block* v. *Wilson* (D. C. Mun. App. 1947, 54 A. 2d 646); *Thompson* v. *Clark* (D. C. Mun. App. 1948, 61 A. 2d 477, 67 A. 2d 291, reversed on other grounds, 180 F. 2d 766, 86 U. S. App. D. C. 137). *Dewey* v. *Clark* (D. C. Mun. App. 1948, 61 A. 2d 475).

Informality of pleadings is the rule in landlord and tenant cases, but the court has never said that a suing landlord may allege one thing, and, over objection, prove another. *Reese* v. *Wells* (D. C. Mun. App. 1950, 73 A. 2d 899).

POSSESSION, RIGHT TO

Where owner of rooming house occupied by tenant was faced with possibility of having to lease son-in-law's home because of son-in-law's inability on Army pay to continue her support, it was not necessary that owner wait until actually forced to leave before seeking to obtain possession of rooming house as a means of providing shelter and a living. *Downs* v. *Karsh* (D. C. 1943, 33 A. 2d 620).

This chapter does not deprive an owner of right to occupy his own property in possession of tenants if occupancy is sought in good faith and is not for purpose of evading or defeating purposes of this chapter. *Downs* v. *Karsh* (D. C. 1943, 33 A. 2d 620).

Where tenant at sufferance twice sublet apartment for definite terms with express consent of landlord and landlord after it had knowledge that persons in addition to second sublessee were occupying apartment expressly consented that second sublease continue to its expiration date, and accepted rent throughout remaining period of sublease landlord had no right to demand possession because of anything which had occurred prior to expiration date of second sublease on ground that tenant was violating "obli-

gation of tenancy" within this section. *Westchester Apartments* v. *Keroes* (D. C. 1943, 32 A. 2d 869).

In testing landlord's right to possession under this chapter permitting landlord to obtain possession for immediate and personal use, the spirit as well as the letter of the law should be considered and flimsy showing should not form basis for ousting tenant. *Gould* v. *Butler* (D. C. 1943, 31 A. 2d 867).

Where landlord sought possession of premises for his immediate and personal use as dwelling within this chapter, the fact that surrender of premises to landlord would result in ousting eight roomers who had rented from tenant and were not parties to action did not deprive landlord of right to possession. *Gould* v. *Butler* (D. C. 1943, 31 A. 2d 867).

The fact that landlord worked in Alexandria, Va., did not deprive him of protective purview of this chapter which permits landlord in good faith to recover possession of property for his immediate and personal use and occupancy as a dwelling. *Gould* v. *Butler* (D. C. 1943, 31 A. 2d 867).

Purchaser of residential property in order to obtain possession thereof as against vendor's tenant was required to establish his claim under exception in this section prohibiting maintenance of action for possession of housing accommodations against a tenant. *Mason* v. *Curro* (D. C. Mun. App. 1945, 41 A. 2d 164).

Where there was no evidence to contradict landlord's good faith or her need of dwelling house for her own personal use and occupancy as a dwelling, she was entitled to possession under this section for her immediate and personal use and occupancy as a dwelling. *Olessoff* v. *Osbourn* (D. C. Mun. App. 1946, 47 A. 2d 514).

The fact that landlord's sister and brother-in-law who proposed to move in with landlord had lived in their present quarters for 20 years, did not preclude landlord from recovering possession of house under this section for her immediate and personal use and occupancy as a dwelling. *Olessoff* v. *Osbourn* (D. C. Mun. App. 1946, 47 A. 2d 514).

Where it is established that the sale of residence is made in good faith and the purchase is made for immediate personal use and occupancy as a dwelling, the right to recover possession against tenant under subsection (b) (3) of this section is not affected by fact that the purchaser contracted not directly with the legal owner but with one who contracted to buy from the legal owner, nor by fact that the sale was for a profit. *Knowles* v. *Mosher* (D. C. Mun. App. 1946, 45 A. 2d 755).

Subsection (b) of this section, although prohibiting dispossession of tenant continuing to pay rent, does not preclude dispossession of tenant who fails to pay rent. *Tamamian* v. *Gabbard* (D. C. Mun. App. 1947, 55 A. 2d 513).

Where in suit for possession of property purchased at foreclosure sale, defendant had previously owned the property but had defaulted on the second trust note, the defense that when the deed of trust was foreclosed, defendants automatically became tenants at will under § 45–822 and could not be ousted by reason of § 45–1605 is not applicable since the property does not constitute housing accommodations within the meaning of § 45–1611. *Suratt* v. *Real Estate Exchange, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 587).

Contracts, where possible, are to be given their ordinary meaning. Tenants who purchased stock in a hotel operated on a semi-cooperative basis gained no estate in the land. *Beck* v. *Bechtel Hotel* (D. C. Mun. App. 1950, 72 A. 2d 36).

Landlord's claim that she could not be required to restore the premises to tenant because she had spent money in improvements and had installed other tenants in the accommodations is without merit, since the improvements were made and premises rented to other tenants during the pendency of an appeal from a judgment in her favor. *Quick* v. *Paregol* (D. C. Mun. App. 1949, 68 A. 2d 211).

Possession on the grounds of substantially altering or remodeling the property may be gained by the landlord only after the plans for remodeling have been approved and after suit has been filed in the court. *Quick* v. *Paregol* (D. C. Mun. App. 1949, 68 A. 2d 211).

Landlord's contention that restitution will not be ordered after the tenant's term has expired is without merit, since it ignores the effect of the Act which gives tenants the right to continued occupancy of the housing accommodations so long as rent control continues and so long as they pay their rent and comply with the terms of the tenancy. *Quick* v. *Paregol* (D. C. Mun. App. 1949, 68 A. 2d 211).

Presumptions

Where lack of good faith of landlord who sought to recover possession of housing accommodations for personal occupancy as a dwelling under subsection (b) (2) of this section had been established in prior suit, presumption was, in absence of evidence to contrary, that such lack continued to exist, especially in view of comparatively short time elapsing between the two suits, and landlord was required to produce evidence of new facts and changed situation to overcome previously established fact of absence of good faith and presumption of its continuance. *Black* v. *Tamamian* (D. C. Mun. App. 1946, 49 A. 2d 547).

Prior Judgment as Bar

Action by owners for possession of residential property under this chapter, on ground that they desired possession for their immediate use as a dwelling, was not barred by prior judgment for defendant in action between same parties, where transcript showed that, when prior judgment was introduced in evidence, owners' attorney stated without contradiction that findings for defendant were based on fact that 30-day notice to quit required by § 45–904 to be served on tenant to terminate tenancy had been invalidated by acceptance of rent by owners' rental agent for a period extending beyond expiration date of notice, and present action was brought after expiration date of the second notice. *Klein* v. *Fields* (D. C. 1943, 32 A. 2d 398).

Landlord was not entitled to possession because of allegedly unlawful use of leased premises by tenant where law was so modified while action for possession was pending that use complained of was no longer unlawful and such use had not injured physical property, estate or purse of landlord and was the very use contemplated under original letting. *Cosby* v. *Shoemaker* (D. C. Mun. App. 1943, 34 A. 2d 27).

Premises used for dwelling purposes were subject to this chapter and landlord could not recover possession except by establishing violation by tenant of provisions of this chapter. *Cosby* v. *Shoemaker* (D. C. Mun. App. 1943, 34 A. 2d 27).

If complaint which alleged that tenant left leased premises as result of stipulation signed by himself and his attorney and in compliance with resulting judgment in landlord's action under this chapter to secure possession, and which further alleged that landlord's statement in the action in regard to his intention to immediately use designated premises as a dwelling were false, were construed as an attack on the judgment in the landlord and tenant proceeding, the complaint was a collateral attack on the judgment and did not state a cause of action. *Simpkins* v. *Brooks* (D. C. Mun. App. 1946, 49 A. 2d 549); *Resnick* v. *Hammond* (D. C. Mun. App. 1948, 61 A. 2d 495).

Proceeding To Recover Possession

In landlord's action to recover possession of apartment, where judgment for possession was entered December 2, 1941, with stay of execution until January 31, 1942, pursuant to stipulation of parties, and tenant paid rent for December and January, landlord's direction to clerk in March, 1942, to issue writ of restitution for possession constituted the "maintaining of a proceeding" against a "tenant in possession" of "housing accommodations" within this chapter, and therefore writ of restitution was improperly granted in absence of compliance with this chapter. *Myers* v. *H. L. Rust Co.*, 1943 (134 F. 2d 417, 77 U. S. App. D. C. 218).

Under this section, the procedure in landlord's action against tenant for possession of premises, except for restrictions as to grounds upon which landlord may claim right of possession, remains the same as it was previously. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

The effect of this section restricting landlord's right to recover possession of housing accommodations is to create a noncontractual statutory right of possession in tenant, continuing at his option beyond expiration of his lease or rental agreement by depriving landlord, unless he claims under one of the permitted grounds, of right to maintain an action for possession. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

In proceeding in landlord and tenant court, where informality of pleading has always been the rule, to recover demised premises on the sole ground that tenancy had been terminated by notice failure of complaint to show that premises were exempt from this chapter did not require dismissal. *U. S.* v. *Wittek* (D. C. Mun. App. 1946, 48 A. 2d 805, reversed and remanded 69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1406, remanded 171 F. 2d 8, 83 U. S. App. D. C. 337).

Where complaint alleged termination of tenancy by notice and sought recovery of demised premises, even if premises were housing accommodations governed by this chapter, it was still possible that plaintiff could have stated a cause of action by alleging that tenants had violated a condition of their tenancy, and proper procedure was to grant motion to dismiss with leave to amend. *U. S.* v. *Wittek* (D. C. Mun. App. 1946, 48 A. 2d 805, reversed and remanded 69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1406, remanded 171 F. 2d 8, 83 U. S. App. D. C. 337).

Rent Act does not require that the person suing for possession be the owner of a fee simple title. It is sufficient if the plantiff be the landlord. *Glennon* v. *Butler* (D. C. Mun. App. 1949, 66 A. 2d 519).

A landlord may recover possession of his property when occupancy is sought in good faith and not to evade or defeat the purpose of the Act, even though it is shown that he will not require the whole thereof as a personal dwelling but only when there has been a full disclosure of this information at the trial. *Frankfurt* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 197).

Where housing development was originally built by the United States and later sold to a veteran's co-operative housing association, and a member thereof sued for possession of an individual apartment for personal use, decision does not turn on whether appellant is a landlord, but rather upon the legal effect of a series of contracts and transfers of title affecting the project as a whole and the individual apartment involved. Appellant's argument that the agreement to extend appellee's lease until the end of rent control was made without consideration to him and therefor void is unfounded because, if consideration exists, it is not necessary that it run to the person seeking to enforce the agreement. *Owens* v. *Liff* (D. C. Mun. App. 1949, 65 A 2d 921).

Purpose

The purpose of subsection (b) of this section was to protect tenant's possession and not to give to tenant means of effective subletting which tenant did not previously have. *Keroes* v. *Westchester Apartment* (D. C. Mun. App. 1944, 36 A. 2d 263).

Subsection (b) (3) of this section permitting landlord to recover possession of premises when he has in good faith contracted to sell the property for immediate personal use is to protect tenant from being evicted under a simulated sale. *Knowles* v. *Mosher* (D. C. Mun. App. 1946, 45 A. 2d 755).

Questions of Fact

When there is substantial evidence challenging good faith of the landlord, in seeking to recover possession of premises allegedly for his own personal use, a question of fact is raised for determination by the jury or trial court. *Staves* v. *Johnson* (D. C. Mun. App. 1945, 44 A. 2d 870).

Where there is substantial evidence challenging the good faith of a landlord seeking to recover possession of a house under this section, a question of fact is raised for determination by the jury or trial court. *Olessoff* v. *Osbourn*. (D. C. Mun. App. 1946, 47 A. 2d 514).

The question whether the housing accommodations involved are new ones not rented on the critical date, or are old ones with substantial capital improvements or alterations, is a question of fact. Such a question must, unless evidence is compelling one way or the other, be decided by the jury. *Martin* v. *Schlein* (D. C. Mun. App. 1950, 71 A. 2d 614).

Remodeling

In suit by landlord to obtain possession of dwelling house from tenant for immediate purpose of making substantial alterations and remodeling, landlord was not required to elect whether work of remodeling would be performed by National Housing Agency or by private builder, with both of whom she had negotiated. *Klein* v. *Hilton* (D. C. Mun. App. 1944, 40 A. 2d 77).

Landlords, who sought to recover possession of premises under subsection (b) (4) of this section for the immediate purpose of substantially altering and remodeling the property and replacing it with new construction, and who offered evidence that plans therefor had been approved by the Commissioners of the District of Columbia were not required to show, additionally, approval of the work by the Civilian Production Administration. *Carow* v. *Bishop* (D. C. Mun. App. 1946, 50 A. 2d 598).

Where landlords seek to recover possession of premises under subsection (a) (4) of this section for immediate purpose of altering and remodeling the property and replacing it with new construction, recovery of possession might be defeated upon showing of complete inability of landlords to remodel because of Civilian Production Administration regulations, but failure to obtain approval of the work by the Administration would not bar the action although the regulations could properly be considered by the court on the question of good faith. *Carow* v. *Bishop* (D. C. Mun. App. 1946, 50 A. 2d 598).

Landlord's suit to recover possession of a dwelling house for the purpose of demolishing it and erecting apartment building on the lot was premature, where construction plans had not been approved by the District of Columbia Commissioners as required by subsection (b) (4) of this section at the time the suit was filed and notice of such approval was not given until almost two months later on the day before the trial of the case. *Tatum* v. *Townsend* (D. C. Mun. App. 1948, 61 A. 2d 478).

Res Judicata

Judgment of landlord and tenant court in favor of tenant in action by landlord to recover premises for his own use was res judicata in subsequent action in municipal court for same relief. *Scholl* v. *Tibbs* (D. C. Mun. App. 1944, 36 A. 2d 352).

The fact that landlord, in first action to secure housing accommodations for his own use, described defendant as a tenant at will and in second action described defendant as a monthly tenant, did not avoid application of res judicata doctrine, particularly where briefs filed in first action also described defendant as a monthly tenant. *Scholl* v. *Tibbs* (D. C. Mun. App. 1944, 36 A. 2d 352).

Where judgment in first action followed a judicial determination of basic controversy as to whether landlord was entitled to maintain a possessory action against tenant, although no formal trial was held, such judgment was conclusive to same extent as if rendered after a formal trial. *Scholl* v. *Tibbs* (D. C. Mun. App. 1944, 36 A. 2d 352).

An adjudication that landlord in former suit did not seek possession of housing accommodations in good faith for personal occupancy as a dwelling under subsection (b) (2) of this section was not res judicata of question of good faith in landlord's subsequent action under same subsection. *Black* v. *Tamamian* (D. C. Mun. App. 1946, 49 A. 2d 547).

Where tenant's petition for rent refund was dismissed for lack of jurisdiction of relief sought, and Administrator had undertaken to make findings on some of the questions in controversy, such findings are without effect and are not res judicafa in any other proceedings involving the question. *Levy* v. *Arsenault* (D. C. Mun. App. 1948, 62 A 2d 642).

Residential Versus Commercial Property

Whether property is commercial and therefore free from control, or whether it is partly residential, is ordinarily a question of fact. In determining such an issue, due weight must be given to such factors as whether the

parties have treated the two portions as separate and distinct or as a unit, prior leases, acts of the parties, the time during which the landlord-tenant relationship has existed and the nature and services of the units involved. Such questions should be submitted to the jury. *Bellmore* v. *Baum* (D. C. Mun. App. 1949, 68 A. 2d 588).

Showing Premises

Landlord's right under this section to show rented premises for sale must be exercised reasonably and in good faith and cannot be used to harass tenant or unreasonably interfere with his enjoyment of possession. *National Metropolitan Bank of Washington* v. *Judge* (D. C. Mun. App. 1944, 37 A. 2d 446).

Refusal by tenant, whose possession depended wholly on this chapter, to permit landlord to show property for sale at reasonable times, was a violation of an obligation of tenancy which, if persisted in, would authorize order for surrender of premises. *National Metropolitan Bank of Washington* v. *Judge* (D. C. Mun. App. 1944, 37 A. 2d 446).

Landlord's right to sell, reserved to landlord under subsection (b) (1, 3) of this section, includes right to show premises at reasonable times. *National Metropolitan Bank of Washington* v. *Judge* (D. C. Mun. App. 1944, 37 A. 2d 446).

Stage of Proceedings

Where trial court misinterpreted decision on a former appeal when case was remanded, and reinstated its earlier ruling, such action constituted error. It follows that while the case was pending before the Administrator on such remand and until a new ceiling was fixed, the monthly rental continued to apply. *Acuino* v. *Winthrop* (D. C. Mun. App. 1949, 65 A. 2d 602).

Stay of Proceedings

Where judgment of another court first obtaining jurisdiction enjoined owner from conveying property to colored persons and subsequently the judgment was stayed pending an appeal, whereupon the property was bought by colored persons who instituted proceeding against tenant to obtain possession for their own personal use, dismissal of plaintiff's proceedings was error, but the proceedings should have been stayed until disposition of appeal in first case. *Williams* v. *Pearson* (D. C. Mun. App. 1946, 49 A. 2d 663).

The Municipal Court for District of Columbia did not have the power, in order to accomplish ends of justice, to temporarily stay execution of judgment in favor of landlords suing tenant for possession of leased housing accommodations. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

Subletting

Where § 45–1611 provides that the term "tenant" includes a person entitled to the use of any housing accommodations, but the definitions of said § 45–1611 are expressly limited to "as used in this Act [chapter]", such definitions are controlling for the purposes of this chapter but do not purport to make that a subletting, which was not a subletting prior to this chapter, and hence the taking of roomers does not violate a covenant against "subletting" without landlord's written consent. *Beall* v. *Everson* (D. C. Mun. App. 1943, 34 A. 2d 41).

Where tenant under verbal hiring by the month removed herself from rented apartment and sublet it to another with landlord's consent for a designated period, after expiration of such period, landlord was entitled to possession of the apartment on ground that tenant was violating "obligation of tenancy" within subsection (b) (1) (a) of this section. *Keroes* v. *Westchester Apartments* (D. C. Mun. App. 1944, 36 A. 2d 263).

Tenant by Sufferance

Prior to enactment of this chapter, landlord could have evicted tenant by sufferance at any time and without any reason merely by serving on tenant a 30-day notice to quit followed with possessory action, under § 45–904, but this chapter restricts landlord's rights and protects tenant from eviction except on one of grounds specified. *Westchester Apartments* v. *Keroes* (D. C. 1943, 32 A. 2d 869).

Tenancy under verbal hiring by the month, though deemed a tenancy at sufferance by § 45–820 is not an estate at sufferance within strict meaning of the common-law term, but is more in the nature of an estate, from month to month, or an estate at will, and until this section became effective was determinable at any time. *Keroes* v. *Westchester Apartments* (D. C. Mun. App. 1944, 36 A. 2d 263).

A tenant continuing in possession and paying rent under an expired lease becomes a tenant at sufferance and such tenancy is impliedly subject to the provisions of the expired lease. Where with the implied consent of the landlord, the tenant used the major part of the premises for residence purposes, it is clear that the accommodations come within the meaning of the Rent Act. *Friedman* v. *Sherman* (D. C. Mun. App. 1950, 74 A. 2d 57).

Tenant's Rescission

This section, prohibiting actions by landlord to recover possession even though tenant has no lease or though his lease has expired, restricts landlord's right to evict tenant and does not apply to actions by tenants for rescission for landlord's violation of this chapter or regulation thereunder. *Friedman* v. *Kennedy* (D. C. Mun. App. 1944, 40 A. 2d 72).

Terms of Lease

To require a man and his wife and a child to sign separate rental agreements and use such agreements as a basis for charging a higher rental would constitute an obvious evasion of the Rent Act as it is entirely clear that the per person rental was not intended to apply to members of a family unit. *Block* v. *Gates* (D. C. Mun. App. 1949, 68 A. 2d 295).

Unlawful Eviction

A complaint which alleged that tenant left leased premises as the result of stipulation signed by himself and his attorney and in compliance with the resulting judgment in landlord's action under this chapter to secure possession failed to charge an "unlawful eviction," notwithstanding that it was alleged that landlord's statement in his action in regard to his intention to use premises for his own immediate personal use as a dwelling were fraudulent. *Simpkins* v. *Brooks* (D. C. Mun. App. 1946, 49 A. 2d 549).

If complaint, which alleged that tenant left leased premises as result of stipulation signed by himself and his attorney and in compliance with resulting judgment in landlord's action under this chapter to secure premises for his personal use as a dwelling, was not intended as an attack on the previous judgment, but intended to relate only to events occurring since the judgment, mere allegation that premises were available March 15, and that landlord had not moved in by June 24 did not, without more, show that tenant was fraudulently evicted. *Simpkins* v. *Brooks* (D. C. Mun. App. 1946, 49 A. 2d 549).

Waiver

Whether there was constructive waiver of covenant in lease against subletting by landlord's acceptance of rent must be determined as of date when landlord's action to recover possession of leased property because of such subletting was commenced. *Hall* v. *Henry J. Robb, Inc.* (D. C. 1943, 32 A. 2d 707).

A landlord's acceptance of monthly rent payment three days after commencement of his suit against tenant to recover possession of leased property because of defendant's breach of lease by subletting did not constitute "waiver" of such breach. *Hall* v. *Henry J. Robb, Inc.* (D. C. 1943, 32 A. 2d 707).

Where landlord, at time premises were rented, understood that entire premises were to be occupied by a daughter of tenants, but tenants divided premises into apartments which they sublet and landlord, with full knowledge of the subletting, continued to accept monthly rent in advance for four years without making any protest regarding the subletting, landlord waived right to claim that subletting constituted a violation of an obligation of the tenancy so as to secure eviction of tenants under subsection (b) (1) of this section. *Thompson* v. *Gray* (D. C. Mun. App. 1946, 50 A. 2d 594).

§ 45–1606. Administrator.

There is hereby created in and for the District of Columbia the office of Administrator of Rent Control. The Administrator shall be appointed by the Commissioners of the District of Columbia and shall be a bona fide resident of the District of Columbia for not less than three years prior to his appointment. He shall devote his full time to the Office of Administrator and shall receive a salary at the rate of $7,500 per annum. The Administrator shall establish offices, acquire supplies and equipment, and employ such personnel, subject to approval by the Commissioners of the District of Columbia, and in accordance with the Classification Act of 1923, as amended, without regard to race or creed, as may be necessary in the performance of his functions under this chapter. The Administrator shall submit a semiannual report to the Commissioners of the District of Columbia for transmittal to the Congress of the United States. (Dec. 2, 1941, 55 Stat. 791, ch. 553, § 6.)

§ 45–1607. Obtaining information.

(a) The Administrator may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as he deems necessary or proper to assist him in prescribing any regulation or order under this chapter, or in the administration and enforcement of this chapter, and regulations and orders thereunder. For such purposes the Administrator may administer oaths and affirmations, may require by subpena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place, may require persons to permit the inspection and copying of documents, and the inspection of housing accommodations and may, by regulation or order, require the making and keeping of records and other documents. No person shall be excused from complying with any requirement under this section because of his privilege against self-incrimination, but the immunity provisions of U. S. C., title 49, sec. 46, shall apply with respect to any individual who specifically claims such privilege. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Administrator may make application to the United States District Court for the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order.

(b) The Administrator shall have authority to promulgate, issue, amend, or rescind rules and regulations, subject to approval by the Commissioners of the District of Columbia, and to issue such orders as may be deemed necessary or proper to carry out the purposes and provisions of this chapter or to prevent the circumvention or evasion thereof. The Administrator may require a license as a condition of engaging in any rental transaction involving the subletting of any housing accommodations or the renting of housing accommodations in a rooming or boarding house, or in a hotel. For the purposes of this chapter the term "rooming or boarding house" means a house in which living quarters are rented by the householder to more than four persons. No fee shall be charged for the issuance to any person of any such license and no such license shall contain any provision not prescribed by this chapter or which could not be prescribed by regulation, order, or requirement thereunder. (Dec. 2, 1941, 55 Stat. 792, ch. 553, § 7; Sept. 26, 1942, 56 Stat. 759, ch. 564, § 2.)

AMENDMENTS

The act of Sept. 26, 1942, cited to text, amended section by deleting word "two" and inserting in lieu thereof word "four" in third sentence of subsec. (b).

NOTES TO DECISIONS

CONTRACTS

Where under this chapter, Administrator's regulation prescribed certain duties for rooming-house operators, including duty of filing schedules and of having maximum rentals established, this chapter entered into and formed a part of contract for sale of rooming-house business as if expressly referred to or incorporated in terms of contract. *Tucker* v. *Beazley* (D. C. Mun. App. 1948, 57 A. 2d 191).

VALIDITY OF ORDERS

Order of rent administrator requiring landlords of premises newly placed on rental market to file an application for determination of a maximum ceiling before any future tenancy begins, which order was duly issued and promulgated and was designed to keep landlords from fixing their own rent ceiling without prior approval by the administrator, is valid as being clearly consonant with basic purposes of this chapter. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

§ 45–1608. Procedure.

(a) Any petition filed by a landlord or tenant under section 45–1604 shall be promptly referred to an examiner designated by the Administrator. Notice of such action, in such manner as the Administrator shall by regulation prescribe, shall be given the tenant and landlord of the housing accommodations involved. If the petition be frivolous or without merit, the examiner shall forthwith dismiss it. Such order of dismissal may be reviewed by the Administrator in the manner provided in subsection (c) of this section. The examiner shall grant a hearing upon the petition except in cases dismissed under this subsection.

(b) Hearings under this section shall be conducted in accordance with regulations prescribed by the Administrator. The landlord and tenant shall be given an opportunity to be heard or to file written statements, due regard to be given the utility and relevance of the information offered and the need for expedition. In any such hearing the common-law rules of evidence shall not be controlling.

(c) The examiner, after hearing, shall make findings of fact and recommend an appropriate order. Copies of such findings and order shall be served upon the parties to the proceeding in such manner as the Administrator may prescribe by regulation. Within five days after such service, any such party may request that the recommended order be reviewed by the Administrator. If there be no such request within such five days, the findings and recommended order of the examiner shall thereupon be deemed to be the findings and order of the Ad-

ministrator: *Provided,* That the Administrator may review the proceedings, as herein provided, on his own motion at any time within ten days after service of the examiner's findings and order upon the parties. The Administrator may, in his discretion, grant a hearing upon the request. Upon such request or motion, the record in the case shall be forthwith transferred to the Administrator for review and he may, in his discretion, grant a hearing. He shall state his findings of fact or affirm the examiner's findings of fact which findings in either case shall be conclusive if supported by substantial evidence, and shall make an appropriate order. (Dec. 2, 1941, 55 Stat. 792, ch. 553, § 8.)

NOTES TO DECISIONS

ADJUSTMENT OF RENT

The Rent Administrator's order determining rental was of no effect, and he properly set it aside on discovering that, contrary to landlord's representation, premises were rented on rental freeze date; landlord's remedy being to seek adjustment rather than determination of rent. *Gould* v. *Delsnider* (D. C. Mun. App. 1945, 42 A. 2d 140, 81 U. S. App. D. C. 54, reversed, 1946, 154 F. 2d 844, 81 U. S. App. D. C. 54).

Under this chapter, Rent Administrator cannot set aside a valid and subsisting lease between parties providing for lower rentals than rent ceiling established by Administrator. *Hildebrand* v. *Nee* (D. C. Mun. App. 1947, 54 A. 2d 640).

The proper method to be used in administering the Rent Act is that the examiner and the Administrator should consider the various items of operating expenses for the base year and for the last year of operation and should make such adjustments as are necessary, based upon expenses for the intervening years and other relevant data. *Sharpe* v. *Goldwyn* (D. C. Mun. App. 1949, 65 A. 2d 185).

ADMINISTRATIVE REVIEW, NECESSITY

Where rent ceiling during period of tenants' occupancy was based on landlord's misrepresentations but examiner in proceedings for a redetermination of ceiling refused to set a new ceiling on ground that premises had been withdrawn from rental market, so that ceiling under which tenants had paid rent remained the only ceiling which had been fixed for property, and tenants did not seek administrative or statutory review of examiner's order, tenants could not establish over-ceiling charges for rent on which to base an action to recover double amount allegedly collected by landlord in excess of rent ceiling. *Schachter* v. *Singer* (D. C. Mun. App. 1946, 45 A. 2d 364).

CONSTRUCTION WITH OTHER LAWS

Without an existing maximum rent ceiling or maximum service standard as defined in § 45–1602, a proceeding for adjustment under § 45–1604 was unauthorized, and the procedural and review provisions of this section and § 45–1609 were inapplicable. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

DISMISSAL

The Municipal Court has exclusive jurisdiction over actions by tenants to recover rent over-charges and Penalties. The Rent Administrator was correct in ordering a petition for such recovery dismissed since he has no jurisdicton. *Levy* v. *Arsenault* (D. C. Mun. App. 1948, 62 A. 2d 642).

EQUITABLE ESTOPPEL

Where landlord petitioned under Section 4 of Rent Act for an adjustment, and where Administrator made no determination, it did not preclude landlord from asserting as a defense to tenant's suit for damages that the examiner's recommended order was not a sufficient basis for tenant's suit. The principles of equitable estoppel do not apply where the legal position first asserted is not successfully maintained. *Parker* v *Sager* (C. A. D. C. 1949, 174 F. 2d 657, 85 U. S. App. D. C. 4).

FINDINGS CONCLUSIVE

Where trial court found on conflicting evidence that there was no refusal of landlord to furnish services required by Rent Administrator's order, appellate court was bound by such finding. *Hicks* v. *Behrend* (D. C. Mun. App. 1944, 40 A. 2d 78).

Where evidence sustained Rent Administrator's finding that landlord was entitled to a 10 percent increase in rents under section 1604 (b) of this title, Municipal Court of Appeals for the District of Columbia would be violating fundamental principles applicable to court review of administrative findings, to hold that administrator's conclusion was not supported by substantial evidence or was plainly wrong. *Stokes* v. *Realest Corp.* (D. C. Mun. App. 1948, 60 A. 2d 532).

FINDINGS OF FACT

Rent Administrator on landlord's petition for adjustment in rent ceilings is not bound by common law rules of evidence and he has inherent right to take judicial notice of certain facts not presented in evidence, but is not allowed right to reach an ultimate fact determinative of case without the slightest attempt to incorporate into record the basic facts essential to his conclusion. *Aquino* v. *Knox* (D. C. Mun. App. 1948, 60 A. 2d 237).

Findings of fact by Rent Administrator on landlord's petition for adjustment in rent ceilings need not be set out in detail but they must be shown with substantial particularity to enable petitioner seeking review of Administrator's order to rebut them, and a reviewing court to follow path which has been used. *Aquino* v. *Knox* (D. C. Mun. App. 1948, 60 A. 2d 237).

Where the Rent Administrator, upon review of the findings of the examiner, states his findings of fact or affirms the facts as found, such findings shall be conclusive if supported by substantial evidence. *Winkler* v. *Ballard* (D. C. Mun. App. 1949, 63 A. 2d 669).

Findings of fact made by examiner and approved by the Administrator, that landlord had not violated the minimum service standard with respect to bed linen were beyond the power of the examiner or Administrator where the evidence showed laxity in cleaning petitioner's room. *Levy* v. *Arsenault* (D. C. Mun. App. 1948, 62 A. 2d 642).

ORDERS REVIEWABLE

The Rent Act nowhere expressly authorizes control of meal charges. If, as the Administrator claimed, the meal rates were subject to control, such control rests on the premise that the furnishing of meals is a privilege or facility connected with the use and occupancy of the housing accommodations and therefore a part of the service standard. Until the service standard was completed, the rent ceiling could not be completed. *Hearn* v. *Cogswell* (D. C. Mun. App. 1949, 68 A. 2d 219).

PETITION

Landlord's complaint seeking to recover possession of dwelling property under this chapter would not be held bad because it did not contain an allegation that proceeding was in good faith. *De Bobula* v. *Coppedge* (D. C. Mun. App. 1944, 40 A. 2d 255).

REHEARING

Where landlord insisted that a hearing de novo be ordered, new evidence be received, and new findings be made by District of Columbia Rent Administrator following a recommended order by examiner denying increase requested by landlord, landlord could not complain that effective date of the increase as ordered was postponed by reason of the second hearing and order. *Thorn* v. *Miller* (D. C. Mun. App. 1948, 60 A. 2d 223).

Contention that landlord was denied a hearing is without foundation where the case had already been heard and was not remanded for a hearing on all the issues and where upon an inspection of the premises by the examiner in the presence of counsel for the Administrator, the landlord and his manager neither tendered nor offered additional evidence. These facts constituted a

sufficient hearing. *Block* v. *Tenants* (D. C. Mun. App. 1949, 70 A. 2d 59).

RES JUDICATA

Where tenant's petition for rent refund was dismissed for lack of jurisdiction of relief sought, and Administrator had undertaken to make findings on some of the questions in controversy, such findings are without effect and are not res judicata in any other proceedings involving the question. *Levy* v. *Arsenault* (D. C. Mun. App. 1948, 62 A. 2d 642).

§ 45–1609. Court review.

(a) Within ten days after issuance of an order of the Administrator under section 45–1604, any party may file a petition to review such action in the Municipal Court of Appeals for the District of Columbia, and shall forthwith serve a copy of such petition upon the Administrator. Thereupon, the Administrator shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript, the court shall have exclusive jurisdiction to affirm or set aside such order, or remand the proceeding: *Provided,* That the Administrator may at any time, upon reasonable notice and in such manner as he shall deem proper, rescind, modify, or set aside, in whole or in part, any such order at any time notwithstanding the pendency of the petition to review.

(b) No objection that has not been urged before the Administrator shall be considered by the court, unless the failure to urge such objection shall be excused because of extraordinary circumstances. No order shall be set aside or remanded unless the petitioner shall establish to the satisfaction of the court that the order is not in accordance with law, or is not supported by substantial evidence. The commencement of proceedings under this section shall not, except as provided in subsection (d), operate as a stay of the Administrator's order.

(c) The Municipal Court of Appeals for the District of Columbia is hereby granted exclusive jurisdiction to review any order of the Administrator made pursuant to section 45–1604. The judgment and decree of the court shall be final, subject to review as provided by law relative to other judgments of the court. Three judges of the municipal court, selected in such rotation as the judges of the court shall determine, shall sit in all proceedings under this section and shall participate in the decision of such cases.

(d) No court shall issue any interlocutory order or decree staying the effectiveness of any provision of this chapter or any regulation or order issued thereunder, unless the person objecting to such provision, regulation, or order, shall file with the court an undertaking with a surety or sureties satisfactory to the court for the payment, in the event such objection is not sustained, of the amount by which the maximum rent, if any, permitted under such provision, regulation, or order, exceeds or is less than the amount actually received or paid while such stay is in effect. (Dec. 2, 1941, 55 Stat. 793, ch. 553, § 9; April 29, 1948, 62 Stat. 206, ch. 243, § 3 (a), (b).)

AMENDMENTS

The act of April 29, 1948, cited to text, substituted "Municipal Court of Appeals" for "Municipal Court" in the first sentence of subsection (a) and first sentence of subsection (c).

SUITS PENDING IN THREE-JUDGE COURT

Sec. 4 of the act of April 29, 1948, cited to the text, provided as follows:

"SEC. 4. All cases now pending before the statutory three-judge court of the municipal court which have not been presented to that court for decision at the time this Act takes effect shall forthwith be certified by said court to the Municipal Court of Appeals for the District of Columbia. Nothing herein contained shall affect the validity of any judgment or decree of the statutory court (consisting of three judges of the municipal court as heretofore provided by law) rendered subsequent to the effective date of this Act in cases heretofore presented to that court and now awaiting decision."

NOTES TO DECISIONS

ADMINISTRATOR'S DETERMINATION

The order of the Rent Administrator fixing the rent ceiling made under § 45–1602 (1) (c) of the Rent Act is not appealable, and, furthermore, a finding of fact is not an appealable order. *Weiner* v. *McMahon* (D. C. Mun. App. 1949, 67 A. 2d 525).

AFFIRMANCE

In tenant's proceeding before District of Columbia Rent Administrator on petition for adjustment of rent or services, wherein tenants sought determination only that premises were rented on statutory freeze date for claimed sum per month, and such matter was one which could properly be decided only by the Municipal Court, Administrator's dismissal of tenant's petition was proper and was affirmed notwithstanding it was based on wrong reason. *Schlein* v. *Evans* (D. C. Mun. App. 1948, 61 A. 2d 35).

BURDEN OF PROOF

One seeking a reversal in an appellate court has the burden of affirmatively establishing error. *Jennings* v. *Gilbertson* (D. C. Mun. App. 1950, 74 A. 2d 839).

COMPELLING ORDERS

Three-judge Municipal Court of District of Columbia could not require Administrator of Rent Control to promulgate an order that collection of rent for accommodations as to which no ceiling had been fixed is subject to refunding to tenant of excess over ceiling subsequently determined. *Kern* v. *Cogswell* (D. C. Mun. App. 1948, 59 A. 2d 793).

CONSTRUCTION

Subsection (a) of this section must be read in conjunction with subsection (c) of this section. *Fabianich* v. *Hart* (D. C. 1943, 31 A. 2d 881).

CONSTRUCTION WITH OTHER LAWS

Without an existing maximum rent ceiling or maximum service standard as defined in § 45–1602, a proceeding for adjustment under § 45–1604 was unauthorized, and the procedural and review provisions of § 45–1608 and this section were inapplicable. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

EQUITABLE ESTOPPEL

Where landlord petitioned under Section 4 of Rent Act for an adjustment, and where Administrator made no determination, it did not preclude landlord from asserting as a defense to tenant's suit for damages that the examiner's recommended order was not a sufficient basis for tenant's suit. The principles of equitable estoppel do not apply where the legal position first asserted is not successfully maintained. *Parker* v. *Sager* (C. A. D. C. 1949, 174 F. 2d 657, 85 U. S. App. D. C. 4).

FINAL ORDERS

Denial of a preliminary injunction is not a final order nor is it a form of an interlocutory order from which

appeal lies. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 63 A. 2d 671).

FINDINGS OF FACT

Rent Administrator is not concerned with net income from housing accommodations, but only with increase in rent sufficient to compensate in whole or in part for increased operating expenses. *Hall* v. *Ring Management Company* (D. C. Mun. App. 1948, 63 A. 2d 656).

Where examiner's findings that reduction in service did not form sufficient basis for an adjustment of maximum rent is supported by substantial evidence, it will not be set aside. *Hall* v. *Ring Management Company* (D. C. Mun. App. 1948, 63 A. 2d 656).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

It was not error for the trial court to deny appellant's request for findings of fact and conclusions of law, for trial court rules provide that in actions tried on the facts without a jury the court may, if requested by any party, find the facts specially and state separately its conclusions of law. The rule is permissive, not mandatory. *Eide* v. *Traten* (D. C. Mun. App. 1950, 73 A. 2d 522).

JUDGMENT

Judgment on reciprocal claims between different parties should be set off against each other and satisfaction of both should be entered in the amount of the smaller claim. *Block* v. *Gates* (D. C. Mun. App. 1949, 68 A. 2d 215, modified on other grounds, 68 A. 2d 898).

JUDICIAL NOTICE

Court will take judicial notice that during the war the government and various persons in official and unofficial positions urged that the public forego luxury items which consumed manpower and critical war materials. It cannot be said as a matter of law that the landlord's refusal to supply such items rendered him guilty of a service standard violation. *Connolly* v. *B. F. Saul Co., Inc.* (D. C. Mun. App. 1949, 68 A. 2d 236).

MOOT QUESTIONS

Where payment of judgment in action to recover double rent under § 45–1610, if any, was an involuntary one, issue in case was not rendered moot. *King* v. *McKnight* (D. C. Mun. App. 1948, 61 A. 2d 714).

Where in the record itself, nothing is revealed concerning an alleged payment, court cannot resolve dispute in respect thereof on the basis of contradictory statements in the brief. *Acuino* v. *Winthrop* (D. C. Mun. App. 1949, 65 A. 2d 602).

ORDERS RESCINDED

Section 9 of the Rent Act authorizes the Administrator at any time to rescind, modify, or set aside a section 4 order, but a section 4 order cannot be summarily set aside and a new order entered without consideration of the evidence offered. *Hearn* v. *Cogswell* (D. C. Mun. App. 1949, 68 A. 2d 219).

ORDERS REVIEWABLE

This section, giving municipal court exclusive jurisdiction to review any order of the administrator made "pursuant to" section 45–1604, refers to orders specifically provided for said § 45–1604, and does not authorize review of any order made in course of proceeding under § 45–1604. *Fabianich* v. *Hart* (D. C. 1943, 31 A. 2d 881).

Under this section giving municipal court exclusive jurisdiction to review orders made pursuant to § 45–1604 and under § 45–1604, authorizing only orders definitely fixing new rent ceilings or adjusted minimum service requirements, municipal court had no jurisdiction to review order directing rehearing in proceeding under said section 45–1604. *Fabianich* v. *Hart* (D. C. 1943, 31 A. 2d 881).

A general order of Administrator of Rent Control requiring landlords to file petitions for determination of maximum rent ceilings, and reciting that, until further notice, Administrator will assume, but not concede, that first rent collected by landlord is fair and reasonable, was not an adoption of rent then charged as a "maximum rent ceiling", and landlord's petition for court review of adjustment of rent or service on basis of such order was properly dismissed. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

Municipal Court of Appeals was not required to pass upon the validity of an interpretative order of the Administrator under this chapter, where neither tenant nor landlord had sought a court review of such order. *Hall* v. *Henry J. Robb, Inc.* (D. C. Mun. App. 1944, 34 A. 2d 863).

Where petitioner asserts that there is nothing in the record to indicate by what means the examiner and the Administrator arrived at the ceiling fixed, the claim is without merit where the record shows that testimony was taken and exhibits were introduced and considered on a personal inspection by the examiner. *Jennings* v. *Gilbertson* (D. C. Mun. App. 1950, 74 A. 2d 839).

Where an error charged relates to the refusal of the examiner to grant a continuance of the hearing, such a refusal is in the field of discretion and is seldom reviewable on appeal. *Jennings* v. *Gilbertson* (D. C. Mun. App. 1950, 74 A. 2d 839).

Where the evidence presented showed that the Administrator's determination of the ceiling was under § 2 of the Act, despite the contention of the claimant that it was under § 4, no appeal lies. *Cox* v. *Cogswell* (D. C. Mun. App. 1949, 69 A. 2d 659).

Rent Act provides that objections not urged before the Administrator shall not be considered by the court, unless failure to urge them shall be excused because of extraordinary circumstances. Where no extraordinary circumstances are presented, orders are not reviewable. *Jennings* v. *Gilbertson* (D. C. Mun. App. 1950, 74 A. 2d 839).

Where examiner averaged the expenses for years 1942 through 1947, inclusive, and allowed a sufficient rental increase to make up for the excess of such averaged operating expenses over the operating expenses for 1941, such method was improper because it failed to take into account the various items of operating expenses for the base year and intervening years. *Shapiro* v. *Bombardier* (D. C. Mun. App. 1949, 63 A. 2d 772).

Where there is a single tenancy and nothing in the record that either landlord or tenant ever regarded it as divisible, no separate toilet facilities for the housing and alleged commercial part thereof, only one heating unit, one meter for electricity, gas and water, it was error for Rent Administrator to rule that the unit was both a commercial and housing accommodation. *Wayne* v. *Burke* (D. C. Mun. App. 1949, 63 A. 2d 669).

Contention of Administrator that an order entered under § 7 of Rent Act is not reviewable because Act limits review to those under § 4 is without merit. If this position were correct, then in any § 4 proceeding, after time for review of the order had passed, the Administrator could issue an order under § 7 abrogating or changing the § 4 order and thereby effectively prevent court review of the § 4 proceeding. *Hearn* v. *Cogswell* (D. C. Mun. App. 1949, 68 A. 2d 219).

Where ceiling has been regularly and properly established and has stood unchanged throughout the term, it could be rendered invalid only by alteration, or change of the building, real estate, service or facilities. *Sawyer* v. *Warner* (D. C. Mun. App. 1948, 73 A. 2d 653).

Where petitioner specifically requested Administrator to issue an order declaring a refund for over-charges, failure of the Administrator to bring suit is not reviewable on appeal where no objection was urged before the Administrator, no extraordinary circumstances were shown and no reason shown why petitioner should not have filed suit himself. *Levy* v. *Arsenault* (D. C. Mun. App. 1948, 62 A. 2d 642).

ORDERS SET ASIDE

Order of Rent Administrator adjusting rent ceilings of various apartments on landlord's petition would be set aside on subsequent petition by landlord as not supported by substantial evidence, and as denying due process where Administrator made general finding that landlord's expenses had increased substantially and entitled landlord to increase to extent allowed and then further found that to give a larger increase would raise rents above

those for comparable housing accommodations without showing what if any comparable housing accommodations were used in making up the order. *Aquino* v. *Knox* (D. C. Mun. App. 1948, 60 A. 2d 237).

Where examiner and Rent Administrator compared the operating expenses for the last year of operations with those of the first year and granted an increase sufficient to produce in full the increase in expenditures determined by this method, such procedure is improper and must be set aside. *Hall et. al* v. *Ring Management Company* (D. C. Mun. App. 1948, 63 A. 2d 656).

Where Rent Administrator averaged expenses for the years 1941 to 1947 inclusive, deducted the 1941 expenses from such average, and granted a sufficient rent increase to produce the difference, such procedure is improper and orders based thereon must be reversed. *Proctor* v. *Miller* (D. C. Mun. App. 1949, 63 A. 2d 665).

Failure of an examiner and Rent Administrator to make detailed findings of fact showing basis for rental increase allowed, and failure to make allowance for the fact that expenses for last year's operation is not typical, is improper and order must be set aside. *Hall* v. *Ring Management Company* (D. C. Mun. App. 1948, 63 A. 2d 656).

PETITION FOR REVIEW

The petition for review must be dismissed where there is no final order of the Administrator which can be reviewed where the filing of a petition prevented the examiner's recommended order from becoming effective. *Parker* v. *Williams* (D. C. Mun. App. 1950, 71 A. 2d 770).

QUESTION FOR JURY

The question whether accommodations involved are new ones, or old ones with substantial capital improvement, is a question of fact for the jury. *Sawyer* v. *Warner* (D. C. Mun. App. 1948, 63 A. 2d 653).

QUESTIONS NOT RAISED BELOW

No objection that has not been urged before the Rent Administrator may be considered by the court unless the failure to urge such objection may be excused because of extraordinary circumstances. *Crisp* v. *Giles* (D. C. Mun. App. 1949, 65 A. 2d 204).

RECORD

Where in District of Columbia Municipal Court tenant's brief described in detail proceedings before Rent Administrator but such statements were unsupported by record, appellate court could not determine whether tenant by applying to Rent Administrator for rent adjustment because of landlord's alleged failure to supply minimum service exhausted remedies and was precluded from recovering damages for failure to supply minimum services. *Zindler* v. *Buchanon* (D. C. Mun. App. 1948, 61 A. 2d 616).

It may be that the rent increase ordered by the Administrator was justified by the record before him, but the record does not disclose what the total rent increase in dollars amounted to. On numerous occasions the court has pointed out the necessity of including in the record figures on which at least the approximate correctness of the Administrator's finding may be determined. *Corey* v. *Fitzgerald* (D. C. Mun. App. 1950, 73 A. 2d 230).

Facts asserted by the petitioner's counsel, which do not appear in the examiner's Statement of Evidence or any other evidentiary form in the record and bear no approval or certification of the Rent Administrator, are not part of the record and cannot be considered on appeal. *Bailey* v. *Maple* (D. C. Mun. App. 1948, 63 A. 2d 333).

REMEDY AS EXCLUSIVE

The remedy provided by this section for review of the orders of the Administrator is exclusive, and a party dissatisfied with such order must pursue the remedy given, and cannot in an action brought for violation of that order collaterally attack it. *Hall* v. *Henry J. Robb, Inc.* (D. C. Mun. App. 1944, 34 A. 2d 863).

TIME FOR APPEAL

Where 10-day period under subsection (a) of this section for filing of a petition to review an order of Rent Administrator expired on a Sunday, and petition for review was filed with clerk of court on Monday, petition was timely. *Wayne* v. *Burke* (D. C. Mun. App. 1948, 61 A. 2d 714; see also *Wayne* v. *Burke*, 68 A. 2d 669).

§ 45–1610. Enforcement—Penalties.

(a) If any landlord receives rent or refuses to render services in violation of any provision of this chapter, or of any regulation or order thereunder prescribing a rent ceiling or service standard, the tenant paying such rent or entitled to such service, or the Administrator on behalf of such tenant, may bring suit to rescind the lease or rental agreement, or, in case of violation of a maximum-rent ceiling, an action for double the amount by which the rent paid exceeded the applicable rent ceiling and, in case of violation of a minimum-service standard, an action for double the value of the services refused in violation of the applicable minimum-service standard or for $50, whichever is greater in either case, plus reasonable attorneys' fees and costs as determined by the court. Any suit or action under this subsection may be brought in the municipal court of the District of Columbia regardless of the amount involved, and the municipal court is hereby given exclusive jurisdiction to hear and determine all such cases.

(c) No person shall be held liable for damages or penalties in any court on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this chapter or any regulation, order, or requirement thereunder, notwithstanding that subsequently such provision, regulation, order, or requirement may be modified, rescinded, or determined to be invalid. The Administrator may intervene in any suit or action wherein a party relies for ground of relief or defense upon this chapter or any regulation, order, or requirement thereunder. No costs shall be assessed against the Administrator in any proceedings had or taken in accordance with this chapter.

(d) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, or any regulation, order, or requirement thereunder, he may make application to the United States District Court for the District of Columbia for an order enforcing compliance with this chapter or such regulation, order, or requirement, and upon a proper showing a permanent or temporary injunction, restraining order, or other order, shall be granted without bond. (Dec. 2, 1941, 55 Stat. 794, ch. 553, § 10; April 19, 1949, 63 Stat. 49, ch. 73, § 6.)

AMENDMENTS

The Act of April 19, 1949, cited to text, repealed subsection (b).

EXCEPTIONS

Section 7 of the act of April 19, 1949, cited to text, provided as follows:

"SEC. 7. Nothing in this Act shall be construed as authorizing or permitting the recontrol of any housing accommodations which have been heretofore decontrolled."

NOTES TO DECISIONS

ACCORD AND SATISFACTION

Agreement between the parties which stated that "in consideration of your having permitted us to sub-let

the apartment during period that rent control is continued, we release you from and waive any claim against you," was an accord and satisfaction, relieving landlord from liability. *Perper* v. *Danford* (D. C. Mun. App. 1949, 63 A. 2d 773).

On question whether a payment by a tenant to a landlord was rent, or whether such payment constituted an accord and satisfaction as to which party should pay for the installation of a new furnace in the rented premises, evidence sustained finding that it was in accord and satisfaction. *Bond* v. *Pinchot* and *Pinchot* v. *Bond* (D. C. Mun. App. 1949, 65 A. 2d 924).

ADMISSIBILITY OF EVIDENCE

Where plaintiff in action under this section to recover double amount of alleged over-ceiling rents charged was permitted to go outside lease to establish a prima facie violation of section 45–1602, exclusion of evidence rebutting such showing was error, where excluded evidence merely put the lease in its proper setting. *Fulton R. Gordon, Inc.* v. *Schram* (D. C. Mun. App. 1945, 44 A. 2d 662).

In action under this section to recover double over-ceiling rent charge, where issue was whether landlord had received rent in excess of legal ceiling and lease was offered merely as evidence that defendants contracted for rent in excess of legal ceiling, and hence was collateral to the main issue, parol evidence was admissible to vary terms of lease. *Fulton R. Gordon, Inc.* v. *Schram* (D. C. Mun. App. 1945, 44 A. 2d 662).

Where parol evidence was necessary to explain two items on face of lease, testimony that individual defendant leased furnished premises to plaintiff in dual capacity as agent of corporate defendant which owned property and as agent of third person who owned furniture and that, in distribution of rent received by individual defendant, corporate defendant did not receive more than maximum rent ceiling, was admissible in tenant's action to recover double amount of alleged over-ceiling rent charges. *Fulton R. Gordon, Inc.* v. *Schram* (D. C. Mun. App. 1945, 44 A. 2d 662).

In prosecution of landlord for violating an order of rent administrator by failing to file application for determination of maximum rent ceilings before the beginning of a tenancy, negative evidence showing lack of receipt was competent to show landlord's failure to file, and mere statement by official witnesses that there was a possibility that papers might have been lost went only to weight of evidence. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

ADMINISTRATIVE FINDINGS

Under this chapter, administrator in a proceeding for adjustment of rent ceilings can properly inquire into subject of what premises rented for on freeze date for incidental purpose of enabling him to decide what rent should be, but his finding as to what rent was on that date would not be binding on municipal court in subsequent litigation between the parties for rent overcharges. *Evans* v. *Schlein* (D. C. Mun. App. 1948, 61 A. 2d 32).

AMENDMENT OF PLEADINGS

Where it appeared that defendant in action to recover double rent should have been permitted to restate his defense in an amended answer so that trial court would be able to determine whether complaint and answer presented any issues of fact or whether case was one turning entirely on question of law, refusal to grant defendant leave to file amended answer was improper. *King* v. *McKnight* (D. C. Mun. App. 1948, 61 A. 2d 714).

Court's rules permit an amendment to the complaint as a matter of course at any time before a responsive pleading is served. Where defendant has not answered but has filed a motion to dismiss, such a motion is not a responsive pleading within the meaning of the rule. *Lustine* v. *Williams* (D. C. Mun. App. 1949, 68 A. 2d 900).

AMOUNT OF RECOVERY

Proof of landlord's violation of the minimum service standard under this section may be made by showing failure to comply with the standard in one or more particulars, but the action is a single action, and where tenant does not prove the value of the services refused recovery is limited to $50, though the standard was violated in many particulars. *Hall* v. *Henry J. Robb, Inc.* (D. C. Mun. App. 1944, 34 A. 2d 863).

Where house was rented for $15.50 a month on rental freeze date and subsequent tenants paying $100 a month sued for double amount of overcharge, judge improperly computed overcharge on basis of $85, which was ceiling fixed by order of Rent Administrator, who had vacated order on discovering falsity of landlord's representation that premises were not rented on freeze date. *Gould* v. *Delsnider* (D. C. Mun. App. 1945, 42 A. 2d 140, 81 U. S. App. D. C. 54, reversed, 1946, 154 F. 2d 884, 81 U. S. App. D. C. 54).

Where house was rented for $15.50 a month on rental freeze date and was later bought by defendant, who remodeled and modernized it at cost of $2,500 and rented it to plaintiffs for $100 a month without petitioning Administrator for rent increase in case of a capital improvement, court had no discretion to award plaintiffs less than double the amount of overcharge as provided by this section. *Gould* v. *Delsnider* (D. C. Mun. App. 1945, 42 A. 2d 140, 81 U. S. App. D. C. 54, reversed, 1946, 154 F. 2d 884, 81 U. S. App. D. C. 54).

This section is limited to receipt of rent in violation of this chapter or of any provision or order thereunder prescribing a rent ceiling, and finds no support in a failure, however contumacious to comply with Rent Administrator's orders of a different character. *Dekelbaum* v. *Lloyd* (D. C. Mun. App. 1945, 41 A. 2d 174).

Where this chapter fixed maximum rent to which landlord was entitled for a lease of housing accommodations as $250, lease providing for a monthly rental of $265, was ineffective to raise the rent ceiling, and tenant was entitled to recover under subsection (a) of this section, double the amount paid in excess of the ceiling. *Wilner* v. *Vartanian* (D. C. Mun. App. 1947, 55 A. 2d 88).

Lease of premises consisting of 31 rooms and 6 baths, and used for the general purposes of a hotel or lodging house, was a lease of "housing accommodations" and subject to this chapter, and was not excluded therefrom as a "hotel." *Wilner* v. *Vartanian* (D. C. Mun. App. 1947, 55 A. 2d 88).

In tenants' action against landlords to recover for overcharge of rent and for failure to maintain minimum service standards under this section, amount of recovery is limited strictly to right to recover twice overcharge and double value of services refused. *Evans* v. *Schlein* (D. C. Mun. App. 1948, 61 A. 2d 32).

Under subsection (a) of this section authorizing tenant's recovery only of value of services which landlord fails to furnish, or $50, whichever is greater, when value of services is not proved, only one item of $50 may be recovered. *Zindler* v. *Buchanon* (D. C. Mun. App. 1948, 61 A. 2d 616).

A violation of Rent Act is to be considered entire. If twice the total over-charge exceeds the $50.00 minimum, such larger amount is the maximum which may be recovered by a tenant and he may not recover $50.00 for each separate violation. *Mancuso* v. *Santucci* (D. C. Mun. App. 1949, 69 A. 2d 274).

ATTORNEYS' FEES AND COSTS

Failure to submit proof of value of services of tenant's attorneys in action to recover double amount of rent paid in excess of maximum rent ceiling did not prevent trial judge from awarding a fee under subsection (a) of this section, since trial judge would be considered an expert on value of legal services. *Tyler* v. *Dixson* (D. C. Mun. App. 1948, 57 A. 2d 648).

Where award of fees to tenant's attorney in action to recover double amount of rent paid in excess of maximum rent ceiling appeared to be generous in amount but not so manifestly excessive as to constitute an abuse of discretion, award would not be disturbed, but additional attorneys' fees for services rendered in connection with appeal would be denied. *Tyler* v. *Dixson* (D. C. Mun. App. 1948, 57 A. 2d 648).

Appellee's request for additional allowance for attorneys' fees to cover appellate services is improper. Fees

for such services whether in trial or appellate courts should be fixed by the trial court. *Heitmuller* v. *Berkow* (C. A., D. C. 1948, 171 F. 2d 741, 83 U. S. App. D. C. 342).

There being no court rule allowing same, transcript cannot be taxed as costs nor are attorneys' fees on appeal allowable. *Sawyer* v. *Warner* (D. C. Mun. App. 1948, 63 A. 2d 653).

It is a correct rule of law that attorney's fee allowed under a statute not providing specifically that it go to the attorney is an allowance to the party and not to the attorney, and may be credited in arriving at a net judgment between the parties. The court should set off the claim, costs and allowances of one party against those of the other; and also the claim of an attorney for a charging lien should not defeat such a setoff. *Block* v. *Gates* (D. C. Mun. App. 1949, 68 A. 2d 898).

Bill of Particulars

A bill of particulars, which alleged that plaintiff as tenant in apartment called upon landlord to perform certain painting and refinishing necessary to bring apartment up to minimum service standard under § 45–1605 (a), that landlord refused to do so, and that plaintiff thereupon had the work performed, that reasonable value of such work was $115.08 and that, under this chapter, plaintiff was entitled to recover twice the value of his services, costs and attorney's fees was sufficient. *Goldberg* v. *Roumel* (D. C. Mun. App. 1944, 40 A. 2d 253).

On its face, a bill of particulars stated an over-charge of rent for which the defendant would be liable for statutory damages irrespective of an erroneous theory as to the amount recoverable since an improper measure of damages is not a ground for dismissal. *Mancuso* v. *Santucci* (D. C. Mun. App. 1949, 69 A. 2d 274).

Burden of Proof

Tenant claiming that landlord had refused to maintain minimum service standard with respect to decorating apartment occupied by its tenant, had burden of establishing such fact. *Goldberg* v. *Roumel* (D. C. Mun. App. 1946, 47 A. 2d 790).

In prosecution of a landlord for violation of a general order of rent administrator, government had burden to prove that landlord failed to comply with terms of order and that failure to do so was a willful one. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

To prove violations of the Rent Act, it is incumbent on the tenant first to establish the existence of the ceiling and standard. *Eide* v. *Traten* (D. C. Mun. App. 1950, 73 A. 2d 522).

Tenant by his answer and counterclaim admitted that he had not paid rent for the period from September 15 to October 31 and that he owed $97.50 for such period. Unless, as tenant claims, the landlord had collected rent in excess of the ceiling and had violated the minimum service standard, the allegation was an affirmative defense and the trial court properly ruled that the burden was on the tenant to proceed and proce his defense. *Eide* v. *Traten* (D. C. Mun. App. 1950, 73 A. 2d 522).

In a suit by a tenant for damages for violation of minimum service standard for lack of heat, it was not error to dismiss claim where plaintiff failed to make out a prima facie case since there was no evidence that the minimum service standard included furnishing heat by the landlord. *Bond* v. *Pinchot* and *Pinchot* v. *Bond* (D. C. Mun. App. 1949, 66 A. 2d 213).

In order to obtain damages for violation of service standard, the tenant must show that he has been deprived of a service to which he was entitled as of right. *Hutchinson* v. *Peacock* (D. C. Mun. App. 1950, 73 A. 2d 903).

Ceiling

For housing accommodations not rented within year ending January 1, 1941, no maximum rent ceiling exists until determined by Administrator of Rent Control, and until then, parties' rights are those fixed by lease agreement and there can be no violation of the ceiling. *Kern* v. *Cogswell* (D. C. Mun. App. 1948, 59 A. 2d 793).

Where ceiling has been regularly and properly established and has stood unchanged throughout the term, it could have been rendered invalid only by alteration, or change of the building, real estate, service or facilties. *Sawyer* v. *Warner* (D. C. Mun. App. 1948, 63 A. 2d 653).

Commercial User

Where tenant who had been renting first floor only for $50 rented entire building for $80 in 1939, and subsequently sublet second floor for $30 which had automatically become the rent ceiling for second floor, and first floor was not subject to this chapter because used commercially, this chapter was not violated. *Ridolfi* v. *Benton* (D. C. Mun. App. 1948, 58 A. 2d 723).

Where landlord and tenant had consistently treated first and second floors of building as divisible, and use of one floor was not essential to use of the other, fact that the two floors were rented as a whole at time of passage of this chapter and on freeze date, did not require that premises be considered as a whole, nor preclude subsequent execution of separate leases, and rental for first floor, used mostly for barber shop, was a matter for agreement between parties. *Ridolfi* v. *Benton* (D. C. Mun. App. 1948, 53 A. 2d 723).

Criminal Prosecutions

Where after conviction under § 10 (b) of the Rent Act, but before sentence, the section was stricken from the act, the pending prosecutions for violations committed while section was in force should have been continued because they were saved by the saving clause contained in 1 USCA § 109. *Quick* v. *District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 771).

Dismissal

Dismissal with prejudice by stipulation of parties of actions involving defendants' counterclaim for failure of plaintiff landlord to repair a refrigerator in apartment rented to defendants, did not dispose of defendants' counterclaim in subsequent action for failure to repair refrigerator concerning a period subsequent to the periods involved in the previous actions. *Block* v. *Wilson* (D. C. Mun. App. 1948, 61 A. 2d 493).

Equitable Estoppel

Where landlord petitioned under Section 4 of Rent Act for an adjustment, and where Administrator made no determination, this did not preclude landlord from asserting as a defense to tenant's suit for damages that the examiner's recommended order was not a sufficient basis for tenant's suit. The principles of equitable estoppel do not apply where the legal position first asserted is not successfully maintained. *Parker* v. *Sager* (C. A. D. C. 1949, 174 F. 2d 657, 85 U. S. App. D. C. 4).

Estoppel

Tenant's right to services supplied by landlord on statutory freeze date was guaranteed by § 45–1605 and was not lost by tenant's agreement to take the apartment "as is," neither did such agreement estop the tenant from maintaining action for damages under this section. *Baker* v. *Rosen* (D. C. Mun. App. 1948, 58 A. 2d 687).

Fair Trial

In prosecution of landlord for violation of rent regulation, alleged circumstances that cause was first prosecution of kind brought under subsection (b) of this section, that tenants who testified against landlord were motivated by malice engendered by a prior civil action between them and landlord, that assistant general counsel was appointed special prosecutor for the one case, and that witnesses caused prejudicial newspaper accounts to be published, in absence of an affirmative showing that such circumstances deprived landlord of a fair trial, were irrelevant. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

Intervention by Administrator

Where in the course of a trial, intervention by the Administrator was sought and granted, appellant's claim that such procedure tended to disrupt the orderly course of the trial by placing opposing counsel at a disadvantage is without merit. Generally, the Administrator should be required to make his decision on intervention at the

commencement of the trial, but that is a matter resting largely in the discretion of the trial court. *Turner* v. *Bowman* (D. C. Mun. App. 1949, 68 A. 2d 231).

JURISIDICTION

Exclusive jurisdiction is invested in municipal court by subsection (a) of this section to determine all actions for rent overcharges and includes power to decide all incidental and preliminary questions including specifically the question as to whether property was rented on the freeze date and at what rental. *Evans* v. *Schlein* (D. C. Mun. App. 1948, 61 A. 2d 32).

The Administrator was correct in dismissing petition for refund of rent over-charges for lack of jurisdiction, inasmuch as the Municipal Court has exclusive jurisdiction over actions by tenants to recover rent over-charges and penalties for failure to provide minimum service standards. *Levy* v. *Arsenault* (D. C. Mun. App. 1948, 62 A. 2d 642).

LIABILITY OF AGENT

A defendant signing lease as agent for undisclosed landlord and contracting therein for payment of overceiling rent could not escape liability to tenant for excess rent by having turned over to landlord the monies unlawfully collected after deducting defendant's commissions. *Mayer* v. *Buchanan* (D. C. Mun. App. 1946, 50 A. 2d 595).

A defendant signing lease "as agent for the owner only" did not thereby escape liability for double amount of overceiling rent collected, where defendant did not disclose identity of owner, notwithstanding that identity of owner was matter of public record. *Mayer* v. *Buchanan* (D. C. Mun. App. 1946, 50 A. 2d 595).

Where appellant's duties were more janitorial than managerial, and authority with respect to rent was limited to renting at rates fixed by owner, collecting them and turning them over, the amount of rent was no concern of the agent. Having no authority to fix them, the agent was under no duty to ascertain whether they were within the ceiling, and the agent was, therefore, not liable for rental over-charges. *Delpan* v. *Karosky* (D. C. Mun. App. 1950, 72 A. 2d 33).

Where broker is authorized to receive rent for landlord, he is a "person" within meaning of Rent Act and liable to tenant for over-charges. It is no defense that he is not a party to the lease. *Dunning* v. *Randall Hagner Co.* (D. C. Mun. App. 1949, 63 A. 2d 770).

Where defendant was the undisclosed agent of the actual landlord but had described itself as the landlord and executed the lease in its own name, the tenant could not deny his landlord's title. Also, under these circumstances, the defendant could not deny he was the landlord and was liable for violation of the minimum service standard. *Goldberg* v. *Charles C. Koones & Co.* (D. C. Mun. App. 1949, 66 A. 2d 495).

LIABILITY OF LANDLORD

That a tenant, as between himself and his subtenants, violated this chapter in collecting rentals not fixed by the Administrator, did not relieve the landlord from responsibility for complying with this chapter. *Hall* v. *Henry J. Robb* (D. C. Mun. App. 1944, 34 A. 2d 863).

Under § 45–1603 requiring for accommodations not rented during 1940 the rent and services generally prevailing for comparable accommodations, "as determined by the Administrator", an order by Administrator fixing maximum rent ceiling for particular premises effective March 16, 1943, was intended to apply only prospectively, and hence tenant could not recover excess of rent paid prior to effective date of order over ceiling fixed by Rent Administrator. *Dekelbaum* v. *Lloyd* (D. C. Mun. App. 1945, 41 A. 2d 174).

Although there can be no violation of a rent ceiling until such ceiling is established by Rent Administrator, landlord cannot willfully refuse to comply with Administrator's order directing an immediate filing of applications for determination of rent ceilings without subjecting himself to criminal liability. *Wilkerson* v. *Montgomery* (D. C. Mun. App. 1946, 47 A. 2d 102).

Where order of Rent Administrator fixing maximum rent ceiling on apartment was based on assumption that the ceiling was for furnished quarters, fact that tenant declined to use furniture in apartment and exercised her privilege of bringing into the apartment her own furniture would not show a violation of maximum rent ceiling by Administrator in charging maximum as fixed by Administrator's order. *Wilkerson* v. *Montgomery* (D. C. Mun. App. 1946, 47 A. 2d 102).

Where appellant bought a $10,000 property from stepfather with a down payment of only $300, followed by appellant's two suits seeking possession for personal use, and by extensive improvements, and the immediate renting of an apartment at a substantially higher rent, there was sufficient evidence to establish intent to evade the Rent Act. *Frankfurt* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 197).

Though in a possessory action, the rights of the parties and the condition of plaintiff's claim are to be tested by the facts as they existed on the day the suit was filed, the rule is different in a criminal prosecution in which the government alleged a device or arrangement with intent to evade the Rent Act. Such an offense would not necessarily be reflected in a single act or limited to a single day. *Frankfurt* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 197).

MOTION FOR SUMMARY JUDGMENT

In motion for summary judgment, it is not enough for an affiant to state that he has personal knowledge of the facts, but he must state the facts themselves in detail. The burden of establishing the non-existence of any genuine issue is upon the moving party. *Schwartz* v. *Sandidge* (D. C. Mun. App. 1949, 63 A. 2d 869).

MOTION TO DISMISS

A motion to dismiss concedes all facts well pleaded and if the complaint states a cause of action, however loosely drawn it may be, it is not subject to dismissal. Such motion may ony be granted when it appears certain that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of the claim. *Mancuso* v. *Santucci* (D. C. Mun. App. 1949, 69 A. 2d 274).

NATURE OF ACTION

An action to recover double amount of excess rent collected in violation of this chapter, was not an action for a statutory "penalty or forfeiture" within bar of one year statute of limitations of section 201 of Title 12. *Heitmuller* v. *Berkow* (D. C. Mun. App. 1947, 51 A. 2d 302); *Heitmuller* v. *Berkow* (App. D. C. 1948, 165 F. 2d 961).

Action to recover for rent over-charges is not one in contract based on a lease, but one to recover a statutory obligation arising from an unlawful act. *Dunning* v. *Randall Hagner Co.* (D. C. Mun. App. 1949, 63 A. 2d 770).

ORDERS REVIEWABLE

Where petitioner specifically requested Administrator to issue an order declaring a refund for over-charges, failure of the Administrator to bring suit is not reviewable on appeal when no objection was urged before the Administrator, no extraordinary circumstances were shown, and no reason shown why petitioner should not have filed suit himself. *Levy* v. *Arsenault* (D. C. Mun. App. 1948, 62 A. 2d 642).

PARTIES

Fact that during a period of the tenancy rented premises were occupied not only by tenant but also by her "girl friend" and that the two shared the rental and expenses did not preclude tenant from bringing action to recover double amount of rent paid in excess of maximum rent ceiling prescribed by this chapter. *Tyler* v. *Dixson* (D. C. Mun. App. 1948, 57 A. 2d 648).

Occupancy by several tenants of a housing unit under separate agreements with landlord did not prevent them from joining in an action for violation of a rent ceiling when their combined payments exceeded maximum ceiling for housing unit. *Glassman* v. *Graver* (D. C. Mun. App. 1948, 56 A. 2d 160).

PENALTIES

The Act provides means for enforcing violations of its provisions and to hold a landlord who has violated the

Act in one respect to be deprived of all rights under other provisions would be adding a new penalty not provided by statute. *Ostrow* v. *Horning, Inc.* (D. C. Mun. App. 1949, 69 A. 2d 277).

QUESTION FOR JURY

The question whether housing accommodations are new ones not rented on critical date under this chapter or are old ones with substantial capital improvements or alterations, is a question of fact, which, in tenant's action to recover double amount of excess rent, must, unless evidence is compelling one way or the other, be decided by jury. *Delsnider* v. *Gould* (App. D. C. 1946, 154 F. 2d 844).

Whether real estate agent agreed to take care of everything necessary to establish rent ceiling was for jury. *Norris* v. *Rael* (D. C. Mun. App. 1946, 47 A. 2d 766).

Whether housing accommodations are new ones not rented on the critical date, or old ones with substantial capital improvements or alterations, is a question of fact which must be decided by the jury unless the evidence is compelling one way or another. *Norris* v. *Rael* (D. C. Mun. App. 1946, 47 A. 2d 766).

In prosecution of landlord for failure to file an application for determination of maximum rent ceiling as required by an order of rent administrator, conflicting testimony that application was not received by administrator's office and was not on file and testimony of landlord that application was filed was for jury. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

The question whether accommodations involved are new ones, or old ones with substantial capital improvement, is a question of fact for jury. *Sawyer* v. *Warner* (D. C. Mun. App. 1948, 63 A. 2d 653).

REDUCTION OF SERVICES

Even if place or person for receiving rent could be considered a service supplied in connection with use and occupancy of housing accommodations, landlord could designate a different agent to receive rent without being liable under subsection (a) of this section for reduced services. *Roumel* v. *Goldberg* (D. C. Mun. App. 1946, 46 A. 2d 114).

Finding that tenant had been denied service of a resident manager who would take charge of packages left for tenant in his absence, which service had been furnished tenant on freeze date under subsection (a) of this section, was insufficient to authorize tenant to recover damages from landlord for violation of service standard, in absence of further finding that such service was furnished to tenant on freeze date as a matter of right, and not gratuitously. *Roumel* v. *Goldberg* (D. C. Mun. App. 1946, 46 A. 2d 114).

REMEDY AS EXCLUSIVE

A tenant may not minimize statutory liability for exceeding rent ceiling by suing for mere reimbursement, since statutory remedy is exclusive. *Moore* v. *Coates* (D. C. Mun. App. 1944, 40 A. 2d 68).

REPAIRS, RECOVERY FOR

Where there was no agreement by landlord to repair, landlord's only duty was to maintain minimum service standard provided in this chapter, and tenant, upon claiming that landlord breached such duty in refusing to paint walls and refinish floors of apartment, was required to rely upon remedies provided by this section, and he could not make the repairs himself and then sue for twice their cost. *Goldberg* v. *Roumel* (D. C. Mun. App. 1947, 47 A. 2d 790).

In landlord's action for possession of rented apartment for failure of tenants to pay rent, wherein tenants counterclaimed for failure of landlord to repair refrigerator although refrigeration was a service standard prescribed by rent administrator, evidence sustained finding that landlord had inexcusably failed to supply refrigeration and that tenants were entitled to recover on their counterclaim as against contention that landlord was not notified of bad condition of refrigerator and did not refuse to repair. *Block* v. *Wilson* (D. C. Mun. App. 1948, 61 A. 2d 493).

RES JUDICATA

Where tenants commenced proceedings before rent administrator to determine rent charged by landlord on freeze date but administrator made no affirmative finding on that issue and held that evidence failed to establish rent increase over that payable on freeze date or that premises were rented on freeze date, and dismissed petition administrator was without jurisdiction to determine that there had been an overcharge and dismissal was not res judicata of any issue in tenants' subsequent action before municipal court to recover for rent overcharges and failure to provide minimum services under this chapter. *Evans* v. *Schlein* (D. C. Mun. App. 1948, 61 A. 2d 32).

Where tenant's petition for rent refund was dismissed for lack of jurisdiction of relief sought, and Administrator had undertaken to make findings on some of the questions in controversy, such findings are without effect and are not res judicata in any other proceedings involving the question. *Levy* v. *Arsenault* (D. C. Mun. App. 1948, 62 A. 2d 642).

Where tenant sought an order restoring the services which had been withdrawn, or a corresponding reduction in rent, and failing to get either, then began present litigation seeking statutory damages for landlord's alleged refusal to furnish the services in question, he had no right to maintain suit because the issues had already been tried by the Administrator and determined against him. *Connolly* v. *B. F. Saul Co., Inc.* (D. C. Mun. App. 1949, 68 A. 2d 236).

RESCIND, DEFINITION OF

In this section, authorizing tenant to sue to rescind lease if landlord receives rent or refuses to render services as required by § 45–1601 et seq. or regulation thereunder, "rescind" must be given its commonly accepted meaning, so that, when tenant obtains rescission, lease is annulled and abrogated. *Friedman* v. *Kennedy* (D. C. Mun. App. 1944, 40 A. 2d 72).

SERVICE STANDARD

The word "entitled" in provision of subsection (a) of this section and § 45–1602 authorizing tenant to recover damages from landlord upon proof of failure to furnish minimum service standard to which tenant was entitled on freeze date under this chapter, means having a right to, and indicates that service standard consists only of services tenant was entitled to as of right on freeze date, and not those which were furnished gratuitously or as a matter of courtesy. *Roumel* v. *Goldberg* (D. C. Mun. App. 1946, 46 A. 2d 114).

In order to entitle tenant to recover damages from landlord for violation of minimum service standard under subsection (a) of this section and § 45–1602, such service need not be specifically contracted for in lease or rental agreement. *Roumel* v. *Goldberg* (D. C. Mun. App. 1946, 46 A. 2d 114).

Where apartment contained a refrigerator at time of rental to defendants, and administrator in determining rent for apartment, also determined that rent was based upon a minimum service standard including repairs, landlord was required to keep refrigerator in repair regardless of agreement relieving landlord of duty to keep refrigerator in repair. *Block* v. *Wilson* (D. C. Mun. App. 1948, 61 A. 2d 493).

Where tenant claimed that there was a violation of the service standard because the furniture in her apartment was not of the value indicated by the landlord, it is the furniture and not the value of it which constitutes the service. The tenant should have applied to the administrator for a reduction in rent as she is permitted to do if she felt the apartment did not warrant the maximum rent. *Astin* v. *Phillips* (D. C. Mun. App. 1949, 66 A. 2d 690).

Where tenants of an apartment house sued their landlord for damages for his alleged refusal to render services as required by the applicable minimum service standard, the evidence supported a finding that those services applied only to those rented on a daily or hotel basis and not to tenants' apartments. *Astin* v. *Phillips* (D. C. Mun. App. 1949, 66 A. 2d 690).

There was substantial evidence to support the view that the minimum service standard for the premises included the making of repairs to the roof by the landlord, and there was also substantial evidence to support the view that the repairs were refused. *Bond* v. *Pinchot* and *Pinchot* v. *Bond* (D. C. Mun. App. 1949, 66 A. 2d 213).

There was ample evidence in the record to support trial court's findings that landlord refused to supply the services requested, i. e., heat, hot water and maintenance of the apartment in habitable conditions. *Block* v. *Gates* (D. C. Mun. App. 1949, 68 A. 2d 215, modified on other grounds, 68 A. 2d 898).

A tenant is under no duty and generally has no right to attempt to repair those parts of a central system outside his own apartment. *Goldberg* v. *Charles C. Koones & Co.* (D. C. Mun. App. 1949, 66 A. 2d 495).

To have a refusal of services within the meaning of the Rent Act, the landlord must have some knowledge of the need for the services and an opportunity to furnish them. *Bischoff* v. *Person* (D. C. Mun. App. 1950, 73 A. 2d 716).

STANDARD OF RECOVERY

Tenants must rely on the Rent Act for their remedies and consequently they must also rely on it for their standard of recovery. *Mancuso* v. *Santucci* (D. C. Mun. App. 1949, 69 A. 2d 274).

STATUTE OF LIMITATIONS

The rule is well settled in this jurisdiction that a suit under the District of Columbia Emergency Rent Act for the recovery of rent overcharges is governed by the general three-year limitation contained in Code 1940, § 12–201, as an action, the limitations of which is not otherwise specially prescribed. *Lustine* v. *Williams* (D. C. Mun. App. 1949, 68 A. 2d 900).

SUFFICIENCY OF EVIDENCE

Evidence justified landlord's recovery of rented premises on ground that they were rented for office purposes and were being used by tenant for living purposes, and denial of the tenant's counterclaim on ground that rent charged on a commercial basis was illegal under this chapter because the premises constituted "housing accommodations," within the meaning of section 1611 (a) of this title. *De Bobula* v. *Winston* (D. C. Mun. App. 1948, 57 A. 2d 742).

Evidence authorized conviction of landlord of violating this chapter by willfully violating order of rent administrator requiring the filing of an application for determination of a maximum rent ceiling. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

Evidence sustained finding that there had been no failure on part of landlord to render minimum services under this chapter to apartment tenant seeking damages. *Zindler* v. *Buchanon* (D. C. Mun. App. 1948, 61 A. 2d 616).

Where, on statutory freeze date, service supplied by landlords included, among other things, window shades, refrigerator, and repairs inside and outside, and the uncontradicted evidence showed that landlords had refused to furnish window shades or refrigerator and had failed or refused to do any decorating or to make other essential repairs, a prima facie case was made out by tenant that he was entitled to some damages, if no more than the $50 named in this section. *Baker* v. *Rosen* (D. C. Mun. App. 1948, 58 A. 2d 687).

Question whether repairs or remodeling constitute new housing is ordinarily a question of fact. *Lustine* v. *Williams* (D. C. Mun. App. 1949, 68 A. 2d 900).

Where landlord acted on claim that the premises, when rented at the lowest figure, were unfurnished, whereas they were rented furnished to the tenant and that the furnished premises were new accommodations not subject to the old rent ceiling and further, where tenant disputed this, claiming that the furniture never belonged to the landlord but was formerly owned by a previous tenant, trial court was justified in finding either that the furniture was not supplied by the landlord or if it was, that its addition did not result in new accommodations. *Turner* v. *Bowman* (D. C. Mun. App. 1949, 68 A. 2d 231).

Where trial judge ruled as a matter of law that there had been no substantial change or alteration so as to constitute new accommodations, such ruling is substantiated where the findings of fact are supported by the evidence. *Cummings* v. *Peters* (D. C. Mun. App. 1949, 66 A. 2d 516).

A refusal of services as contemplated by the Act need not be explicit, and a repeated failure to perform a duty may be equivalent to a refusal. *Bischoff* v. *Person* (D. C. Mun. App. 1950, 73 A. 2d 716).

THIRD PARTY PRACTICE

Where a third party defendant was not served with notice of the motion for summary judgment, such a defendant was deprived of no rights by such failure and cannot complain. Court properly exercised its discretion in passing on the motion. *Schwartz* v. *Sandidge* (D. C. Mun. App. 1949, 63 A. 2d 869).

WILLFUL VIOLATION

To establish a "willful" violation of this chapter, only proof of a knowing violation is required, and specific proof of malice or bad purpose is not contemplated. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

§ 45–1611. Definitions.

As used in this chapter—

(a) The term "housing accommodations" means any building, structure or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia (including, but without limitation, houses, apartments, hotels, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all services supplied in connection with the use or occupancy of such property.

(b) The term "services" includes the furnishing of light, heat, hot and cold water, telephone, elevator service, furnishings, furniture, window shades, screens, awnings, and storage, kitchen, bath, and laundry facilities and privileges, maid service, janitor service, the removal of refuse, and the making of all repairs suited to the housing accommodations or necessitated by ordinary wear and tear, and any other privilege or facility connected with the use or occupancy of housing accommodations.

(c) The term "rent" means the consideration, including any bonus, benefit, or gratuity, demanded or received per day, week, month, year, or other period of time as the case may be, for the use or occupancy of housing accommodations or the transfer of a lease for such accommodations.

(d) The term "maximum-rent ceiling" means the maximum rent which may be demanded or received for the use or occupancy of housing accommodations or the transfer of a lease for such accommodations.

(e) The term "minimum-service standard" means the minimum service which may be supplied in connection with the renting or leasing of housing accommodations.

(f) The term "tenant" includes a subtenant, lessee, sublessee, or other person entitled to the use or occupancy of any housing accommodations.

(g) The term "landlord" includes an owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any housing accommodations.

(h) The term "person" includes one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative thereof.

(i) The term "documents" includes leases, agreements, records, books, accounts, correspondence, memoranda, and other documents, and drafts and copies of any of the foregoing. (Dec. 2, 1941, 55 Stat. 794, ch. 553, § 11.)

SEPARABILITY PROVISIONS, APPROPRIATIONS AND SHORT TITLE

SECS. 12–14 of the act of Dec. 2, 1941, cited to text, provided:

"SEC. 12. SEPARABILITY.—If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

"SEC. 13. APPROPRIATION.—There is hereby authorized to be appropriated such funds as may be necessary to carry out the provisions of this Act, to be paid out of money in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated.

"SEC. 14. SHORT TITLE.—This Act may be cited as the 'District of Columbia Emergency Rent Act'."

NOTES TO DECISIONS

ANIMALS ON PREMISES

Where tenants brought their dogs into building after effective date of this chapter, right to keep dogs on leased premises was neither a "privilege" nor a "facility" within this chapter, and therefore this chapter did not preclude landlord from exercising right under lease to revoke permission to keep dogs. *Mee* v. *Marlyn Apartment Co.* (D. C. 1943, 31 A. 2d 864).

The right to keep a dog in leased premises was neither a "privilege" nor a "facility" within this chapter, and therefore this chapter did not preclude landlord from exercising right under lease to revoke permission to keep dog. *Shay* v. *Randall H. Hagner & Co.* (D. C. Mun. App. 1944, 38 A. 2d 617).

COUNTERCLAIMS

This chapter permitting landlord to petition Rent Administrator for increased rentals based upon operating costs, or capital improvements or alterations, is exclusive, and landlord sued for penalty on account of exaction of rent in excess of ceiling could not maintain counterclaim for rental value of furnishings of apartment. *Norris* v. *Rael* (D. C. Mun. App. 1946, 47 A. 2d 766).

HOUSING ACCOMMODATIONS

Leased property, used and operated by hold-over tenant as rooming house, constituted "housing accommodations" within this chapter, so as to preclude landlord from recovering possession of property for purpose of continuing such operation, though tenant was operating establishment as business for profit and did not personally live in house. *Lingo* v. *Wolfe* (D. C. Mun. App. 1944, 37 A. 2d 270).

Business property not used for dwelling purposes was not governed by this chapter. *J. & J. Slater, Inc.* v. *Brainerd* (D. C. Mun. App. 1945, 43 A. 2d 714).

Where premises rented on critical date under this chapter, was a frame building described as a "shack", and after that date a new owner installed water, plumbing and electricity and a bathroom with tub and overhanging shower, finished walls, installed electric refrigerator and electrically controlled kerosene furnace, rebuilt front entrance, planted flowers in yard and made repairs and completely furnished the house except for silver and linen, the completely equipped and furnished house was a new "housing accommodation" within § 1602 (1) which was not rented on critical date so that ceiling rent was the rent generally prevailing for comparable housing accommodations. *Delsnider* v. *Gould* (App. D. C. 1946, 154 F. 2d 844).

Where apartment in rear of first floor could not be rented or used conveniently except in connection with use of front room occupied by barber shop, and was never separately rented, but first floor was treated as a unit, rent being based primarily upon commercial use of the barber shop, second floor which was continuously used for dwelling and had separate entrance, but not first floor was within subsection (a) of this section. *Ridolfi* v. *Benton* (D. C. Mun. App. 1948, 58 A. 2d 723).

The definition of housing accommodations seems plainly to prescribe that the use of the premises shall determine whether the Rent Act is to apply and this seems to be the test even though the property is zoned for commercial use. When so zoned, it must be used commercially to be free from the control of the Rent Act. *White* v. *Allen* (D. C. Mun. App. 1949, 70 A. 2d 252, see also 70 A. 2d 613).

LANDLORD

One who purchased an apartment in co-operative building and pursuant thereto acquired stock in corporate owner of building and a proprietary lease for 99 years with right of 100-year renewals was a "landlord" within subsection (g) of this section and was entitled to maintain suit for possession of her apartment for own personal use. *Hicks* v. *Bigelow* (D. C. Mun. App. 1948, 55 A. 2d 924).

Under subsection (g) of this section the person suing for possession need not be the owner of a fee simple title, but it is sufficient if the plaintiff is the landlord. *Mancuso* v. *Santucci* (D. C. Mun. App. 1948, 60 A. 2d 697).

The Act contains no express reference to the United States as a landlord or to the application of the Act to government-owned housing of any kind, and does not apply to government housing in the District. *United States* v. *Wittek,* 1949 (69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1906).

Evidence entitles the purchaser of perpetual use and equity contract to the rights of a landlord within the Rent Act when the substantial nature of these rights rather than the form of the transaction is considered. *Abbot* v. *Bralove* (D. C. D. C. 1948, 81 F. Supp. 532, aff'd 176 F. 2d 64, 85 U. S. App. D. C. 189).

The defendant purchasers of a cooperative apartment, because of their proprietary rights, voice in the management of the building, voice in any proposed sale or mortgage of the property, plus the exclusive right to perpetual occupancy of an apartment in the dwelling, and other facts of ownership, are landlords within the definitions contained in the Rent Act. *Abbot* v. *Bralove* (D. C. D. C. 1948, 81 F. Supp. 532, aff'd 176 F. 2d 64, 85 U. S. App. D. C. 189).

PERSON

Religious corporation which furnished free food and shelter to its students was a "person" and was capable of using house for "occupancy as a dwelling" within provision of § 45–1605 authorizing a landlord to recover possession from a tenant if he seeks in good faith to recover possession for his immediate and personal use and occupancy as a dwelling. *Hoffman* v. *Apostolic Works* (D. C. Mun. App. 1945, 43 A. 2d 848).

A defendant signing lease as agent for undisclosed landlord and contracting therein for payment of overceiling rent was a "person" against whom tenant could bring action for overceiling rent under section 1610 of this title. *Mayer* v. *Buchanan* (D. C. Mun. App. 1946, 50 A. 2d 595).

Where broker is authorized to receive rent for landlord, he is a "person" within meaning of the Rent Act and liable to tenant for over-charges, and it is no defense that he is not a party to the lease. *Dunning* v. *Randall Hagner Co.* (D. C. Mun. App. 1949, 63 A. 2d 770).

RENT

Landlord's contention that monthly payments were paid under an agreement for the right to sub-let is untenable. The payments constitute rent because the subletting was a use of the apartment and anything paid for such use constitutes rent. *Perper* v. *Danford* (D. C. Mun. App. 1949, 63 A. 2d 773).

Making a security deposit in connection with the rental of housing accommodations constitutes both a detriment to the tenant and a benefit to the landlord within the classical definition of consideration and is

within the term "rent." *Block* v. *Gates* (D. C. Mun. App. 1949, 66 A. 2d 215, modified on other grounds, 68 A. 2d 898).

RIGHT TO POSSESSION

Where plaintiff sued for possession of property purchased at foreclosure sale, against defendant who had previously owned the property but had defaulted on the second trust note, the defense that, when the deed to trust was foreclosed, defendants automatically became tenants at will under § 45–822 and could not be ousted by reason of § 45–1605, is not applicable as the property did not constitute housing accommodations within the meaning of § 45–1611. *Surratt* v. *Real Estate Exchange, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 587).

TENANT

A lessee who has sued to rescind lease is not a "person entitled to the use or occupancy" of premises within definition of "tenant" in this chapter, and hence cannot retain possession. *Friedman* v. *Kennedy* (D. C. Mun. App. 1944, 40 A. 2d 72).

A tenant who had sublet the leased premises and was not in possession thereof, although entitled to possession, was a "tenant" within meaning of this chapter and was entitled to the protection thereof until dispossessed by the landlord. *Hall* v. *Henry J. Robb, Inc.* (D. C. Mun. App. 1944, 34 A. 2d 863).

Where tenant terminated tenancy by notice acceptable to landlord but tenant's estranged wife remained in possession after lease was terminated, she was no longer "entitled" to occupancy within meaning of subsection (f) of this section. *Scott* v. *H. G. Smithy Co.* (D. C. Mun. App. 1947, 53 A. 2d 45).

The occupant of one room in a house for whom owners provided furnishings, linens, towels, and daily maid service was a "roomer" and not a "tenant". *Tamamian* v. *Gabbard* (D. C. Mun. App. 1947, 55 A. 2d 513).

The fact that occupancy relates to one room only is not decisive as to whether occupant is a "roomer" or a "tenant", since tenancy may exist with respect to a single room. *Tamamian* v. *Gabbard* (D. C. Mun. App. 1947, 55 A. 2d 513).

UNIT FOR RENT CEILINGS

The unit for which a rent ceiling is fixed by this chapter is not the real estate or the premises but the combination of real estate, all personal property, all facilities and all services connected with the use or occupancy and for which rent was payable. *Delsnider* v. *Gould* (App. D. C. 1946, 154 F. 2d 844). See also, *James* v. *Noorbolm* (D. C. Mun. App. 1946, 47 A. 2d 105).

Chapter 17.—SERVICEMEN'S READJUSTMENT

Sec.

45–1701. Disability of minority removed—Investment by building associations.
45–1702. Direct-reduction loans authorized.

§ 45–1701. Disability of minority removed—Investment by building associations.

(a) The disability of minority of a resident of the District of Columbia who is eligible for guaranty of a loan pursuant to chapter 11C of title 38, United States Code, and of a minor spouse of any such resident (when acting jointly with such resident) is hereby removed with respect to the incurring of any obligation all or part of which is guaranteed under the provisions of said chapter or in conjunction with which a secondary loan is so guaranteed, and with respect to the exercise of the rights of ownership in any property acquired with the proceeds of any such obligation, including the right to sell, convey, lease, encumber, improve, or maintain the same and to further obligate himself incident to his exercise of such rights.

(b) Notwithstanding any other provision of law, any building association or building and loan association or any savings and loan association, incorporated or unincorporated, organized and operating under the laws of the District of Columbia, or any Federal savings and loan association whose main office is in the District of Columbia, may invest its funds in: (1) Property-improvement loans insured or insurable under sections 1701–1706 of Title 12, United States Code; (2) loans to veterans of World War II when guaranteed in whole or in part by a loan guaranty certificate issued under chapter 11C of title 38, United States Code, including, without limitation, such loans as are unsecured and such loans as are junior to another mortgage or lien upon the security; and (3) other secured or unsecured loan for property alteration, repair, or improvement or for home equipment: *Provided,* That no such unsecured loan not insured or guaranteed by a Federal agency shall be made in excess of $2,000: *Provided further,* That the total amount loaned or invested and held in unsecured loans not insured or guaranteed by a Federal agency as provided for under this subsection at any one time shall not exceed 15 per centum of the association's assets. (May 1, 1946, 60 Stat. 159, ch. 245, § 2.)

SHORT TITLE

Section 1 of the Act of May 1, 1946, cited to text provided: "That this Act [this chapter] may be cited as the 'District of Columbia Servicemen's Readjustment Enabling Act of 1945'."

§ 45–1702. Direct-reduction loans authorized.

Any building association, building and loan association, or savings and loan association organized and operating under the laws of the District of Columbia, is authorized to lend money to veterans of World War II and others upon the security of a first deed of trust or first mortgage upon real estate, to be repaid in monthly or quarterly payments to be applied first to interest and the balance to principal until the indebtedness is paid in full, and without subscription to, or ownership of any shares, and such loans shall be known as direct-reduction loans. Direct-reduction-loan borrowers, and all persons assuming or obligated under direct-reduction loans made or held by such association shall be members of the association, and at all meetings of the members of the association, each borrower or each obligor upon a direct-reduction loan shall be entitled to one vote as such member. (May 1, 1946, 60 Stat. 159, ch. 245, § 3.)

TITLE 46.—SOCIAL SECURITY

Chap.		Sec.
1.	Care of blind	46–101
2.	Old-age assistance	46–201
3.	Unemployment compensation	46–301

Chapter 1.—CARE OF BLIND

Sec.

46–101. Relief for blind persons—Commissioners to enforce provisions for—Agency.

46–102. Inmate of institution applying for relief—Definition of "needy blind person."

46–103. Eligibility for aid—Age—Residence—Liability of relatives for.

46–104. Application for aid—Affidavit—Contents.

46–105. Evidence of blindness—Amount of aid—Appeal from agency.

46–106. Aid to blind person—Increase or decrease of allowance—Appeal—Aid pending appeal.

46–107. Blind person receiving aid not to solicit alms.

46–108. Aid to blind person to cease on removal from District of Columbia—Temporary absence.

46–109. Refusal to work—Refusal to submit to treatment.

46–110. No benefits when intentional destruction of eyesight—Loss of eyesight through crime or vicious habits.

46–111. Liability of relatives for aid to blind person—Agency authorized to recover amount paid.

46–112. Deduction of aid to blind persons from estates of assisted persons—Transfer of property to board or agency as security.

46–113. Penalty for fraud in obtaining allowance for blind person.

46–114. Appropriation for—Accounts—Appointment of one to stand in loco parentis.

46–115. Board of Commissioners—Cooperation with Social Security Board.

46–116. Care for blind—Liberal construction—Saving clause.

§ 46–101 [8: 251]. Relief for blind persons—Commissioners to enforce provisions for—Agency.

The Board of Commissioners of the District of Columbia (hereinafter called the "Board") is hereby authorized and directed to enforce the provisions of this chapter for the purpose of maintaining, supporting, and caring for needy blind persons who are residents of the said District of Columbia, citizens of the United States, and not inmates of any institution supported in whole or in part by the Federal or District Governments, and said Board shall have the power to make and enforce all proper rules and regulations therefor, including the definitions of "blindness" and of "needy individuals" and the power to make and require any reports required by the Federal Social Security Board or otherwise authorized or required by law. The said Board may entrust the carrying out of the provisions of this chapter, or any of them, to any agency of the government of the District of Columbia which said Board may designate. (Aug. 24, 1935, 49 Stat. 744, ch. 639, § 1.)

CROSS REFERENCES

Rules and regulations generally, § 1–226 and notes.

Rules and regulations regarding care and management of pensioners' property, § 46–112.

§ 46–102 [8: 252]. Inmate of institution applying for relief—Definition of "needy blind person."

As used in this chapter, the term "needy blind person" shall be construed to mean any person who by reason of the loss or impairment of eyesight is of such condition that he can not be rehabilitated for self-support through the facilities offered by the Vocational Rehabilitation Service for the District of Columbia, United States Office of Education, and who is unable to provide himself with the necessities of life and who has not sufficient means of his own to maintain himself and who is otherwise qualified as further set forth in this chapter, and nothing in this chapter shall prevent any blind person in sound mental and physical condition who is an inmate of an institution for the care of the indigent from applying for the benefits under this chapter on the condition that they leave such institution upon the granting of such relief. (Aug. 24, 1935, 49 Stat. 744, ch. 639, § 2.)

§ 46–103 [8: 253]. Eligibility for aid—Age—Residence—Liability of relatives for.

In order that any person who shall have become blind while a resident of the District of Columbia may be entitled to aid under the provisions of this chapter such person must be at least sixteen years of age and a resident of the District of Columbia for one year next preceding his application for aid hereunder: *Provided,* That in order that any person whose blindness originated while he was not a resident of the District of Columbia may be entitled to aid hereunder, such person must be at least twenty-one years of age and must have been a bona fide resident of the District of Columbia for a period of five years during the nine years immediately preceding the filing of his application for aid hereunder and must have resided in the District of Columbia continuously for at least one year immediately preceding the date of the application: *And provided further,* That nothing in this chapter shall be construed to repeal or render void, so far as blind persons are concerned, any existing statutes which create or define a liability on the part of certain persons to support and provide for poor relatives. (Aug. 24, 1935, 49 Stat. 744, ch. 639, § 3.)

§ 46–104 [8: 254]. Application for aid—Affidavit—Contents.

To receive aid under this chapter, the applicant shall file his application with the Board or its designated agency, accompanied by an affidavit signed by himself stating his age, sex, places of residence during the period stipulated in the District of Columbia, his financial resources, and incomes, the name and address of his next of kin, degree of blindness, how long blind, what employment he has had, his general physical condition, and such other information

as the Board or its designated agency may designate. (Aug. 24, 1935, 49 Stat. 745, ch. 639, § 4.)

§ 46–105 [8: 255]. Evidence of blindness—Amount of aid—Appeal from agency.

No aid shall be granted hereunder until the board or its designated agency is satisfied from the evidence of at least two reputable citizens of the District of Columbia that they know the applicant has the residential qualifications to entitle him to the aid asked for, and from the evidence of a duly licensed and practicing oculist whose duty it shall be to describe the condition of the applicant's eyes and to testify to his blindness, which evidence shall be in writing subscribed to by such witnesses, subject to the right of cross-examination by either the Board or its designated agency; and if the Board or its designated agency is satisfied by such testimony that the applicant is entitled to aid hereunder, it shall, without delay, allow such sum as it finds needed: *Provided,* That no aid shall be furnished any individual with respect to any period with respect to which he is receiving old-age assistance: *Provided further,* That in the case of a blind dependent child living with its parents or parent such aid shall not exceed $30 per month: *And provided further,* That any agency designated by the Board hereunder shall transmit to the Board a record of its actions in granting or refusing to grant aid to each blind applicant, and any blind applicant who is dissatisfied with the finding of such agency regarding his application for aid, may appeal to the Board who shall grant such applicant a full hearing, after reasonable notice, and shall then consider the application; and, if a majority of the Board in attendance at a meeting at which a quorum is present shall find that the applicant is entitled to aid under the provisions of this chapter, they shall then and there award such aid as they deem proper.

On the death of a recipient of aid under this Act such reasonable funeral expenses as the Board or its designated agency may deem necessary may be paid for the burial of such person and such funeral expenses so paid may be recovered in the same manner as provided in sections 46–111 and 46–112 for the recovery of amounts expended as aid. (Aug. 24, 1935, 49 Stat. 745, ch. 639, § 5; Aug. 21, 1941, 55 Stat. 656, ch. 391, § 1.)

AMENDMENTS

The act of Aug. 21, 1941, cited to text, added the last sentence.

§ 46–106 [8: 256]. Aid to blind person—Increase or decrease of allowance—Appeal—Aid pending appeal.

The Board or its designated agency shall investigate annually, or oftener, the qualifications of blind persons who receive aid hereunder, and may increase or decrease the allowance within the limits prescribed by this chapter; or if said designated agency is satisfied that any person receiving aid under this chapter is not entitled to such aid, it shall discontinue such aid and shall forthwith notify such person and the Board of such action: *Provided, however,* That the person receiving such aid may take an appeal to the Board from such action as if it were an original application for aid: *And provided further,* That such an appeal must be filed within sixty days from the notification by the designated agency to the beneficiary hereunder of the intended reduction or discontinuance of aid. If any such appeal be filed, the said aid shall be restored pending the findings of the board on said appeal. (Aug. 24, 1935, 49 Stat. 745, ch. 639, § 6.)

§ 46–107 [8: 257]. Blind person receiving aid not to solicit alms.

No persons shall be eligible to receive aid under the provisions of this chapter who, after receiving said aid publicly solicits alms in any manner, either by wearing, carrying, or exhibiting signs denoting blindness for the securing of alms, or by any signs calling attention to blindness exhibited on wares and merchandise, or the carrying of receptables for the purpose of securing alms, or the doing of the same by proxy or by stationary or house-to-house begging, or any other means of publicly securing aid. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 7.)

§ 46–108 [8: 258]. Aid to blind person to cease on removal from District of Columbia—Temporary absence.

Any person qualifying for and receiving aid hereunder who removes himself from the jurisdiction of the District of Columbia and thereby ceases to be a resident shall no longer be entitled to the benefits and aid under the provisions of this chapter. Absence for a reasonable length of time, as designated by the Board, shall not work a forfeiture hereunder. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 8.)

§ 46–109 [8: 259]. Refusal to work—Refusal to submit to treatment.

The benefits hereof shall not be granted to any person between the ages of sixteen and fifty-five years who, having no occupation and being both physically and mentally capable of some useful occupation, or of receiving vocational or other training, refuses for any reason to engage in such useful occupation, or refuses to avail himself of such vocational or other training: *Provided,* That no person shall be entitled to the benefits of this chapter who shall refuse to submit to any treatment or operation for blindness when such treatment or operation is recommended by three examining oculists and approved by the Board or its designated agency. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 9.)

§ 46–110 [8: 260]. No benefits when intentional destruction of eyesight—Loss of eyesight through crime or vicious habits.

No person shall be eligible to the benefits of this chapter who shall hereafter either intentionally deprive himself of his eyesight or assist in the destruction thereof by others; or hereafter shall lose his eyesight during the perpetration of a criminal offense; or shall hereafter lose his eyesight by reason of vicious habits. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 10.)

§ 46–111 [8: 261]. Liability of relatives for aid to blind person—Agency authorized to recover amount paid.

The kindred of any person otherwise entitled to aid under the provisions of this chapter, in line and de-

gree of spouse, father, child, or grandchild, living in the District of Columbia and of sufficient ability so to do shall be bound to support such person, in the order above named and in proportion to their respective ability. If at any time during the continuance of aid the Board of Commissioners, or its designated agency has reason to believe that a spouse, father, child, or grandchild is reasonably able to assist him, it shall be empowered to bring suit, after notifying such person of the amount of such aid, against such spouse, father, child, or grandchild to recover the amount of such aid provided under this chapter, or such part thereof as such spouse, father, child, or grandchild was reasonably able to pay. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 11.)

§ 46–112 [8: 262]. Deduction of aid to blind persons from estates of assisted persons—Transfer of property to Board or agency as security.

At the death of a recipient of aid under this chapter, or of the last survivor of a married couple either one of whom have received aid, the total amount of aid since the first grant, together with simple interest at the rate of 3 per centum per annum, shall be deducted and allowed by the proper courts out of the proceeds of his property as a preferred claim against the estate of the person so assisted, and refunded to the Treasurer of the United States to the credit of the District of Columbia, leaving the balance for distribution among the lawful heirs in accordance with law: *Provided,* That upon sufficient cause, such as mismanagement, failure to keep in repair, or the inability of any recipient of aid properly to manage his property, the designated agency of the Board may demand the assignment or transfer of such property, or a proper part thereof, upon the first grant of such aid, or at any time thereafter that it deems advisable for the purpose of safeguarding the interest of any applicant or for the protection of the funds of the District of Columbia. Such agency shall establish such rules and regulations regarding the care, management, transfer, and sale of such property as it deems advisable and shall provide for the return of the balance of the claimant's property into his hands whenever the assistance is withdrawn or the claimant ceases to request it. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 12.)

CROSS REFERENCE

Rules and regulations generally, § 46–101.

§ 46–113 [8: 263]. Penalty for fraud in obtaining allowance for blind person.

Any person who attempts to obtain, or obtains, by false representation, fraud, or deceit, any allowance under this chapter, or who receives any allowance knowing it to have been fraudulently obtained, or who aids or assists any person in obtaining or attempting to obtain an allowance by fraud, shall upon conviction in the police court of the District of Columbia be punished by a fine of not more than $500 or by imprisonment for not more than one year, or by both such fine and imprisonment. (Aug. 24, 1935, 49 Stat. 747, ch. 639, § 13.)

§ 46–114 [8: 264]. Appropriation for — Accounts — Appointment of one to stand in loco parentis.

In order to carry out the provisions of this chapter there is authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $75,000, payable from the revenues of the District of Columbia, and for the fiscal year ending June 30, 1937, and annually thereafter, the Commissioners of the District of Columbia shall include in the estimate of appropriations for said District of Columbia, such an amount as may be necessary for this purpose; and the Board shall assign such personnel in the employ of the District of Columbia as may be necessary to administer this chapter and said Board or its designated agency shall keep and render separate account of the funds expended and separate statistical reports of the persons aided, under the provisions of this chapter: *Provided,* That whenever necessary said Board shall appoint an acceptable member of the personnel to stand in loco parentis to any minor qualifying for aid hereunder. (Aug. 24, 1935, 49 Stat. 747, ch. 639, § 14.)

§ 46–115 [8: 265]. Board of Commissioners—Cooperation with Social Security Board.

The Board of Commissioners or its designated agency is hereby authorized and directed to cooperate in all necessary respects with the Social Security Board of the United States Government in the administration of this chapter, and to accept any sums allotted or apportioned by such Board as are available under the provisions of the Social Security Act. (Aug. 24, 1935, 49 Stat. 747, ch. 639, § 15.)

§ 46–116 [8:266]. Care for blind—Liberal construction—Saving clause.

The provisions of this chapter are to be liberally construed to effect its objects and purposes, and if any section, subsection, or subdivision of this chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. (Aug. 24, 1935, 49 Stat. 747, ch. 639, § 16.)

Chapter 2.—OLD-AGE ASSISTANCE

Sec.

46–201. Old-age assistance—Definitions.
46–202. Eligibility—Age—Residence requirements—Other relief not given except medical aid.
46–203. Agency to administer old-age assistance—Amount—Reference to Home for Aged and Infirm—Hearing and review.
46–204. Old-age assistance inalienable and exempt from levy.
46–205. Recipient of old-age assistance—Reasonable funeral expenses authorized.
46–206. Application for old-age assistance.
46–207. Investigation of applicant for assistance.
46–208. Change or suspension of old-age assistance.
46–209. Inquiry into old-age assistance improperly obtained.
46–210. Old-age assistance obtained by fraud—Penalty.
46–211. Liability of relatives for support—Suit to recover.
46–212. Estate of recipient liable for assistance—Transfer of property to board as security.
46–213. Appropriation for old-age assistance.
46–214. Expenses for old-age assistance to be paid as other expenses.
46–215. Board of Commissioners—Cooperation with Federal Social Security Board.

§ 46–201 [8: 281]. Old-age assistance—Definitions.

The care and assistance of aged persons who are in need and whose physical or other condition or disabilities seem to render permanent their inability to provide properly for themselves is hereby declared to be a special matter of public concern and a necessity in promoting the public health and welfare. To provide such care and assistance at public expense a system of old-age assistance is hereby established for the District of Columbia. The term "assistance" whenever used in this chapter shall be construed to include relief, aid, care, or support. The pronoun "he" or "his" when used herein shall be construed to include persons of either sex. (Aug. 24, 1935, 49 Stat. 747, ch. 640, § 1.)

§ 46–202 [8: 282]. Eligibility—Age—Residence requirements—Other relief not given except medical aid.

Assistance may be granted only to an applicant who (a) is a citizen of the United States; (b) has attained the age of sixty-five years or upward; (c) has resided in the District of Columbia for five years or more within the nine years immediately preceding application for assistance, and who has resided therein continuously for one year immediately preceding the said application; (d) is not at the time of making application an inmate of any prison, jail, workhouse, insane asylum, or any other public reformatory or correctional institution; (e) is not a habitual tramp or beggar; (f) has no child or other person financially able to support him and legally responsible for his support; and (g) has not made a voluntary assignment or transfer of property for the purpose of qualifying for such assistance.

During the continuance of the old-age assistance no recipient shall receive any other relief from the District of Columbia except for medical and surgical and nursing care. (Aug. 24, 1935, 49 Stat. 748, ch. 640, § 2.)

§ 46–203 [8: 283]. Agency to administer old-age assistance—Amount—Reference to Home for Aged and Infirm—Hearing and Review.

The Board of Commissioners of the District of Columbia shall administer old-age assistance under this chapter through such agent or agency as it may designate. It shall prescribe the form of and print and supply the blanks for applications, reports, and affidavits, and such other forms as it may deem advisable, and shall make rules and regulations necessary for the carrying out of the provisions of this chapter, and shall make and render any and all reports required by the federal Social Security Board or otherwise authorized or required by law. The amount of the assistance which any such person shall receive, and the manner of providing it, shall be determined by the Board of Commissioners or its designated agency, with due regard to the conditions existing in each case. The Board of Commissioners may, in lieu of the assistance herein provided, refer any applicant to the Board of Public Welfare for admission to the Home for Aged and Infirm, whenever, in the judgment of the said Commissioners, such action may be in the public interest or in the best interest of the applicant. Any applicant for old-age assistance whose claim for initial relief or modification of relief is denied may apply to the agency designated by the Commissioners for the administration of this chapter for hearing and review of said claim and the determination of the designated agency on such appeal shall be final except that the Commissioners of the District of Columbia in their discretion may grant a further review of the matters embraced in the aforesaid application.

If, in the opinion of the Board of Commissioners or its designated agency, the recipient is incapable of taking care of himself or his money, it may direct the payment to any responsible person for the benefit of the pensioner, or may suspend payment if deemed advisable. (Aug. 24, 1935, 49 Stat. 748, ch. 640, § 3.)

CROSS REFERENCES

Rules and regulations for care and management of pensioners' property, § 46–212.

Rules and regulations generally, § 1–226.

§ 46–204 [8: 284]. Old-age assistance inalienable and exempt from levy.

All assistance given under this chapter shall be inalienable by any assignment or transfer and shall be exempt from levy or execution under the laws of the United States and the District of Columbia. (Aug. 24, 1935, 49 Stat. 748, ch. 640, § 4.)

§ 46–205 [8: 285]. Recipient of old-age assistance—Reasonable funeral expenses authorized.

On the death of a recipient of old-age assistance such reasonable funeral expenses as the Board of Commissioners or its designated agency may deem necessary may be paid for the burial of such person. (Aug. 24, 1935, 49 Stat. 748, ch. 640, § 5.)

§ 46–206 [8: 286]. Application for old-age assistance.

A person requesting assistance under this chapter shall make his application therefor to the Board of Commissioners or its designated agency. The person requesting assistance may apply in person, or the application may be made by another in his behalf. The application shall be made in writing and under oath. (Aug. 24, 1935, 49 Stat. 748, ch. 640, § 6.)

§ 46–207 [8: 287]. Investigation of applicant for assistance.

Upon the receipt of an application for assistance an investigation and record shall be promptly made of the circumstances of the applicant. The object of such investigation shall be to ascertain the facts supporting the application made under this chapter and such other information as may be required by the rules hereunder formulated. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 7.)

CROSS REFERENCE

Rules and regulations, § 46–203.

§ 46–208 [8:288]. Change or suspension of old-age assistance.

All assistance under this chapter shall be reviewed from time to time as frequently as may be required by the rules hereunder formulated. After such further investigation as may be deemed necessary the amount and manner of assistance may be changed or the assistance may be withdrawn if it is found that the recipient's circumstances have changed

sufficiently to warrant such action, and all cases in which relief is being extended shall be reviewed every six months. It shall be within the power of the Board of Commissioners or its designated agency at any time to cancel and revoke assistance and to suspend payments for such periods as it may deem proper. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 8.)

§ 46–209 [8: 289]. Inquiry into old-age assistance improperly obtained.

If at any time the Board of Commissioners or its designated agency has reason to believe that any assistance has been improperly obtained, it shall cause special inquiry to be made. If, on inquiry it appears that it was improperly obtained, it shall be canceled. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 9.)

§ 46–210 [8: 290]. Old-age assistance obtained by fraud—Penalty.

Any person, who by means of a wilfully false statement or representation, or by impersonation, or other fraudulent device, obtains or attempts to obtain, or aids or abets any person to obtain (a) assistance to which he is not justly entitled; (b) a larger amount of assistance than that to which he is justly entitled; (c) payment of any forfeited installment grant; (d) or aids or abets in the buying or in any way disposing of the property of an old-age assistance recipient, without the consent of the Board of Commissioners or its designated agency, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not more than $500 or imprisoned for a period not to exceed six months, or both. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 10.)

§ 46–211 [8: 291]. Liability of relatives for support—Suit to recover.

The kindred of any person otherwise entitled to old-age assistance under the provisions of this chapter, in line and degree of spouse, father, child, or grandchild, living in the District of Columbia and of sufficient ability so to do shall be bound to support such person, in the order above named and in proportion to their respective ability. If at any time during the continuance of old-age assistance the Board of Commissioners or its designated agency has reason to believe that a spouse, father, child, or grandchild is reasonably able to assist him, it shall be empowered to bring suit, after notifying such person of the amount of old-age assistance, against such spouse, father, child, or grandchild to recover the amount of assistance provided under the chapter, or such part thereof as such spouse, father, child, or grandchild was reasonably able to pay. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 11.)

§ 46–212 [8: 292]. Estate of recipient liable for assistance—Transfer of property to Board as security.

At the death of recipient of an old-age assistance, or of the last survivor of a recipient married couple, the total amount of assistance since the first grant, together with simple interest at the rate of 3 per centum per annum, shall be deducted and allowed by the proper courts out of the proceeds of his property as a preferred claim against the estate of the person so assisted, and refunded to the Treasurer of the United States to the credit of the District of Columbia, leaving the balance for distribution among the lawful heirs in accordance with law: *Provided,* That upon sufficient cause, such as mismanagement, failure to keep in repair, or the inability of any recipient of assistance properly to manage his property, the designated agency of the Commissioners may demand the assignment or transfer of such property, or a proper part thereof, upon the first grant of such assistance, or at any time thereafter that it deems advisable for the purpose of safeguarding the interest of an applicant or for the protection of the funds of the District of Columbia. Such agency shall establish such rules and regulations regarding the care, management, transfer, and sale of such property as it deems advisable and shall provide for the return of the balance of the claimant's property into his hands whenever the assistance is withdrawn or the claimant ceases to request it. If the District of Columbia collects from the estate of any recipient of old-age assistance any amount with respect to old-age assistance furnished him under this chapter, one-half of the net amount so collected shall be paid to the United States in accordance with the provisions of title 42, sections 301–306, Supplement V, of the Code of the Laws of the United States. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 12.)

CROSS REFERENCE

Rules and regulations, § 46–203.

§ 46–213 [8: 293]. Appropriation for old-age assistance.

Congress shall appropriate annually and make available to the order of the Board of Commissioners of the District of Columbia such sums as may be needed to pay the share of the District of Columbia for old-age assistance, provided under this chapter together with a sufficient sum to defray its share of the administrative expenses to be incurred in connection therewith, and include such sums in the annual District of Columbia Appropriation Act. Should the sum so appropriated, however, be expended or exhausted during the year for the purposes for which it was appropriated, additional sums shall be appropriated by Congress as occasion demands to carry out the provisions of this chapter. (Aug. 24, 1935, 49 Stat. 750, ch. 640, § 13.)

§ 46–214 [8: 294]. Expenses for old-age assistance to be paid as other expenses.

All necessary expenses incurred by the District of Columbia in carrying out the provisions of this chapter shall be paid in the same manner as other expenses of the District of Columbia are paid. (Aug. 24, 1935, 49 Stat. 750, ch. 640, § 14.)

§ 46–215 [8: 295]. Board of Commissioners—Cooperation with Federal Social Security Board.

The Board of Commissioners or its designated agency is hereby authorized and directed to cooperate in all necessary respects with the Social Security Board of the United States Government in the administration of this chapter, and to accept any sums allotted or apportioned by such Board as are available under the provisions of Title 42, chapter

7, Supplement V, of the Code of the Laws of the United States. (Aug. 24, 1935, 49 Stat. 750, ch. 640, § 15.)

Chapter 3.—UNEMPLOYMENT COMPENSATION

Sec.
46–301. Definitions.
46–302. District Unemployment Fund.
46–303. Employer contributions.
46–303a. Employer contributions by the District of Columbia.
46–304. Method of paying employer contributions.
46–305. Service on nonresident employers.
46–306. Deposit in unemployment trust fund.
46–307. Amount and duration of benefits.
46–308. Method of paying benefits.
46–309. Eligibility for benefits.
46–310. Disqualification for benefits.
46–311. Determination of claims.
46–312. Court review.
46–313. Administration.
46–314. Method of paying administrative expenses.
46–315. District Unemployment Compensation Board.
46–316. Reciprocal arrangements.
46–317. Records and reports.
46–318. Protection of rights and benefits.
46–319. Penalties.
46–320. Disposition of fines.
46–321. Representation of Board in court.
46–322. All audits by District Auditor.
46–323. Right to amend or repeal.
46–324. Separability of provisions.
46–325. Short title.

§ 46–301 [8: 311]. Definitions.

As used in this chapter, unless the context indicates otherwise—

(a) The term "employer" means every individual and type of organization for whom services are performed in employment;

(b) (1) "Employment" means any service performed prior to the effective date of this chapter which was employment as defined in this Act prior to such date, and subject to the other provisions of this subsection, service performed on and after the effective date of this Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) The term "employment" shall include an individual's entire service, performed within or both within and without the District if—

(A) the service is localized in the District; or

(B) the service is not localized in any State but some of the service is performed in the District and (i) the individual's base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in the District; or (ii) the individual's base of operations or place from which such service is directed or controlled is not in any State in which some part of the service is performed but the individual's residence is in the District.

(3) Services covered by an arrangement pursuant to section 46–316 between the Board and the agency charged with the administration of any other State or Federal unemployment compensation law, pursuant to which all services performed by an individual for an employer are deemed to be performed entirely within the District, shall be deemed to be employment if the Board has approved an election of the employer for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment for an employer.

(4) Service shall be deemed to be localized within a State if—

(A) the service is performed entirely within such State; or

(B) the service is performed both within and without such State, but the service performed without such State is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) The term "employment" shall not include—

(A) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(B) casual labor not in the course of the employer's trade or business;

(C) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(D) service performed in the employ of the United States Government or of an instrumentality of the United States which is (a) wholly owned by the United States, or (b) exempt from the tax imposed by section 1600 of the Internal Revenue Code of the United States (26 U. S. C.) or by virtue of any other provision of law: *Provided,* That, in the event that the Congress of the United States, on or before the date of the enactment of the chapter, has permitted or in the event that the Congress of the United States shall permit States to require any instrumentalities of the United States to make contributions to an unemployment fund under a State unemployment compensation law, then, to the extent so permitted by Congress, and from and after the date as of which such permission becomes effective, or January 1, 1940, whichever is the later, all of the provisions of this chapter shall be applicable to such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employees, individuals, and services: *Provided further,* That if the District of Columbia should not be certified by the Social Security Board under section 1603 of the Internal Revenue Code (26 U. S. C.) for any year, the payments required of any instrumentality of the United States or its employees with respect to such year shall be refunded by the District Unemployment Compensation Board in accordance with the provisions of section 46–304 (i): *Provided, however,* That any employer required to make retroactive payment of any contributions shall be given thirty days from October 17, 1940, within which to make such retroactive payments without incurring any penalty for the late payment of such contributions and all interest charges shall commence one month from October 17, 1940;

(E) service performed in the employ of the District, or of any other State, or of any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by the District or by one or more States or political

subdivisions; and any service performed in the employ of any instrumentality of the District or of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, exempt under the Constitution of the United States from the tax imposed by section 1600 of the Federal Internal Revenue Code (26 U. S. C.);

(F) service performed in the employ of a Senator, Representative, Delegate, or Resident Commissioner, insofar as such service directly assists him in carrying out his legislative duties;

(G) service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(H) service with respect to which unemployment compensation is payable under any other unemployment compensation system established by an Act of Congress;

(I) (1) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101 of the Internal Revenue Code of the United States (26 U. S. C.), if—

(a) the remuneration for such service does not exceed $45; or

(b) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association; or

(c) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(2) service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1) of the Internal Revenue Code of the United States (26 U. S. C.);

(3) service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(4) service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(5) service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101 of the Internal Revenue Code of the United States (26 U. S. C.), if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition);

(J) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(K) service performed in the employ of an instrumentality wholly owned by a foreign government—

(1) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(2) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(L) service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(M) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(N) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(O) service covered by an arrangement between the Board and the agency charged with the administration of any other State or Federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by such employer's duly approved election are deemed to be performed entirely within such agency's State;

(P) service performed by an individual for a person as a real-estate salesman, real-estate solicitor, or real-estate agent, if all of such service performed by such individual for such person is performed for remuneration solely by way of commission.

(6) INCLUDED AND EXCLUDED SERVICE.—If the services performed during one-half or more of any pay period by an individual in employment for the person employing him constitute employment, all the services of such individual in employment for such period shall be deemed to be employment; but if the services performed during more than one-half

of any such pay period by an individual in employment for the person employing him do not constitute employment, then none of the services of such individual in employment for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the individual in employment by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an individual in employment for the person employing him, where any of such service is excepted by paragraph 5 (H) of subsection (b).

(c) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employer shall be treated as wages received from his employer. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with the regulations prescribed by the Board, except that such term "wages" shall not include—

(1) that part of the remuneration which, after remuneration equal to $3,000 has been paid to any individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year and after December 31, 1939;

(2) the amount of any payment with respect to services performed on and after the effective date of this chapter, made to, or on behalf of, an individual in its employ under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization, expenses in connection with sickness or accident disability, or (D) death, provided such individual (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contribution to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) the payment by an employer (without deduction from the remuneration of the individual in employment) (A) of the tax imposed upon an individual in its employ under section 1400 of the Internal Revenue Code (26 U. S. C.); or

(4) dismissal payments on and after the effective date of this chapter, which the employer is not legally required to make.

(d) "Earnings" means all remuneration payable for personal services, including wages, commissions, and bonuses, and the cash value of all remuneration payable in any medium other than cash whether received from employment, self-employment, or any other work. Gratuities received by an individual in the course of his work shall be treated as earnings. The reasonable cash value of any remuneration payable in any medium other than cash, and a reasonable amount of gratuities shall be estimated and determined in accordance with the regulations prescribed by the Board.

(e) An individual shall be deemed "unemployed" with respect to any week during which he performs no services and with respect to which no earnings are payable to him, or with respect to any week of less than full-time work if the earnings payable to him with respect to such week are less than his weekly benefit amount.

(f) "Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year.

(g) The term "benefits" means the money payments to an individual, as provided in this chapter, with respect to his unemployment.

(h) "Benefit year" with respect to any individual means the fifty-two-consecutive-week period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the fifty-two-consecutive-week period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with section 46–311 (b) shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has during his base period been paid wages for employment by employers equal to not less than whichever is the lesser of (1) twenty-five times his weekly benefit amount, and (2) $250.

(i) The term "computation date" means the 30th day of June of each year as of which rates of contributions are determined for the next following calendar year, except that the first computation date under the provisions of this chapter shall be the last day of the third calendar quarter immediately preceding the effective date of this chapter, as of which rates of contribution, commencing with the effective date of this chapter, are determined for the remainder of that calendar year.

(j) The term "Board" means the District Unemployment Compensation Board established by section 46–315.

(k) "Calendar quarter" means the period of three consecutive months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Board may by regulation prescribe.

(*l*) The term "District" means the District of Columbia.

(m) The phrase "employment office" means a free public employment office or branch thereof, operated by the Social Security Board or by any department or agency of the United States or by any department or agency of the District of Columbia or any free public employment office maintained as a part of a State-controlled system of public employment offices.

(n) The term "month" means calendar month; except as the Board may otherwise prescribe.

(o) The term "week" means the calendar week or such period of seven consecutive days as the Board may by regulation prescribe.

(p) "Fund" means the District unemployment fund established by section 46–302, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(q) "State" includes, in addition to the States of the United States of America, Alaska, Hawaii, and the District of Columbia (herein referred to as the "District").

(r) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has, or subsequent to January 1, 1936, had, in its employ one or more individuals performing services for it within the District.

(s) The phrase "dependent relative" means a spouse, mother, father, stepmother, stepfather, brother, or sister, who, because of age or physical disability, is unable to work, or a child under sixteen years of age, or a child who is unable to work because of physical disability, who is wholly or mainly supported by the individual receiving the benefit. For the purposes of this subsection the term "child" shall mean any son, daughter, stepson, or stepdaughter, regardless of age, whom the claimant is morally obligated to support. (Aug. 28, 1935, 49 Stat. 946, ch. 794; § 1; Feb. 13, 1936, 49 Stat. 1138, ch. 68; June 23, 1936, 49 Stat. 1888, ch. 726, § 9; June 25, 1938, 52 Stat. 1112, ch. 680, § 14; Apr. 22, 1940, 54 Stat. 149, ch. 127, § 1; July 2, 1940, 54 Stat. 730, ch. 524, § 1; Oct. 17, 1940, 54 Stat. 1204, ch. 898, § 1; June 4, 1943, 57 Stat. 100, ch. 117.)

COMPILER'S NOTES

In paragraph (h), the 1935 act refers to the Board established by § 15 of that act (§ 46–314 herein). However, the Board is established by § 16 (§ 46–315 herein).

Section 2 of the act approved July 2, 1940, provided as follows:

TRANSITION PROVISIONS

"(a) As used in this section unless the context clearly requires otherwise—

"(1) 'old law' means the unemployment-compensation law prior to its amendment by this title;

"(2) 'new law' means the unemployment-compensation law as amended by this title;

"(3) 'effective date' means the date upon which the new law becomes effective; and

"(4) 'continuous period of compensable unemployment' means a period of unemployment beginning prior to and continuing up to and after the effective date in the case of an individual who, prior to the effective date, has filed a claim for benefits for a week or weeks of unemployment in such period: *Provided*, That the individual has satisfied the requirements of paragraph 2 of subsection (a) of section 10 of the old law and has not exhausted his rights to benefits pursuant to subsection (b) of section 8 of the old law prior to the effective date.

"(b) Except as otherwise specifically provided in subsection (c) of this section, the new law shall be exclusively applicable with respect to any individual on and after the effective date. No provision of the old law shall be construed to limit or extend the rights of any individual as fixed by the new law, after the new law becomes exclusively applicable with respect to such individual as provided in this section.

"(c) With respect to any individual who is unemployed during a continuous period of compensable unemployment (as defined in paragraph 4 of subsection (a) of this section) sections 1 (d), 8 (a) (insofar as it relates to the determination of the weekly benefit rate for total unemployment), 8 (b), 8 (c), 8 (d), and 10 (a) (2) of the old law shall be exclusively applicable until the expiration of such continuous period of compensable unemployment.

"(d) Upon application by an employer, filed pursuant to suitable regulations by the Board, the Board shall determine the extent to which the employer's contributions paid for the first six months of the calendar year 1940 were in excess of his contributions due for said period under the new law and shall make an adjustment for that amount, without interest, solely in connection with subsequent contributions by him."

AMENDMENTS

Paragraph (7) in subsection (b) was added by the act of Feb. 13, 1936. It was amended by act of June 23, 1936, to read as above. As originally enacted it read: "(7) Service performed in the employ of the following: All religious institutions and schools maintained by them; colleges or universities, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Paragraph (8) of subsection (b) was added by act of June 25, 1938. Paragraph (p) [(b)] was also added by the last-mentioned act.

Paragraph (9) in subsection (b) was added by the act of April 22, 1940. Section 2 of this last-mentioned act provided that said paragraph (9) should "be effective January 1, 1940."

Act of July 2, 1940, added paragraph (b) (10), and the proviso to subsection (c), and substituted subsections (d), (e), and (f) as above for the former subsections which provided as follows:

"(d) The phrase 'weekly wage' as applied to any individual who has been engaged in employment for at least thirty hours in each of twenty-six or more weeks within the period of one hundred and four weeks ending with the week in which such individual was last engaged in employment, means the sum obtained by dividing the total of the wages earned in all the weeks within such period in which he was engaged in employment at least thirty hours by the number of such weeks; and, as applied to any individual who has not been engaged in employment for at least thirty hours in each of twenty-six or more weeks within such period of one hundred and four weeks, means the sum obtained by dividing the total of the wages earned in such period by the total number of weeks within such period in which he was engaged in employment.

"(e) The phrase 'totally unemployed' means that the individual concerned has performed in the particular week no services whatsoever for which remuneration (of any nature whatsoever) is payable, has not engaged in any self-employment, and is found by the Board to have been unable to engage in any self-employment in which he was formerly engaged.

"(f) The phrase 'partially unemployed' means that the individual concerned has failed to earn in the particular week remuneration (of any nature whatsoever) of at least $2 more than the benefit he would be entitled to receive under this Act with respect to such week if totally unemployed and otherwise eligible."

Other amendments made by act of July 2, 1940, were as follows: In subsection (g) the words "or a child who is unable to work because of physical disability" were inserted following the words "sixteen years of age"; in subsection (n), the words "or elsewhere," were inserted after the word "District" and the rest of the sentence omitted. The new subsection (o) was also added by this act.

Act of October 17, 1940, substituted paragraph (4) as above for the former paragraph (4) which read as follows: "(4) service performed in the employ of the United States Government or of an instrumentality of the United States." Section 2 of this act provided as follows: "This act shall be effective as of January 1, 1940: *Provided, however,* That any employer required to make retroactive payment of any contributions shall be given thirty days from the enactment of this Act within which to make such retroactive payments without incurring any penalty for the late payment of such contributions and all interest charges shall commence one month from the date of the enactment of this Act."

AMENDMENTS

The act of June 4, 1943, cited to text, amended section generally.

EFFECTIVE DATE

Section 25 of act June 4, 1943, cited to text, provided: "This Act (§§ 46–301 to 46–325) shall take effect as of 12:01 antemeridian on the first day of the next succeeding calendar quarter following the enactment of this Act (§§ 46–301 to 46–325)."

NOTES TO DECISIONS

CHARITABLE OR EDUCATIONAL ORGANIZATION

In excepting from this chapter service performed in the employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, etc., Congress included every nonprofit organization designed and operating for the benefit and enlightenment of the community, the State or the Nation, or those organizations commonly designated "charitable" in the law of trusts. *International Reform Federation* v. *District Unemployment Compensation Board,* 1942 (131 F. 2d 337, 76 U. S. App. D. C. 282, certiorari denied 63 S. Ct. 324, 317 U. S. 693, 87 L. Ed. 555).

In the enactment of this chapter it was within discretion of Congress to include charitable or educational institutions on the same terms as business or social organizations or if it included the former, to limit in such way as Congress thought proper the enjoyment of the preferred position, and the language of this section evinces a clear purpose to exclude charitable or educational institutions without limiting the enjoyment of their preferred positions and all that is requisite under this section is that the institution claiming exemption shall be organized and operated exclusively for one of the named purposes. *International Reform Federation* v. *District Unemployment Compensation Board,* 1942 (131 F. 2d 337, 76 U. S. App. D. C. 282, certiorari denied 63 S. Ct. 324, 317 U. S. 693, 87 L. Ed. 555).

In order to be classified as a "charitable corporation" entitled to exemption from payment into fund under this chapter, it is not necessary that corporation's principal objective be to provide for the poor, the sick and the needy. *International Reform Federation* v. *District Unemployment Compensation Board,* 1942 (131 F. 2d 337, 76 U. S. App. D. C. 282, certiorari denied 63 S. Ct. 324, 317 U. S. 693, 87 L. Ed. 555).

The International Reform Federation whose principal purpose and activities were promotion of sociological reform, suppression of gambling and political corruption, substitution of arbitration and conciliation for both industrial and international war, suppression of the white slave traffic, harmful drugs and kindred evils, was exempt as a "charitable or educational corporation" from the chapter, and was not affected by incidental political activities. *International Reform Federation* v. *District Unemployment Compensation Board,* 1942 (131 F. 2d 337, 76 U. S. App. D. C. 282, certiorari denied 63 S. Ct. 324, 317 U. S. 693, 87 L. Ed. 555).

Where New York corporation formed for improvement of its members in marksmanship, and to promote introduction of system of rifle practice as part of military drill of National Guard, and to provide suitable range, was organized under McKinney's N. Y. membership corporations law, for incorporation of societies for social and recreative purposes, the corporation was not "organized exclusively for religious, charitable, scientific, literary or educational purposes" within this section exempting corporation organized for such purposes from liability for unemployment contributions. *National Rifle Ass'n of America* v. *Young,* 1943 (134 F. 2d 524, 77 U. S. App. D. C. 290).

In determining whether corporation is organized and operated exclusively for religious, charitable, scientific, literary or educational purposes within exemption clause in this section, recourse must be had to its charter and the statute under the authority of which it was organized. *National Rifle Ass'n of America* v. *Young,* 1943 (134 F. 2d 524, 77 U. S. App. D. C. 290).

A corporation, whose object in part, as indicated by its charter, was for the mutual welfare, protection, and improvement of business methods among merchants and for protecting the interests of certain classes of businesses to enable them to profitably conduct their business, was not exempt as organized exclusively for "educational or scientific purposes" from this chapter, notwithstanding corporation's purposes were to be accomplished by educational methods. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1944, 34 A. 2d 614).

CONSTRUCTION

Exemptions from taxation in general, and especially exemptions from unemployment contributions under this chapter, are to be strictly construed. *National Rifle Ass'n of America* v. *Young,* 1943 (134 F. 2d 524, 77 U. S. App. D. C. 290).

This chapter should be liberally construed to accomplish their purposes and extend their coverage with consequent strict construction of exemption provisions of this section. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1944, 34 A. 2d 614).

The contributions required by this chapter are "taxes", and exemptions from such taxes are strictly construed. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1944, 34 A. 2d 614).

CONSTRUCTION WITH OTHER LAWS

In ascertaining whether a corporation organized under § 29–601 relating to benevolent, charitable, educational, and similar corporations was exempt from this chapter, said section must be considered but said section cannot be conclusive in face of specific objects selected by corporation for inclusion in its charter. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1944, 34 A. 2d 614).

DETERMINATION OF EXEMPTION

To come within exemption of this section, corporation must be organized and operated exclusively for one or more of named purposes, and, though its primary purpose is within exemption, it cannot have benefit thereof if it has other purposes beyond scope of exemption. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1944, 34 A. 2d 614).

PURPOSE

Where this section exempted service performed in the employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, without including the limitation that no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, which appeared in other laws, intent of Congress was to make the exception apply where the primary and exclusive purpose was religious, charitable or educational. *International Reform Federation* v. *District Unemployment*

Compensation Board, 1942 (131 F. 2d 337, 76 U. S. App. D. C. 282, certiorari denied 63 S. Ct. 324, 317 U. S. 693, 87 L. Ed. 555).

§ 46–302 [8: 312]. District Unemployment Fund.

(a) There is hereby established the District unemployment fund, as a special deposit in the Treasury of the United States, into which shall be paid all contributions received or collected pursuant to this chapter and from which shall be paid all benefits and refunds provided for under this chapter. The fund shall consist of three separate accounts: (1) A clearing account, (2) an unemployment-trust-fund account, and (3) a benefit account, and be managed and controlled by the Board in the manner provided in this Act; and the Board shall keep complete and accurate accounts of the status of the fund and shall include a statement of such status in its yearly report to Congress. (Aug. 28, 1935, 49 Stat. 947, ch. 794, § 2; June 4, 1943, 57 Stat. 105, ch. 117.)

AMENDMENTS

The act of June 4, 1943, cited to text, amended section generally.

§ 46–303 [8: 313]. Employer contributions.

(a) Each employer who employs one or more individuals in any employment shall for each month, beginning with the month of January 1936 and ending December 31, 1939, pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to such employment by him during such month:

(1) With respect to employment during the calendar year 1936, the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937, the rate shall be 2 per centum;

(3) With respect to employment during the calendar years 1938 and 1939, the rate shall be 3 per centum.

(b) Each employer shall pay contributions equal to 2.7 per centum of wages paid by him during the calendar year 1940 and thereafter, until the effective date of this chapter, with respect to employment after December 31, 1939.

(c) FUTURE RATES BASED ON BENEFIT EXPERIENCE.—

(1) The Board shall maintain a separate account for each employer, and shall credit his account with all of the contributions paid by him after June 30, 1939, with respect to employment subsequent to May 31, 1939.

(2) Benefits paid to an individual with respect to any week of unemployment which was based on an initial claim filed after June 30, 1939, and before July 1, 1940, shall be charged against the account of his most recent employer. Benefits paid to an individual on an initial claim for benefits filed after June 30, 1940, shall be charged against the accounts of his base period employers. The amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wages paid to the individual by such employer bear to the total amount of the base period wages paid to the individual by all of his base period employers.

(3) The standard rate of contributions payable by each employer shall be 2.7 per centum.

(4) (i) No employer's rate of contribution for any calendar year or part thereof shall be reduced below the standard rate unless and until his account could have been charged with benefits paid throughout the thirty-six-consecutive-calendar-month period ending on the computation date applicable to such year or part thereof.

(ii) If the amount in the fund as of the computation date is less than 5 per centum of the total pay rolls subject to contributions under this chapter for the twelve-consecutive-month period ending on said computation date, the contribution rate for each employer shall be increased by the percentage differential between said 5 per centum of such total pay rolls and said fund's percentage of such total pay rolls, but in no event shall the contribution rate for any employer be more than 2.7 per centum. Said percentage differential for each employer shall be computed to the next highest one-tenth of 1 per centum.

(iii) If, on December 20 of any calendar year, the amount in the fund becomes less than 2.4 per centum of the total annual pay rolls subject to contribution under this chapter for the twelve-consecutive-month period ending on the preceding June 30, the Board shall make a declaration to that effect. Effective the quarter following such announcement, each employer's rate of contribution shall be the standard rate.

(iv) CONTRIBUTION RATES AFTER TERMINATION OF MILITARY SERVICE.—When the Board finds that the continuity of an employer's employment experience has been interrupted solely by reason of one or more of the owners, officers, managers, partners, or majority stockholders of such employer's employing enterprise having served in the armed forces of the United States of America or any of its allies during a time of war, such employer's employment experience shall be deemed to have been continuous throughout the period that such individual or individuals so served in such armed forces, including the period up to the time it again resumes the status of an employer liable for contributions under this Act, provided it resumes such status within two years from the date of discharge of such individual or individuals or from the date of the termination of such war, whichever date is the earlier. For the purposes of this paragraph (iv), in determining an employer's contribution rate his average annual pay roll shall be the average of his last three annual pay rolls.

(5) The Board shall for any uncompleted portion of the calendar year beginning with the effective date of this chapter and for each calendar year thereafter classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts. Each employer's contribution rate for each subsequent year or part thereof shall be calculated on the basis of his records filed with the Board and benefit payments disbursed through the applicable computation date.

(6) If, as of the date such classification of employers is made, the Board finds that an employing unit has failed to file any report in connection there-

with, or has filed a report which the Board finds incorrect or insufficient, the Board shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time, and notify the employing unit thereof by registered mail addressed to its last-known address. Unless such employing unit shall file the report or a correct or sufficient report, as the case may be, within fifteen days after the mailing of such notice, the Board shall compute such employing unit's rate of contribution on the basis of such estimates, and the rates so determined shall be subject to increase, but not to reduction, on the basis of subsequently ascertained information.

(7) (a) If the business of any employer is transferred in whole or in part, the transferee shall be deemed a successor for the purpose of this section. In case the transfer of any of the assets of a covered employer's business by any means whatever, otherwise than in the ordinary course of trade, such transfer shall be deemed a transfer of business and shall constitute the transferee a successor hereunder, unless the Board, on its own motion or on application of an interested party, finds that all of the following conditions exist:

(1) The transferee has not assumed any of the transferor's obligations; and

(2) The transferee has not continued or resumed transferor's good will; and

(3) The transferee has not continued or resumed the business of the transferor, either in the same establishment or elsewhere; and

(4) The transferee has not employed substantially the same employees as those the transferor had employed in connection with the assets transferred.

(b) The successor, if not already subject to this section, shall become an "employer" subject hereto on the date of such transfer, and shall accordingly become liable for contributions hereunder from and after said date.

(c) The successor shall take over and continue the employer's account, including its reserve and all other aspects of its experience under this section, in proportion to the pay roll or employees assignable to the transferred business as determined for the purposes of this section by the Board. The successor shall be secondarily liable for any amounts owed by the employer to the fund at the time of such transfer; but such liability shall be proportioned to the extent of the transfer of business and shall not exceed the value of the assets transferred.

(d) The benefit chargeability of a successor's account under section 3 (c) if not accrued before the transfer date shall begin to accrue on the transfer date, in case the transferor's benefit chargeability was then accruing; or shall begin to accrue on the date otherwise applicable to the successor, or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor's benefit chargeability was not accruing on the transfer date. Similarly, benefits from a successor's account, if not chargeable before the transfer date shall become chargeable on the transfer date, in case the transfer was then chargeable for the benefit payments; or shall become chargeable on the date otherwise applicable to the successor or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor was chargeable for the benefit payments on the transfer date.

(e) The account taken over by the successor employer shall remain chargeable with respect to accrued benefit and related rights based on employment in the transferred business, and all such employment shall be deemed employment performed for such employer.

(f) The contribution rates applicable with respect to the accounts of the successor employer and a transferring employer shall be respectively determined or redetermined as of the next preceding June 30 computation date, to apply from the date of transfer of business until the close of the current calendar year, and shall thereafter be determined whenever required by section 3 (c), as follows: For the purposes of section 3 (c), the Board shall determine the "experience under this section" of the successor employer's account and of the transferring employer's account by allocating to the successor employer's account for each period in question the respective proportions of the transferring employer's pay roll and the benefits which the Board determines to be properly assignable to the business transferred.

(g) SPECIAL COMBINATIONS OF EXPERIENCE.—Any successor employer who has failed to obtain credit for its predecessor's experience, solely because of the provisions of section 3 (c) (7) of the Act prior to its amendment by this Act, may file a written application for such allowance after the effective date of this Act. In the event the Board finds that such employer is entitled to such combination of experience under the provisions of section 3 (c) (7) as amended by this Act, the combination shall be allowed effective for the calendar year next succeeding the date of such application.

(8) Variations from the standard rates of contributions for each calendar year or part thereof shall be determined as of the applicable computation date in accordance with the following requirements:

i. If as of the computation date the total of all contributions credited to any employer's account, with respect to employment since May 31, 1939, is in excess of the total benefits paid after June 30, 1939, then chargeable or charged to his account, such excess shall be known as the employer's reserve, and his contribution rate for the ensuing calendar year or part thereof shall be—

(A) 2.7 per centum if such reserve is less than 1 per centum of his average annual pay roll;

(B) 2 per centum if such reserve equals or exceeds 1 per centum but is less than 1.5 per centum of his average annual pay roll;

(C) 1.5 per centum if such reserve equals or exceeds 1.5 per centum but is less than 2 per centum of his average annual pay roll;

(D) 1 per centum if such reserve equals or exceeds 2 per centum but is less than 3 per centum of his average annual pay roll;

(E) 0.5 per centum if such reserve equals or exceeds 3 per centum but is less than 3.5 per centum of his average annual pay roll;

(F) 0.1 per centum if such reserve equals or exceeds 3.5 per centum of his average annual pay roll.

ii. If as of the computation date the total amount of benefits paid and chargeable to an employer's account for the periods after June 30, 1939, is more than the total contributions credited to his account with respect to employment since May 31, 1939, then his contribution rate for the ensuing calendar year or part thereof shall be 2.7 per centum.

iii. Except as otherwise provided in this section, whenever through inadvertence or mistake erroneous charges or credits are found to have been made to experience-rating accounts, the same shall be readjusted as of the date of discovery and such readjustment shall not affect any computation or rate assigned prior to the date of discovery but shall be used on the next computation date in calculating future contribution rates.

(9) As used in this subsection—

(a) The term "annual pay roll" means the total amount of wages for employment paid by an employer during a twelve-month period ending ninety days prior to the computation date;

(b) The term "average annual pay roll", except for the purposes of paragraph (4) (iv) of this subsection, means the average of the annual pay rolls of any employer for the three consecutive twelve-month periods ending ninety days prior to the computation date;

(c) The term "base period wages" means the wages paid to an individual during his base period for employment;

(d) The term "base period employers" means the employers by whom an individual was paid his base period wages;

(e) The term "most recent employer" means that employer who last employed such individual immediately prior to such individual's filing an initial claim for benefits.

(10) At least one month prior to the final date upon which the first contributions for any calendar year or part thereof become due from any employer at a contribution rate determined under this subsection, the Board shall notify such employer of his rate of contributions and of the benefit charges upon which such rate was based. Such determination shall become conclusive and binding upon the employer unless, within fifteen days after the mailing of notice thereof to his last-known address, or in the absence of mailing, within fifteen days after the delivery of such notice, the employer files an application for review and a redetermination, setting forth his reasons therefor. Upon receipt of such application, the Board shall voluntarily adjust such matter or shall grant an opportunity for a fair hearing and promptly notify the employer thereof. All such hearings shall be held before a Contribution Rate Review Committee composed of three members who shall be employees of the Board and appointed by the Board. The findings and decision of this Committee shall not be subject to review by the District Auditor. No employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability of his account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to section 46–311, except on the ground that the services on the basis of which such benefits were found to be chargeable do not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination, or decision or to any other proceedings under this chapter in which the character of such services was determined. The employer shall be promptly notified of the Board's denial of his application or of the Board's redetermination, both of which shall become final unless, within fifteen days after the mailing of such notice thereof to his last-known address, or in the absence of mailing, within fifteen days after the delivery of such notice, a petition for judicial review is filed in the District Court of the United States for the District of Columbia. In any proceedings under this subsection the findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such proceedings shall be given precedence over all other civil cases except cases arising under section 46–312 and under section 36–501. An appeal may be taken from the decision of the District Court of the United States for the District of Columbia to the United States Court of Appeals for the District of Columbia in the same manner as is provided in other civil cases.

(d) The contributions payable pursuant to subsections (b) and (c) of this section shall become due and be paid by each employer to the Board in accordance with such regulations as the Board may prescribe, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ. (Aug. 28, 1935, 49 Stat. 947, ch. 794, § 3; June 2, 1940, 54 Stat. 731, ch. 524, § 1; Nov. 21, 1941, 55 Stat. 781, ch. 500, § 1; Nov. 9, 1942, 56 Stat. 1016, ch. 636; June 4, 1943, 57 Stat. 105, ch. 117; July 11, 1946, 60 Stat. 527, ch. 557; July 26, 1947, 61 Stat. 494, ch. 342, § 1, 2.)

AMENDMENTS

In paragraph (a) (3) the 1940 amendment struck out the following words: ", and 1940,"; struck out paragraph (a) (4); in paragraph (b) struck out the letter "(b)" and inserted in lieu thereof the letter "(c)" and added a new paragraph (b); in the original paragraph (b) struck out the words "calendar year 1941" and substituted in lieu thereof "second six months of the calendar year 1942", substituted the word "paid" for the word "payable", and changed the figure "3" to "2.7."

The act of July 26, 1947, cited to text, amended subsec. (c) (9) (b) and added subsec. (c) (4) (iv).

Sec. 3 of said act provided:

SEC. 3. The amendments made by this Act shall be effective with respect to employment on or after July 1, 1943. The amount of any contributions or interest thereon paid to the Board by any employer in excess of the amount such employer would have been required to pay if the amendments made by this Act had been in effect on and after July 1, 1943, shall, for the purposes of section 4 (i) of the District of Columbia Unemployment Compensation Act, be subject to adjustment against subsequent contributions by him. Notwithstanding the period of limitation prescribed in such section 4 (i), the

employing unit which paid such excess amount of contributions or interest thereon may make application under such section 4 (i) within one year after the date of the enactment of this Act for an adjustment thereof.

The act of July 11, 1946, cited to text, made the following amendments effective as of 12:01 antemeridian on the first day of the next succeeding calendar quarter following the enactment of this act:

(1) Subsec. (c) (5) last sentence amended;

(2) Subsec. (c) (7) amended generally;

(3) Subsec. (c) (8) amended by adding paragraph iii;

(4) Subsec. (c) (10) amended by inserting fourth sentence.

The act of June 4, 1943, cited to text, amended section generally.

The act of Nov. 9, 1942, cited to text, struck out "1943" in subdivision (3) (c) and inserted "1944".

The act of Nov. 21, 1941, cited to text, struck out "1942" in subdivision (3) (c) and inserted "1943".

COMPILER'S NOTE

For effect of amendment, see note to § 46–301.

CROSS REFERENCES

Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. § 901 et seq. made applicable to the District of Columbia, see § 36–501.

Power of the Board to recommend change in rate of contributions, § 46–313 (d).

NOTES TO DECISIONS

BURDEN OF PROOF

A partnership leasing and operating corporation's plant had burden of proving that timely request was made that District of Columbia Unemployment Compensation Board combine experience of partnership and corporation in determining partnership's unemployment compensation contributions. *Schlosberg* v. *District Unemployment Compensation Bd.* (App. D. C. 1948, 167 F. 2d 881).

CHANGE OF OWNERSHIP

A corporation and partnership leasing and operating corporation's plant were not parties to or subject of "merger, consolidation or other form of reorganization," and change effected was not mere "change in legal identity or form," but was complete change in substantial as well as formal ownership of business, and partnership was not "owned or controlled by substantially same interests as predecessor," and hence experience of corporation and partnership could not be combined in determining partnership's unemployment compensation contributions, notwithstanding that partnership retained corporation's manager and employees. *Schlosberg* v. *District Unemployment Compensation Bd.* (App. D. C. 1948, 167 F. 2d 881).

Under this section requiring employers to pay contributions at different rates based on differences in experience, where admission of partners' wives into partnership caused no change in management or risk, partnership was the same employer after as before admission, and partnership was not required to pay contributions at a new rate. *Cohen* v. *District Unemployment Compensation Bd.* (App. D. C. 1948, 167 F. 2d 883).

CONSTRUCTION

This chapter should be interpreted in accordance with its purpose which is to protect employees. *Cohen* v. *District Unemployment Compensation Bd.* (App. D. C. 1948, 167 F. 2d 883).

ESTOPPEL

Collection by District of Columbia Unemployment Compensation Board of unemployment compensation contributions from partnership leasing and operating corporation's plant at rates paid by corporation did not estop board, after discovering change of ownership, from collecting contributions at proper rate. *Schlosberg* v. *District Unemployment Compensation Bd.* (App. D. C. 1948, 167 F. 2d 881).

EVIDENCE

Witness' oral testimony, that he requested in letter written three years before to District of Columbia Unemployment Compensation Board that experience of corporation and partnership leasing and operating corporation's plant be combined in determining partnership's unemployment compensation contributions, warranted board's finding that timely request was not made. *Schlosberg* v. *District Unemployment Compensation Bd.* (App. D. C. 1948, 167 F. 2d 881).

NATURE OF CONTRIBUTIONS

Compulsory unemployment contributions under this chapter are "taxes". *National Rifle Ass'n of America* v. *Young*, 1943 (134 F. 2d 524, 77 U. S. App. D. C. 290).

NECESSITY FOR REQUEST

Subsection (c) (7) of this section enabling two or more employing units to combine their experience, on timely request, after a change in legal identity or form, did not require request by partnership which admitted wives of partnership into the firm without change in management or risk, in order to avoid necessity for paying contributions at different rates based on differences in experience, since there was only one employing unit. *Cohen* v. *District Unemployment Compensation Bd.* (App. D. C. 1948, 167 F. 2d 883).

§ 46–303a. Employer contributions by the District of Columbia.

Appropriations for the District of Columbia shall be available for payment by the District of Columbia of its contributions as an employer, in accordance with the provisions of this chapter. (June 28, 1944, 58 Stat. 530, ch. 300, § 2.)

CODIFICATION

Section comprised the second paragraph of section 2 of act June 28, 1944, which was the District of Columbia Appropriation Act for 1945, and was not enacted as a part of the District of Columbia Unemployment Compensation Act.

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 2, 57 Stat. 344.
1943—June 27, 1942, ch. 452, § 2, 56 Stat. 458.
1942—July 1, 1941, ch. 271, § 2, 55 Stat. 538.
1941—June 12, 1940, ch. 333, § 2, 54 Stat. 341.

§ 46–304. Method of paying employer contributions.

(a) The contributions required by section 46–303 shall be paid to and collected by the Board, and shall, immediately upon collection, be deposited in the clearing account of the fund. All moneys so required to be paid to and collected by the Board shall be subject to audit by the District auditor.

(b) Not later than the last day of the following month after the close of each calendar quarter, or at such other time as the Board may by regulations prescribe, every employer shall make a return of, and shall pay the contributions which shall have accrued with respect to, wages paid during such quarter with respect to employment. Each such return shall be filed with the Board, and shall contain such information and be made in such manner as the Board may by regulation prescribe. No extension of time for filing the return or for payment of the contributions shall be allowed to any employer, except as herein provided.

(c) If the contributions are not paid when due, there shall be added, as part of the contributions, interest at the rate of 1 per centum per month from the date the contributions became due until paid.

(d) In the event of the dissolution, insolvency, receivership, bankruptcy, composition, or assignment for benefit of creditors of any employer, contributions then or thereafter due from such employer under this section shall have priority over all other claims, except taxes due the United States or the

District, and wages (not exceeding $600 with respect to any individual) due for services performed within the three months preceding such event.

(e) If any employer liable to pay the contribution or tax imposed by section 46–303 neglects and refuses to pay the same after demand, the amount (including any interest) shall be a lien upon all of the property and rights to property, whether real or personal belonging to such person. Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Board with the clerk of the District Court of the United States for the District of Columbia. The Board may cause a civil action to be filed in the District Court of the United States for the District of Columbia to enforce the aforesaid lien by sale of any property or rights to property, whether real or personal, of the delinquent employer affected by said lien. All persons having liens upon or claiming any interest in the property or rights to property sought to be sold, as aforesaid, shall be made parties to the proceedings and brought into court. The court shall proceed to adjudicate all matters involved therein and finally determine the merits of all claims to a lien upon the property and rights to the property in question, and in all cases where a claim or interest of the Board therein is established, may decree a sale of such property and rights of property by the proper officer of the court, and any sale made pursuant to such proceedings shall be made subject to any and all valid liens existing against said property or rights to property, at the date of filing of the notice of lien. Such action shall be heard by the court at the earliest possible date, and shall be entitled to preference on the calendar of the court over all other civil actions except petitions for judicial review of this chapter. In any suit to enforce a lien hereunder the owner of the property or rights of property affected by said lien may be allowed to file with the clerk of the District Court of the United States for the District of Columbia a written undertaking with two or more sureties to be approved by the court, or with corporate surety approved by the court, to the effect that he and they will pay the judgment that may be recovered and costs which judgment shall be rendered against all the persons so undertaking. Upon the approval of said undertaking the property or rights of property shall be released from such lien. No such undertaking shall be approved by the court until the owner of the property or rights of property in question shall have given at least two days' notice to the Board of his intention to apply to the courts therefor. Each notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath if required that they are worth over and above all debts and liabilities double the amount of said lien. The Board may appear and object to such approval. When corporate surety is offered and the undertaking bears a certificate of the clerk of the District Court of the United States for the District of Columbia that said corporation holds authority from the Secretary of the Treasury to do business in the District of Columbia and has a process agent therein, no notice shall be required. Such an undertaking as above mentioned may be offered before any suit is brought in order to discharge the property from such lien, in which case notice shall be given as aforesaid to the Board and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, except that when the surety is a corporation and the undertaking bears a certificate of the clerk of said District Court of the United States for the District of Columbia that said corporation holds authority from the Secretary of the Treasury to do business in the District of Columbia, and has a process agent therein, no notice shall be required; and said undertaking shall be to the effect that the owner of said property or rights of property and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien. If such undertaking be approved before any suit is brought, the surety or sureties may be made parties to such suit; if the undertaking be approved after suit is brought, the surety or sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the surety or sureties as well as the owner. Subject to such regulations as the Board may prescribe, the Board shall issue a certificate of release of the lien if the Board finds that the liability for the amount of the contribution or tax imposed, together with all interest in respect thereof, has been satisfied or for any other reason deemed proper by the Board. Such lien shall continue to be valid for a period of ten years from the date of filing of the notice thereof with the clerk of the District Court of the United States for the District of Columbia, unless the same shall have been released of record, as hereinbefore provided. The foregoing remedy of the Board shall be cumulative and no action taken by the Board shall be or be construed to be an election on the part of the Board to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter.

(f) Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is a part of its usual trade, occupation, profession, or business, said employing unit shall report to the Board, in accordance with applicable regulations, the name and address of each and every such contractor or subcontractor so employed. Unless such report is made the employing unit shall for all purposes of the chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged solely in performing such employment. Any employing unit who thus becomes liable for and pays contributions with respect to individuals in the employ of any such contractor or subcontractor, however, may recover same from such contractor or subcontractor.

(g) In payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(h) COLLECTIONS.—If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the Board, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review of this chapter. This subsection shall not be construed to mean that the Board shall be required to use only this means of collecting delinquent contributions but it may use any other legal method which it deems advisable.

(i) REFUNDS.—If not later than three years after the date on which any contributions or interest thereon were paid, an employing unit which has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the Board shall determine that such contributions or interest or any portion thereof was erroneously collected, the Board shall allow such employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by it, or if such adjustment cannot be made the Board shall refund said amount, without interest, from the clearing account or benefit account upon checks issued by the Board or its duly authorized agent. For like cause and within the same period, adjustment or refund may be so made on the Board's own initiative. Should benefits have been paid based upon work records filed by the employing unit, claiming an adjustment or refund, such benefit should be disregarded for purposes of figuring such adjustment or refund, and any such benefit payments already having been made at the time of the adjustment or refund, based upon records filed with this Board by such employing unit, shall to that extent be allowed and shall not be deemed to have been paid erroneously. All refunds paid pursuant to this subsection shall be subject to a prior audit by the District auditor.

(j) Upon application by an employer, filed pursuant to suitable regulation by the Board, the Board shall determine the extent to which the employer's contributions paid for the first six months of the calendar year 1940 were in excess of his contributions due for said period under Public, Numbered 719, Seventy-sixth Congress, and shall make an adjustment for that amount, without interest, solely in connection with subsequent contributions by him.

(k) The Board, or the executive officer provided for under section 46–315 (b), with the consent of the Board, may prescribe the extent, if any, to which any ruling, regulation, or decision relating to this chapter shall be applied without retroactive effect.

(*l*) The Board, with the approval of the corporation counsel and the District auditor, may compromise any civil case arising under this chapter. Whenever a compromise is made by the Board in each such case, there shall be placed in the minutes of the Board the opinion of an attorney of the Board with the reasons therefor, including a statement of (1) the amount of the contributions due, (2) the amount of interest due on such contributions, and (3) the amount actually paid in accordance with the terms of the compromise. (Aug. 28, 1935, 49 Stat. 948, ch. 794, § 4; June 2, 1940, 54 Stat. 731, ch. 524, § 1; June 4, 1943, 57 Stat. 108, ch. 117.)

COMPILER'S NOTE

Section 3 of Title I of the said 1940 act is as follows: "This title shall take effect as of 12: 01 antemeridian, July 1, 1940."

AMENDMENTS

The above paragraph (b) was substituted for (b) of the 1935 act. The old section read as follows:

"(b) Not later than the fifteenth day after the close of each month, every employer shall make a return of and shall pay the contributions which shall have accrued with respect to wages payable with respect to employment by him within such month. Each such return shall be made under oath (except where the amount of the contribution payable is less than $10), shall be filed with the Board, and shall contain such information and be made in such manner as the Board may by regulations prescribe. No extension of the time for filing the return or for payment of the contributions shall be allowed to any employer."

Paragraph (f) was added by the 1940 act.

For effect of amendment, see note to § 46–301.

The act of June 4, 1943, cited to text, amended section generally.

REFERENCES IN TEXT

Words "Public, Numbered 719, Seventy-sixth Congress," refer to the amendment of this chapter by act July 2, 1940, ch. 524, 54 Stat. 730.

CROSS REFERENCE

Refund of taxes generally, § 47–1017 et seq.

NOTES TO DECISIONS

RECOVERY OF CONTRIBUTIONS

Where Unemployment Compensation Board, after hearing, granted exemption from liability for unemployment contributions, but employer had not changed its position and was not injured by reason of Board's act, the employer was not entitled to recover contributions previously paid under protest, on grounds of "estoppel" and "res judicata" since the Board could reverse an erroneous ruling retrospectively as well as prospectively. *National Rifle Ass'n of America* v. *Young*, 1943 (134 F. 2d 524, 77 U. S. App. D. C. 290).

§ 46–305. Service on nonresident employers.

Any nonresident employer, for whom services constituting employment subject to this chapter are performed, shall be deemed to have appointed the Director of Vehicles and Traffic of the District of Columbia as his true and lawful attorney upon whom may be served all processes in any action or proceedings against such nonresident arising out of, or incident to, this chapter, and said employment shall be a signification that any such process against him served, as herein provided, shall have the same effect and validity as if served on him personally in the District of Columbia. Service of such process shall be made by leaving a copy thereof (with a fee of $2) in the hands of the Director of Vehicles and Traffic of the District of Columbia, or other persons in charge of his office, and such service shall be sufficient service upon such nonresident: *Provided,* That notice of such service and a copy of the process are forthwith sent, by registered mail, by the plaintiff to the defendant and the defendant's return receipt attached to the writ

and entered with the initial pleading. The court in which the action is pending may order such extensions as may be necessary to afford the defendant a reasonable opportunity to defend the action, and no judgment by default in any such action shall be granted until at least twenty days shall have elapsed after the notice of such service has been sent to the defendant as hereinabove prescribed. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 6; June 4, 1943, 57 Stat. 111, ch. 117.)

AMENDMENTS

Section, formerly section 6 of act Aug. 28, 1935, cited to text, which related to appropriations, was amended generally as section 5 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

§ 46–306 [8: 317]. Deposit in unemployment trust fund.

All moneys received in the District unemployment fund from sources other than the unemployment trust fund, except as provided in section 46–304 (i) and section 46–301 (b) (5) (D), shall be immediately paid over to the Secretary of the Treasury to the credit of the unemployment trust fund, to be held in trust for the District upon the terms and conditions provided in section 904 of the Social Security Act. (U. S. C. Title 42, section 1104.) (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 7; June 4, 1943, 57 Stat. 112, ch. 117.)

AMENDMENTS

Section, formerly section 7 of act Aug. 28, 1935, cited to text, which related to similar subject matter, was amended generally as section 6 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

§ 46–307 [8: 318]. Amount and duration of benefits.

(a) On and after January 1, 1938, benefits shall become payable from the benefit account of the District unemployment fund. All benefits shall be paid through employment offices, in accordance with such regulations as the Board may prescribe.

(b) An individual's weekly benefit amount shall be the amount appearing in column B in the table set forth in this subsection on the line on which in column A of such table appears the total wages for employment paid to such individual by employers during that quarter of his base period in which such wages were the highest.

UNEMPLOYMENT BENEFIT TABLE

COLUMN A	COLUMN B	COLUMN C
Wages paid in highest quarter of base period	*Weekly benefit amount*	*Qualifying amount*
$37.50 to $138	$6	$150
$138.01 to $161	7	175
$161.01 to $184	8	200
$184.01 to $207	9	225
$207.01 to $230	10	250
$230.01 to $253	11	250
$253.01 to $276	12	250
$276.01 to $299	13	250
$299.01 to $322	14	250
$322.01 to $345	15	250
$345.01 to $368	16	250
$368.01 to $391	17	250
$391.01 to $414	18	250
$414.01 to $437	19	250
$437.01 and over	20	250

(c) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less the earnings (if any) payable to him with respect to such week. For the purpose of this subsection, the term "earnings" shall include only that part of the remuneration payable to him for such week which is in excess of 40 per centum of his weekly benefit amount for any week. Such benefit, if not a multiple of $1, shall be computed to the next higher multiple of $1.

(d) Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to twenty times his weekly benefit amount or one-half of the wages for employment paid to such individual by employers during his base period, whichever is the lesser: *Provided,* That such total amount of benefits, if not a multiple of $1, shall be computed to the next higher multiple of $1.

(e) DEPENDENT'S ALLOWANCE.—In addition to the benefits payable under subsections (b) and (c) of this section, each eligible individual who is unemployed in any week shall be paid with respect to such week $1 for each dependent relative, but not more than $3 shall be paid to an individual as dependent's allowance with respect to any one week of unemployment, nor shall any weekly benefit which includes a dependent's allowance be paid in the amount of more than $20. The dependent's allowance is not to be taken into consideration in calculating the claimant's total amount of benefits in subsection (d) of this section.

(f) (1) BENEFITS AFTER TERMINATION OF MILITARY SERVICE.—Notwithstanding any inconsistent provisions of this chapter the benefit rights of trainees shall be determined in accordance with the following provisions of this subsection for the periods and with respect to the matters specified herein. Except as herein otherwise provided, all other provisions of this chapter shall continue to be applicable in connection with such benefits.

(2) The term "military service" as used in this subsection means active service in the land or naval forces of the United States, but the service of an individual in any reserve component of the land or naval forces of the United States who is ordered to active duty in any such force for a period of thirty days or less shall not be deemed to be active service in such force during such period.

(3) The term "trainee" as used in this subsection means an individual who entered military service after March 31, 1940, who continued such service for not less than ninety consecutive days and whose military service was terminated on or before the six months after the war in which the United States is now engaged has been terminated by a treaty of peace proclaimed by the President of the United States.

(4) In determining a trainee's "benefit year" (as defined by section 46–301 (h)) the weeks and parts of weeks between the date of his entrance into military service and the date of termination of such service shall be excluded.

(5) In determining a trainee's "base period" (as defined in section 46–301 (f)) the completed and

uncompleted calendar quarters between the date of his entrance into military service and the termination of such service shall be excluded.

(6) If under an Act of Congress, payments with respect to the unemployment of individuals who have completed a period of military service are payable by the United States, a trainee shall be disqualified for benefits with respect to any week beginning within a benefit year as defined in paragraph (4) of this subsection until he has exhausted all his rights to such payments from the United States. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 8; June 2, 1940, 54 Stat. 732, ch. 524, § 1; June 4, 1943, 57 Stat. 112, ch. 117.)

AMENDMENT

The section as contained in the 1935 act provided as follows:

"(a) Subject to the provisions of subsections (b) and (c) of this section, the Board shall pay, from the District Unemployment Fund, to every eligible individual (1) with respect to each week, commencing with the week beginning January 2, 1938, in which such individual was totally unemployed, a week's benefit, which shall be an amount, computed to the nearest half-dollar, equal to 40 per centum of his weekly wage, plus 10 per centum of such weekly wage if he has a dependent spouse, plus an additional 5 per centum of such weekly wage for each dependent relative: *Provided,* That in no case shall the amount paid to any such individual for any week exceed $15, or 65 per centum of his weekly wage, whichever is the lesser; and (2) with respect to each week commencing with the week beginning January 2, 1938, in which such individual was partially unemployed, an amount which when added to the total amount of remuneration (of any nature whatsoever) payable for services performed by such individual during such week, will total $2 more than the week's benefit to which he would be entitled if totally unemployed during such week.

"(b) With respect to unemployment occurring within any period of fifty-two weeks, benefits shall be payable to every eligible unemployed individual (1) in the ratio of one-third of a week's benefit to each credit week which occurred within the period of one hundred and four weeks ending with the week in which he was last engaged in employment, until a total amount equivalent to sixteen times a week's benefit has been paid to him; and (2) after such total has been paid, in the ratio of one-twentieth of a week's benefit to each credit week which occurred within the period of two hundred and sixty weeks ending with the week in which he was last engaged in employment.

"(c) All payments of benefits under this section shall be charged, in accordance with the applicable ratio, against the earliest credit week or part thereof available for such purpose.

"(d) As used in this section, the term 'credit week' means a week in which the individual concerned performed some employment, against which no benefits have been charged, and with respect to which no benefits were paid to the individual: *Provided,* That any week occurring within the customary school vacation period shall not be counted as a credit week in the case of any individual who attended a school, college, or university in the last preceding school term, and returns to a school, or college, or university at the end of such vacation period."

Section, formerly section 8 of act Aug. 28, 1935, cited to text, which related to similar subject matter, was amended generally as section 7 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

CROSS REFERENCE

Rules and regulations, § 46–313.

§ 46–308 [8: 319]. Method of paying benefits.

Moneys shall be requisitioned from the Board's account in the unemployment trust fund solely for the payment of benefits and refunds as provided under section 46–304 (i) and section 46–301 (b) (5) (D) in accordance with regulations prescribed by the Board. The Board shall from time to time requisition from the unemployment trust fund such amounts not exceeding the amounts standing to the Board's account therein as it deems necessary for the payment of benefits and refunds for a reasonable future period. Upon receipt of the amount requisitioned, the Board shall deposit it in the benefit account of the District unemployment fund in the Treasury of the United States as a special deposit to be used solely to pay the benefits and refunds provided in this chapter. All payments of benefits shall be made by checks drawn by the Board, or its duly authorized agent, shall be made through the employment offices designated by the Board, and shall be subject to a post, but not a prior, audit by the District auditor. Aug. 28, 1935, 49 Stat. 950, ch. 794, § 9; June 4, 1943, 57 Stat. 114, ch. 117.)

AMENDMENTS

Section, formerly section 9 of act Aug. 28, 1935, cited to text, which related to similar subject matter, was amended generally as section 8 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

§ 46–309 [8: 320]. Eligibility for benefits.

An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found by the Board—

(a) that he has made a claim for benefits with respect to such week in accordance with such regulations as the Board may prescribe;

(b) that he has during his base period been paid wages for employment by employers equal to not less than the amount appearing in column "C" of the table in section 46–307 (b), on the line on which in column "B" his weekly benefit amount appears;

(c) that he is physically able to work;

(d) that he is available for work and has registered and inquired for work at the employment office designated by the Board, with such frequency and in such manner as the Board may by regulation prescribe: *Provided,* That failure to comply with this condition may be excused by the Board upon a showing of good cause for such failure; and the Board may by regulation waive or alter the requirements of this subsection as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this chapter;

(e) that he has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purposes of this subsection—

(1) unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(2) if benefits have been paid with respect thereto; and

(3) unless the individual was eligible for benefits with respect thereto as provided in this section and section 46–310, except for the requirements of this subsection and of subsection (f) of section 46–310.

(Aug. 28, 1935, 49 Stat. 950, ch. 794, § 10; June 2, 1940, 54 Stat. 733, ch. 524, § 1; June 4, 1943, 57 Stat. 114, ch. 117.)

AMENDMENT

The 1940 amendment inserted the present paragraphs (2) and (5). In the 1935 act they appeared as follows:

"(2) that he has performed employment in at least thirteen weeks within the period of fifty-two weeks ending with the week in which he was last engaged in employment;"

"(5) that he has been totally unemployed and otherwise eligible for benefits under this act for a waiting period of at least three weeks with respect to which he received no benefits, prior to the week for which he claims benefits; and for the purpose of computing such waiting period, two weeks of partial unemployment shall be counted as one week of total unemployment. Such weeks of unemployment need not be consecutive but may be accumulated over the period of fifty-two weeks prior to the week for which he claims benefits; and * * *."

Section, formerly section 10 of act Aug. 28, 1935, cited to text, which related to similar subject matter, was amended generally as section 9 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

CROSS REFERENCE

Rules and regulations, § 46–313 and notes.

§ 46–310 [8: 321]. Disqualification for benefits.

(a) An individual who has left his most recent work voluntarily without good cause, as determined by the Board under regulations prescribed by it, shall not be eligible for benefits with respect to the week in which he so left nor with respect to the three weeks of consecutive unemployment immediately following.

(b) An individual who has been discharged for misconduct occurring in the course of his most recent work, proved to the satisfaction of the Board, shall not be eligible for benefits with respect to the week in which such discharge occurred nor with respect to such additional number of consecutive weeks of unemployment immediately following (not less than one nor more than four) as the Board may determine, under regulations prescribed by it, in proportion to the degree of such misconduct.

(c) If an individual otherwise eligible for benefits fails, without good cause as determined by the Board under regulations prescribed by it either to apply for new work found by the Board to be suitable when notified by any employment office, or to accept any such work when offered to him, he shall not be eligible for benefits with respect to the week in which such failure occurred nor with respect to the three weeks of continuous unemployment immediately following. In determining whether or not work is suitable within the meaning of this subsection the Board shall consider (1) the physical fitness and prior training and experience of the individual, (2) the distance of the place of work from the individual's place of residence, and (3) the risk involved as to health, safety, or morals.

(d) Benefits shall not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lock-out, or other labor dispute; (2) if the wages, earnings, hours, or other conditions of the work offered are less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(e) If an individual under twenty-one years of age otherwise eligible for benefits fails, without good cause as determined by the Board under regulations prescribed by it, to attend courses at a vocational or other school when recommended by the manager of the employment office or by the Board and such courses are available at public expense, he shall not be eligible for benefits with respect to any week in which such failure occurred.

(f) An individual shall not be eligible for benefits with respect to any week if it has been found by the Board that such individual is unemployed in such week as a direct result of a labor dispute, such as a strike, lock-out, or jurisdictional labor dispute still in active progress in the establishment where he is or was last employed: *Provided,* That this subsection shall not apply if it is shown to the satisfaction of the Board that—

(1) he is not participating in or directly interested in the labor dispute which caused his unemployment; and

(2) he does not belong to a grade or class of workers of which, immediately before the commencement of the dispute, there were members employed at the premises at which the dispute occurs, any of whom are participating in or directly interested in the dispute: *Provided,* That if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

(g) An individual shall not be eligible for benefits for any week with respect to which he has received or is seeking unemployment compensation under any other unemployment compensation law of another State or of the United States: *Provided,* That if the appropriate agency of such other State or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply. (Aug. 28, 1935, 49 Stat. 951, ch. 794, § 11; June 4, 1943, 57 Stat. 114, ch. 117.)

AMENDMENTS

Section, formerly section 11 of act Aug. 28, 1935, cited to text, which related to similar subject matter, was amended generally as section 10 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

CROSS REFERENCE

Rules and regulations, § 46–313 and notes.

§ 46–311. Determination of claims.

(a) Claims for benefits shall be made in accordance with such regulations as the Board may prescribe. Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning such regulations or such other matters as the Board may by regulations prescribe. Each employer shall supply

such individuals with copies of such printed statements or materials relating to claims for benefits as the Board may by regulation prescribe. Such printed statements or materials shall be supplied by the Board to each employer without cost to him.

(b) Promptly after an individual has filed a claim for benefits, an agent of the Board designated by it for such purpose shall make an initial determination with respect thereto which shall include a determination with respect to whether or not such benefit may be payable, and if payable, the week with respect to which payments will commence, the maximum duration thereof, and the weekly benefit amount, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 46–310 (e), the agent shall promptly transmit such claim to an appeal tribunal which shall make a decision thereon after such investigation as it deems necessary, and after affording the parties opportunity for fair hearing in accordance with subsection (e) of this section, and the claimant and interested parties shall be given notice thereof and permitted to appeal therefrom to the Board and the courts as is provided in this chapter for notice of, and appeals from, decisions of appeal tribunals. An initial determination may, for good cause, be reconsidered. The claimant and other parties to the proceedings shall be promptly notified of the initial determination or any amended determination and the reasons therefor. Benefits shall be denied or, if the claimant is otherwise eligible, paid promptly in accordance with such initial determination except as hereinafter otherwise provided. The claimant or any party to the determination may file an appeal from such initial determination or from a reconsideration of such determination within ten days after notification thereof, or after the date such notification was mailed to his last known address. If upon such initial determination benefits are allowed but the record of the case indicates that a disqualification has been alleged or may exist, benefits shall not be paid prior to the expiration of the period for appeal as hereinafter provided. If an appeal is duly filed with respect to a matter other than the weekly benefit amount or maximum duration of benefits payable, benefits with respect to the period prior to the final decision of the Board shall be paid only after such decision: *Provided,* That if an appeal tribunal affirms an initial determination allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken. If, subsequent to such initial determination, benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the initial determination, the claimant shall be promptly notified of the denial and the reasons therefor, and may appeal therefrom in accordance with the procedure herein described for appeals from initial determinations.

(c) To hear and decide appealed claims, the Board shall appoint one or more appeal tribunals to hold hearings in accordance with regulations prescribed by the Board at which all parties shall be given opportunity to present evidence and to be heard. In the conduct of such hearings, the parties shall not be bound by common law or statutory rules of evidence or other technical rules of procedure, but the appeal tribunal shall use due diligence to ascertain the true facts of the case.

(d) Each appeal tribunal shall consist of either an examiner regularly employed by the Board on a salaried basis or a body composed of an examiner who shall act as chairman, and, without regard to the civil-service laws otherwise applicable, of one representative of employees and one representative of employers, each designated by the Board. No representative shall be regularly employed by the Board, nor shall any person acting in any case on behalf of the Board have any interest, direct or indirect, in the case. In no case shall the hearings proceed unless the examiner designated as a member of an appeal tribunal is present; and if either or both of such representatives fail to appear for any such hearings or are disqualified from participating in any such hearings, the examiner shall proceed to hear the case: *Provided,* That the Board may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. Each such representative shall be paid for each day on which he actively engaged or was present and prepared to engage in the conduct of any such hearings, such sums, not in excess of $10, as the Board shall by regulation prescribe.

(e) An appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall, unless such appeal is withdrawn, affirm or modify the finding of facts and the initial determination. The parties shall be duly notified of the decision of such appeal tribunal, together with the reasons therefor. The Board, under regulations prescribed by it, may permit further appeal by any party or may, upon its own motion, affirm, reverse, or modify the decision of the appeal tribunal or may set it aside and order a rehearing or the taking of additional evidence before the same or a different appeal tribunal. Unless a petition for such appeal is filed within ten days after the date of notification or mailing of the decision of an appeal tribunal, or within such ten-day period the Board has taken action on its own motion in accordance with the provisions of this subsection, the decision of the appeal tribunal shall constitute the decision of the Board and shall be effective as such. Any decision of an appeal tribunal which is not so modified or so appealed within such ten-day period is final for all purposes, except as provided in section 46–312 (a), and is not subject to review by the District auditor. All decisions rendered by the Board affirming, reversing, or modifying any decision of an appeal tribunal shall become effective immediately, unless the Board shall otherwise order, and are not subject to review by the District auditor.

(f) A full and complete record shall be kept of all proceedings in connection with an appealed claim. All testimony at every hearing on any such claim shall be taken down by a stenographer, but shall not be transcribed except upon order of the Board or in the event of an appeal pursuant to section 46–312 (a). Upon any such appeal, a copy

of all the testimony and of the findings of fact upon which the Board's decision was based shall be filed with the court, and the facts so found shall, if supported by evidence, be binding on the court.

(g) Witnesses subpenaed pursuant to this section shall be allowed fees at a rate fixed by the Board. Such fees shall be deemed part of the expense of administering this chapter. (Aug. 28, 1935, 49 Stat. 951, ch. 794, § 12; June 4, 1943, 57 Stat. 116, ch. 117.)

AMENDMENTS

Section, formerly section 12 of act Aug. 28, 1935, cited to text, which related to similar subject matter, was amended generally as section 11 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

§ 46–312 [8: 323]. Court review.

(a) Within thirty days after the decision of the Board has become final, any party to the proceeding may appeal from the decision to the District Court of the United States for the District of Columbia. Upon the filing of any such appeal notice thereof shall be served upon the Board by the appellant and upon any other party to the proceedings. Such appeal shall be heard by the court at the earliest possible date and shall be given precedence over all other civil cases. It shall not be necessary on any such appeal to enter exceptions to the rulings of the Board and no bond shall be required for entering such appeal. In no event shall any appeal act as a supersedeas. In any appeal under this section the findings of the Board, or of the examiner or appeal tribunal, as the case may be, as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law: *Provided,* That no appeal shall be permitted under this section by any party who has not first exhausted his administrative remedies as provided by this chapter.

(b) An appeal may be taken from a decision of such court to the United States Court of Appeals for the District of Columbia. (Aug. 28, 1935, 49 Stat. 953, ch. 794, § 13; June 4, 1943, 57 Stat. 118, ch. 117.)

AMENDMENTS

Section, formerly section 13 of act Aug. 28, 1935, cited to text, which related to similar subject matter, was amended generally as section 12 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

NOTES TO DECISIONS

ADMISSIONS BY MOTION

In action to recover unemployment contributions paid under protest, where complaint alleged that Unemployment Compensation Board after hearing granted exemption, such legal conclusion was not admitted by the Board's motion to dismiss the complaint. *National Rifle Ass'n of America* v. *Young,* 1943 (134 F. 2d 524, 77 U. S. App. D. C. 290).

§ 46–313. Administration.

(a) The Board is hereby authorized and directed to administer the provisions of this chapter. Subject to the Civil Service Act (5 U. S. C. §§ 632, 633, 635, 637, 638, 640, 642; 18 U. S. C. §§ 208 to 212, and 40 U. S. C. § 42) the Board is further authorized to employ such officers, examiners, accountants, attorneys, experts, agents, and other persons, and to make such expenditures as may be necessary to administer this chapter, and to authorize any such person to do any act or acts which could lawfully be done by the Board. The Civil Service Commission is hereby authorized and directed to confer a competitive classified civil-service status upon those employees performing services for the Board on July 1, 1940: *Provided,* (1) That such employees are certified by the Board as having rendered satisfactory service for not less than six months; (2) that they qualify in such appropriate noncompetitive examination as may be prescribed by the Civil Service Commission; however, all employees certified by the Board in accordance with condition (1) hereof shall automatically be eligible to take such noncompetitive examination; (3) that they are citizens of the United States; and (4) that they are not disqualified by any provision of section 3 of Civil Service Rule V. The Board may, in its discretion, require bond from any of its employees engaged in carrying out the provisions of this chapter.

(b) The Board is further authorized to make and enforce all reasonable regulations which may be necessary to carry out the provisions of this chapter. Such regulations shall become effective five days after they have been published in a newspaper of general circulation in the District.

(c) The Board shall each year, not later than March 1, submit to Congress a report covering the administration and operation of this chapter during the preceding calendar year, and containing such recommendations as the Board wishes to make.

(d) The Board shall, whenever it believes that a change in the contribution or benefit rates is necessary to protect the solvency of the fund, at once recommend such change to Congress if in session.

(e) FEDERAL-STATE COOPERATION.—In the administration of this chapter the Board shall cooperate to the fullest extent consistent with the provisions of this chapter, with the Social Security Board, created by the Act of Congress, entitled "The Social Security Act, as amended" (42 U. S. C. § 301 et seq.), and is authorized and directed to take such action, through the adoption of appropriate rules, regulations, administrative methods, and standards, as may be necessary to secure to the District and its citizens all advantages available under the provisions of such Act (42 U. S. C. § 301 et seq.), under the provisions of sections 1602 and 1603 of the Federal Unemployment Tax Act (26 U. S. C.), and under the provisions of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with States in the promotion of such system, and for other purposes", approved June 6, 1933, as amended (29 U. S. C. §§ 49–49c, 49d, 49e–49h, 49j, 49k, and 39 U. S. C. § 338). The Board shall comply with the regulations of the Social Security Board relating to the receipt or expenditure by the States of moneys granted under any of such Acts and shall make such reports, in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports.

The Board may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment-insurance law.

(f) DISCLOSURE OF INFORMATION.—Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of this chapter and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner, whether by subpena or otherwise, revealing the individual's or employing unit's identity. Any claimant (or his legal representative) shall be supplied with information from the records of the division, to the extent necessary for the proper presentation of his claim in any proceeding under this chapter with respect thereto. Subject to such restrictions as the Board may by regulation prescribe, such information may be made available to any agency of this or any other State, or any Federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or the Bureau of Internal Revenue of the United States Department of the Treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor the Board shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any State agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter. The Board may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter, and may in connection with such request transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 1606 (c) of the Federal Internal Revenue Code (26 U. S. C.).

(g) In the discharge of the duties imposed by this chapter, any member of the Board and any duly authorized representative thereof shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpenas to compel attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

(h) In the case of contumacy by, or refusal to obey a subpena issued to, any person, the Board may invoke the aid of the District Court of the United States for the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Board or officer designated by the Board, there to produce records, if so ordered, or to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpena of the Board, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(i) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Board or in obedience to the subpena of the Board or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. (Aug. 28, 1935, 49 Stat. 953, ch. 794, § 14; June 2, 1940, 54 Stat. 733, ch. 524, § 1; June 4, 1943, 57 Stat. 118, ch. 117.)

COMPILER'S NOTE

The word "Title" refers to Title I of the 1940 act that amends this section.

Section 3 of Title I of 1940 act is as follows: "This title shall take effect as of 12:01 antemeridian, July 1, 1940."

Section 3 of Civil Service Rule V referred to in subsection (a) is as follows:

"3. Disqualifications.—The Commission may, in its discretion, refuse to examine an applicant for appointment or reinstatement or to certify an eligible for any of the following reasons: (a) Dismissal from the service for delinquency, inefficiency, or misconduct; (b) physical or mental unfitness for the position for which he applies: *Provided,* That the Commission may, in its discretion, exempt from the physical requirements established for any position a disabled honorably discharged soldier, sailor, or marine upon a certificate of the United States Veterans' Administration attesting that he has completed an appropriate and sufficient rehabilitatory course of training for the duties of the class of positions in which employment is sought; *And provided further,* That the Commission, may in its discretion, waive the physical requirements in the case of a disabled veteran not so trained to permit his examination; (c) criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct; (d) intentionally making a false statement as to any material fact, or practicing any deception or fraud in securing examination, registration, certification, or appointment; (e) refusal to furnish testimony as required by rule XIV; and (f) the habitual use of intoxicating beverages to excess.

"Any of the reasons stated in the foregoing clauses (b) to (f), inclusive, shall also be good cause for removal from the service."

AMENDMENT

The 1940 act inserted the present paragraph (a). This paragraph appeared in the 1935 act as follows:

"(a) The Board is hereby authorized and directed to administer the provisions of this act. The Board is further authorized to employ such officers, examiners, accountants, attorneys, experts, agents, and other persons, and to make such expenditures, as may be necessary to administer this act, and to authorize any such person to do any act or acts which could lawfully be done by the Board. The Board may, in its discretion, require bond from any of its employees engaged in carrying out the provisions of this act."

Section, formerly section 14 of act Aug. 28, 1935, cited to text, which related to similar subject matter was amended generally as section 13 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

CROSS REFERENCES

Regulations for payment of benefit, § 46–307.

Rules and regulations for reporting for work, § 46–309.

Rules and regulations generally, § 1–226.

Rules and regulations to determine refusal to accept work, § 46–310.

Rules and regulations to determine voluntary leaving of work without good cause, § 46–310.

NOTES TO DECISIONS

CONFIDENTIAL INFORMATION

Evidence relating to the practices and methods of the D. C. Unemployment Compensation Board is excludible as the statute specifically prohibits the disclosure of information given it by employers, including the identity of the employer. It would be against the public interest to permit obtaining by indirection what is directly prohibited by statute. *Orndorff* v. *Cohen* (D. C. Mun. App. 1948, 62 A. 2d 794).

§ 46–314 [8: 325]. Method of paying administrative expenses.

All moneys received by the Board from the United States under title III of the Social Security Act (42 U. S. C. §§ 501 to 503) or from other sources for administering this chapter shall, immediately upon such receipt, be deposited in the Treasury of the United States as a special deposit to be used solely to pay such administrative expenses (including expenditures for rent, for suitable office space in the District of Columbia, and for lawbooks, books of reference, and periodicals), traveling expenses when authorized by the Board, and allowances to field men for furnishing privately owned motor vehicles in the performance of official duties at rates not to exceed $24 per month. All such payments of expenses shall be made by checks drawn by the Board and shall be subject to audit by the District auditor in the same manner as are payments of other expenses of the District. All moneys received by the Board pursuant to section 302 of the Social Security Act (42 U. S. C. § 302), shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board for the proper and efficient administration of this chapter. In lieu of incorporation in this chapter of the provision described in section 303 (a) (9) of the Social Security Act (42 U. S. C. § 302 (a) (9)), the Board shall include in its annual report to the Congress, provided in section 46–313 (c), a report of any moneys received after July 1, 1941, from the Social Security Board under title III of the Social Security Act (42 U. S. C. §§ 501 to 503), and any unencumbered balances in the unemployment compensation administration fund as of that date, which the Social Security Board finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Social Security Board for the proper administration of this chapter. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 15; July 1, 1941, 55 Stat. 540, ch. 272, § 1; June 4, 1943, 57 Stat. 120, ch. 117.)

AMENDMENTS

Section, formerly section 15 of act Aug. 28, 1935, cited to text, which related to similar subject matter was amended generally as section 14 of such act by section 1 of the amendatory act of June 14, 1943, cited to text.

The act of July 1, 1941, cited to text, added the second paragraph.

EFFECTIVE DATE OF AMENDMENT

Sec. 2 of the act of July 1, 1941, cited to text, provided: "This Act shall take effect as of 12:01 o'clock antemeridian July 1, 1941".

§ 46–315 [8: 326]. District Unemployment Compensation Board.

(a) There is hereby established the District Unemployment Compensation Board, to be composed of the Commissioners of the District as members ex officio, and one representative of employees and one representative of employers to be appointed by the Commissioners. Each such representative shall be a resident of the District and shall hold office for a term of three years from the date of his appointment; except that any representative appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. The president of the Board of Commissioners of the District shall be chairman of the Board.

(b) The Board shall administer this chapter through an executive officer to be appointed and employed by the Board, subject to section 46–313 (a). Such executive officer shall act as secretary of the Board and is hereby authorized to act in the name of the Board in all matters specifically delegated to him by the Board.

(c) The Commissioners of the District shall serve on the Board without additional compensation, but the representatives of employees and employers, respectively, shall be paid $10 for each day of active service.

(d) The Board, as herein established, shall be and constitute a body corporate with an official seal which shall be judicially noticed, and shall be capable of suing and being sued as such. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 16; June 4, 1943, 57 Stat. 121, ch. 117.)

AMENDMENTS

Section, formerly section 16 of act Aug. 28, 1935, cited to text, which related to similar subject matter was amended generally as section 15 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

§ 46–316. Reciprocal arrangements.

(a) The Board is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other States or of the Federal Government, or both, whereby—

(1) services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one State shall be deemed to be services performed entirely within any one of the States (i) in which any

part of such individual's service is performed or (ii) in which such individual has his residence or (iii) in which the employing unit maintains a place of business, provided there is in effect, as to such services, an election, approved by the agency charged with the administration of such State's unemployment-compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such State;

(2) potential rights to benefits accumulated under the unemployment-compensation laws of one or more States or under one or more such laws of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Board finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(3) wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment-compensation law of another State or of the Federal Government, shall be deemed to be wages for employment for the purpose of determining his rights to benefits under this chapter, and wages for employment, on the basis of which an individual may become entitled to benefits under this chapter shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another State or of the Federal Government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this chapter upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for employment, as the Board finds will be fair and reasonable as to all affected interests; and

(4) contributions due under this chapter with respect to wages for employment shall for the purposes of section 46–304 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another State or Federal unemployment-compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the Board finds will be fair and reasonable as to all affected interests.

(b) Reimbursements paid from the fund pursuant to paragraph 3 of subsection (a) of this section shall be deemed to be benefits for the purpose of sections 46–306 to 46–308. The Board is authorized to make to other State or Federal agencies and to receive from such other State or Federal agencies reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subsection (a) of this section.

(c) The administration of this chapter and of other State and Federal unemployment-compensation and public-employment-service laws will be promoted by cooperation between the District and such other States and the appropriate Federal agencies in exchanging services and making available facilities and information. The Board is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities, and exercise such of the other powers provided herein with respect to the administration of this chapter as it deems necessary or appropriate to facilitate the administration of any such unemployment-compensation or public-employment-service law, and in like manner to accept and utilize information, services, and facilities made available to the District by the agency charged with the administration of any such other unemployment-compensation or public-employment-service law.

(d) To the extent permissible under the laws and Constitution of the United States, the Board is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment-compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment-security law of the District or under a similar law of such government. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 17; June 4, 1943, 57 Stat. 121, ch. 117.)

AMENDMENTS

Section, formerly section 17 of act Aug. 28, 1935, cited to text, which related to similar subject matter was amended generally as section 16 of such act by section 1 of the amendatory act of June 4, 1943.

§ 46–317 [8: 328]. Records and reports.

(a) Every employing unit, whether or not liable to pay contributions under section 46–303, shall keep such true and accurate work records with respect to all individuals employed by it as the Board may prescribe. Such records shall be open to inspection by the Board and shall be subject to being copied by the Board or their authorized representative at any reasonable time and as often as may be necessary.

(b) The Board may require from any employing unit any sworn or unsworn reports in connection with its business, covering employment, employees, wages, earnings, unemployment and related matters, as the Board deems necessary to the effective administration of this chapter. Except as hereinbefore provided in section 46–13 (f), information thus obtained may not be divulged. Any person who violates any provision of this section or section 46–13 (f) shall be fined not less than $20 nor more than $200 or imprisoned not longer than ninety days, or both. (Aug. 28, 1935, 49 Stat. 955, ch. 794, § 18; June 4, 1943, 57 Stat. 122, ch. 117.)

AMENDMENTS

Section, formerly section 18 of act Aug. 28, 1935, cited to text, which related to similar subject matter was amended generally as section 17 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

§ 46–318 [8: 329]. Protection of rights and benefits.

(a) No agreement by any individual to waive any of his rights under this chapter or to pay any part of the contribution payable by his employer with respect to his or any other individual's employment, shall be valid; nor shall any employer make, require, or permit any deduction from the wages payable to his employees for the purpose of paying any part

of the contributions required of the employer under this chapter, or require or attempt to induce any individual to waive any right he may acquire under this chapter. Any employer who violates any provision of this subsection shall, for each such offense, be fined not less than $100 nor more than $1,000 or be imprisoned not more than six months, or both.

(b) No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be valid or enforceable; and the right to any such benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and the benefits received by any individual so long as they are not mingled with other funds of the recipient shall be exempt from any remedy whatsoever for the collection of all debts except debts accrued for necessaries furnished to such individual, his spouse, or his dependents during the time when such individual was unemployed.

(c) No individual seeking to establish a claim for benefits shall be charged any fee whatsoever by the Board or its representatives, or by the court or any officer thereof. Any individual claiming benefits in any proceeding before the Board or its representative or the court may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the Board. Any person who violates any provision of this subsection shall, for each such offense, be fined not more than $500 or imprisoned not more than one year, or both. (Aug. 28, 1935, 49 Stat. 955, ch. 794, § 19; June 4, 1943, 57 Stat. 123, ch. 117.)

AMENDMENTS

Section, formerly section 19 of act Aug. 28, 1935, cited to text, which related to similar subject matter, was amended generally as section 18 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

§ 46–319 [8: 330]. Penalties.

(a) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment provided for in this chapter for himself or any other individual, shall, for each such offense, be fined not more than $100 or imprisoned not more than sixty days, or both.

(b) Any employing unit, and any officer or agent of any employing unit or any other person, who furnishes a false record or makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to avoid the payment of any or all of the contributions required of such employing unit under this chapter, or to prevent or reduce the payment of benefits to any individual entitled thereto, or who fails or refuses to pay the contributions or other payment or to furnish any reports required of him under this chapter, shall for each such offense be fined not more than $1,000 or imprisoned not more than six months, or both. For purposes of this subsection an officer of a corporation charged with any duty required by this chapter shall be personally liable to prosecution under this section.

(c) Any person who shall willfully violate any provision of this chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not more than $200 or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of his fraud, has received any sum as benefits under this chapter to which he is not entitled shall, in the discretion of the Board, be liable to repay such sum to the Board, to be deposited in the fund; be liable to have such sum deducted from any future benefits payable to him under this chapter; or may have such sum waived in the discretion of the Board. If any person, other than by reason of his fraud, is paid any sum as benefits under this chapter, to which he was not entitled, he shall not be liable to repay such sum, but in the discretion of the Board be liable to have such sum deducted from any future benefits payable to him with respect to the benefit year current at the time of such receipt: *Provided, however,* That no such recoupment from future benefits shall be had if such sum is received by such person without fault on his part and such recoupment would defeat the purpose of this chapter or would be against equity and good conscience; or in the discretion of the Board such recoupment has been waived. In any case in which, under this subsection, a claimant is liable to repay to the Board any sum, such sum may be collected without interest, by civil action in the name of the Board. The disbursing officer and certifying officer of the Board shall not be held liable for any amounts certified or paid by them, in good faith, prior to the effective date of this chapter, or subsequent thereto, to any person where the refund, recoupment, adjustment, or recovery of such amount is waived under this subsection or where such refund, recoupment, adjustment, or recovery under this subsection is not completed prior to the death of the person against whom such refund, recoupment, adjustment, or recovery has been authorized. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 20; June 4, 1943, 57 Stat. 123, ch. 117.)

AMENDMENTS

Section, formerly section 20 of act Aug. 28, 1935, cited to text, which related to similar subject matter, was generally amended as section 19 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

§ 46–320 [8: 331]. Disposition of fines.

The amount of all fines collected pursuant to the provisions of this chapter shall be turned over to the Board and by it paid into the District unemployment fund. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 21; June 4, 1943, 57 Stat. 124, ch. 117.)

AMENDMENTS

Section, formerly section 21 of act Aug. 28, 1935, cited to text, which related to similar subject matter, was generally amended as section 20 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

§ 46–321. Representation in court.

(a) On the request of the Board the United States attorney for the District of Columbia shall represent the Board in any action in court arising under this chapter, or in connection with the administration and enforcement of its provisions, or the rules and regulations authorized thereunder, including actions for the collection of contributions due hereunder; but in any civil action the Board may be represented by its own counsel.

(b) Violations of any provision of this chapter shall be prosecuted by the United States attorney for the District of Columbia. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 22; June 4, 1943, 57 Stat. 124, ch. 117.)

AMENDMENTS

Section, formerly section 22 of act Aug. 28, 1935, cited to text, which related to similar subject matter, was amended generally as section 21 of such act by section 1 of the amendatory act of June 4, 1943, cited to text.

§ 46–322. All audits by District auditor.

All audits herein prescribed shall be made by the District auditor in the same manner as are all other audits of the District. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 23; June 4, 1943, 57 Stat. 125, ch. 117.)

AMENDMENTS

Section, formerly section 23 of act Aug. 28, 1935, cited to text, which related to right to amend or repeal is now section 46–323 and subject matter of this section is based on section 22 of said act Aug. 28, 1935, as amended by section 1 of act June 4, 1943, cited to text.

§ 46–323. Right to amend or repeal.

All rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of Congress to amend or repeal this chapter at any time. (Aug. 28, 1935, ch. 794, § 24, as added June 4, 1943, 57 Stat. 125, ch. 117.)

AMENDMENTS

Section, formerly section 24 of act Aug. 28, 1935, cited to text, which related to separability provisions is now section 46–324 and subject matter of this section is based on section 23 of said act Aug. 28, 1935, as amended by section 1 of act June 4, 1943, cited to text.

§ 46–324. Separability of provisions.

If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances, shall not be affected thereby. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 24, renumbered § 25 by act June 4, 1943, 57 Stat. 125, ch. 117.)

AMENDMENTS

Section, formerly section 25 of act Aug. 28, 1935, cited to text, which related to short title is now incorporated in section 46–325 and subject matter of this section is based on section 24 of said act Aug. 28, 1935, as amended by section 1 of act June 4, 1943, cited to text.

§ 46–325. Short title.

This chapter may be cited as the "District of Columbia Unemployment Compensation Act." (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 25, renumbered § 26 by act June 4, 1943, 57 Stat. 125, ch. 117.)

AMENDMENTS

Section, subject matter of which is based on section 26 of act Aug. 28, 1935, cited to text, was added to said act by section 1 of the amendatory act of June 4, 1943, cited to text.

TITLE 47.—TAXATION AND FISCAL AFFAIRS

Chap.		Sec.
1.	General provisions	47–101
2.	Budget estimates	47–201
3.	Collection and disbursement of taxes	47–301
4.	Designation of property for assessment and taxation	47–401
5.	Rates, records, and surplus funds	47–501
6.	Tax assessor	47–601
7.	Assessment of real property	47–701
8.	Exemptions from taxation	47–801
9.	Family dwellings occupied by owners	47–901
10.	Real property tax sales	47–1001
11.	Special assessments	47–1101
12.	Taxation of personal property	47–1201
13.	Enforcement of personal property taxes by distraint or levy	47–1301
14.	Enforcement of personal property taxes by acquisition of lien	47–1401
15.	Income tax	47–1501
16.	Inheritance and estate taxes	47–1601
17.	Financial institution, guaranty company, and public utility taxes	47–1701
18.	Insurance companies	47–1801
19.	Motor fuel tax	47–1901
20.	Dog tax	47–2001
21.	Private employment agency licenses	47–2101
22.	Public auction permits	47–2201
23.	General license law	47–2301
24.	Board of Tax Appeals	47–2401
25.	Miscellaneous provisions	47–2501
26.	Gross sales tax	47–2601
27.	Compensating-use tax	47–2701
28.	Cigarette tax	47–2801

Chapter 1.—GENERAL PROVISIONS

Sec.

47–101. Fiscal year for District of Columbia—Commencement.
47–102. Indebtedness not to be increased—Penalty.
47–103. Officers to give security.
47–104. Diversion of funds prohibited—Penalty.
47–105. "Antideficiency Act" applicable to the District of Columbia.
47–106. Apportionment of appropriations for contingent and miscellaneous expenses.
47–107. Appropriations for contingent expenses—Accounting.
47–108. Permanent appropriations repealed.
47–109. Permanent appropriations abolished.
47–110. Permanent appropriations continued.
47–111. Membership dues of District of Columbia employees to be specifically authorized.
47–112. Disbursing officer—Appointment—Bond—Duties.
47–113. Deputy disbursing officer—Duties—Bond.
47–114. Advances to the major and superintendent of police.
47–115. Advances to director of public welfare.
47–116. Advances to chief probation officer of juvenile court.
47–117. Advances to superintendent of penal institutions.
47–118. Advances to librarian of Public Library.
47–119. Notification to disbursing officer of objections to allowance of disbursements.
47–120. Auditor—Duties—Bond.
47–121. Auditor—Countersigning checks.
47–122. Auditor's chief clerk, duties.
47–123. Auditor to audit all accounts.
47–124. Amount of disbursing officers' outstanding checks to be deposited in Treasury.
47–125. Disbursing officer's checks—Payment to holders of outstanding checks.
47–126. Fees collected to be paid into Treasury of the United States.
47–127. Fees of inspector of gas and meters and harbor master.
47–128. Market rents, fees, and income to be paid to collector of taxes.
47–129. Assessment and permit work—Credit of collections.
47–130. Receipts to be credited to United States and District of Columbia in proportion to fiscal year appropriations.
47–130a. Revenues credited to District of Columbia general fund.
47–131. Working capital for industrial enterprises at workhouse and reformatory.
47–132. Money received from sale of animals and materials to be paid into Treasury.
47–133. Appropriations for playground employees to be paid from District revenues.
47–134. Annual Federal payment.
47–135. Investment of District of Columbia's funds in United States Government securities—Deposit of interest to credit of appropriate fund—Sale and exchange of such securities.

§ 47–101 [20: 621]. Fiscal year for District of Columbia—Commencement.

The fiscal year of the District of Columbia shall commence on the first day of July in each and every year until otherwise provided by law. (Leg. Assem., Aug. 22, 1871, ch. 65.)

§ 47–102 [20: 622]. Indebtedness not to be increased—Penalty.

There shall be no increase of the amount of the total indebtedness of the District of Columbia existing on June 11, 1878; and any officer or person who shall knowingly increase, or aid or abet in increasing, such total indebtedness, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding ten years, and by fine not exceeding ten thousand dollars. (June 11, 1878, 20 Stat. 108, ch. 180, § 13.)

CROSS REFERENCES

Commissioners may not anticipate taxes by sale or hypothecation, § 1–219.

General limitation on power of Commissioners, § 1–801.

§ 47–103 [20: 623]. Officers to give security.

All officers appointed by the President for the District, who, by virtue of the provisions of any law of Congress, are required to give security for moneys that may be intrusted to them for disbursement, shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe. (R. S., D. C., § 87.)

CROSS REFERENCES

Bond of assessor, § 47–602.
Bond of auditor, § 47–120.
Bond of collector of taxes, § 47–302.
Bond of disbursing officer, §§ 47–112, 47–113.

§ 47–104 [20: 624]. Diversion of funds prohibited—Penalty.

It shall not be lawful for the District authorities, or any person charged with the disbursements of money in the District, to divert from its legitimate object any money levied or collected as taxes from the people of the District. Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor in office, and be dismissed therefrom. (R. S., D. C., §§ 116, 118.)

§ 47–105 [20: 625]. "Antideficiency Act" applicable to the District of Columbia.

The provisions of section 665 of title 31 of the Code of the Laws of the United States of America, known as the "Antideficiency Act," are hereby extended and made applicable in all respects to appropriations made for and expenditures of and to all of the officers and employees of the government of the District of Columbia. (June 26, 1912, 37 Stat. 184, ch. 182, § 9.)

CROSS REFERENCE

Commissioners may not anticipate taxes by sale or hypothecation, § 1–219.

STATUTORY REFERENCE

U. S. C., title 31, § 665, above referred to reads as follows: "No executive department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law. Nor shall any department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. All appropriations made for contingent expenses or other general purposes, except appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations are made; and all such apportionments shall be adhered to and shall not be waived or modified except upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment, but this provision shall not apply to the contingent appropriations of the Senate or House of Representatives; and in case said apportionments are waived or modified as herein provided, the same shall be waived or modified in writing by the head of such executive department or other Government establishment having control of the expenditure, and the reasons therefor shall be fully set forth in each particular case and communicated to Congress in connection with estimates for any additional appropriations required on account thereof. Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less than $100 or by imprisonment for not less than one month. (R. S. § 3679; Mar. 3, 1905, ch. 1484, § 4, 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48.)"

§ 47–106 [20: 626]. Apportionment of appropriations for contingent and miscellaneous expenses.

The Commissioners of the District of Columbia shall, on or before the beginning of each fiscal year, so apportion appropriations made for contingent and miscellaneous expenses under the Metropolitan police, fire department, electrical department, and other offices or departments of the government of the District of Columbia as to prevent deficiencies in said appropriations. (July 1, 1902, 32 Stat. 561, ch. 1351.)

§ 47–107 [20: 627]. Appropriations for contingent expenses—Accounting.

All expenditures from appropriations made for contingent expenses of the District of Columbia shall be accounted for in the General Accounting Office as other expenditures for the District, and a detailed statement of such expenditures shall be reported to Congress in accordance with section 104 of title 5 of the Code of Laws of the United States. (Feb. 25, 1885, 23 Stat. 319, ch. 145; July 18, 1888, 25 Stat. 314, ch. 676; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

AMENDMENTS

The 1888 amendment repealed from the 1885 act the following: "That thereafter all appropriations made for contingent expenses of the District of Columbia shall be expended under the direction and in the sole discretion of the Commissioners."

The 1921 act transferred the duties of the Treasury in this matter to the General Accounting Office. The 1885 act provided for an accounting "in the Treasury Department."

STATUTORY REFERENCE

U. S. C., title 5, § 104, above referred to reads: "The head of each department shall require of the disbursing officers, acting under his direction and authority, the return of precise and analytical statements and receipts for all the moneys which may have been from time to time during the next preceding year expended by them. (R. S., § 193; May 29, 1928, ch. 901, § 1, 45 Stat. 986.)"

NOTES TO DECISIONS

POWERS OF COMPTROLLER GENERAL

No greater powers were given to the Comptroller General than had been enjoyed by his predecessors. *Mare* v. *Alexander* ((D. C.-Mass.), 2 Fed. (2d) 895, affd. 5 Fed. (2d) 964).

SHIPPING BOARD EMERGENCY FLEET CORPORATION

The Shipping Board Emergency Fleet Corporation organized as a private corporation under District of Columbia laws, is an entity distinct from the United States and its financial transactions are within the control of its own officers. Mandamus to subject a claim against it to the audit of the Comptroller General must therefore be refused. *United States ex rel. Skinner and Eddy Corp.* v. *McCarl* (275 U. S. 1, 72 L. Ed. 131, 48 Sup. Ct. 12).

§ 47–108 [20: 636a]. Permanent appropriations repealed.

(a) Effective July 1, 1935, such portion of any Acts as provide appropriations from the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section are hereby repealed, and any balances remaining in, or but for this provision would accrue to, such accounts shall be covered into the Treasury of the United States to the credit of the District of Columbia. Any claims accruing on or after July 1, 1935, which but for this section properly would have been charged to these appropriation accounts shall, upon proper

audit, be certified to Congress for appropriation, which is hereby authorized.

(b) (1) Militia fund from fines, District of Columbia (DCs592).

(2) Industrial Home School fund, District of Columbia (DCs463).

(3) Sanitary fund, District of Columbia (DCt619).

(4) New site and buildings, Industrial Home School, District of Columbia (DCs460).

(5) Payment to tenants excess rentals recovered by Rent Commission, District of Columbia (DCs087).

(6) Escheated estates relief fund, District of Columbia (DCs612).

(7) Redemption of tax-lien certificates, District of Columbia (DCt618).

(8) Washington special tax fund, District of Columbia (DCt623)..

(9) Redemption of assessment certificates, District of Columbia (DCt617). (June 26, 1934, 48 Stat. 1230, ch. 756, § 13.)

STATUTORY REFERENCE

See note to U. S. C., title 31, § 725*l*.

§ 47–109 [20: 636b]. Permanent appropriations abolished.

(a) On and after July 1, 1935, appropriations for the District of Columbia appearing on the books of the Government and listed in subsection (b) of this section are abolished as such, and so much of the several Acts as provide for such appropriations is amended so as to authorize in lieu thereof annual definite appropriations, estimates for which shall be incorporated in the estimates of annual appropriations for the District of Columbia.

(b) (1) Refunding water rents, and so forth, District of Columbia (DCx602).

(2) Refunding taxes, District of Columbia (DCx601).

(3) Extension, and so forth, of streets and avenues, District of Columbia (fiscal year) (DC–114).

(4) Policemen and Firemen's Relief Fund, District of Columbia (DCt614). (June 26, 1934, 48 Stat. 1230, ch. 756, § 14.)

STATUTORY REFERENCE

See note to U. S. C., title 31, § 725m.

§ 47–110 [20: 636c]. Permanent appropriations continued.

(a) The funds appearing on the books of the Government and listed in subsections (b) and (c) of this section shall be classified on the books of the Treasury as trust funds. All moneys accruing to these funds are hereby appropriated, and shall be disbursed in compliance with the terms of the trust. Hereafter moneys received by the Government as trustee analogous to the funds named in subsections (b) and (c) of this section, not otherwise herein provided for, except moneys received by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, shall likewise be deposited into the Treasury as trust funds with appropriate title, and all amounts credited to such trust-fund accounts are hereby appropriated and shall be disbursed in compliance with the terms of the trust: *Provided,* That, effective July 1, 1935, expenditures from the trust fund "Soldiers' Home, Permanent Fund" (8t184) shall be made only in pursuance of appropriations annually made by Congress, and such appropriations are hereby authorized: *Provided further,* That personal funds of deceased inmates, Naval Home, now deposited with the pay officer of the Naval Home, shall be deposited in the Treasury to the credit of the trust fund account "Personal Funds of Deceased Inmates, Naval Home" (7t989): *Provided further,* That on June 30 of each year there shall be transferred to the trust fund receipt account directed to be established in section 725p of Title 31, of the Code of Laws of the United States such portion of the balances in any trust-fund account hereinbefore or hereafter listed or established, except the balances in the accounts listed in subsection (c) of this section, which have been in any such fund for more than one year and represent moneys belonging to individuals whose whereabouts are unknown, and subsequent claims therefor shall be disbursed from the trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown," directed to be established in section 725p of Title 31, of the Code of Laws of the United States.

(54) Unclaimed condemnation awards, Rock Creek and Potomac Parkway Commission, District of Columbia (DCt620).

(55) Miscellaneous trust-fund deposits, District of Columbia (DCt613).

(56) Surplus fund, District of Columbia (DCt621).

(57) Relief and rehabilitation, District of Columbia Workmen's Compensation Act (DCt604).

(58) Inmates' fund, workhouse and reformatory, District of Columbia (DCt605).

(79) Matured obligations of the District of Columbia (2t070).

(c) (3) Teachers' Retirement Fund Deductions, District of Columbia (DCt624).

(4) Teachers' Retirement Fund, Government Reserves, District of Columbia (DCt627). (June 26, 1934, 48 Stat. 1233–1235, ch. 756, § 20.)

STATUTORY REFERENCE

See U. S. C., title 31, § 725s.

§ 47–111 [20: 637]. Membership dues of District of Columbia employees to be specifically authorized.

No money appropriated by any Act of Congress shall be expended for membership fees or dues of any officer or employee of the District of Columbia in any society or association or for expenses of attendance of any person at any meeting or convention of members of any society or association, unless such fees, dues, or expenses are authorized to be paid by specific appropriations for such purposes or are provided for in express terms in some general appropriation. (June 26, 1912, 37 Stat. 184, ch. 182, § 8.)

§ 47–112 [20: 638]. Disbursing officer—Appointment—Bond—Duties.

The disbursing officer shall be appointed by the Commissioners, and shall give bond to the United States in the sum of fifty thousand dollars, for the benefit of the United States, the District of Columbia, the Commissioners of the District of Columbia, and all persons interested conditioned for the faithful

performance of the duties of his office in the disbursing and accounting, according to law, for all moneys of the United States and of the District of Columbia that may come into his hands, which bond shall be approved by the said Commissioners and the Secretary of the Treasury and be filed in the office of the Secretary of the Treasury: *Provided,* That advances in money shall be made, on the requisition of said Commissioners, to the said disbursing officer instead of to the Commissioners, and he shall account for the same as required by section 47–309. Said disbursing officer shall be subordinate to the commissioners, and they shall in every respect be responsible to the United States, the District of Columbia, and to individuals for the acts and doings of said disbursing officer.

The disbursing officer is authorized to pay laborers and employees of the District of Columbia, and such payments shall be made upon pay rolls or other vouchers audited and approved by the auditor of the District of Columbia, and certified by the Commissioners as required by section 47–309. Said pay rolls and other vouchers shall be included in the account of the Commissioners.

The accounts of the disbursing officer shall be audited by the auditor of the District of Columbia, who shall promptly forward the same to the Commissioners for their approval. (Mar. 3, 1891, 26 Stat. 1064, ch. 546; July 14, 1892, 27 Stat. 151, ch. 171; June 30, 1898, 30 Stat. 526, ch. 540.)

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCE

Requisitions and vouchers, § 47–310.

NOTES TO DECISIONS

IN GENERAL

This section does not impose responsibility for the faults of the disbursing clerk upon the auditor. *District of Columbia* v. *Petty* (229 U. S. 593, 57 L. Ed. 1343, 33 Sup. Ct. 881).

§ 47–113 [20: 639]. Deputy disbursing officer—Duties—Bond.

The deputy disbursing officer shall, in the absence of the disbursing officer, be authorized to transact all duties pertaining to said disbursing officer, and shall be required to give bond to the said disbursing officer in the sum of twenty-five thousand dollars, conditioned on the faithful performance of the duties of his office, but said disbursing officer to be responsible to the United States, District of Columbia, and the people whom he pays, as required by law. (June 6, 1900, 31 Stat. 555, ch. 789.)

§ 47–114 [20: 640]. Advances to the major and superintendent of police.

The disbursing officer of the District of Columbia may advance to the major and superintendent of the Metropolitan police, upon requisitions previously approved by the auditor of the District of Columbia, from the appropriation for miscellaneous and contingent expenses of the Metropolitan police department of the District of Columbia, sums of money, not exceeding three hundred dollars at any one time, to be used only for the prevention and detection of crime, and to be accounted for monthly on itemized vouchers to the accounting officers of the District of Columbia. (Apr. 27, 1904, 33 Stat. 381, ch. 1628.)

§ 47–115 [20: 641]. Advances to director of public welfare.

The disbursing officer of the District of Columbia is authorized to advance to the director of public welfare, upon requisitions previously approved by the auditor of the District of Columbia and upon such security as may be required of said director by the commissioners, sums of money not to exceed $400 at any one time, to be used for expenses in placing and visiting children, traveling on official business of the board, and for office and sundry expenses, all such expenditures to be accounted for to the accounting officers of the District of Columbia within one month on itemized vouchers properly approved. (Feb. 25, 1929, 45 Stat. 1289, ch. 314.)

COMPILER'S NOTE

This section is repeated in the District of Columbia Appropriation Act for 1933 (47 Stat. 370, ch. 308) and in the Appropriation Act for 1934 (June 16, 1933, 48 Stat. 243, ch. 93) and thereafter, including the act for 1941 (June 12, 1940, 54 Stat. 326, ch. 333, § 1).

§ 47–116 [20: 642]. Advances to chief probation officer of juvenile court.

The disbursing officer of the District of Columbia is authorized to advance to the chief probation officer of the juvenile court upon requisition previously approved by the judge of the juvenile court and the auditor of the District of Columbia, sums of money not to exceed $50 at any one time, to be expended for transportation and traveling expenses to secure the return of absconding probationers, and to be accounted for monthly on itemized vouchers to the accounting officer of the District of Columbia. (Feb. 25, 1929, 45 Stat. 1286, ch. 314.)

COMPILER'S NOTE

This section is repeated in the District of Columbia Appropriation Act for 1933 (47 Stat. 367, ch. 308) and in the Appropriation Act for 1934 (48 Stat. 240, ch. 93) and thereafter, including the act for 1941 (June 12, 1940, 54 Stat. 324, ch. 333, § 1).

§ 47–117 [20: 643]. Advances to superintendent of penal institutions.

The disbursing officer of the District of Columbia is authorized to advance to the general superintendent of penal institutions, upon requisitions previously approved by the auditor of the District of Columbia, and upon such security as the commissioners may require of said superintendent, sums of money not exceeding $100 at one time, to be used only for expenses in returning escaped prisoners, payable from the maintenance appropriations for the workhouse and reformatory, all such expenditures to be accounted for to the accounting officers of the District of Columbia within one month on itemized vouchers properly approved. (Feb. 25, 1929, 45 Stat. 1286, ch. 314.)

COMPILER'S NOTE

The District of Columbia Appropriation Acts for 1933 and 1934 (47 Stat. 370, ch. 308 and 48 Stat. 244, ch. 93), repeated this authority but increased to $200 the sum that

might be advanced. It was increased to $300 in the act for 1940 (July 15, 1939, 53 Stat. 1026, ch. 281) and for 1941 (June 12, 1940, 54 Stat. 327, ch. 333, § 1).

§ 47–118 [20: 643a]. Advances to librarian of Public Library.

The disbursing officer of the District of Columbia is authorized to advance to the librarian of the Public Library, upon requisition previously approved by the Auditor of the District of Columbia, not exceeding $50 at the first of each month, for the purchase of certain books, pamphlets, periodicals, or newspapers, or other printed material. (June 19, 1948, 62 Stat. 543, ch. 555, § 1.)

SIMILAR PROVISIONS

1951—July 18, 1950, ch. 467, § 1, 64 Stat. 347.
1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
1949—June 19, 1948, ch. 555, § 1, 62 Stat. 544.
1948—July 25, 1947, ch. 324, § 1, 61 Stat. 433.
1947—July 9, 1946, ch. 544, § 1, 60 Stat. 507.
1946—June 30, 1945, ch. 209, § 1, 59 Stat. 278.
Prior appropriation acts limited amount to $25.

§ 47–119 [20: 644]. Notification to disbursing officer of objections to allowance of disbursements.

When differences arise in the examination of the accounts of the disbursing officer of the District of Columbia, calling for the suspension of any item in said acounts, it shall be the duty of the General Accounting Office to notify the auditor of the District of Columbia in connection with the disbursing officer of the District of Columbia of the grounds of such objections resulting in said suspensions, in order that said auditor in connection with said disbursing officer may by explanation if possible remove said grounds of suspension. (July 1, 1902, 32 Stat. 592, ch. 1352; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

AMENDMENT

The 1921 act created the General Acounting Office. The 1902 act contained the words "Auditor for the State and other departments who settles said accounts" in place of the present words "General Accounting Office."

CROSS REFERENCE

Adjustment of controverted accounts, § 47–309.

§ 47–120 [20: 645]. Auditor—Duties—Bond.

It shall be the duty of the auditor of the District of Columbia to audit all accounts against the said District, and also approve and certify the same. He shall keep a record of all bills certified by him, their amounts, the appropriation to which they are chargeable, and the date of approval. He shall retain in his office the originals of all contracts and agreements not otherwise provided for. He shall also examine and audit all accounts, not otherwise provided for by law. He shall countersign all warrants if he shall find the same correct, and shall give bond, to be approved by the Commissioners in the sum of twenty thousand dollars, conditioned for the faithful discharge of the duties of his office. (Leg. Assem., Aug. 23, 1871, ch. 108, § 10, p. 146.)

CROSS REFERENCES

Approval of advances to public library, § 47–118.
Audit of accounts of clerk of juvenile court, § 11–940.
Audit of accounts of clerk of police court, § 11–627.
Audit of benefits paid under Unemployment Compensation Act, § 46–308.
Audit of workmen's unemployment compensation funds, § 46–304.
Control over "Miscellaneous Trust Fund Deposits," § 47–311.
Custodian of insurance deposits, § 35–416.
Duty to audit accounts of nurses' examining board, § 2–408.
General limitation on power of Commissioners, § 1–801.

§ 47–121 [20: 646]. Auditor—Countersigning checks.

The auditor of the District of Columbia shall continue to prepare and countersign all checks issued by the disbursing officer, and no check involving disbursement of public moneys by the disbursing officer shall be valid unless countersigned by the auditor of the District of Columbia. (July 1, 1902, 32 Stat. 592, ch. 1352.)

§ 47–122 [20: 647]. Auditor's chief clerk, duties.

The chief clerk (of the auditor's office) shall after March 2, 1911, in the necessary absence or inability from any cause of the auditor, perform his duties without additional compensation, and shall during the presence of the auditor perform such duties as shall be prescribed by the auditor; and the auditor may require the said chief clerk to give bond for the faithful performance of such duties; but the auditor shall in every respect be responsible to the United States, the District of Columbia, and to individuals, as now provided by law. (Aug. 6, 1890, 26 Stat. 295, ch. 724; Mar. 2, 1911, 36 Stat. 969, ch. 192.)

AMENDMENT

Both acts are appropriation acts. The later one merely rewords the earlier one.

§ 47–123 [20: 648]. Auditor to audit all accounts.

All accounts for the disbursement of appropriations made either from the revenues of the District of Columbia or jointly from the revenues of the United States and the District of Columbia shall be audited by the auditor of the District of Columbia before being transmitted to the General Accounting Office, unless otherwise specifically provided in the law making such appropriations: *Provided,* That this provision shall not apply to disbursements on account of the court of appeals and the District Court of the United States for the District of Columbia, and for interest and sinking fund on the funded debt of the District of Columbia, which disbursements shall continue to be audited as heretofore provided by law. (June 30, 1898, 30 Stat. 526, ch. 540; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

COMPILER'S NOTE

The 1921 act provides for the General Accounting Office.

CROSS REFERENCE

Audit of accounts of disbursing officer, § 47–112.

§ 47–124 [20: 649]. Amount of disbursing officers' outstanding checks to be deposited in Treasury.

At the beginning of each fiscal year, or as soon thereafter as may be practicable, the respective amounts represented by checks drawn by the disbursing officer of the District of Columbia, or by any former disbursing officer of said District, which have remained outstanding, unsatisfied, and unpaid for three years or more, shall be deposited by the

treasurer of the United States and covered back into the treasury by warrant to the credit of a permanent appropriation account to be denominated "Outstanding liabilities, District of Columbia," and shall be carried to the credit of the respective parties in whose favor such checks were issued upon the books of the auditor of the District of Columbia, in like manner as the amounts represented by checks of disbursing officers of the United States which have remained outstanding, unsatisfied, and unpaid for three years or more are covered back into the treasury. (Apr. 28, 1904, 33 Stat. 574, ch. 1827, § 1.)

§ 47–125 [20: 650]. Disbursing officer's checks—Payment to holders of outstanding checks.

The payee or bona fide holder of any check drawn by the disbursing officer of the District of Columbia, or by any former disbursing officer of said District, the amount of which has been so covered back into the Treasury of the United States, shall, upon application accompanied with competent and sufficient proof, and the surrender of such check, be paid the amount thereof from the said appropriation account to be denominated "Outstanding liabilities, District of Columbia," upon a claim therefor duly audited and approved by the auditor of the District of Columbia, subject to like conditions and provisions as those imposed and required by the Revised Statutes of the United States, with respect to the payment of amounts represented by checks of disbursing officers of the United States which have been covered back into the Treasury to the credit of outstanding liabilities. (Apr. 28, 1904, 33 Stat. 574, ch. 1827, § 2.)

STATUTORY REFERENCE

See R. S. § 306, U. S. C., title 31, § 149.

§ 47–126 [20: 651]. Fees collected to be paid into Treasury of the United States.

Fees collected by the District of Columbia shall be paid for each fiscal year into the Treasury of the United States to the credit of the District of Columbia unless otherwise provided by law, as follows, namely, fees of superintendent of weights, measures, and markets; fees of surveyor's office; health department fees; pound fees; fees for railing permits; fees for building permits; fees for electrical permits; bathing beach fees; fees from public convenience stations; fees for tax certificates; fees of the municipal court; and fees collected by the building inspection division on account of permits, certificates, and transcripts of records issued by the inspector of buildings; fees and emoluments of the offices of the recorder of deeds and the register of wills; together with the tuition of nonresident pupils in public schools. (June 26, 1912, 37 Stat. 184, ch. 182, § 10; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; Apr. 24, 1926, 44 Stat. 322, ch. 176, § 1; June 7, 1926, 44 Stat. 697, ch. 480.)

COMPILER'S NOTE

This section has been reworded by the compiler to express the present state of the law. It formerly made provision for payment of fees into the Treasury to the credit of the United States and the District of Columbia in the same proportion as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. It is believed that these provisions no longer apply, see acts 1922, 42 Stat. 668, 669, ch. 249, § 1, which provided as follows:

"Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States excepting such items of expense as Congress may direct shall be paid on another basis, * * * and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

The appropriation act of June 7, 1924, 43 Stat. 539, ch. 302, § 1, made a lump-sum appropriation as follows: "Any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and in addition, $9,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923, namely:"

Subsequent appropriation acts contained similar provisions, changing only the amount of the appropriation and the fiscal year (see act of June 12, 1940, 54 Stat. 307, ch. 333, § 1). These appropriation acts did not, however, provide for the repeal of the provisions of the 1922 act above quoted. This was done by the act of May 16, 1938, 52 Stat. 375, § 8, which added Title 10 to the District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690.

From the foregoing it would seem that there is no longer any apportionment of expenses or segregation of revenues unless specific provision is made therefor by Congress subsequent to the repeal provision.

Section 10 of the act of 1912 closed with a clause reading as follows: "and the annual wheel tax on all automobiles or other motor vehicles." This tax is no longer being collected and the above-quoted words were deleted as obsolete.

AMENDMENTS

The 1912 act provided that the payments should be credited equally to the District and the United States.

The 1921 act provided fees "paid into the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts shall be paid for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia."

The act of Apr. 24, 1926, related to the fees of the offices of register of wills and recorder, see §§ 19–404, 45–709.

The provision of the 1912 act including "The tax of one-half of one cent paid by any street or other railroad company for each passenger carried across the Highway Bridge" was deleted by the June 7, 1926, act.

CROSS REFERENCES

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

Refund of building permit fee, § 5–430.

Tuition for nonresidents, "nonresidents" defined, disposition of tuition, § 31–301.

§ 47–127 [20: 652]. Fees of inspector of gas and meters and harbor master.

All fees collected by the inspector of gas and meters and the harbor-master and amounts collected for leases of streets and reservations and wharf charges shall be paid to the collector for payment into the Treasury of the United States to the credit of the District of Columbia unless otherwise provided by law. (July 18, 1888, 25 Stat. 316, ch. 676; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CROSS REFERENCE

See amendment note to § 47–126.

§ 47–128 [20: 653]. Market rents, fees, and income to be paid to collector of taxes.

All rents, fees, and income derived from the markets operated by the District of Columbia shall be paid to the collector of taxes; and no person employed by the District of Columbia in or about the said markets shall receive any fees or compensation of any kind in addition to the salary provided by law. (June 11, 1896, 29 Stat. 394, ch. 419.)

§ 47–129 [20: 654]. Assessment and permit work—Credit of collections.

All collections for work done under the assessment and permit system shall be deposited by the collector of taxes in the Treasury of the United States to the credit of the District of Columbia unless otherwise provided by law. (Mar. 2, 1911, 36 Stat. 975, ch. 192; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CROSS REFERENCES

See compiler's note to § 47–126.

Construction or repair of streets, sidewalks, and sewers under permit plan, §§ 7–608, 7–609.

Special assessments generally, § 47–1101 and notes.

§ 47–130 [20: 655]. Receipts to be credited to United States and District of Columbia in proportion to fiscal year appropriations.

All fees, fines, and other miscellaneous items of revenue prior to July 1, 1921, required by law to be paid into the Treasury of the United States to the credit of the District of Columbia, unless otherwise provided by law; and all collections on account of special assessments for public improvements for which assessments are levied according to the law shall be paid into the Treasury of the United States to the credit of the District of Columbia unless otherwise provided by law. (Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CROSS REFERENCES

See compiler's note to § 47–126.

Federal Government now makes a lump-sum appropriation for the District, § 47–134.

Ownership of revenue derived from property owned by the United States, § 47–502.

STATUTORY REFERENCE

This section is in U. S. C., title 31, § 491.

§ 47–130a. Revenues credited to District of Columbia general fund.

Any revenue now required by law to be credited to the District of Columbia and the United States in the proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the general fund of the District of Columbia. (June 28, 1944, 58 Stat. 533, ch. 300, § 18.)

§ 47–131 [20: 656]. Working capital for industrial enterprises at workhouse and reformatory.

To provide a working capital fund for such industrial enterprises at the workhouse and reformatory as may be approved by the Commissioners, $50,000: *Provided,* That the various departments and institutions of the District of Columbia and the Federal Government may purchase, at fair market prices, as determined by the Commissioners, products and services of said industrial enterprises: *Provided further,* That receipts from the sale of products and services shall be deposited to the credit of said working capital fund, and said fund, including all receipts credited thereto, shall be used as a revolving fund for the fiscal year 1946 for all necessary expenses of such enterprises, including personal services; the purchase and repair of machinery, tools, and equipment; purchase of raw materials and manufacturing supplies; and for the payment to inmates or their dependents of such pecuniary earnings as the Commissioners may deem proper. (Feb. 25, 1929, 45 Stat. 1290, ch. 314; June 28, 1944, 58 Stat. 522, ch. 300, § 1; June 30, 1945, 59 Stat. 285, ch. 209, § 1; July 9, 1946, 60 Stat. 514, ch. 544, § 1).

COMPILER'S NOTE

The District of Columbia Appropriation Act for 1934 (June 16, 1933, 48 Stat. 244, ch. 93) provided: "To provide a working capital fund for such industrial enterprises as may be approved by the Commissioners of the District of Columbia, $35,000: *Provided,* That the various departments and institutions of the District of Columbia and the Federal Government may purchase, at fair market prices, as determined by the Commissioners, such surplus products and services as meet their requirements; receipts from the sale of products and services shall be deposited to the credit of said working capital fund, and said fund, including all receipts credited thereto, shall be used as a revolving fund for the fiscal year 1934 for the purchase and repair of machinery, tools, and equipment, purchase of raw materials and manufacturing supplies, purchase, maintenance, and operation of nonpassenger-carrying vehicles, purchase and maintenance of horses, and purchase of fuel for manufacturing purposes; for freight, personal services, and all other necessary expenses; and for the payment to inmates or their dependents of such pecuniary earnings as the Commissioners may deem proper."

AMENDMENTS

The act of June 28, 1944, cited to text, amended section by inserting "1945" for "1930", and by omitting last sentence which read "the Commissioners * * * working capital fund.".

§ 47–132 [20: 657]. Money received from sale of animals and materials to be paid into Treasury.

All moneys received from the sales of animals or materials of any sort, purchased under appropriations made for the District of Columbia since July 1, 1878, other than for the water department, shall be paid into the treasury of the United States, to the credit of the District unless otherwise provided by law. (Mar. 2, 1889, 25 Stat. 808, ch. 370, § 3; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CROSS REFERENCE

See compiler's note to § 47–126 and § 47–134.

§ 47–133 [20: 658]. Appropriations for playground employees to be paid from District revenues.

The appropriations for salaries of employees of the playgrounds shall be paid wholly out of the revenues of the District of Columbia. (June 26, 1912, 37 Stat. 153, ch. 182.)

§ 47–134 [20: 670b]. Annual Federal payment.

For the fiscal year ending June 30, 1940, and for each fiscal year thereafter, there is hereby authorized to be appropriated, as the annual payment by the United States toward defraying the expenses of the government of the District of Columbia, the sum of $6,000,000. (July 26, 1939, 53 Stat. 1085, ch. 367, title I; June 12, 1940, 54 Stat. 307, ch. 333, § 1.)

COMPILER'S NOTES

The former law, the act of June 29, 1922, 42 Stat. 668, ch. 249 (D. C. 1929, title 20, § 670a) has been repealed by the act of May 16, 1938, 52 Stat. 375, ch. 223, § 8. It provided as follows: "Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States, except such items of expense as Congress may direct shall be paid on another basis."

AMENDMENT

This section was repeated in the Appropriation Act of 1940.

CROSS REFERENCES

Advancement of funds, § 47–2501.

Apportionment of cost of construction and repair of public roadways and bridges, § 7–604.

This section is part of the Revenue Act of 1939, see compiler's notes to § 47–1401.

§ 47–135. Investment of District of Columbia's funds in United States Government securities—Deposit of interest to credit of appropriate fund—Sale and exchange of such securities.

The Commissioners are authorized in their discretion, to invest at any time in United States Government securities, with the approval of the Secretary of the Treasury, any part of the general fund, highway fund, water fund, or trust funds, of the District of Columbia, not needed to meet expenses during the current fiscal year, to deposit the interest accruing from such investment to the credit of the fund from which the investment was made, and to sell or exchange such securities for other Government securities, and deposit the proceeds to the credit of the appropriate fund. (June 30, 1945, 59 Stat. 294, ch. 209, § 8.)

Chapter 2.—BUDGET ESTIMATES

Sec.

47–201. Salaries of force for protection of courthouse—Payment—Estimates.
47–202. Estimates—Repairs to schools.
47–203. Estimates for schools to be in accordance with 5-year building program.
47–204. Certain expenses of the District Court of the United States for the District of Columbia.
47–205. Commissioners' annual estimates—To include report of assignment of certain market employees.
47–206. Estimates for employees and for maintenance of sewers.
47–207. Estimates for employees for maintenance of highway bridge and approaches.
47–208. Estimates for witnesses and securing evidence in claims against the District of Columbia.
47–209. Estimates for assessment of real estate.
47–210. Estimates for water department.
47–211. Estimates for expenses of District—Order of arrangement.
47–212. Publication of estimates of the District.
47–213. Estimates for offices of probation officer and register of wills, and Commission on Mental Health.

§ 47–201 [20: 659]. Salaries of force for protection of courthouse—Payment—Estimates.

The salaries of the force necessary for the care and protection of the courthouse in the District of Columbia and of the salary of the Superintendent of the Washington Asylum and Jail shall be paid out of the revenues of the District of Columbia and the Treasury of the United States in the manner prescribed by the District of Columbia Appropriation Acts for the respective years for which such sums are provided, and estimates for such expenses shall each year hereafter be submitted in the annual estimates for the expenses of the government of the District of Columbia. (July 31, 1894, 28 Stat. 202, ch. 174; Mar. 2, 1911, 36 Stat. 1003, ch. 192; June 29, 1922, 42 Stat. 668, ch. 249; Aug. 17, 1937, ch. 690, title X, as added by May 16, 1938, 52 Stat. 375, ch. 223, § 8; June 25, 1938, 52 Stat. 1125, ch. 681, § 1.)

AMENDMENTS

The 1911 amendment combined the Washington jail and the Washington asylum into one institution called, "Washington Asylum and Jail."

The act of June 29, 1922, cited to the text, which formed the basis for percentage liabilities, was repealed by the act of May 16, 1938, 52 Stat. 375, ch. 223, § 8, adding title X to the act of Aug. 17, 1937, 50 Stat. 673, ch. 690. The repealing act does not provide any substitute provision, and the 1922 act contains a provision repealing all prior inconsistent acts. However, acts making apropriations for the Departments of State, Commerce, and Justice, and for the judiciary, have, since the act of Apr. 27, 1938, 52 Stat. 265 ch. 180, § 1, down to and including the act of May 14, 1940, 54 Stat. 207, ch. 189, § 1, contained the following provision: "Sixty per centum of the expenditures for the District Court of the United States for the District of Columbia from all appropriations under this title and 30 per centum of the expenditures for the United States Court of Appeals for the District of Columbia from all appropriations under this title shall be reimbursed to the United States from any funds in the Treasury to the credit of the District of Columbia."

The Deficiency Appropriation Act of June 25, 1938, 52 Stat. 1125, ch. 681, § 1, and other such acts including the Second Deficiency Appropriation Act of June 27, 1940, 54 Stat. 639, ch. 437, contained the following language: "The foregoing sums for the District of Columbia, unless otherwise therein specifically provided, shall be paid out of the revenues of the District of Columbia and the Treasury of the United States in the manner prescribed by the District of Columbia Appropriation Acts for the respective years for which such sums are provided."

It may also be noted that there is now made a lump-sum appropriation, July 29, 1939, 53 Stat. 1085, ch. 367, title I (§ 47–134).

§ 47–202 [20: 660]. Estimates—Repairs to schools.

A detailed statement of the expenditure of the appropriation made for repairs and improvements to school buildings and grounds and for repairing and renewing heating, plumbing, and ventilating apparatus, and installation of sanitary drinking fountains in buildings not supplied with same, and the taking down, transferring, and the re-erection

of portable schools shall be submitted with the annual estimates. (Mar. 3, 1915, 38 Stat. 910, ch. 80.)

COMPILER'S NOTE

The act of June 10, 1921, 42 Stat. 23, ch. 18, provided for the General Accounting Office.

§ 47–203 [20: 661]. Estimates for schools to be in accordance with 5-year building program.

Estimates of expenditures for buildings and grounds for the public schools of the District of Columbia, shall hereafter be prepared in accordance with the provisions of the Act of Congress approved February 26, 1925. (Feb. 26, 1925, 43 Stat. 994, ch. 342, § 9.)

COMPILER'S NOTE

The act of February 26, 1925, referred to in the text is omitted from the code, except § 5 which is classified as § 31–804 and § 9 which is this section.

CROSS REFERENCE

Division of funds and expenditures, see compiler's note to § 47–201.

§ 47–204 [20: 662]. Certain expenses of District Court of the United States for the District of Columbia.

Sixty per centum of the expenditures for all of the expenses of the District Court of the United States for the District of Columbia mentioned below, to wit, fees of witnesses, fees of jurors, pay of bailiffs and criers, including salaries of deputy marshals who act as bailiffs or criers, and all miscellaneous expenses of said court, shall be reimbursed to the United States from any funds in the Treasury to the credit of the District of Columbia: *Provided,* That estimates for like expenditures for each fiscal year shall be submitted to the Commissioners of the District of Columbia for transmission with the annual estimates of the District of Columbia. (June 30, 1906, 34 Stat. 763, ch. 3914, § 7; June 10, 1921, 42 Stat. 24, ch. 18, § 304; June 29, 1922, 42 Stat. 668, ch. 249; Aug. 17, 1937, ch. 690, title X, as added by May 16, 1938, 52 Stat. 375, ch. 223, § 8; June 25, 1938, 52 Stat. 1125, ch. 681, § 1.)

AMENDMENT

The 1921 act provided for the General Accounting Office.

§ 47–205 [20: 663]. Commissioners' annual estimates—To include report of assignment of certain market employees.

The commissioners each year in the annual estimates shall report to Congress the assignment of the market masters, assistant market masters, watchmen, and laborers to the various markets and offices. (July 11, 1919, 41 Stat. 70, ch. 7.)

§ 47–206 [20: 664]. Estimates for employees and for maintenance of sewers.

Estimates in detail shall be submitted annually for the employment of mechanics, laborers, and watchmen, and the purchase of coal, oils, waste, and other supplies for the maintenance of sewers. (June 27, 1906, 34 Stat. 494, ch. 3553.)

CROSS REFERENCE

Jurisdiction and control over public way and sewers, § 7–102.

§ 47–207 [20: 665]. Estimates for employees for maintenance of highway bridge and approaches.

Estimates in detail shall be submitted annually for salaries of employees, lighting, power, and miscellaneous supplies and expenses of every kind necessarily incident to the operation and maintenance of the highway bridge and approaches. (June 27, 1906, 34 Stat. 492, ch. 3553.)

CROSS REFERENCE

Jurisdiction and control over public ways, § 7–102.

§ 47–208 [20: 666]. Estimates for witnesses and securing evidence in claims against the District of Columbia.

The estimates for expenses incurred on account of the District of Columbia in the examination of witnesses and procuring of evidence in the matter of claims against the District of Columbia pending in any department shall be submitted in the annual estimates for the District of Columbia. (Aug. 4, 1886, 24 Stat. 252, ch. 902, § 1.)

§ 47–209 [20: 667]. Estimates for assessment of real estate.

The commissioners of said District shall in their annual estimates include all necessary provision to carry out the provisions of law relative to the assessment of real estate, to be immediately available. (Aug. 14, 1894, 28 Stat. 285, ch. 287, § 14.)

§ 47–210 [20: 668]. Estimates for water department.

It shall be the duty of the commissioners to include in the annual estimates of the District of Columbia estimates of the expenses of the water department. (Mar. 3, 1881, 21 Stat. 466, ch. 134, § 1.)

CROSS REFERENCE

Water supply, § 43–1501 et seq.

§ 47–211 [20: 669]. Estimates for expenses of District—Order of arrangement.

The estimates for expenses of the government of the District of Columbia shall be prepared and submitted each year according to the order and arrangement of the appropriation act for the year preceding, and any change in such order and arrangement and transfers of salaries from one office or department to another desired by the commissioners may be submitted by note in the estimates. (July 1, 1902, 32 Stat. 616, ch. 1352, § 4.)

§ 47–212 [20: 670]. Publication of estimates of the District.

The annual estimates for expenses of the District of Columbia shall not be published in advance of their submission to Congress at the beginning of each regular session thereof. (Mar. 3, 1909, 35 Stat. 728, ch. 250, § 7.)

§ 47–213. Estimates for offices of probation officer and Register of Wills, and Commission on Mental Health.

The annual estimates of expenditures and appropriations necessary for the maintenance and operation of the courts submitted by the Director of the Administrative Office of the United States Courts shall include estimates of appropriations for the

operation and maintenance of the office of the probation officer of the United States District Court for the District of Columbia, the office of the Register of Wills of the District of Columbia, and the Commission on Mental Health. (Aug. 2, 1949, 63 Stat. 491, ch. 383, § 6.)

COMPILER'S NOTE

See notes to § 19–404.

Chapter 3.—COLLECTION AND DISBURSEMENT OF TAXES

Sec.

47–301. Collector of taxes—To collect all revenues.
47–302. Collector of taxes—Bond.
47–303. Deputy collector of taxes—Duties—Bond.
47–304. Cashier in collector's office—Duties—Responsibility.
47–305. Account books to be kept by collector.
47–306. Certificate of tax assessor as to taxes and assessments due—Fee.
47–307. Waiver of interest and penalties.
47–308. Collector may omit uncollectible taxes from record of assets.
47–309. Disbursement of taxes and appropriations—Vouchers—Settlement of accounts.
47–310. Requisition by Commissioners—Appropriations not to be exceeded—Accounting.
47–311. "Miscellaneous Trust Fund Deposits"—Advances—Audit—Separate accounts to be kept.

§ 47–301 [20: 628]. Collector of taxes—To collect all revenues.

The collector of taxes for said District shall collect all revenues of the District and deposit the amounts collected daily with the Treasurer of the United States. (Mar. 3, 1881, 21 Stat. 460, ch. 134.)

CROSS REFERENCES

Representative in department of vehicles and traffic for taxation of motor vehicles, § 40–706.
Time for payment, delinquency, § 47–1209.

§ 47–302 [20: 629]. Collector of taxes—Bond.

The collector of taxes before entering upon his duties shall execute a bond in the sum of one hundred thousand dollars, with sufficient surety or sureties, to be approved by the commissioners, conditioned for the faithful performance of the duties of his office. (Leg. Assem., Aug. 23, 1871, ch. 108, § 7; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

AMENDMENTS

The salary now paid is governed by the Classification Act of 1923 (U. S. C., title 5, § 673).
The 1874 act vested authority in the Commissioners.

§ 47–303 [20: 630]. Deputy collector of taxes—Duties—Bond.

The deputy collector of taxes shall perform such duties as may be required of him by the collector, and the collector may require the said deputy collector to give bond for the faithful performance of his duties; but the collector shall in every respect be responsible, as now provided by law, to the United States, the District of Columbia, and to individuals, as the case may be, for all moneys collected. (June 11, 1896, 29 Stat. 394, ch. 419.)

§ 47–304 [20: 631]. Cashier in collector's office—Duties—Responsibility.

The cashier (in the collector's office) shall, in the necessary absence or inability of the collector, from any cause, perform his duties without any additional compensation; and the collector may require the said cashier to give bond for the faithful performance of such duties during the absence or inability of the collector; but the collector shall in every respect be responsible, as now provided by law, to the United States, the District of Columbia, and to individuals, as the case may be, for all moneys collected. (Aug. 6, 1890, 26 Stat. 294, ch. 724.)

§ 47–305 [20: 632]. Account books to be kept by collector.

It shall be the duty of the collector to keep in his office account books, in which shall be entered: First, the dates of payment of all taxes; second, the amounts paid; third, the names of the persons by whom payment has been made; fourth, the years paid for; fifth, the property paid on; and sixth, the names of the persons to whom assessed. His books shall at all times be open to the inspection of any officer who may be authorized by the commissioners to examine the same. (Leg. Assem., Aug. 23, 1871, ch. 108, § 1; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

AMENDMENT

The 1874 act created and vested authority in the Commissioners.

§ 47–306 [20: 633]. Certificate of tax assessor as to taxes and assessments due—Fee.

The collector of taxes shall furnish whenever called upon, a certified statement, over his hand and official seal, of all taxes and assessments, general and special, that may be due at the time of making said certificate; and said certificate when furnished shall be a bar to the collection and recovery from any subsequent purchaser of any tax or assessment omitted from and which may be a lien upon the real estate mentioned in said certificate, and said lien shall be discharged as to such subsequent purchaser, but shall not affect the liability of the person who owned the property at the time such tax was assessed to pay the same, mentioned in said certificate. The charge for each certificate of taxes so issued shall be one dollar. (Feb. 6, 1879, 20 Stat. 283, ch. 50; May 13, 1892, 27 Stat. 37, ch. 74; Mar. 3, 1917, 39 Stat. 1005, ch. 160; Mar. 3, 1925, 43 Stat. 1222, ch. 477; June 25, 1938, 52 Stat. 1262, ch. 702, § 11.)

COMPILER'S NOTE

The duty to prepare list of property sold for taxes for public inspection imposed upon the collector of taxes by the act of March 3, 1917, 39 Stat. 1005, ch. 160, has now been transferred to the assessor by the act of June 25, 1938, 52 Stat. 1202, ch. 702, § 11 (§ 47–603).

AMENDMENTS

The 1879 act provided that those duties be performed by the collector of taxes.
The 1892 act transferred these duties to the assessor.
The 1917 act transferred them back to the collector of taxes.
The 1925 act added the last sentence.
The 1938 act transferred the duties back to the assessor.

§ 47–307 [20: 746f]. Waiver of interest and penalties.

The Commissioners of the District of Columbia are authorized, in their discretion, to waive, in whole or in part, interest or penalties, or both, on unpaid

taxes and special assessments due the District of Columbia, when, in their judgment, such action would be equitable or just or in the public interest. (June 25, 1938, 52 Stat. 1201, ch. 702, § 7.)

CROSS REFERENCE

Refund of taxes and fees, § 47–1016 et seq.

§ 47–308 [20: 747]. Collector may omit uncollectible taxes from record of assets.

The Commissioners of the District of Columbia are authorized to direct the collector of taxes of the District of Columbia to omit from his records as assets of the District of Columbia any and all taxes, real and personal, and all special assessments which the Commissioners may determine are uncollectible, but such determination on the part of the Commissioners or the failure of the collector to carry such taxes on his records as assets shall not affect the liability of the taxpayer for the payment of said taxes. (June 25, 1938, 52 Stat. 1202, ch. 702, § 10.)

§ 47–309 [20: 634]. Disbursement of taxes and appropriations—Vouchers—Settlement of accounts.

All taxes collected shall be paid into the Treasury of the United States, and the same, as well as the appropriations made by Congress for the expenses of the District of Columbia, shall be disbursed for the expenses of said District, on itemized vouchers, which shall have been audited and approved by the Auditor of the District of Columbia, certified by said commissioners, or a majority of them; and the accounts of said commissioners, and the tax collectors, and all other officers required to account, shall be settled and adjusted by the General Accounting Office. (June 11, 1878, 20 Stat. 105, ch. 180, § 4; June 10, 1921, 42 Stat. 24, ch. 18, § 305.)

AMENDMENT

The 1921 act provided for the creation and duties of the General Accounting Office.

CROSS REFERENCES

Adjustment of controverted disbursements, § 47–119.
General limitation on power of Commissioners, § 1–801.

§ 47–310 [20: 635]. Requisition by Commissioners—Appropriations not to be exceeded—Accounting.

All moneys appropriated for the expenses of the government of the District of Columbia, together with all revenues of the District of Columbia from taxes or otherwise, shall be deposited in the Treasury of the United States, as required by the provisions of section 47–309, and shall be drawn therefrom only on requisition of the Commissioners of the District of Columbia (except that the moneys appropriated for interest and the sinking fund shall be drawn therefrom only on the requisition of the Treasurer of the United States), such requisition specifying the appropriation upon which the same is drawn; and in no case shall such appropriation be exceeded either in requisition or expenditure; and the accounts for all disbursements of the Commissioners of said District shall be made monthly to the General Accounting Office by the auditor of the District of Columbia, on vouchers certified by the Commissioners, as required by law. (July 1, 1882, 22 Stat. 144, ch. 263, § 3; Mar. 3, 1883, 22 Stat. 470, ch. 95, § 2; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

AMENDMENTS

This section was enacted by the 1882 Appropriations Act and re-enacted by the 1883 Appropriations Act.

The 1921 act provided for the creation and duties of the General Accounting Office.

CROSS REFERENCE

Disbursement officer, § 47–112 et seq.

§ 47–311 [20: 636]. "Miscellaneous Trust Fund Deposits"—Advances—Audit—Separate accounts to be kept.

All moneys received by the collector of taxes of the District of Columbia in the nature of trust-fund deposits, the disposition of which is not provided for by law, and which had been on April 27, 1904, deposited by said collector with the Treasurer of the United States to the official credit of the disbursing officer of the District of Columbia, shall be deposited by the said collector in the Treasury of the United States to the credit of a permanent appropriation account, to be known and designated as "Miscellaneous trust-fund deposits, District of Columbia."

Necessary advances from said permanent appropriation account shall be made by the Secretary of the Treasury to the disbursing officer of the District of Columbia, upon requisition of the commissioners, for such amounts as may be required from time to time for necessary disbursements. The said disbursing officer shall make disbursements from such advances only upon itemized vouchers duly audited and approved by the auditor of the District of Columbia, and the accounts of said disbursing officer for all such disbursements shall be rendered to and audited by the General Accounting Office.

It shall be the duty of the auditor of the District of Columbia to keep separate accounts with each depositor for all trust-fund deposits received and deposited in accordance with the provisions of this section, showing the amounts received and deposited and the payments made on each individual account. (Apr. 27, 1904, 33 Stat. 368, ch. 1628; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

AMENDMENT

The 1921 act provided for the creation and duties of the General Accounting Office.

Chapter 4.—DESIGNATION OF PROPERTY FOR ASSESSMENT AND TAXATION

Sec.

47–401. Squares, lots, blocks, parcels, to be numbered—City of Washington.
47–402. Designation to be official.
47–403. Daily transcript from records of recorder of deeds and register of wills.
47–404. Designation of land for assessment—Beyond city limits.
47–405. Designation of land to be numbered.
47–406. Designation of land—Plat books to be made under authority of Commissioners—Custody of surveyor.
47–407. Surveyor's office to make daily transcripts of records of deeds, wills, condemnations, and decrees.
47–408. Designation given to land sufficient for tax sales purposes.
47–409. Sale of property belonging to the United States—Report of sale.

§ 47–401 [20: 671]. Squares, lots, blocks, parcels to be numbered—City of Washington.

For the purposes of facilitating assessment and taxation of real estate in the District of Columbia, the following system of designating the several parcels of land therein is hereby prescribed, and every designation given in conformity with said system shall be a sufficient description of the parcel of land to which it relates, for all purposes of assessment and collection of taxes and assessments of every kind:

Each square in the city of Washington shall bear a number or other designation that will distinguish it from every other square in said city.

Each lot or parcel of ground in each such square shall bear a number or other designation that will distinguish it from every other lot or parcel of ground in such square.

Each block in each subdivision in said District outside of the limits of the city of Washington shall bear a number that will distinguish it from every other such block.

Each lot or parcel of land in each such block shall bear a number that will distinguish it from every other lot therein.

Each piece or parcel of unsubdivided land and each parcel of land deeded by metes and bounds in said District shall have a distinctive designation.

As nearly as practicable, in the judgment of the commissioners, the numbers in each of the aforesaid squares, blocks, or parcels of land requiring to be numbered shall be in a regularly increasing numerical sequence and order, beginning with the lowest number practicable; and, in case of the lots, shall commence at the same relative location in each of the squares, blocks, or parcels of land, and be continued in the same relative order.

It shall be the duty of the said commissioners to cause a record of the designations of the several aforesaid parcels of land to be made in accordance with the foregoing system, in the office of the surveyor of said District; and hereafter it shall be the duty of the surveyor, in giving numbers to blocks or lots of future subdivisions, to be governed by said system. (Mar. 3, 1899, 30 Stat. 1376, ch. 457, § 1.)

COMPILER'S NOTE

Insofar as this section provides a numbering system for blocks, subdivisions, and parcels of land within the District but lying outside the city of Washington, it has been superseded by §§ 47–404 to 47–408.

CROSS REFERENCE

Numbering of squares in "Georgetown," see amendment note to § 47–703.

§ 47–402 [20: 672]. Designation to be official.

The designation as prescribed in section 47–401 to each of said lots or parcels of land, which they shall respectively bear on the records of the assessor of said District at the time said lots or parcels become subject to sale for arrears of any tax or assessment, shall be the official designation of said lots or parcels of land for the enforcement of the collection of all such arrears of general taxes and assessments for the tax year in which the said designation shall be given, and until such designation be changed pursuant to law. (Mar. 3, 1899, 30 Stat. 1377, ch. 457, § 2.)

CROSS REFERENCE

See compiler's note to § 47–401.

§ 47–403 [20: 673]. Daily transcript from records of recorder of deeds and register of wills.

The Commissioners of the District of Columbia shall cause to be made a daily transcript, and entry on the records of said assessor, of the designations of lots or parcels of land in said District appearing in instruments of conveyance received for record in the office of the recorder of deeds, and the designations of lots or parcels of land in said District transferred by probated wills; and the person or persons whom the Commissioners of said District may designate for the purpose of making such transcript shall for this purpose at all times during office hours have full access to the records of the recorder of deeds and the register of wills of said District; and the assessor shall daily furnish the surveyor with a copy of such transcript. (Mar. 3, 1899, 30 Stat. 1377, ch. 457, § 3.)

COMPILER'S NOTE

Insofar as this section provides a numbering system for blocks, subdivisions, and parcels of land within the District but lying outside the city of Washington, it has been superseded by § 47–407.

CROSS REFERENCE

Transcript from surveyor's office, § 47–407.

§ 47–404 [20: 674]. Designation of land for assessment—Beyond city limits.

For the purpose of facilitating the assessment and taxation of real property in the territory within the limits of the District of Columbia lying outside of the city of Washington the following system of designating the several subdivisions, blocks, lots, and parcels of land is hereby prescribed, and each and every designation made or given in conformity with said system shall be deemed a sufficient description of the property to which it relates for all purposes of assessment and the collection of taxes and assessments of every kind. (Feb. 23, 1905, 33 Stat. 737, ch. 735, § 1.)

§ 47–405 [20: 675]. Designation of land to be numbered.

The Commissioners of the District of Columbia are hereby authorized and directed to cause to be given numbers to all of said blocks or squares, lots or parcels of land as said blocks, squares, lots, or parcels of land have been formed by the highway-extension plan, of record on February 23, 1905, in the office of surveyor of the District of Columbia, and subdivisions existing on February 23, 1905, and to place the numbers so given upon the said highway-extension plan: *Provided,* That in all cases where two or more blocks or parts of contiguous existing subdivisions are surrounded as a group by existing streets or roads, or by proposed streets of the highway-extension plan, such group shall be numbered as a block or square upon the recorded plats of the highway-extension plan: *Provided further,* That where lots are numbered in duplicate in any block or square which includes parts of two or

more existing subdivisions, new lot numbers shall be given said lots numbered in duplicate, and new lot numbers shall also be given to all parts of lots remaining after the extension of streets or alleys by dedication, condemnation, or purchase, whereby parts of lots have become public property: *Provided further,* That new lot numbers shall also be given to all parts of original and subdivided lots existing on February 23, 1905, on the records of the assessor and the surveyor of the District of Columbia. (Feb. 23, 1905, 33 Stat. 737, ch. 735, § 2.)

NOTES TO DECISIONS

SQUARE BOUNDARIES

Streets projected by the highway commission are designated as "square boundaries." *Hazard* v. *Blessing* (55 App. D. C. 114, 2 Fed. (2d) 916).

POWERS OF COMMISSIONERS

Commissioners could not open street running through corners of two squares and across proposed street. *Rudolph* v. *Warwick* (56 App. D. C. 128, 10 Fed. (2d) 993).

The commissioners were authorized and directed to number all the blocks or squares, lots or parcels of land which had been formed by the highway extension plan as shown by the records of the surveyor of the District of Columbia. *Hazard* v. *Blessing* (55 App. D. C. 114, 2 Fed. (2d) 916).

§ 47–406 [20: 676]. Designation of land—Plat books to be made under authority of Commissioners—Custody of surveyor.

The Commissioners of the District of Columbia shall cause to be prepared a series of volumes of plats, on a scale of one hundred feet to the inch, embracing all the land in said District outside the city of Washington, these plats to show at all times the separate parcels of land created by subdivisions, sales, wills, condemnations, dedications, decrees of court, or otherwise, each with its distinctive number. Said books shall be kept in the office of the surveyor of said District, and shall be numbered according to the first and last page numbers of each volume, the pages being numbered continuously, and indefinitely rising in numbers as new books are opened to record changes in the outlines of parcels from any cause. (Feb. 23, 1905, 33 Stat. 738, ch. 735, § 3.)

§ 47–407 [20: 677]. Surveyor's office to make daily transcripts of records of deeds, wills, condemnations, and decrees.

For the purpose of keeping said books constantly current and up to date, the said commissioners shall cause an employee of the surveyor's office to make daily transcripts of all deeds of conveyance, wills, condemnations, decrees, and other instruments or proceedings by which boundaries are changed; for which purpose, such employee of the surveyor's office shall at all times during business hours have full and free access to all records of the recorder of deeds, register of wills, clerk of the District Court of the United States for the District of Columbia, marshal, and other officials; and the surveyor shall furnish to the assessor a copy of such transcript, from which a duplicate set of taxation and assessment plat books shall be maintained by the said assessor: *Provided,* That the current series of taxation and assessment plat books in the surveyor's office shall be the standard book of reference for all purposes of assessment and taxation by all departments of the government of the District of Columbia. (Feb. 23, 1905, 33 Stat. 738, ch. 735, § 4.)

§ 47–408 [20: 678]. Designation given to land sufficient for tax sales purposes.

The designation given as hereinbefore prescribed in section 47–404 to each block or square, lot or parcel of land, respectively appearing on the records of the assessor of the District of Columbia at the time any assessment or tax is levied for which such property may become subject to sale, shall be a complete and official designation of said block or square, lot or parcel of land, for the purpose of the collection of taxes or assessments of any kind, and the designations so given shall be considered good and sufficient descriptions in any advertisements of such property for sale for delinquent taxes or assessments. (Feb. 23, 1905, 33 Stat. 738, ch. 735, § 5.)

§ 47–409 [20: 962]. Sale of property belonging to the United States—Report of sale.

It shall be the duty of the Director of the National Park Service, within ninety days after the sale of any lots or squares belonging to the United States in the city of Washington, to report the fact to the proper officers of the District, giving the date of sale, the number of the lot and square, and the name of the purchaser; and such lots or squares shall be liable to taxation by the District from the day of sale. (R. S., D. C., § 143; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

COMPILER'S NOTE

The functions of the Office of Public Buildings and Public Parks of the National Capital were transferred to the Office of National Parks, Buildings, and Reservations, and the first mentioned agency abolished by the President's Reorganization Plan No. 1, Executive Order 6166, § 2. The act of Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1 provided that thereafter the Office of National Parks, Buildings and Reservations should be known as the National Park Service.

Chapter 5.—RATES, RECORDS, AND SURPLUS FUNDS

Sec.

47–501. Assessment of taxes on real and personal property—Rate of taxation—Collection.
47–502. Treasury Department to keep record of receipts and disbursements relative to District of Columbia.
47–503. Disposition of surplus funds—To be applied to succeeding year's expenditures.

§ 47–501 [20: 681]. Assessment of taxes on real and personal property—Rate of taxation—Collection.

For the purpose of defraying such expenses of the District of Columbia as Congress may from time to time appropriate for, there hereby is levied for each and every fiscal year, a tax at such rate on the real and personal property subject to taxation in the District as will, when added to the other taxes and revenues of the District, produce money enough to enable the District to pay promptly and in full all sums directed by Congress to be paid by the District, and for which appropriation has been duly made; and the Commissioners of the District of Columbia

hereby are empowered and directed to ascertain, determine, and fix annually such rate of taxation as will, when applied as aforesaid, produce the money needed to defray the share of the expenses of the District during the year for which the rate is fixed; and the Commissioners of the District shall, in accordance with existing law, cause all such taxes and revenues to be promptly collected and, when collected, to be daily deposited in the Treasury to the credit of the District for the purposes herein set out. (June 29, 1922, 42 Stat. 669, ch. 249.)

COMPILER'S NOTES

A minimum rate of 1.75 percent on real and tangible personal property for the fiscal year ending June 30, 1938, was set out by the act of Aug. 17, 1937, 50 Stat. 692, ch. 690, title VII, § 1. That section was amended by the act of May 16, 1938, 52 Stat. 369, ch. 223, title VI, § 7, which set the minimum rate for the year ending June 30, 1939. But the act of July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 3, amended the 1937 section as amended to read, "For the fiscal year ending June 30, 1940, the rate of taxation imposed on real and tangible personal property in the District of Columbia shall be 1.75 per centum of the assessed value of such property." It is believed that it was an inadvertence on the part of Congress in making the $1.75 rate for the fiscal year of 1940 mandatory. In all probability it was intended to provide that the rate should not be less than $1.75, as was done in the case of the two preceding years, but even though it was intended to make the $1.75 rate mandatory for the fiscal year 1940, this would take all discretionary power from the Commission for that year only, and since, up to January 1, 1941, no rate has been fixed by Congress for any fiscal year subsequent to 1940, the rate would seem to be within the absolute discretion of the Commissioners.

The act from which this section was taken also levied a tax "on such intangible personal property as is subject to taxation in the District of Columbia, at the rate of five-tenths of one per centum on the full market value thereof" and contained a further provision, "the rate fixed herein on intangible personal property not to be made less but which may be increased by the Commissioners in their discretion to any rate not in excess of the rate imposed upon real estate." A rewording of these clauses, included in the comparable section of the 1929 Code, have been deleted because the Revenue Act of July 26, 1939 (53 Stat. 1107, ch. 367, title IV, § 1) provided: "The tax on intangible personal property imposed by any law relating to the District shall not apply with respect to any year subsequent to the fiscal year ending June 30, 1939."

RATE FOR FISCAL YEARS 1948 AND 1949

The Act of July 16, 1947, ch. 258, Art. II, 61 Stat. 359, provided:

For each of the fiscal years ending June 30, 1948, and June 30, 1949, respectively, the rate of taxation imposed for the District of Columbia on real and tangible personal property shall not be less than 2 per centum on the assessed value of such property.

RATE FOR FISCAL YEAR 1950

The Act of May 27, 1949, 63 Stat. 139, ch. 146, Title VII, § 701, provided:

For the fiscal year ending June 30, 1950, the rate of taxation on real property in the District of Columbia shall not be less than 2.15 per centum on the assessed value of such property.

CROSS REFERENCE

Time for payment, delinquency, § 47–1209.

NOTES TO DECISIONS

MIGRATORY PROPERTY

This section and § 47–1201 et seq. authorizing taxation by District of Columbia of all tangible "personal property subject to taxation" contemplates personal property having a definite and permanent situs in the District and not temporarily brought into District by nonresident, and this section and said § 47–1201 et seq. apply only to property that has acquired a fixed, definite and permanent taxable situs. *Queen City Brewing Co.* v. *District of Columbia*, 1943 (134 F. 2d 44, 77 U. S. App. D. C. 213, certiorari denied 63 S. Ct. 1330, 319 U. S. 767, 87 L. Ed. 1716).

§ 47–502 [20: 682]. Treasury Department to keep record of receipts and disbursements relative to District of Columbia.

The treasury department shall accurately keep an account showing all receipts and disbursements relative to the revenues and expenditures of the District of Columbia, and shall also show the sources of the revenue, the purpose of expenditure, and the appropriation under which the expenditure is made; and any and all revenue derived from property not owned wholly or in part by the District of Columbia, as between the United States and the District of Columbia, shall be the property of the United States. (June 29, 1922, 42 Stat. 669, ch. 249; May 16, 1938, 52 Stat. 375, ch. 223, title X, § 38.)

AMENDMENT

The act of May 16, 1938, 52 Stat. 375, ch. 223, title X, § 8, repealed that part of this section reading as follows: "and where the United States is the owner of ground or the holder thereof in trust for the public, upon which improvements have been made at the joint expense of the United States and the District of Columbia, the revenues therefrom shall first be used to pay the United States 3 per centum of the full value of the ground as a ground rent, and the remainder shall be divided between them in the same proportion that each contributed to said improvements, and for such purposes the assessor for the District of Columbia shall fix the full value of the ground after he has first made oath that he will fairly and impartially appraise the same." That act also repealed the following language of the 1922 act, cited to the text: "; and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

§ 47–503 [20: 683]. Disposition of surplus funds—To be applied to succeeding year's expenditures.

If, for any fiscal year, the District of Columbia should raise and deposit in the treasury to its credit, more money derived from taxation, privileges, and other sources authorized in this chapter than may be necessary for the purposes therein, such excess shall be available the succeeding year, in the discretion of the Commissioners, either for the purpose of meeting the expense chargeable to the District of Columbia and/or for the further purpose of enabling the Commissioners to fix a lower rate of taxation for the year following the one in which said excess accrued than they might otherwise be able to do; and the agencies through which the District of Columbia collects its revenue derived from taxation shall also collect for the United States any revenues which by section 47–502 become the sole property of the United States, and said revenues shall be deposited in the Treasury of the United States as "miscellaneous receipts"; and the Commissioners of the District of Columbia shall not be restricted in submitting to the Bureau of the Budget their estimates

of the needs of the District, but they shall, as near as may be bring them within the probable aggregate of the fixed proportionate appropriations to be paid by the United States and the District of Columbia. (June 29, 1922, 42 Stat. 669, ch. 249.)

COMPILER'S NOTE

This section formerly contained the words, "but the revenues from the property known as Center Market shall not be so collected," following the words "miscellaneous receipts," but this market is no longer in existence, see Act of June 6, 1930, 46 Stat. 523, ch. 412 and note to § 10–137. For this reason that part of the section above quoted has been deleted.

Chapter 6.—TAX ASSESSOR

Sec.

47–601. Assessor of District of Columbia to prepare annual tax ledgers—Statement of assessment and taxes.
47–602. Assessor to furnish bonds.
47–603. Records to be kept by assessor—Duties of assessor.
47–604. Board of assistant assessors—Appointment—Qualifications—Clerk.
47–605. Assistant assessors—Three members to assess real property and three members to assess personal property.
47–606. Assessor to have power to administer oaths and summon witnesses.

§ 47–601 [20: 691]. Assessor of District of Columbia to prepare annual tax ledgers—Statement of assessment and taxes.

The assessor of the District of Columbia shall be charged with the duty of preparing the annual tax ledgers on a numerical system, which shall be finished or completed at such time as will allow preparation by him of tax bills for collection purposes. Upon the completion of the tax ledgers, said assessor shall prepare a statement showing the total amount of the assessment of both real and personal property, and the total amount of taxes to be collected under said assessment; which statement shall be receipted by the collector of taxes in triplicate, and said collector shall be held responsible under his bond for all such taxes, except such as he may not be able to collect after fully complying with the requirements of law. The original receipt of said assessment and taxes shall be forwarded by the assessor to the General Accounting Office, the duplicate to the auditor of the District of Columbia, and the triplicate shall be retained by the collector. (July 3, 1926, 44 Stat. 834, ch. 759, § 8; Mar. 31, 1892, 27 Stat. 13, ch. 30; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

AMENDMENTS

The 1921 act provided for the creation and duties of the General Accounting Office.

The 1926 act added the first sentence.

CROSS REFERENCES

Competent witness in condemnation proceedings, § 14–309.

Duty to make list of those eligible for military service, § 39–103.

Ex-officio member and chairman of Real Estate Commission, § 45–1403.

§ 47–602 [20: 692]. Assessor to furnish bonds.

The assessor of the District of Columbia shall give bond to the District of Columbia for the faithful and efficient performance of all the duties of his office in the penal sum of ten thousand dollars, with sureties to be approved by the commissioners of said District. (July 7, 1898, 30 Stat. 666, ch. 571.)

§ 47–603 [20: 748]. Records to be kept by assessor—Duties of assessor.

All records and accounts in any way relating or pertaining to the bookkeeping, accounting, and collection of taxes and assessments which, prior to June 25, 1938, were prepared by the assessor of the District of Columbia and kept in the office of the collector of taxes of the District of Columbia shall be transferred to and kept in the office of the said assessor. The said assessor shall be charged with the duties heretofore required of the collector of taxes in relation to the preparation and issuance of tax bills and bills for special taxes and assessments, the preparation for public inspection of lists of all real estate in the District of Columbia heretofore sold or which may hereafter be sold for the nonpayment of any general or special taxes or assessments, the furnishing of certified statements over his hand and official seal of all taxes and assessments general and special that may be due at the time of making the said certificate, and the preparation of the lists of taxes on real property in said District subject to taxation on which taxes are levied and in arrears on the 1st day of July in each year. On or before September 1 of each year the assessor shall prepare and retain in his office tax accounts in such form as shall be prescribed by the Commissioners of the District showing the assessed owners, amount, description, and value of real property listed for taxation in the District of Columbia, and on or before April 1 of each year the assessor shall prepare and retain in his office personal tax accounts in such form as may be prescribed by the Commissioners of the District showing the names and addresses of assessed owners, and the location and value of the property assessed. (June 25, 1938, 52 Stat. 1202, ch. 702, § 11.)

COMPILER'S NOTE

For the duties referred to in the second sentence, see § 47–1010.

§ 47–604 [20: 693]. Board of assistant assessors—Appointment—Qualifications—Clerk.

The commissioners of the District of Columbia shall appoint six discreet persons, who shall have been bona fide residents of the District of Columbia for the period of at least five years, and conversant with real estate values therein, as a permanent board of assistant assessors. Each person so appointed on said board shall, within ten days after receiving notice thereof, take and subscribe an oath to diligently, faithfully, and impartially perform all and singular the duties imposed upon him by law. If any such appointee shall fail to qualify as aforesaid within the time prescribed, or shall fail to enter upon the discharge of his duties within fifteen days after such qualification, the appointment shall be void, and the commissioners shall forthwith appoint another suitable person, who shall qualify as above provided. And said commissioners are hereby authorized and directed to appoint a clerk for said board of assistant assessors; and said clerk shall also be the clerk for

the board of equalization and review hereinafter provided for. (Aug. 14, 1894, 28 Stat. 282, ch. 287, § 2; July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; Mar. 3, 1917, 39 Stat. 1005, ch. 160; Mar. 4, 1923, 42 Stat. 1488, ch. 265; July 3, 1926, 44 Stat. 832, ch. 759, § 1.)

AMENDMENTS

The 1902 amendment changed the number of persons from three to five; struck out following the words "assistant assessors", the first time they appear. The following words, "shall hold office for a term of four years, unless sooner removed by said Commissioners for cause satisfactory to them"; and inserted the following words, "the assessor of the District of Columbia and the members of the permanent board of assistant assessors shall not be removed except for inefficiency, neglect of duty, or malfeasance of office," which were repealed by the 1917 act. That part of the section as it appeared in the 1894 act providing for particular revision and equalization returns to be made before the first Monday in January 1895 has now been omitted as obsolete.

The 1926 amendment raised the number of members from five to six.

The law as originally enacted provided for salary of $3,000. The salary paid is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

§ 47–605 [20: 694]. Assistant assessors—Three members to assess real property and three members to assess personal property.

The assessor of the District of Columbia shall designate three of the members of said Board of Assistant Assessors for the assessment of real estate, and the three other members of said board to assess personal property, in accordance with law; all members of said board, together with the assessor of the District of Columbia, as chairman, shall constitute the Board of Equalization and Review of real-estate assessments, and also the Board of Personal Tax Appeals: *Provided,* That the assessor of the District of Columbia shall act as chairman, ex officio, of the several boards aforesaid. (July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; July 3, 1926, 44 Stat. 832, ch. 759, § 1.)

AMENDMENT

The 1926 amendment provided that three members should serve on the board to assess personal property. See amendment note to preceding section (§ 47–604.)

NOTES TO DECISIONS

TESTIMONY OF ASSESSOR

In appraising property for tax assessment, a district assessor may not testify as expert witness in condemnation proceedings. *Johnson* v. *Reichelderfer* (60 App. D. C. 186, 50 Fed. (2d) 336).

However, see § 14–309.

§ 47–606 [20: 695]. Assessor to have power to administer oaths and summon witnesses.

The assessor of the District of Columbia and each member of said Board of Assistant Assessors in the discharge of any of the duties devolved upon him or them, or the Board of Equalization and Review, may administer all necessary oaths or affirmations. The assessor of the District of Columbia, or in his absence the temporary chairman of said board, shall have power to summon the attendance of any person before said board to be examined under oath touching such matters and things as the Board of Assistant Assessors or the said Board of Equalization and Review may deem advisable in the discharge of their duties; and any member of the Metropolitan police force of the District of Columbia may serve subpœnas in his behalf. Such fees shall be allowed witnesses so examined, to be paid out of the contingent fund of the commissioners, as are allowed in civil actions before the District Court of the United States for the District of Columbia. Any person summoned and examined as aforesaid who shall knowingly make false oath or affirmation shall be guilty of perjury, and upon conviction thereof be punished according to the laws in force for the punishment of perjury. (Aug. 14, 1894, 28 Stat. 285, ch. 287. § 13.)

Chapter 7.—ASSESSMENT OF REAL PROPERTY

Sec.

47–701. Assessments to be made in the name of the owner.
47–702. Assessments to be made annually.
47–703. Assessments to be by lot and square.
47–704. Commissioners to supply Board of Assistant Assessors with plats.
47–705. Assistant assessor's valuation to be made separately for improvements and each tract or lot.
47–406. Board of Assistant Assessors to make annual tabulated report of property assessed.
47–707. Penalties.
47–708. Board of equalization and review—To meet annually—Notice of meetings.
47–709. Valuation of real property to be complete on the first Monday of June annually.
47–710. Real property and improvements becoming subject to taxation to be listed annually.
47–711. New buildings under roof to be included in list.
47–712. Assessment of omitted property—Voided assessments, reassessment of property.
47–713. Assessments to be according to true value of the property—Taxes on subdivisions made from July to December, inclusive.
47–714. Subdivisions made during January, February, March, April, May, or June—Taxation, special assessment.
47–715. Redistribution of assessment on application by owner of unsubdivided tract.
47–716. Application for redistribution or reassessment—Notice—Validity.
47–717. Reassessment of real estate by board of assistant assessors.
47–718. Philadelphia, Baltimore and Washington Railroad Company or Baltimore and Ohio Railroad Company property—Taxation.
47–719. Baltimore and Ohio Railroad Company—Terminals—Taxation.
47–720. Baltimore and Potomac, bridges and tunnels assessed for taxation.
47–721. Reassessment of taxes declared void by court.
47–722. Valuation of United States property in the District of Columbia.
47–723. Valuation of United States property in the District of Columbia under regulations of Secretary of Interior.

§ 47–701 [20: 696]. Assessments to be made in the name of the owner.

All real property in the District of Columbia, except as hereinafter provided, shall be assessed in the name of the owner, or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until the same is divided, according to law, or has otherwise passed into the possession of some other person or persons; and all real property, the ownership of which is unknown, shall be assessed "owner unknown." (Aug. 14, 1894, 28 Stat. 282, ch. 287, § 1.)

CROSS REFERENCES

Assessment of a tax against premises used for purposes of prostitution, § 22–2717.

Assessment of land reverting from abandoned highways, § 7–124.

Assessment of lands reverting to private owners from public highways closed under Street Readjustment Act, § 7–401.

Board for assessment of real estate, § 47–605.

CITED

Tumulty v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

NOTES TO DECISIONS

DECEASED OWNERS

Where wills of deceased nonresident owners of lots had not been probated in District of Columbia and it was not shown that commissioners were given notice of deaths of owners or who became owners under the wills, it was proper to assess lots in names of deceased owners. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Realty held by devisees as tenants in common was properly assessed under this section in the name of their testatrix even after probate of her will. *Deming* v. *Turner* (D. C., D. C. 1945, 63 F. Supp. 220).

NOTICE OF ASSESSMENT

Where will placing record title to lot in husband and wife as trustees was probated after husband had acquired tax title in individual name, assessment in name of husband only was sufficient to give due notice of the assessment, within requirements of "due process of law". *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Persons owning undivided interests in realty in District of Columbia as devisees or heirs of deceased former owner are not prejudiced by assessment of such realty in name of their decedent because this section permitting such assessment places them on notice that assessment will be thus carried on tax rolls. *Deming* v. *Turner* (D. C., D. C. 1945, 63 F. Supp. 220).

PASSING OF POSSESSION

The quoted phrase as used in this section authorizing undivided real property of a deceased person to be assessed in name of such deceased person until it is divided, according to law, or has "otherwise passed into the possession of some other person or persons", refers to a passing other than by intestacy or the will itself. *Turner* v. *Deming* (App. D. C. 1946, 155 F. 2d 181, certiorari denied 67 S. Ct. 80, 329 U. S. 727, 91 L. Ed. 629).

Realty which passed into possession of testatrix's four children as tenants in common under the will did not thereby pass into possession of "some other person or persons", within this section, and hence assessment of the realty in testatrix's name was authorized. *Turner* v. *Deming* (App. D. C. 1946, 155 F. 2d 181, certiorari denied 67 S. Ct. 80, 329 U. S. 727, 91 L. Ed. 629).

PROPERTY NOT TO BE ASSESSED

Poles, conduits, wires, and lamps are not to be assessed under the real estate tax law. *Rudolph* v. *Potomac Elec. Power Co.* (58 App. D. C. 54, 24 Fed. (2d) 882, 57 A. L. R. 865).

PURPOSE

This section permitting assessment of undivided real property of a deceased person in the name of decedent was intended to relieve taxing authorities of the burden of tracing heirs and devisees and their heirs and devisees, all of whom might own undivided interests in the same property. *Deming* v. *Turner* (D. C., D. C. 1945, 63 F. Supp. 220).

RECORD OWNER

Taxes must be assessed in the name of the record owner of the property. *Tepper* v. *Fraser* (63 App. D. C. 174, 70 Fed. (2d) 778).

TAX TITLE HOLDER

Where tax deed was made in accordance with § 47–1003, it was proper to assess taxes in name of tax title holder. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Where will placing record title to lot in husband and wife as trustees was probated after husband had acquired tax title in individual name, assessment in name of husband only was valid as being in name of "owner" within statutory requirement and the irregularity did not invalidate the assessment in view of "laches" in nonpayment of taxes from 1921 to 1929 and again from 1931 to 1934. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

TRUSTEE

Where will placing record title to lot in trustee was probated after trustee had acquired tax title in individual name, even if assessment in name of record holder under will was required, assessment in name of the trustee individually was proper. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

UNDIVIDED REAL PROPERTY

Realty owned by devisees as tenants in common was "undivided real property" within this section permitting assessment of undivided real property of a deceased person in decedent's name. *Deming* v. *Turner* (D. C., D. C. 1945, 63 F. Supp. 220).

Realty which was devised to testatrix's four children as tenants in common did not become "divided" when it passed to the children under the will, so as to preclude assessment of the realty in name of testatrix under this section. *Turner* v. *Deming* (App. D. C. 1946, 155 F. 2d 181, certiorari denied, 67 S. Ct. 80, 329 U. S. 727, 91 L. Ed. 629).

VALIDITY

Conveyance of title would not affect validity of assessment in grantor's name where conveyance was not recorded until after the assessment. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

§ 47–702 [20: 697]. Assessments to be made annually.

Assessments of real estate in the District of Columbia for purposes of taxation shall be made annually in the same manner and subject to the same limitations as heretofore provided by law for making biennial assessments of real estate in said District. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 3; Sept. 1, 1916, 39 Stat. 678, ch. 433; July 3, 1926, 44 Stat. 834, ch. 759, § 10.)

COMPILER'S NOTE

The words "as heretofore provided by law" refer to this chapter, the basic law of which is the 1894 act, cited to the text. (See amendment note.)

AMENDMENTS

The 1894 act provided "That real property shall be assessed and valued in the year 1896, and every third year thereafter, as herein provided."

The 1916 act provided for biennial assessments "in the same manner as is now required by law for triennial assessments."

CROSS REFERENCE

Time for payment, delinquency, § 47–1209.

§ 47–703 [20: 697a]. Assessments to be by lot and square.

Real estate in the city of Washington, except such as may be exempt by law from taxation, shall be assessed according to the number of the squares

and lots thereof, or parts of lots, and upon the number of the square or superficial feet in each square or lot, or parts of a lot, and in the county the agricultural lands shall be assessed by the acre, and suburban lots by the square foot, as in the city of Washington. (Mar. 3, 1883, 22 Stat. 569, ch. 137, § 5; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

AMENDMENT

The 1895 act incorporated Georgetown into the city of Washington and directed "that the squares in Georgetown" be "renumbered, so that no square shall hereafter bear a like number to any square in the city of Washington."

NOTES TO DECISIONS

FRONT-FOOT RULE

Assessment under front-foot rule held invalid. *Johnson* v. *Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525); *Dougherty* v. *American Secur. & Trust Co.* (59 App. D. C. 301, 40 Fed. (2d) 813, cert. den. 282 U. S. 854, 75 L. Ed. 757, 51 Sup. Ct. 31); *Taliaferro* v. *Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

In applying this general law as to front-foot rule, which extends throughout the District, to a special assessment for street improvement not exclusively benefiting adjacent property-owners, the assessment cannot be upheld if it is in excess of the benefits and is not equal and fair in view of existing physical conditions, as where there is no relative equality in the value and depth of the abutting properties. *Johnson* v. *Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525).

In applying the front-foot rule under this act, the size, shape, improvements, or favorable location of property is not the test in determining validity of an assessment, but rather the relation of the property to other properties facing on the avenue and in the immediate vicinity. *Taliaferro* v. *Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

A road improvement assessment under the front-foot rule was canceled as inequitable as applied to a triangular-shaped lot. *Taliaferro* v. *Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

§ 47–704 [20: 698]. Commissioners to supply Board of Assistant Assessors with plats.

The commissioners shall furnish each member of said Board of Assistant Assessors with the necessary maps and field books, which shall contain an accurate list of each tract, together with a pertinent description of the real property situate in the District of Columbia, and, as far as may be known, the owner thereof; and also such blanks, forms, books, surveys, and plats as may be necessary for a systematic statement of the property to be assessed, and shall also furnish the said Board of Assistant Assessors with the necessary conveyance to view said property for assessment. Upon the completion of the assessment the said Board of Assistant Assessors shall deposit with the assessor of the District of Columbia all maps, field books, surveys, and plats, and all notes and memoranda thereof, and same shall be open to inspection by any taxpayer of said District. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 4.)

CROSS REFERENCE

Appointment of Board, § 47–605.

§ 47–705 [20: 699]. Assistant assessor's valuation to be made separately for improvements and each tract or lot.

Said Board of Assistant Assessors shall, from actual view and from the best sources of information in its reach, determine the value of each separate tract or lot of real property in the District of Columbia in lawful money, and shall separately estimate the value of all improvements on any tract or lot, and shall note the same in the proper field book, which shall be carried out as part of the value of such tract or lot, and shall also return the dimensions of each tract or lot, and said assistant assessors shall also perform such other official duties as may be required of them by the Commissioners of the District of Columbia. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 6.)

§ 47–706 [20: 700]. Board of Assistant Assessors to make annual tabulated report of property assessed.

Said Board of Assistant Assessors shall annually on or before the 1st Monday of January make out and deliver to the assessor of the District of Columbia a return in tabular form, contained in a book to be furnished by the commissioners, of the amount, description, and value of the real property subject to be listed for taxation in the District of Columbia. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 7; July 3, 1926, 44 Stat. 834, ch. 759, § 10.)

AMENDMENTS

The 1894 act provided "that said board of assistant assessors shall, on or before the first Monday in January, eighteen hundred and ninety-six, and every third year thereafter make out etc."

The 1926 act provided that assessments be made annually (see § 47–702 and notes thereto).

§ 47–707 [20: 701]. Penalties.

Any person who shall refuse or knowingly neglect to perform any duty enjoined on him by law, or who shall consent to or connive at any evasion of the provision of sections 47–604 to 47–712 shall, on conviction thereof, be liable to removal from office and to a fine not exceeding five hundred dollars, or imprisonment not exceeding one year, or both, in the discretion of the court, for each offense. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 8.)

§ 47–708 [20: 702]. Board of Equalization and Review—To meet annually—Notice of meetings.

The assessor and deputy assessor of the District and the board of all of the assistant assessors, with the assessor as chairman, shall compose a Board of Equalization and Review, and as such Board of Equalization and Review they shall convene in a room to be provided for them by the Commissioners, on the first Monday of January of each year, and shall remain in session until the first Monday in April of each year, after which date no complaint as to valuation as herein provided shall be received or considered by such Board of Equalization and Review. Public notice of the time and place of such session shall be given by publication for two successive days in two daily newspapers in the District not more than two weeks or less than ten days before the beginning of said session. It shall be the duty of said Board of Equalization and Review to fairly and impartially equalize the value of real property made by the board of assistant assessors as the basis for assessment. Any five of said Board of Equaliza-

tion and Review shall constitute a quorum for business, and, in the absence of the assessor, a temporary chairman may be selected. They shall immediately proceed to equalize the valuations made by the board of assistant assessors so that each lot and tract and improvements thereon shall be entered upon the tax list at their value in money; and for this purpose they shall hear such complaints as may be made in respect of said assessments, and in determining them they may raise the valuation of such tracts or lots as in their opinion may have been returned below their value and reduce the valuation of such as they may believe to have been returned above their value to such sum as in their opinion may be the value therof. (Aug. 14, 1894, 28 Stat. 284, ch. 287, § 9; July 3, 1926, 44 Stat. 834, ch. 759, § 10; Aug. 17, 1937, 50 Stat. 673, ch. 690, title IX, § 5, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8; July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5 (b).)

AMENDMENTS

The 1894 act contained the words "eighteen hundred and ninety-six, and every third year thereafter," which have been replaced by the words "each year" at the end of the first sentence in view of the 1926 act (see § 47–702 and notes thereto).

The 1938 act added this section to the 1937 law and provided for the termination of sessions, fixed the last day for receiving complaints, and changed the quorum requirement from three to five members.

The 1939 amendment added the words "and deputy assessor" and "all of the" in the first phrase.

§ 47–709 [20: 703]. Valuation of real property to be complete on the first Monday of June annually.

The valuation of the real property made and equalized as aforesaid shall be completed not later than the first Monday of May annually. The valuation of said real property made and equalized as aforesaid shall be approved by the Commissioners not later than July 1 annually, and when approved by the Commissioners shall constitute the basis of taxation for the next succeeding year and until another valuation is made according to law, except as hereinafter provided. Any person aggrieved by an assessment, equalization, or valuation made, may, within ninety days after October 1 of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47–2403, 47–2404: *Provided, however,* That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided. (Aug. 14, 1894, 28 Stat. 284, ch. 287, § 10; July 3, 1926, 44 Stat. 834, ch. 759, § 10; Aug. 17, 1937, 50 Stat. 673, ch. 690, § 5, title IX, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8; July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5 (b).)

AMENDMENTS

The 1894 act contained the words "eighteen hundred and ninety-six, and every third year thereafter" which have been replaced by the word "annually" following the word "June" in view of the 1926 act (see § 47–702 and notes thereto).

The 1938 act added this section to the 1937 act and changed the last day for equalization from the first Monday in June to the first Monday in May, provided for the last day for valuation, set July 1 as the final day for approval by the Commissioners, and added the method of appeal.

The 1939 amendment deleted the words "pursuant to this paragraph" following the word "made" the first time it appears in the last sentence before the proviso, changed the date in the same sentence from "August 1" to "April 1," and added the proviso.

NOTES TO DECISIONS

NEXT SUCCEEDING YEAR

Where this chapter provided for annual assessment of real estate and that annual valuation of real estate should constitute basis of taxation "for the next succeeding year", the quoted phrase had reference to taxes which are levied for a designated fiscal period and did not include inheritance tax which is never part of an annual tax levy on the mass of property in a taxing district. *Fisher* v. *District of Columbia* (App. D. C. 1947, 164 F. 2d 707).

§ 47–710 [20: 704]. Real property and improvements becoming subject to taxation to be listed annually.

Annually, on or prior to July 1 of each year, the board of assistant assessors shall make a list of all real estate which shall have become subject to taxation and which is not then on the tax list, and affix a value thereon, according to the rules prescribed by law for assessing real estate; shall make return of all new structures erected or roofed, and additions to or improvements of old structures which shall not have been theretofore assessed, specifying the tract or lot of land on which each of such structures has been erected, and the value of such structure, and they shall add such valuation to the assessment made on such tract or lot. When the improvements on any lot or tract of land shall become damaged or be destroyed from any cause, the said board of assistant assessors shall reduce the assessment on said property to the extent of such damage: *Provided,* That the Board of Equalization and Review shall hear such complaints as may be made in respect of said assessments between September 1 and September 30 and determine the same not later than October 15 of the same year. Any person aggrieved by any assessment or valuation made in pursuance of this section may, within ninety days after October 15 of the year in which said valuation or assessment is made, appeal from such assessment or valuation in the same manner and to the same extent as provided in sections 47–2403, 47–2404: *Provided, however,* That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided. (Aug. 14, 1894, 28 Stat. 284, ch. 287, § 11; Aug. 17, 1937, 50 Stat. 673, ch. 690, title IX, § 5, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8; July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5 (b).)

AMENDMENTS

The 1938 act added this section to the 1937 act and changed the first proviso from "That the Board of Equalization and Review shall hear such complaints as may be made in respect to said assessments and determine the same between the first Monday of July of the same year" to read as it now does except that the dates were "between July 1 and July 15" and "not later than August 1" and "after August 1," and added the entire appeal method.

The 1939 amendment changed the dates in the first proviso from "July 1 and July 15" to "September 1 and September 30" and from "August 1" to "October 15" both times it appeared, and added the second proviso.

§ 47–711 [20: 705]. New buildings under roof to be included in list.

In addition to the annual assessment of all real estate made on or prior to July 1 of each year there shall be added a list of all new buildings erected or under roof prior to January 1 of each year, in the same manner as provided by law for all annual additions; and the amounts thereof shall be added as assessment for the second half of the then current year payable in the month of March. When the improvements on any lot or tract of land shall become damaged or be destroyed from any cause prior to January 1 of each year the said board of assistant assessors shall reduce the assessment on said property to the extent of said damage for the second half of the then current year payable in the month of March. The Board of Equalization and Review shall hear such complaints as may be made in respect of said assessments for the second half of said year between March 1 and March 31 and determine said complaints not later than April 15 of the same year. Any person aggrieved by any assessment made in pursuance of this section may, within ninety days after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47–2403, 47–2404: *Provided, however,* That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided. (July 3, 1926, 44 Stat. 833, ch. 759, § 3; Aug. 17, 1937, 50 Stat. 673, ch. 690, § 5, title IX, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8; July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5 (b).)

AMENDMENTS

The 1938 act added this section to the 1937 act and incorporated the second sentence in its entirety, changed the wording in the third sentence from "in respect of said assessments for the second half of said year and determine said complaints between the first and third Mondays of January of the same year" to "in respect of said assessments for the second half of said year between January 1 and January 15 and determine said complaints not later than February 1 of the same year" and added the appeal method with the date as "February 1."

The 1939 amendment changed the dates from "January 1 and January 15" to "March 1 and March 31," and from "February 1" to "April 15" both times it appeared, and added the proviso.

§ 47–712 [20: 706]. Assessment of omitted property—Voided assessments, reassessment of property.

If said Board of Assistant Assessors shall learn that any property liable to taxation has been omitted from the assessment for any previous year or years, or has been so assessed that the assessment was void, it shall be their duty at once to reassess such property for each and every year for which it has escaped assessment and taxation and report the same, through the assessor, to the collector of taxes, who shall at once proceed to collect the taxes so in arrears as other taxes are collected: *Provided,* That no property which has escaped taxation shall be liable under this section for a period of more than three years prior to such assessment, except in the case of property involved in litigation.

If the board of assistant assessors shall learn that any property liable to taxation has been omitted from the assessment for any previous year or years, or has been so assessed that the assessment was void, it shall be their duty at once to reassess this property for each and every year for which it has escaped assessment and taxation, and report the same, through the assessor, to the collector of taxes who shall at once proceed to collect the taxes so in arrears as other taxes are collected: *Provided,* That no property which has escaped assessment and taxation shall be liable under this section for a period of more than three years prior to such assessment, except in the case of property involved in litigation. In addition to the duties of the assessor hereinbefore provided, it shall be the duty of the assessor upon reassessment as herein provided to notify the taxpayer by writing of the fact of such reassessment. Any person aggrieved by any reassessment made in pursuance of this section may, within ninety days after notice of said reassessment, appeal from said reassessment in the same manner and to the same extent as provided in sections 47–2403, 47–2404. (Aug. 14, 1894, 28 Stat. 284, ch. 287, § 12; Aug. 17, 1937, 50 Stat. 673, ch. 690, title IX, § 5, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8.)

AMENDMENTS

The 1938 act added this section to the 1937 act and deleted the word "said" after the word "if" at the beginning of the section, added the words "assessment and" after the word "escaped" in the proviso, and added the last two sentences to the proviso.

NOTES TO DECISIONS

NO ASSESSMENT MADE

In the absence of statutory provision for reassessment for prior years, none can validly be made. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

THREE-YEAR PERIOD

No property which has escaped taxation shall be liable for a period of more than three years prior to such assessment. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

CROSS REFERENCE

Manner of serving notice, § 47–2411.

§ 47–713 [20: 707]. Assessments to be according to true value of the property—Taxes on subdivisions made from July to December, inclusive.

All real estate in the District of Columbia subject to taxation, including improvements thereon, shall be listed and assessed at not less than the full and true value thereof in lawful money.

Whenever a subdivision of any lot or parcel of land in the District of Columbia, or any portion of any such lot or parcel is made during the months of July, August, September, October, November, or December, the general tax due and payable upon such lot or parcel of land for prior years and for the first half of the then current fiscal year shall then be paid, and all water main and sewer assessments and special assessments of any kind thereon shall then become due and payable, and be paid before such subdivision shall be admitted to record in the office of the surveyor of the District of Columbia; and the general tax thereon for the last half of the then current fiscal year shall be due and payable in the following May. (July 1, 1902, 32 Stat. 616, ch. 1352, § 5; Mar. 1, 1921,

41 Stat. 1195, ch. 95, § 1; June 29, 1922, 42 Stat. 669, ch. 249; July 3, 1926, 44 Stat. 833, ch. 759, § 4.)

AMENDMENTS

The 1921 amendment added the second paragraph.

The 1922 and the 1926 acts provided for assessment of real property at not less than the full market value, whereas the 1902 act provided for assessment at not less than two-thirds of the true market value.

NOTES TO DECISIONS

DUTY OF TAXPAYER

Local statute imposes on the taxpayer the duty truthfully to fill out the proper blanks in the schedule furnished by the assessor. *Hunt* v. *District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

§ 47–714 [20: 708]. Subdivisions made during January, February, March, April, May, or June—Taxation, special assessment.

Whenever such subdivision is made during the months of January, February, March, April, May, or June, the total general tax assessed against the original lot or parcel of land for prior years and for the then current fiscal year, and all water main and sewer assessments and special assessments of any kind thereon, shall become due and payable and be paid before such subdivision is admitted to record in the office of the surveyor of the District of Columbia. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 2.)

§ 47–715 [20: 709]. Redistribution of assessment on application by owner of unsubdivided tract.

Whenever application is made in writing to the assessor of the District of Columbia by the owner of any tract of land in said District not subdivided into lots and of record as a subdivision in the office of the surveyor of said District, for the redistribution of any general or special taxes or assessments then levied or due thereon, or whenever such application is made by the owner of any parcel of such tract for such redistribution, any such general or special taxes or assessments levied or due against the entire tract of which such parcel is a part shall be redistributed so that the owner of any such parcel may pay the proportion of such entire taxes or assessments equitably chargeable thereon. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 3.)

§ 47–716 [20: 710]. Application for redistribution or reassessment—Notice—Validity.

Whenever application is made according to law for the reassessment or redistribution of taxes by reason of the subdivision of any tract of land in the District, the board of assistant assessors charged with the assessment of real estate in the District is hereby authorized and directed to reassess and redistribute any general or special assessment or tax levied or due and unpaid in accordance with provisions of laws for the assessment and equalizations of valuations of real estate in the District for taxation. The assessor shall promptly notify the owners of record of the land, the taxes of which shall be reassessed or redistributed. Notices in such case shall be served upon each lot or parcel owner if he or she be a resident of the District and his or her residence known, and if he or she be a nonresident of the District, or his or her residence unknown, such notice shall be served on his or her tenant or agent, as the case may be, and if there be no tenant or agent known to the Commissioners, then they shall give notice of such assessment by advertisement twice a week for two weeks in some newspaper published in said District. The service of such notice, where the owner or his tenant or agent resides in the District, shall be either personal or by leaving the same with some person of suitable age at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing and filed in the office of said Commissioners. Any person aggrieved by such reassessment or redistribution, may within ninety days after notice of such reassessment or redistribution, appeal from such reassessment or redistribution in the same manner and to the same extent as provided in sections 47–2403, 47–2404.

Any reassessment or redistribution made under sections 47–713 to 47–716 shall be as valid and effectual upon the various parts of the property, in the same manner and to the same extent as if the tax or assessment so reassessed or redistributed had been laid originally thereon under the various laws appertaining thereto. No payment or failure to pay a tax or assessment upon any such part shall change or affect the liability of the other parts of such property for any tax or assessment so reassessed or redistributed. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 4; Aug. 17, 1937, 50 Stat. 673, ch. 690, § 5, title IX, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8.)

AMENDMENTS

The 1938 act added the first paragraph of this section to the 1937 act while the remainder of the section is as it was in the 1921 act.

CROSS REFERENCE

Manner of serving notice, § 47–2411.

§ 47–717 [20: 711]. Reassessment of real estate by Board of Assistant Assessors.

The Board of Assistant Assessors charged with the assessment of real estate in the District of Columbia is hereby authorized and directed to reassess or redistribute any such general or special assessment or tax levied or due and unpaid in accordance with the provisions of laws for the assessment and equalizations of the valuations of real estate in the District of Columbia for taxation, after notice to owners of record of the land to be assessed, with right of appeal within ten days to the Board of Equalization and Review, as prescribed in section 47–708 and the assessor of said District is hereby authorized and directed to promptly reassess or redistribute any general or special assessment of any kind levied or due and unpaid, as hereinbefore provided. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 5.)

§ 47–718 [20: 736]. Philadelphia, Baltimore and Washington Railroad Company or Baltimore and Ohio Railroad Company property—Taxation.

The property owned or occupied by the Washington Terminal Company, or by the Philadelphia, Baltimore and Washington Railroad Company, or by the Baltimore and Ohio Railroad Company under authority of this Act, or otherwise, together with

the improvements that may be put thereon, shall be subject to taxation in the District of Columbia in the same manner and to the same extent as other property in the District, and all tracks and sidings shall be taxed as real estate: *Provided,* That no assessment, valuation, or tax shall be made, laid, or levied on the stations, terminals, and lines of railroad located, constructed, or maintained under the authority of this Act, in excess of that which would or could be lawfully made, laid, or levied if said stations, terminals, and lines of railroad were located, constructed, and maintained without the use of bridges, tunnels, viaducts, retaining walls, or other structures necessary or properly employed to elevate or to depress the same as required by this Act; it being the true intent and meaning hereof that the lines of railroad and terminals hereby authorized shall be assessed and valued for the purpose of taxation and taxed on the same basis as if the same were not constructed and maintained by means of such bridges, tunnels, viaducts, retaining walls, and other structures: *Provided,* That such portions of the terminal structure or viaduct as may be constructed and used for storage or like commercial purpose shall be subject to taxation in the same manner as other property in the District of Columbia. (Feb. 28, 1903, 32 Stat. 914, ch. 856, § 6.)

COMPILER'S NOTE

The act referred to as "This Act" is the act cited to the text, the act of February 28, 1903, 32 Stat. 909, ch. 856 (§§ 7–1213, 7–1214, and this section). This act supplements the act referred to in the note to § 47–719 and provides for a union railroad station. The sections of the act which have been retained in the code are those providing continuing duties and privileges for the companies concerned, while the omitted sections are deemed executed.

§ 47–719 [20: 737]. Baltimore and Ohio Railroad Company—Terminals—Taxation.

The property occupied by the Baltimore and Ohio Railroad Company, or by the Washington Terminal Company, under authority of this Act, together with the improvements which may be put thereon, shall be subject to tax by the District of Columbia the same as other property in the District of Columbia: *Provided,* That no assessment, valuation, or tax shall be made or levied on the railroad or terminals located, constructed, or maintained under the authority of this Act, in excess of that which would or could be lawfully made, laid, or levied if said railroad and terminals were so located, constructed, and maintained without the use of bridges, viaducts, retaining walls, and other structures necessary or properly employed to elevate the same as required by this Act, it being the true intent and meaning hereof that the railroad and terminals hereby authorized shall be assessed and valued for purposes of taxation and taxed on the same basis as if the same were not constructed and maintained by means of such bridges, viaducts, retaining walls, and other structures. (Feb. 12, 1901, 31 Stat. 779, ch. 354, § 9.)

COMPILER'S NOTE

The act referred to as "this act" is the act cited to the text, act of February 12, 1901, 31 Stat. 774, ch. 354 (§ 7–1212 and this section). This act provides for the formation of a terminal company, the building of a new railroad station and joint trackage and viaducts thereto, and for eliminating certain grade crossings. The sections of the act which have been retained in the code are those providing continuing duties and privileges to the companies concerned, while the omitted sections are deemed executed.

§ 47–720 [20: 738]. Baltimore and Potomac, bridges and tunnels assessed for taxation.

The property occupied by the Baltimore and Potomac Railroad Company under authority of this section, together with the improvements which may be put thereon, shall be subject to tax by the District of Columbia the same as other property in the District of Columbia: *Provided,* That no assessment, valuation, or tax shall be made, laid, or levied on the Baltimore and Potomac Railroad Company on account of any bridges, tunnels, elevated tracks, or subway which shall be located, constructed, or maintained under the authority of this Act, and forming part of said railroad, in excess of that which would or could be lawfully made, laid, or levied if said railroad was wholly located and constructed on the surface of the ground; it being the true intent and meaning hereof that any such bridges, tunnels, elevated tracks, or subway forming a part of said railroad shall be assessed and valued for purposes of taxation and taxed on the same basis as any other equal portion of railroad situated within the said District of Columbia not constructed on, in, through, or upon any such bridges, tunnels, elevated tracks, or subway. (Feb. 12, 1901, 31 Stat. 773, ch. 353, § 14.)

COMPILER'S NOTE

The act referred to as "this act" is the act cited to the text, act of February 12, 1901, 31 Stat. 767, ch. 353 (§§ 7–507, 7–508, 7–1211, and 47–720). The act provides that the railroad company is to relocate part of its tracks, eliminate certain grade crossings, and to depress and elevate trackage. The sections of the act which have been retained in the code are those providing continuing duties and privileges, while the omitted sections are deemed executed.

§ 47–721 [20: 739]. Reassessment of taxes declared void by court.

The Commissioners of the District of Columbia are hereby authorized and directed, in all cases where general taxes or assessments for local improvements in the District of Columbia may be quashed, set aside, or declared void by the District Court of said District, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied by reason of such tax or assessment not having been authenticated by the proper officer, or of a defective return of service of notice, or for any technical reason other than the right of the public authorities to levy the tax or make the improvement in respect of which the assessment was levied, to reassess the lot or parcel of ground in respect of such general taxes or the improvement mentioned in such defective assessment, with power to collect the same according to existing laws relating to the collection of assessments and taxes: *Provided,* That in cases where such taxes or assessments shall be quashed or declared void by said court, for the reasons hereinbefore stated, the reassessment herein provided for shall be made

within ninety days after the judgment or decree of said court quashing or setting aside such taxes or assessments and any amount theretofore paid upon an assessment which has been declared void shall be credited the owner upon the reassessment made under the provision of this section. (Apr. 24, 1896, 29 Stat. 98, ch. 123.)

CROSS REFERENCE

Other similar provisions, §§ 7–632, 47–1106.

§ 47–722 [20: 963]. Valuation of United States property in the District of Columbia.

There shall be a valuation taken of all real estate belonging to the United States in the District, except the public buildings, and the grounds which have been dedicated to the public use as parks and squares, at least once in five years, and return thereof shall be made by the commissioners to the President of the Senate and Speaker of the House of Representatives on the first day of the session of Congress held after such valuation shall be taken. (R. S., D. C., § 138; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

AMENDMENT

The 1874 act created and vested power in the Commissioners.

§ 47–723 [20: 964]. Valuation of United States property in the District of Columbia under regulations of Secretary of the Interior.

All valuations of property belonging to the United States shall be made by such persons as the Secretary of the Interior shall appoint, and under such regulations as he shall prescribe. (R. S., D. C., § 139.)

CROSS REFERENCE

Rules and regulations, § 47–2502 and notes.

Chapter 8.—EXEMPTIONS FROM TAXATION

Sec.
47–801. Repealed.
47–801a. Government property—property of educational, charitable, religious or scientific institutions—additional rounds of—profits arising from sale of.
47–801a–1. Disabled American Veterans property.
47–801a–2. National Society of the Colonial Dames of America.
47–801b. Income producing property of exempt institutions.
47–801b–1. Use of property by agencies of the United States or American Red Cross—Abatement of unpaid taxes.
47–801c. Report as to use of exempt property.
47–801d. Abatement or refund of tax assessed against exempt property.
47–801e. Appeal, persons entitled.
47–801f. Rules and regulations.
47–802. Repealed.
47–803. Property of United States, District of Columbia, and foreign legations.
47–804. Repealed.
47–805. Louise Home.
47–806. Sheridan tapestries.
47–807. Chesapeake and Ohio Canal.
47–808. Oak Hill Cemetery—property inalienable and exempt from taxation.
47–809. Corcoran Gallery of Art—Real property and works of art.
47–810. Corcoran Gallery of Art—Endowment fund.
47–811. Howard University.
47–812. Luther Statue Association.
47–813. Saint Mark's Protestant Episcopal Church.
47–814. Young Women's Christian Home.
47–815. Young Women's Christian Association.
47–816. Young Women's Christian Association—Remission of accrued taxes.
47–817. Young Men's Christian Association.
47–818. Frederick Douglas Memorial and Historical Association.
47–819. Edes Home.
47–820. General Education Board.
47–821. Daughters of American Revolution—Lots 8, 9, and 10, square 173.
47–822. Daughters of the American Revolution—173.
47–823. Daughters of the American Revolution—Lots 12, 13, 14, 15, and 16.
47–824. Daughters of the American Revolution—Lots 23, 24, 25, 26, 27 and 28.
47–825. Daughters of the American Revolution—Lots 4, 5, 6, 7, and 11.
47–826. National Society United States Daughters of 1812—Lot 811.
47–827. National Society of the Sons of the American Revolution.
47–828. The American Legion—Lots 32 and 33.
47–829. National Education Association.
47–830. Society of the Cincinnati—Lots 42, 43, 49, and part of lot 5.

§ 47–801. Repealed. Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (c, g).

NOTES TO DECISIONS

CHARITABLE LESSEE

Under this section exempting from taxation buildings belonging to institutions of purely public charity except if any portion of building or grounds is larger than is absolutely required and actually used for its legitimate purpose and none other, where lessor was public charity but building and grounds were larger than were absolutely required and actually used for the lessor's legitimate purpose, the fact that lessee was also a public charity would not exempt the building from taxation. *Hebrew Home for the Aged* v. *District of Columbia* (App. D. C. 1944, 142 F. 2d 573).

Where both lessor and lessee were public charities and lessee agreed to erect building which at expiration of term would become lessor's property, the building and the land were "larger than was absolutely required and actually used" for the lessor's legitimate purposes within this section granting exemption from taxation and therefore the building was not exempt from taxation. *Hebrew Home for the Aged* v. *District of Columbia* (App. D. C. 1944, 142 F. 2d 573).

MANUFACTURING PROPERTY

Act exempting manufacturing property from taxation does not create a contract in the sense that it cannot be repealed. *Welch* v. *Cook* (97 U. S. 541, 24 L. Ed. 1112).

MODIFICATION OF DISMISSAL ORDER

Where it was impossible to tell from complaint in action to remove certain property from tax rolls whether during certain years there was a synagogue as well as a place for taking ceremonial baths on premises involved, order dismissing amended complaint would be modified on appeal to allow an amendment so that it might be determined whether plaintiff was entitled to relief for such years. *Combined Congregations of District of Columbia* v. *Dent*, 1944 (140 F. 2d 9, 78 U. S. App. D. C. 254).

RELIGIOUS CORPORATIONS

Findings of Board of Tax Appeals for District of Columbia that a building was not primarily and regularly used for religious worship and study, and therefore was not exempt and there was no evidence upon which to base any apportionment of valuation under § 2 of the Act affirmed. *Fellowship Foundation* v. *District of Columbia* (C. A., D. C. 1949, 179 F. 2d 56, 86 U. S. App. D. C. 40).

SEPARATE STRUCTURES

This section exempting "churches" from taxation refers to the building rather than the institution, and a separate structure maintained by Jewish Congregations for ceremonial baths was not within such exemption. *Combined Congregations of District of Columbia* v. *Dent*, 1944 (140 F. 2d 9, 78 U. S. App. D. C. 254).

§ 47–801a. Government property—Property of educational, charitable, religious or scientific institutions—Additional grounds of—Profits arising from sale of.

The real property exempt from taxation in the District of Columbia shall be the following and none other:

(a) Property belonging to the United States of America.

(b) Property belonging to the District of Columbia.

(c) Property belonging to foreign governments and used for legation purposes.

(d) Property belonging to the Commonwealth of the Philippines and used for Government purposes.

(e) Property heretofore specifically exempted from taxation by any special Act of Congress, in force December 24, 1942, so long as such property is used for the purposes for which such exemption is granted. The Commissioners of the District of Columbia shall report annually to the Congress the use being made of such specifically exempted property, and of any changes in such use, with recommendations.

(f) Art gallery buildings belonging to and operated by organizations which are not organized or operated for private gain, and are open to the public generally, and for admission to which no charge is made on more than two days each week.

(g) Library buildings belonging to and operated by organizations which are not organized or operated for private gain and are open to the public generally.

(h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia.

(i) Hospital buildings, belonging to and operated by organizations which are not organized or operated for private gain, including buildings and structures reasonably necessary and usual to the operation of a hospital.

(j) Buildings belonging to and operated by schools, colleges, or universities which are not organized or operated for private gain, and which embrace the generally recognized relationship of teacher and student.

(k) Buildings belonging to and used in carrying on the purposes and activities of the National Geographic Society, American Pharmaceutical Association, The Medical Society of the District of Columbia, the National Lutheran Home, the National Academy of Sciences, Brookings Institution, the American Forestry Association, the American Tree Association, the Carnegie Institution of Washington, the American Chemical Society, the American Association to Promote the Teaching of Speech to the Deaf, and buildings belonging to such similar institutions as may be hereafter exempted from such taxation by special Acts of Congress.

(*l*) Cemeteries dedicated to and used solely for burial purposes and not organized or operated for private gain, including buildings and structures reasonably necessary and usual to the operation of a cemetery.

(m) Churches, including buildings and structures reasonably necessary and usual in the performance of the activities of the church. A church building is one primarily and regularly used by its congregation for public religious worship.

(n) Buildings belonging to religious corporations or societies primarily and regularly used for religious worship, study, training, and missionary activities.

(*o*) Pastoral residences actually occupied as such by the pastor, rector, minister, or rabbi of a church: *Provided,* That such pastoral residence be owned by the church or congregation for which said pastor, rector, minister, or rabbi officiates: *And provided further,* That not more than one such pastoral residence shall be so exempt for any one church or congregation.

(p) Episcopal residences owned by a church and used exclusively as the residence of a bishop of such church.

(q) Buildings belonging to organizations which are charged with the administration, coordination, or unification of activities, locally or otherwise, of institutions or organizations entitled to exemption under the provisions of sections 47–801a to 47–801f, and used as administrative headquarters thereof.

(r) (1) Grounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes of any institution or organization entitled to exemption under the provisions of sections 47–801a to 47–801f.

(2) Additional grounds belonging to and forming a part of the property of such institutions or organizations as of July 1, 1942. Such exemption shall be granted only upon the filing of a written application to the Commissioners, supported by an affidavit that such additional grounds are not held for profit or sale but only for the enlargement and expansion of said institution or organization.

If, however, at any future date the grounds so exempted, or any portion thereof, shall be sold and a profit shall result from such sale the taxes thereon for each year from the date of acquisition of such property for which no tax has been paid shall immediately become due and payable, without interest: *Provided, however,* That the total of such taxes shall not exceed 50 per centum of the net profit derived from such sale. The Commissioners shall be furnished a copy of the contract of sale together with other evidence necessary to establish the amount of profit or loss therefrom at least ten days prior to the date of settlement of such sale. Taxes assessed under this subparagraph shall constitute a lien upon such property. (Dec. 24, 1942, 56 Stat. 1089, ch. 826, § 1; Apr. 9, 1943, 57 Stat. 61, ch. 41, § 1.)

AMENDMENTS

The act of April 9, 1943, cited to text, amended par. (k) by inserting after words "the American Forestry Association" the words "the American Tree Association."

EFFECTIVE DATE

Section 2 of act April 9, 1943, cited to text, provided as follows: "The amendment made by this Act shall take effect as of December 24, 1942."

REPEAL OF OTHER LAWS

Section 7 (a, b) of act Dec. 24, 1942, cited to text, provided as follows:

"The following Acts or parts thereof are hereby repealed:

"(a) Section 1 of "An Act exempting from taxes certain property in the District of Columbia and to amend the 'Act to provide for the creation of corporations in the District of Columbia by general law' ", approved June 17, 1870 (16 Stat. 153);

"(b) Section 8 of 'An Act for the support of the Government of the District of Columbia for the fiscal year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes', approved March 3, 1875 (18 Stat. 503); * * *".

NOTES TO DECISIONS

CHARITABLE ORGANIZATIONS

Under subsection (h) of this section granting exemption from taxation of buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia, a concurrence of ownership and operation in one institution is not essential, but there must be use by charitable organization and ownership by a charitable organization. *Catholic Home for Aged Ladies* v. *District of Columbia* (App. D. C. 1947, 161 F. 2d 901).

Where charitable organization transferred home to its charitable auxiliary which operated charitable home for old ladies, the home was exempt from taxation, notwithstanding the property was not used by owner. *Catholic Home for Aged Ladies* v. *District of Columbia* (App. D. C. 1947, 161 F. 2d 901).

CONGRESSIONAL INTENT

Appellant's contention that the United States, to protect its lien, was obligated to pay District taxes assessed against the property after the federal lien arose, is without foundation since the general policy of the United States is not to pay real estate taxes to the District of Columbia in the absence of evidence of Congressional intent to create such suggested exception to this policy. *Cobb* v. *United States* (C. A. D. C. 1949, 172 F. 2d 277, 84 U. S. App. D. C. 228).

CONSTRUCTION OF EXEMPTION

Exemptions from taxation are construed strictly. *Hebrew Home for the Aged* v. *District of Columbia* (App. D. C. 1944, 142 F. 2d 573).

Tax exemptions must be strictly construed. *Combined Congregations of District of Columbia* v. *Dent,* 1944 (140 F. 2d 9, 78 U. S. App. D. C. 254).

EDUCATIONAL PURPOSES, PROPERTY FOR

Where, after institution of suit to obtain a declaratory judgment that certain property was used for educational purposes and therefore not taxable, Congress adopted this chapter declaring that the property and other similar property in District of Columbia was not taxable, determination in favor of owner of property was affirmed. *District of Columbia* v. *American Pharmaceutical Ass'n,* 1942 (133 F. 2d 43, 77 U. S. App. D. C. 94).

Where university acquired realty, income from which was used only to accumulate funds for purchase of additional property with intention of erecting buildings on realty for use in connection with university's educational facilities and also acquired other realty, income from which was used for educational purposes, the realty was not exempt from taxation under Act Mar. 2, 1867, 14 Stat. 438, as amended by Act May 23, 1938, 52 Stat. 351, exempting property of university "used only for education of youth". *Howard University* v. *District of Columbia* (App. D. C. 1946, 155 F. 2d 10).

RELIGIOUS CORPORATIONS

To entitle property owned by a religious corporation to exemption from taxation under subsection (n) of this section, two elements must be established, namely, that the building belongs to a religious corporation or society and that it is primarily and regularly used for religious worship, study, training, and missionary activities. *Calvary Baptist Church Extension Ass'n* v. *District of Columbia* (App. D. C. 1946, 158 F. 2d 327).

Where church organization, desiring to construct a Sunday school building on its property, organized a separate corporation to avoid effect of a restrictive covenant in deed to the church limiting church indebtedness, and building constructed by separate corporation was used for Sunday school purposes and by other organizations of which the church organization was a part, the entire building so constructed was exempt from taxation under subsection (n) of this section. *Calvary Baptist Church Extension Ass'n* v. *District of Columbia* (App. D. C. 1946, 158 F. 2d 327).

§ 47–801a–1. Disabled American Veterans property.

The property situated in square 153 in the city of Washington, District of Columbia, described as lot 132, owned, occupied, and used by the Disabled American Veterans, is hereby exempt from all taxation so long as the same is so owned and occupied, and not used for commercial purposes, subject to the provisions of sections 47–801b, 47–801c and 47–801e. (May 15, 1946, 60 Stat. 181, ch. 257, § 1.)

§ 47–801a–2. National Society of the Colonial Dames of America.

The property in the District of Columbia described as lot numbered 801, in square numbered 1285, together with the improvements thereon, known as premises number 2715 Q Street Northwest, and the furnishings therein, owned by the National Society of the Colonial Dames of America, a corporation organized and existing under the laws of the District of Columbia, shall be exempt from taxation, national and municipal, so long as the same is used for nonprofit purposes. (Sept. 7, 1949, 63 Stat. 694, ch. 564.)

§ 47–801b. Income producing property of exempt institutions.

If any building or any portion thereof, or grounds, belonging to and actually used by any institution or organization entitled to exemption under the provisions of sections 47–801a to 47–801f are used to secure a rent or income for any activity other than that for which exemption is granted such building, or portion thereof, or grounds, shall be assessed and taxed. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 2.)

NOTES TO DECISIONS

RENTAL OF ROOMS

Where unmarried rector occupied rectory as part of his compensation, fact that rector rented three rooms in the rectory to persons other than his immediate family to help cover household expenses was not the use of the building "to secure income for an activity other than that for which the exemption was granted" so as to annul exemption from real estate taxes provided by § 47–801a for pastoral residence owned by church. *District of Columbia* v. *Vestry of St. James Parish* (App. D. C. 1946, 153 F. 2d 621).

§ 47–801b–1. Use of property by agencies of the United States or American Red Cross—Abatement of unpaid taxes.

The use and occupancy of real property in the District of Columbia by any department, agency, or instrumentality of the United States of America, or by the American Red Cross, on a basis which does not

result in the receipt of rent or income to the owner thereof within the meaning of section 47–801b, shall not operate to terminate the tax-exempt status of such property if exempted from taxation prior to such use and occupancy; and, further, that any taxes, penalties, or interest which may be due by reason of such change in the use and occupancy of such property and unpaid when this joint resolution shall be approved by the President shall be abated: *Provided,* That nothing contained in this section shall be construed as authorizing any refund of any taxes, penalties, or interest paid prior to November 30, 1945. (Nov. 30, 1945, 59 Stat. 589, ch. 501.)

§ 47–801c. Report as to use of exempt property.

Every institution, organization, corporation, or association owning property exempt under the provisions of paragraphs d to q, inclusive, of section 47–801a shall, on or before March 1, 1943, and on or before March 1 of each succeeding year, furnish the Commissioners of the District of Columbia a report, under oath, showing the purposes for which its exempt property has been used during the preceding calendar year. Upon written application by the institution, organization, corporation, or association filed before March 1 of any year, the Commmissioners may extend the time for filing said report for a reasonable period. A copy of such report shall be forwarded to the Congress by the Commissioners.

If such report is not filed within the time provided herein, or as extended by the Commissioners, the property of the institution, organization, corporation, or association affected shall immediately be assessed and taxed until the required report is filed: *Provided, however,* That such tax shall be for a minimum period of thirty days. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 3.)

§ 47–801d. Abatement or refund of tax assessed against exempt property.

The Commissioners of the District of Columbia, upon written application by the owner of real property, filed within ninety days from December 24, 1942, are authorized to abate any tax assessed against any real property exempted by sections 47–801a to 47–801f where such tax was assessed after January 1, 1941, or to refund any such tax within the limitations of appropriations therefor. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 4.)

§ 47–801e. Appeal, persons entitled.

Any institution, organization, corporation, or association aggrieved by any assessment of real property deemed to be exempt from taxation under the provisions of sections 47–801a to 47–801f may appeal therefrom to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as provided in sections 3 and 4 of title IX of the District of Columbia Revenue Act of 1939, as amended: *Provided, however,* That payment of the tax shall not be prerequisite to any such appeal. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 5.)

§ 47–801f. Rules and regulations.

The Commissioners are authorized to make and promulgate such rules and regulations as they may deem necessary to carry out the intent and purposes of sections 47–801a to 47–801f: *Provided,* That such rules and regulations shall include provision for mailing annually, on or before February 1 of each year, to each of the institutions, organizations, corporations, or associations required by section 3 of this Act to file annual reports, notice of its contingent tax liability under this Act, together with a copy of any standard form for such reports which shall have been prescribed by the Commissioners under authority of this section. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 6; Sept. 29, 1943, 57 Stat. 568, ch. 248.)

AMENDMENTS

The act of Sept. 29, 1943, cited to text, amended section by adding the proviso.

§ 47–802. Repealed. Dec. 24, 1942, 56 Stat. 1092, ch. 826, § 7 (f).

NOTES TO DECISIONS

EDUCATIONAL PURPOSES INCIDENTAL

Where education phase of corporation was at most incidental and collateral to the social, recreative, promotional, and propaganda phases which constituted its major reasons for existence, it was not exempt from tax under this section. *Hazen* v. *National Rifle Assn.* (69 App. D. C. 339, 101 Fed. (2d) 432).

MT. VERNON SEMINARY

Mt. Vernon Seminary in the District of Columbia was exempt from taxation as a corporation whose property was held solely for educational purposes, no income inuring to any individual, and not for private gain, even though its receipts had exceeded its expenditures, resulting in a net profit to the institution. *District of Columbia* v. *Mt. Vernon Seminary* (69 App. D. C. 251, 100 Fed. (2d) 116).

STANDARDS

If school measures up to standards of curriculum and pedagogy set by the Government it comes within the reason for the subsidy which is implicit in a tax exemption. *District of Columbia* v. *Mt. Vernon Seminary* (69 App. D. C. 251, 100 Fed. (2d) 116).

§ 47–803 [20: 714]. Property of United States, District of Columbia, and foreign legations.

No property except that of the United States or the District of Columbia and property owned by foreign governments for legation purposes shall be exempt from assessments for improvements. (Mar. 3, 1903, 32 Stat. 961, ch. 992.)

CROSS REFERENCE

Special assessments for improvements around the capitol, § 47–1107.

§ 47–804. Repealed. Dec. 24, 1942, 56 Stat. 1092, ch. 826, § 7 (e).

§ 47–805 [20: 716]. Louise Home.

The buildings and grounds of the Louise Home, and all property held by the trustees thereof for the purposes of the trust contained in a certain deed from William W. Corcoran dated November 21, 1869, and recorded in liber 630 at folio 458 of the land records of the District of Columbia, on the square numbered one hundred and ninety-six shall be free from all taxes and assessment by the municipal authorities, or by the United States, so long as the same shall be held and used for the purposes of the said trust. (Mar. 3, 1875, 18 Stat. 508, ch. 168, § 2.)

§ 47–806 [20: 717]. Sheridan tapestries.

No personal taxes be levied against certain tapestries, which were presented to the late Lieutenant-General Philip H. Sheridan for gallant and meritorious services, and which were on exhibition in the National Museum on April 27, 1904, so long as they are exhibited in said museum. (Apr. 27, 1904, 33 Stat. 364, ch. 1628.)

§ 47–807 [20: 718]. Chesapeake and Ohio Canal.

For and in consideration of the expenses the said stockholders will be at, not only in cutting the Chesapeake and Ohio canal, erecting locks and dams, providing aqueducts, feeders, and other works, and in improving and keeping the same in repair, the said canal and all other works aforesaid, or required to improve the navigation thereof, at any time hereafter, with all their profits, subject to the limitations herein provided, and to none other, shall be, and the same are hereby, vested in the said stockholders, their heirs and assigns, forever, as tenants in common, in proportion to their respective shares, and be forever exempt from the payment of any tax, imposition, or assessment whatsoever. (General Assembly of Virginia, Jan. 27, 1824; 4 Stat. 796, Appendix I, § 9; Mar. 3, 1825, 4 Stat. 101, ch. 52.)

AMENDMENT

The 1825 act confirms the act of the legislature of the State of Virginia entitled "An act incorporating the Chesapeake and Ohio Canal Company," and "An act of the State of Maryland, confirming the same." The 1825 act contains the words of this section.

NOTES TO DECISIONS

CONSTITUTIONAL LAW

The provision in the charter which requires the jury to do what they would be competent to do without such provision, and which, in order to ascertain a compensation which should be just toward the public as well as toward the individual, they ought to do, cannot be considered repugnant to the Constitution; citing and quoting *Chesapeake & Ohio Canal Co.* v. *Key*, 3 Cranch (7 U. S.) 599, 601. *Bauman* v. *Ross* (167 U. S. 548, 42 L. Ed 270, 17 Sup. Ct. 966).

FORFEITURE FOR NONUSER

The question of forfeiture by nonuser could be established only by a direct proceeding on the part of the public authorities, and a decision to that effect in a proper tribunal, and cannot be made an issue for the first time in the trial of the question of private rights. *Mackall* v. *Chesapeake & Ohio Canal Co.* (94 U. S. 308, 24 L. Ed. 161).

GENERAL CREDITORS

A general creditor of the Chesapeake and Ohio Canal Company had notice of the statute granting said company its charter. *Macalester* v. *Maryland* (114 U. S. 598, 29 L. Ed. 233, 5 Sup. Ct. 1065).

RIPARIAN RIGHTS

The Chesapeake and Ohio Canal Company does not own or possess riparian rights along the line of its canal within the limits of the city of Washington. *Morris* v. *United States* (174 U. S. 196, 43 L. Ed. 946, 19 Sup. Ct. 649).

§ 47–808 [20: 719]. Oak Hill Cemetery—Property inalienable and exempt from taxation.

The property owned by "The Oak Hill Cemetery Company" shall be forever inalienable by the said corporation, and shall be exempted from all public assessments and taxes so long as the same shall remain dedicated to the purposes of a cemetery. (Mar. 3, 1849, 9 Stat. 775, ch. 128, § 10.)

§ 47–809 [20: 720]. Corcoran Gallery of Art—Real property and works of art.

The buildings described in a certain deed from William W. Corcoran to the trustees of the Corcoran Gallery of Art, dated May 10th, 1869, and recorded May 18th, 1869, in liber D, No. 8, folio 294 et seq., one of the land records of Washington County, District of Columbia, and the grounds connected therewith, together with all of the works of art that may be contained therein, shall be free from all taxes and assessments by the municipal authorities, or by the United States, so long as the same shall be held and used for the purposes set forth in said deed. (May 24, 1870, 16 Stat. 139, ch. 111, § 4.)

§ 47–810 [20: 721]. Corcoran Gallery of Art—Endowment fund.

All property held as endowment fund by the trustees of the Corcoran Gallery of Art, in the city of Washington, District of Columbia, for the purpose of revenue to support said institution, shall be, and the same is hereby, declared exempt from all taxation and assessments by the municipal authorities or by the United States so long as the same shall be so held. (Jan. 26, 1887, 24 Stat. 364, ch. 43.)

COMPILER'S NOTE

The act contained the following proviso which has been omitted as obsolete: "*Provided,* That real estate purchased prior to January 26, 1887, by said trustees in the management of the endowment fund shall be exempt from taxation only while so held, and not to exceed five years from January 26, 1887."

§ 47–811 [20: 722]. Howard University.

The property, real and personal, of the Howard University shall be exempt from taxation so long as such property shall be used only for the purposes set forth in the charter of said institution: *Provided,* That nothing in this section shall exempt any real estate of said university from assessment and liability for special improvements authorized by law: *Provided also,* That this section shall not include any real estate sold or contracted to be sold by said university to any other person than the United States, the title to which may be still in the said university. (June 16, 1882, 22 Stat. 105, ch. 222, § 3.)

NOTES TO DECISIONS

INCOME OF PROPERTY

Where university acquired realty, income from which was used only to accumulate funds for purchase of additional property with intention of erecting buildings on realty for use in connection with university's educational facilities and also acquired other realty, income from which was used for educational purposes, the realty was not exempt from taxation under act Mar. 2, 1867, 14 Stat. 438, as amended by act May 23, 1938, 52 Stat. 351, exempting property of university "used only for education of youth". *Howard University* v. *District of Columbia* (App. D. C. 1946, 155 F. 2d 10).

§ 47–812 [20: 723]. Luther Statue Association.

The lands acquired and held by the Luther Statue Association, and the statue erected thereon, and all the improvements and appurtenances thereto,

shall be entirely exempt from taxation, and shall not be chargeable or assessed for any purpose whatever: *Provided,* That this section may be modified, repealed or amended, whenever Congress may see fit to do so. (Mar. 3, 1885, 23 Stat. 350, ch. 334, § 4.)

§ 47–813 [20: 724]. Saint Mark's Protestant Episcopal Church.

A certain piece of land situated in the city of Washington, District of Columbia, known as lots nine and eleven, in square seven hundred and eighty-eight of the plan of that city, and occupied by the church known as Saint Mark's Protestant Episcopal Church, and all the buildings, grounds, and property appurtenant thereto and used in connection therewith in the District of Columbia, shall be exempt from any and all taxes or assessments, national, municipal, or county. (Feb. 23, 1887, 24 Stat. 411, ch. 214.)

§ 47–814 [20: 725]. Young Woman's Christian Home.

The property, whether real or personal, owned by the "trustees of Young Woman's Christian Home" and used exclusively for the charitable purposes of said organization shall be exempt from taxation. (Feb. 23, 1887, 24 Stat. 413, ch. 217, § 2.)

§ 47–815 [20: 725a]. Young Women's Christian Association.

All property of the Young Women's Christian Association of the District of Columbia located in the District of Columbia and occupied and used by such association for its legitimate purposes shall be exempt from all national and municipal taxation so long as such property is so occupied and used. (June 16, 1938, 52 Stat. 709, ch. 461, § 1.)

§ 47–816 [20: 725b]. Young Women's Christian Association—Remission of accrued taxes.

The Young Women's Christian Association of the District of Columbia is hereby relieved from any accrued liability to the United States or the District of Columbia for taxes imposed upon any of the property of such association located in the District of Columbia for any tax period during which such property was occupied and used by such association for its legitimate purposes. (June 16, 1938, 52 Stat. 709, ch. 461, § 2.)

§ 47–817 [20: 726]. Young Men's Christian Association.

All property belonging to the Young Men's Christian Association of the District of Columbia, used and occupied by that association, shall, so long as the same is so owned and occupied, be exempt from taxation, national and municipal: *Provided,* That where ground of said association is larger than is reasonably required for its use, or is not actually used for the legitimate purposes of said association, or if said ground or buildings shall be used for private gain, such portion of said ground or buildings as shall not actually be used for the purposes of said association, or from which it derives a rent or income, such portion of the same, or a sum equal in value to such portion, shall be taxed against such association. (Aug. 6, 1894, 28 Stat. 999, ch. 230.)

§ 47–818 [20: 727]. Frederick Douglass Memorial and Historical Association.

When the Frederick Douglass Memorial and Historical Association shall have acquired title in fee simple to the whole or a part, as the case may be, of the property known as Cedar Hill, in the village of Anacostia, in the District of Columbia, and formerly occupied as the homestead of the late Frederick Douglass, said land and premises shall be, and hereby are declared to be exempt from all taxes and assessments for taxation so long as the same shall be used for the purposes of this incorporation. Congress reserves the right to amend or repeal this section. (June 6, 1900, 31 Stat. 663, ch. 806, §§ 7, 8.)

COMPILER'S NOTE

The "purposes of this incorporation" are contained in the act cited to the text.

§ 47–819 [20: 728]. Edes Home.

The property held by The Edes Home actually and exclusively used and occupied for a home for aged and indigent widows shall while and as long as so actually and exclusively used and occupied, be free from any tax, burden, or assessment, laid or to be laid by the United States or under any authority emanating therefrom. This section shall be and remain at all times subject to repeal, alteration, or amendment by the Congress of the United States. (May 1, 1906, 34 Stat. 162, 163, ch. 2075, §§ 2, 6.)

§ 47–820 [20: 729]. General Education Board.

All real property of the General Education Board within the District of Columbia which shall be used by the corporation for the educational or other purposes of the corporation as aforesaid, other than the purpose of producing income, and all personal property and funds of the corporation held, used, or invested for educational purposes as aforesaid, or to produce income to be used for such purposes, shall be exempt from taxation: *Provided, however,* That this exemption shall not apply to any property of the corporation which shall not be used for, or the income of which shall not be applied to, the educational purposes of the corporation: *And provided further,* That the corporation shall annually file with the Secretary of the Interior of the United States a report in writing, stating in detail the property, real and personal, held by the corporation, and the expenditure or other use or disposition of the same or the income thereof during the preceding year.

This charter shall be subject to alteration, amendment, or repeal at the pleasure of the Congress of the United States. (Jan. 12, 1903, 32 Stat. 769, ch. 91, §§ 6, 7.)

COMPILER'S NOTE

The words "as aforesaid" refer to the preceding sections of the act cited to the text.

§ 47–821 [20: 730]. Daughters of American Revolution—Lots 8, 9, and 10, square 173.

The property situated in square numbered 173 in the city of Washington, District of Columbia, described as lots 8, 9, and 10, inclusive, occupied by the Daughters of the American Revolution, is hereby exempt hereafter (May 21, 1924) from all taxes, so long as the same is so occupied and used, subject to

the provisions of section 47–801, providing for exemptions of church and school property, and Acts amendatory thereof. (May 21, 1924, 43 Stat. 135, ch. 163.)

§ 47–822 [20: 731]. Daughters of the American Revolution—Square 173.

That the property situated in square numbered one hundred and seventy-three, in Washington City, District of Columbia, occupied on February 27, 1903 by the Daughters of the American Revolution is hereby exempt from all taxation so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for exemptions of church and school property, and Acts amendatory thereof. (Feb. 27, 1903, 32 Stat. 907, ch. 852.)

§ 47–823 [20: 732]. Daughters of the American Revolution—Lots 12, 13, 14, 15, and 16.

The property situated in square one hundred and seventy-three in the city of Washington, District of Columbia, described as lots twelve, thirteen, fourteen, fifteen, and sixteen, inclusive, occupied by the Daughters of the American Revolution, is exempt from and after February 28, 1921, from all taxation so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for exemptions of church and school property, and Acts amendatory thereof. (Sept. 16, 1922, 42 Stat. 846, ch. 319.)

§ 47–824 [20: 733]. Daughters of the American Revolution—Lots 23, 24, 25, 26, 27, and 28.

The property situated in square one hundred and seventy-three in the city of Washington, District of Columbia, described as lots twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight, inclusive, occupied by the Daughters of the American Revolution, is hereby exempt from all taxation so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for exemptions of church and school property, and Acts amendatory thereof. (Aug. 15, 1916, 39 Stat. 514, ch. 342.)

§ 47–825 [20: 734]. Daughters of the American Revolution—Lots 4, 5, 6, 7, and 11.

The property situated in square one hundred and seventy-three in the city of Washington, District of Columbia, described as lots four, five, six, seven, and eleven, inclusive, occupied by the Daughters of the American Revolution, is hereby exempt from and after February 23, 1916, from all taxation so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for exemptions of church and school property, and Acts amendatory thereof. (Mar. 3, 1917, 39 Stat. 1009, ch. 160.)

§ 47–826 [20: 734a]. National Society United States Daughters of 1812—Lot 811.

The property situated in square numbered 210 in the city of Washington, District of Columbia, described as lot 811, occupied and used by the National Society United States Daughters of 1812, is hereby exempt from all taxation so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for exemptions of church and school property. (June 4, 1934, 48 Stat. 836, ch. 376.)

§ 47–827 [20: 734b]. National Society of the Sons of the American Revolution.

All property, real and personal, belonging to or held by the National Society of the Sons of the American Revolution in the District of Columbia, used, and occupied by that society for its purposes, so long as the same is so owned, used, and occupied, is exempt from taxation, national and municipal. (June 16, 1934, 48 Stat. 972, ch. 547; Oct. 25, 1949, 63 Stat. 888, ch. 709.)

AMENDMENTS

The Act of Oct. 25, 1949, cited to text, inserted the words "real and personal" after the word "property"; added the words "for its purposes" after the words "by that society"; and inserted the words "so owned, used and occupied" in lieu of the words "owned and occupied".

Sec. 2 of said Act provided as follows: "The Commissioners of the District of Columbia are hereby authorized, upon written application filed within ninety days after approval of this Act, to abate any tax heretofore assessed in respect to the property exempted by the provisions of this Act."

§ 47–828 [20: 734c]. The American Legion—Lots 32 and 33.

The property situated in square 185 in the city of Washington, District of Columbia, described as lots 32 and 33, owned, occupied, and used by The American Legion, is hereby exempt from all taxation so long as the same is so owned and occupied, and not used for commercial purposes, subject to the provisions of section 47–801, providing for exemptions of church and school property. (June 13, 1934, 48 Stat. 953, ch. 493.)

§ 47–829 [20: 735]. National Education Association.

All real property of the National Education Association of the United States within the District of Columbia, which shall be used by the corporation for the educational or other purposes of the corporation, other than the purpose of producing income, and all personal property and funds of the corporation, held, used, or invested for educational purposes aforesaid, or to produce income to be used for such purposes, shall be exempt from taxation: *Provided, however,* That this exemption shall not apply to any property of the corporation which shall not be used for or the income of which shall not be applied to the educational purposes of the corporation. Congress may from time to time alter, repeal, or modify this section, but no contract or individual rights made or acquired shall thereby be divested or impaired. (June 30, 1906, 34 Stat. 805, 808, ch. 3929, §§ 4, 11.)

COMPILER'S NOTE

The word "aforesaid" refers to the preceding sections of the act cited to the text.

§ 47–830 [20: 735a]. Society of the Cincinnati—Lots 42, 43, 49, and part of lot 5.

The property situated in square numbered 67 in the city of Washington, District of Columbia, described as lot numbered 42, as per plat recorded in the office of the surveyor for the District of Co-

lumbia, in liber 27 at folio 135; lot numbered 43, as per plat recorded in said surveyor's office in liber 28 at folio 25; lot numbered 49 as per plat recorded in said surveyor's office in liber 40 at folio 15; and part of original lot numbered 5 described as follows: Beginning for the same at the northeast corner of said lot and running thence west along the south line of a public alley thirty feet wide forty-seven and seventeen one-hundredths feet to the east line of another public alley, thirty feet wide; thence south along the east line of said alley seventy-four feet; thence east forty-seven and seventeen one-hundredths feet to the west line of a public alley fifteen feet wide; thence north along the west line of said alley seventy-four feet to the place of beginning, occupied by the Society of the Cincinnati, a corporation of the District of Columbia, with all the buildings and improvements thereon, and the contents thereof are hereby exempt from all taxes so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for the exemption of church and school property, subject to the proviso that said society shall maintain therein a national museum for the custody and preservation of historical documents, relics, and archives, especially those pertaining to the American Revolution, which museum shall be accessible to the public at such reasonable hours and under such regulations as may, from time to time, be prescribed by said society; and subject to the further proviso that if any part of said property is sold, then the exemption as to said part and said part only shall determine and if any part of said property is leased then the exemption shall cease for so long and so long only as said part is so leased. This exemption to become effective on the date of the passage of this section. (Feb. 24, 1938, 52 Stat. 81, ch. 35.)

Chapter 9.—FAMILY DWELLINGS OCCUPIED BY OWNERS

Sec.

47–901. Quarterly payments—Statement of taxes—Interest.
47–902. Extension of time of payment.
47–903. Restrictions on sale for delinquent taxes.
47–904. Sales invalidated where based on errors in computation of taxes due.
47–905. Affidavit as to domicile and ownership.

§ 47–901 [20: 740]. Quarterly payments—Statement of taxes—Interest.

Each fiscal year, commencing with the fiscal year ending June 30, 1934, the assessor of the District of Columbia shall send to the owner of each family dwelling-house occupied by such owner upon written application therefor an itemized statement of the taxes payable with respect to such dwelling-house not less than thirty days prior to the time when the first instalment of real-estate taxes for such fiscal year becomes due and payable. Such statement shall include all real-estate taxes which are due and payable in such fiscal year and all instalments of special assessments which have been levied, charged, or assessed prior to, and are due and payable in, such fiscal year, with respect to the family dwelling-house occupied by the owner. Such taxes and assessments shall be payable, at the election of the taxpayer, in four equal instalments, in the months of September, December, March, and June, and no interest shall be payable with respect to any such instalment unless it is unpaid after the time it is due. Any real-estate tax or special assessment or any instalment thereof with respect to any family dwelling-house occupied by the owner thereof not included in such statement shall not be due or payable during the fiscal year for which the statement is sent; and any such tax or assessment or any instalment thereof otherwise chargeable, assessable, or payable during such fiscal year shall be included in the statement for the next succeeding fiscal year. (Feb. 28, 1933, 47 Stat. 1347, ch. 130, § 1.)

Cross Reference

Time for payment, delinquency, § 47–1209.

§ 47–902 [20: 741]. Extension of time of payment.

The collector of taxes of the District of Columbia shall extend the time for the payments of real-estate taxes and special assessments payable after January 1, 1933, on any family dwelling-house occupied by the owner thereof, or any instalment of such taxes or assessments, for not more than ninety days, if written application for such extension is filed with the collector before such taxes or instalment thereof are due. Such extension shall be granted only if, in the judgment of the collector of taxes, satisfactory evidence is presented by the owner that, through unemployment or other emergency, the owner is unable to make such payment. No such application shall be granted unless the application is accompanied by the payment, to the collector, of interest at the rate of 6 per centum per annum on the amount of the taxes or assessments or instalments thereof for the time of the extension applied for. In any case in which the amount of the tax or assessment or instalment due is paid prior to the expiration of the period of the extension there shall be deducted from the amount payable an amount equal to such part of the interest payable with respect thereto as represents the unexpired portion of the period of the extension. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 2.)

§ 47–903 [20: 742]. Restrictions on sale for delinquent taxes.

No family dwelling-house occupied by the owner thereof shall be sold for delinquent personal or real-estate taxes or special assessments unless notice has been personally served upon such owner or sent by registered mail, addressed to him at such dwelling-house, not less than thirty days prior to the date of such sale. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 3.)

§ 47–904 [20: 743]. Sales invalidated where based on errors in computation of taxes due.

No sale for delinquent personal or real-estate taxes or special assessments with respect to a family dwelling-house owned by the occupier thereof shall be valid if such sale is in consequence of an error or omission in the computation of the amount of taxes due thereon. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 4.)

COMPILER'S NOTE

This is an exception from the general provision set out in § 47–1015.

§ 47–905 [20: 745]. Affidavit as to domicile and ownership.

This chapter shall be deemed as applying only to such occupant and owner as shall have filed with the assessor of the District of Columbia an affidavit as to domicile and ownership. The form of the affidavit shall be prepared by the assessor of the District of Columbia, and shall show the beginning of domicile, the time when ownership began, the street number, the number of the square and lot, and all trusts, if any, against the property. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 6.)

Chapter 10.—REAL PROPERTY TAX SALES

Sec.

47–1001. Delinquent tax list—Publication of notice—Competitive proposals—Sale.
47–1001a. Notice to record owner of amount of tax levy.
47–1002. Sale of property—Purchase by District.
47–1003. Deposit required — Certificate of sale — Tax deed—Redemption.
47–1004. Changed interest rates to apply only to sales after June 25, 1938.
47–1005. Property sold for taxes redeemable within two years from sale.
47–1006. Report of tax sale to be filed with recorder of deeds—Dispositive of surplus on redemption.
47–1007. Commissioners not to convey any property if sale is void.
47–1008. Payment of expenses of advertising.
47–1009. Assessor to furnish information.
47–1010. Assessor to keep list of property sold for taxes for public inspection.
47–1011. Liens on real estate for unpaid taxes—Enforcement—Redemption before sale.
47–1012. Real estate to be sold—Notice to owner—Parties defendant—Court order—Validity of service and sale.
47–1013. Court to decree sale by collector of taxes—No penalty if defect in tax sale.
47–1014. Real estate sold—Confirmation of sale—Surplus paid into court—Delivery of deed.
47–1015. Validity of sales not affected by certain errors in computation.

REFUND OF TAXES

47–1016. Taxes erroneously paid to be refunded.
47–1017. Money paid for license not granted to be refunded.
47–1018. Money paid for redemption of property sold for taxes to go to redemption fund.

§ 47–1001 [20: 791]. Delinquent tax list—Publication of notice—Competitive proposals—Sale.

The assessor of the District of Columbia shall prepare a list of all taxes on real property in said District subject to taxation on which said taxes are levied and in arrears on the first day of July of each year hereafter; and the commissioners of said District shall fix date of sale. The notice of sale and the delinquent tax list shall be advertised once a week for two weeks in the regular issue of one morning and one evening newspaper published in the District of Columbia; and notice shall be given, by advertising twice a week for two successive weeks in the regular issue of two daily newspapers published in the District of Columbia, that such delinquent tax list has been published in two daily newspapers, giving the name of each and the dates and the issues containing said list, and such notice shall be published in the two weeks immediately following the week in which the delinquent tax list shall have been published: *Provided further*, That competitive proposals shall be invited by the Commissioners from the several newspapers published in the District of Columbia for publishing the said delinquent tax list. If the taxes due, together with the penalties and costs that may have accrued thereon, shall not be paid prior to the day fixed for sale, the property will be sold, under the direction of the Commissioners of the District of Columbia, at public auction at the office of the said collector of taxes, commencing at least three weeks after the first publication of said notice and continuing on each following day, Sundays and legal holidays excepted, until all said delinquent property is sold; a description sufficient to identify the property shall be considered a proper description. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 1; July 1, 1902, 32 Stat. 632, ch. 1358, § 1; July 3, 1926, 44 Stat. 834, ch. 759, § 9; Mar. 2, 1927, 44 Stat. 1303, ch. 271; May 21, 1928, 45 Stat. 650, ch. 659; Feb. 25, 1929, 45 Stat. 1268, ch. 314.)

AMENDMENTS

The 1898, 1902, and 1926 acts contained a provision for the publication of a pamphlet and for notice of the publication thereof, the 1902 and 1926 acts altering the time and duration of the notice.

The 1927 amendment abolished this pamphlet and inserted the second sentence.

The 1928 and 1929 acts are appropriation acts that merely re-enact the provisions of the 1927 act.

CROSS REFERENCES

Notice to owner under special provisions concerning family dwelling, § 47–903.

Sale of lands to pay personal property taxes, §§ 47–1301 to 47–1305.

Time for payment, delinquency, § 47–1209.

NOTES TO DECISIONS

CONSTRUCTION WITH OTHER LAWS

Sections 47–1001 to 47–1003 providing in part for public sale of delinquent tax property are not inconsistent with former section 800 of Title 20 of the 1929 D. C. Code providing an additional method for collecting taxes, and said former section 800 of former Title 20 did not repeal said §§ 47–1001 to 47–1003. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation*, 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

REQUIREMENT OF NOTICE

Publication of notice for two weeks, once a week in one newspaper, was proper to comply with the provisions of the District Code requiring publication, morning and evening, once a week, for two weeks. *Tayloe* v. *Kjaer* (C. A. D. C. 1948, 171 F. 2d 343, 84 U. S. App. D. C. 183).

§ 47–1001a. Notice to record owner of amount of tax levy.

Annually and subsequent to July 1, the assessor of the District of Columbia shall mail to the record owner of each lot or parcel of land upon which a real estate tax has been levied by the District of Columbia as of July 1 of the same year, a notice of the amount of such real estate tax, and of the manner in which the amount of such real estate tax is payable according to law; and such notice shall state whether there were any delinquent real estate taxes unpaid on July 1 of the year in which such

notice is sent: *Provided,* That if the address of the owner be unknown, such notice shall be mailed to his agent, if known; and if there be more than one record owner of any lot or parcel, notice mailed to one of the owners shall be deemed compliance with this section: *Provided further,* That nothing in this section shall affect in any way the provisions of section 47–1103: *Provided further,* That failure of the property owner or his agent to receive such notice shall not relieve the property owner of the payment of any penalty or interest as required by law for the delinquent payment of real estate taxes. (June 25, 1938, ch. 702, § 12, as added Oct. 5, 1943, 57 Stat. 570, ch. 256.)

§ 47–1002 [20: 792]. Sale of property—Purchase by District.

Upon the day specified in section 47–1001 the Commissioners shall proceed to sell or cause to be sold any and all property upon which such taxes remain unpaid, and continue to sell the same every secular day until all the real property as aforesaid in section 47–1001 shall have been brought to auction and sold. In case no other person bids the amount due, together with penalties and costs, on any lot, the said collector of taxes shall bid the amount due, together with penalties and costs, on the same and purchase it for the District. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 2; July 1, 1902, 32 Stat. 633, ch. 1358, § 2.)

AMENDMENT

The 1902 amendment inserted the words "together with penalties and costs" in both places where they appear.

NOTES TO DECISIONS

LAND SUBJECT TO EASEMENTS

Sale of real property for non-payment of taxes does not extinguish an easement with which the property is burdened. *District of Columbia* v. *Capital Mortg. & Title Co.* (D. C., D. C. 1949, 84 F. Supp. 788).

§ 47–1003 [20: 793]. Deposit required—Certificate of sale—Tax deed—Redemption.

The collector of taxes shall require from every purchaser of property sold as aforesaid a deposit sufficient, in his judgment, to guarantee a full and final settlement for such purchase. Every purchaser other than the District of Columbia at any sale of property as aforesaid shall pay the full amount of his bid, including surplus, if any, to the collector of taxes within five days after the last day of sale, and in case such payment is not made within the time specified the deposit of the person so failing to make payment shall be forfeited to the District of Columbia, and said collector of taxes shall then issue the certificate of sale for such property to the next highest bidder, and if payment of the amount of the bid of said next highest bidder be not made within two days thereafter, the Commissioners of the District of Columbia shall set aside both sales for which the bids were made; and the said collector of taxes shall thereupon be held to have bid the amount due on the said lot and to have purchased it for the District. Immediately after the close of the sale, upon payment of the purchase money, the said collector of taxes shall issue to the purchaser a certificate of sale, and if the property shall not be redeemed by the owner or owners thereof within two years from the last day of sale, by payment to the collector of taxes of said District, for the use of the legal holder of the certificate, the amount for which it was sold at such sale, exclusive of surplus, and one per centum thereon for each month or part thereof, a deed shall be given by the Commissioners of the District, or their successors in office, to the purchaser at such tax sale, his heirs or devicees, or to the assignee of such certificates, which deed shall be admitted and held to be prima facie evidence of a good and perfect title in fee simple to any property bought at said sale herein authorized: *Provided,* That no deed shall be issued unless application therefor be made within five years from the last day of sale, and if no such application be made then the owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the property by paying to the collector of taxes for the legal holder of the certificate the amount for which it was sold at such sale, exclusive of surplus, plus interest thereon for the first two years after the date of such certificate of sale at the rate hereinabove provided, and for three years thereafter at the rate of 6 per centum per annum; that when the said property is redeemed as aforesaid, the collector of taxes shall, within five days thereafter notify the owner of record of such tax sale certificate at his last known address, by registered mail, of the redemption of such certificate; that within five years from the time that payment has been made to the collector of taxes to redeem such tax sale certificate, the owner thereof may apply for, and, upon the surrender of the certificate, shall receive from the District of Columbia the payment made as hereinbefore prescribed; that upon the failure of the owner of such tax sale certificate to apply within the period of five years, as hereinbefore prescribed, such money shall be forfeited to the District of Columbia, and be deposited by the collector of taxes in the Treasury of the United States to the credit of the general revenues of the District of Columbia: *Provided,* That no deed shall be issued until all taxes and assessments appearing upon the tax books against the property are paid, with penalties, interests, and costs, including taxes for the years for which the District purchased the property at tax sale: *Provided,* That no property advertised as aforesaid shall be sold upon any bid not sufficient to meet the amount of tax, penalty, and costs; but in case the highest bid on any property is not sufficient to meet the taxes, penalties, and costs thereon said property shall thereupon be bid off by the said collector of taxes, in the name of the District of Columbia; but the property so bid off shall not be exempted from assessment and taxation, but shall be assessed and taxed as other property; and if within two years thereafter such property is not redeemed by the owner or owners thereof, or their legal representatives, by the payment of the taxes, penalties and costs due at the time of the sale and that may have accrued after that date, and one per centum thereon for each month or part thereof, or if any property two years after having been so

bid off at any sale in the name of said District under sections 47–1001 to 47–1009 or any other law in force is not or has not been so redeemed as aforesaid (unless it shall be shown that the sale for taxes was irregular and void), then the commissioners of the District, or their successors shall in the name of and on behalf of the District of Columbia, sell said property at public or private sale and issue to any purchaser of such property a deed, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale: *Provided, however,* That no deed shall be issued until all assessments, taxes, costs, and charges due the District, of whatsoever nature, shall have been paid in full: *And provided also,* That minors or other persons under legal disability be allowed one year after attaining full age or after the removal of such legal disability to redeem the property so sold, or bid off by the collector of taxes in the name of the District of Columbia as aforesaid, from the purchaser or purchasers, his, her, or their assigns, or from the District of Columbia, on payment of the amount of purchase money so paid therefor, with eight per centum per annum interest thereon as aforesaid, together with all taxes and assessments that have been paid thereon by the purchaser or his assigns between the day of sale and the period of redemption with eight per centum per annum interest on the amount of such taxes and assessments. When such property is redeemed from a purchaser other than the District of Columbia, and when such property shall be redeemed from the District of Columbia, it shall, except as to the period of redemption, be upon the terms and conditions hereinabove provided for in the case of redemption by persons not under legal disability: *Provided, however,* That failure on the part of the District, from any cause whatsoever, to enforce the liens acquired aforesaid shall not release the property from any tax whatsoever that may be due the District: *Provided further,* That at any time after any property shall have been bid off as aforesaid by the collector of taxes, and before the expiration of the time allowed for the redemption thereof, the collector of taxes of said District, may issue to any person or persons, upon the payment of a sum not less than the aggregate amount of the taxes, penalties, and costs due at the time the property was bid off by the collector and that may have accrued after that date, a certificate of sale, and if the property shall not be redeemed by the owner or owners thereof within two years from the date of such certificate, by payment to the collector of taxes of said District, for the use of the legal holder of the certificate, the amount exclusive of surplus paid by the person or persons to whom such certificate was issued and one per centum thereon for each month or part thereof, a deed shall be given by the Commissioners of the District of Columbia, or their successors in office, to the legal holder of such certificate, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale; and that the foregoing provisions in this section in reference to the sale at public or private sale of property in the District of Columbia advertised for sale for taxes and bid off by the collector of taxes be, and the same are also hereby, made applicable to all property in the District of Columbia subject to taxation where taxes levied and in arrears on July 1, 1897, or at any time prior thereto, have not been paid, and which at any sale held previous to said date were bid off in the name of the District of Columbia; and when for any reason any tax sale of real property in the District of Columbia may be set aside or canceled, such property may be readvertised and sold at the next ensuing annual sale. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 3; July 1, 1902, 32 Stat. 633, ch. 1358, § 3; June 25, 1938, 52 Stat. 1201, ch. 702, § 9; Feb. 22, 1944, 58 Stat. 20, ch. 29.)

Compiler's Note

Sections 47–1011 to 47–1014 provide an alternative method to that given in this section for sale of property which has been bid in at a tax sale in the name of the District.

Amendments

The 1902 amendment added the first sentence and the part of the section following the words "Provided further," and lowered the first percentage provision from 15% per annum to 12% per annum and the second percentage provision from 10% per annum to 8% per annum, and provided the third percentage provision should be 12% per annum.

The 1938 amendments changed these provisions to their present amount.

The act of Feb. 22, 1944, cited to text, amended section by the addition of the first proviso.

NOTES TO DECISIONS

Protection of Interests

Where interests under wills had apparently been extinguished by valid tax title to stranger before trustee under will acquired tax title in individual name, burden was on the trustee, not upon the commissioners, to act for protection of the beneficial interests, and the commissioners did not have burden of searching out the interests under the wills and making a decision regarding their validity. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Conveyance for Lesser Amount

Under this section and §§ 47–1001 and 47–1002 providing for public sale of delinquent tax property, the commissioners had no authority to convey property for less than all assessments, taxes, costs, penalties, and charges due the District of Columbia. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Where, under this section, commissioners had no authority to convey property for less than all assessments, taxes, costs, penalties, and charges due District of Columbia, the purpose of former section 800 of Title 20 of the 1929 D. C. Code creating such authority and a method for selling the property was, not to repeal this section, but rather to provide for disposition on terms not permissible prior thereto with safeguard of judicial approval when the sale should be made on the new terms. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Redemption

Where the "date of redemption" column in assessor's tax record was used for both genuine redemptions within statutory period and payments made on issue of tax deed, tax deed was not objectionable on ground that sale made in January, 1932, stood redeemed on March 10, 1934, on

tax records where evidence established that amounts entered in the "date of redemption column" were amounts paid by purchaser in return for tax deed. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

TAX DEED

The provision in the Code that the District's tax deed shall be prima facie evidence of a good and perfect title in fee simple is not to be interpreted as indicating a Congressional intent that a junior District lien shall be superior to a senior federal lien. *Cobb* v. *United States* (C. A. D. C. 1949, 172 F. 2d 277, 84 U. S. App. D. C. 228).

TAX TITLE, EFFECT OF

Title evidenced by a tax deed given in compliance with statutory requirements expunges all interests which spring from record title and vests in the holder a new and complete title to the property in fee simple. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

No right of dower passed by the tax deed involved. If the deed had any effect at all it was to expunge the inchoate dower right. *Cobb* v. *Shore* (C. A. D. C. 1950, 183 F. 2d 980).

§ 47–1004 [20: 793a]. Changed interest rates to apply only to sales after June 25, 1938.

These amendments (of section 47–1003) shall apply only to tax sales held after June 25, 1938, and section 47–1003, without said amendments, shall remain in full force and effect as to all tax sales held prior to June 25, 1938. (June 25, 1938, 52 Stat. 1201, ch. 702, § 9 (d).)

§ 47–1005 [20: 794]. Property sold for taxes redeemable within 2 years from sale.

The owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the same from such sale at any time within two years after the last day of sale by paying to the collector of taxes, for the use of the purchaser, his heirs and assigns, the sum mentioned in the certificate of sale therefor, exclusive of surplus with interest thereon at the rate of twelve per centum per annum after the date of such certificate of sale. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 4; July 1, 1902, 32 Stat. 635, ch. 1358, § 4.)

AMENDMENT

The 1902 amendment added the words "exclusive of surplus," reduced the percentage provision from 15% per annum to 12% per annum, and deleted the following words which appeared in the 1898 act following the present last word: "Together with any tax or assessment which the holder of said certificate shall have paid between the days of sale and redemption, with interest on the same at the rate of ten per centum per annum," and the words "or authorized agent of the owner" following the word "owner" the first time it is used.

NOTES TO DECISIONS

IN GENERAL

The code provides for the sale of the real property subject to taxation on which said taxes are unpaid after the notice of sale and delinquent tax list shall have been advertised as required under the statute, and the redemption of the property so sold within two years. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

The statute supplies remedial procedure by which to obtain necessary information where there has been a refusal to file return as requested by law. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

§ 47–1006 [20: 795]. Report of tax sale to be filed with recorder of deeds—Disposition of surplus on redemption.

The collector of taxes shall, within twenty days, exclusive of Sundays and legal holidays, after the last day of the sale hereinbefore provided for as aforesaid, file with the recorder of deeds a written report, in which he shall give a statement of the property sold, other than that sold to the District of Columbia, to whom it was assessed, the taxes due, to whom sold, the amount paid, the date of sale, the cost thereof, and the surplus, if any. Any surplus remaining after the collection of taxes, penalties, and costs on any real estate shall be collected as hereinbefore provided for, and shall be deposited by the collector of taxes to the credit of the surplus fund, to be paid to the owner or owners, or their legal representatives, in the same manner as other payments made by the District: *Provided,* That if any property sold for taxes, as herein provided, is redeemed from such sale within two years from last day of sale, any surplus paid at time of sale shall be paid by the District of Columbia to the legal holder of certificate of sale. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 5; July 1, 1902, 32 Stat. 635, ch. 1358, § 5.)

AMENDMENT

The 1902 amendment added the words, "exclusive of Sundays and legal holidays," and the proviso; deleted the words "in sections one hundred and sixty-one and one hundred and sixty-two, chapter six, of the Revised Statutes of the United States, relating to the District of Columbia" and inserted in lieu thereof the words "as hereinbefore provided for."

§ 47–1007 [20: 796]. Commissioners not to convey any property if sale is void.

The said commissioners shall not convey any property sold for taxes if they shall discover, before the conveyance, that the sale was for any cause invalid and ineffectual to give title to the property sold; but they shall cancel the sale and cause the purchase money, together with interest at the rate of six per centum per annum, and the surplus, if any, to be refunded to the purchaser, his representatives or assigns: *Provided,* That if any conveyance made by the said commissioners, of property sold for taxes, shall at any time be set aside by decree of any court as invalid, the party in whose favor the decree is rendered shall pay to the party holding such conveyance, his heirs or assigns, the amount paid for such taxes and conveyances, together with interest at the rate of six per centum per annum. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 6; July 1, 1902, 32 Stat. 635, ch. 1358, § 6.)

AMENDMENT

The 1902 amendment added the words, "together with interest at the rate of six per centum per annum, and the surplus, if any" and the proviso.

NOTES TO DECISIONS

LIMITATIONS

Statute limits reimbursement by the District of Columbia to those instances where the Commissioners "discover, before the conveyance, that the sale was for any cause

invalid and ineffectual to give title to the property sold." *Cobb* v. *Shore* (C. A., D. C. 1950, 183 F. 2d 980).

§ 47–1008 [20: 797]. Payment of expenses of advertising.

The expenses of advertising shall be paid by a charge of fifty cents for each lot or piece of property advertised. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 7; July 1, 1902, 32 Stat. 635, ch. 1358, § 7; May 21, 1928, 45 Stat. 650, ch. 659.)

AMENDMENTS

The 1902 amendment reduced the charge from one dollar and twenty cents to fifty cents.

The 1928 amendment deleted the words "and the printing of said pamphlet" following the word "advertising" (see amendment note to § 47–1001).

§ 47–1009 [20: 798]. Assessor to furnish information.

The assessor of the District of Columbia shall furnish information with respect to taxes, special assessments, and valuations to any person having any interest in the property with respect to which such information is requested. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 8; July 1, 1902, 32 Stat. 635, ch. 1358, § 8; June 25, 1938, 52 Stat. 1201, ch. 702, § 8.)

AMENDMENTS

The act of 1898 provided that a copy of a pamphlet listing the property on which taxes are in arrears, with notice of sale, should be delivered to any taxpayer applying therefor to the office of the collector of taxes.

The 1902 act provided: "The assessor of the District of Columbia shall have the records of his office open to inspection of the public, free of charge at such time or times as the public interest will permit."

§ 47–1010 [20: 799]. Assessor to keep list of property sold for taxes for public inspection.

It shall be the duty of the assessor for the District of Columbia to prepare and keep in his office, for public inspection, a list of all real estate in the District of Columbia heretofore sold, or which may hereafter be sold, for the nonpayment of any general or special tax or assessment levied or assessed upon the same, said list to show the date of sale and for what taxes sold; in whose name assessed at the time of sale; the amount for which the same was sold; when and to whom conveyed if deeded, or, if redeemed from said sale, the date of redemption. (Feb. 6, 1879, 20 Stat. 283, ch. 50; May 13, 1892, 27 Stat. 37, ch. 74; Mar. 3, 1917, 39 Stat. 1005, ch. 160; June 25, 1938, 52 Stat. 1202, ch. 702, § 11.)

AMENDMENTS

The duties set forth in this section were created and placed upon the collector of taxes by the 1879 act, cited to the text.

The 1892 act transferred them to the assessor.

The 1917 act transferred these duties back to the collector by the following words quoted therefrom: "and the collector of taxes shall hereafter be charged with the duties heretofore required of the assessor in relation to * * * the preparation for public inspection of lists of all real estate in the District of Columbia heretofore sold, or which may hereafter be sold, for the nonpayment of any general or special tax or assessment."

The 1938 act, cited to the text, transferred these duties back to the assessor (§ 47–603).

§ 47–1011 [20: 800a]. Liens on real estate for unpaid taxes—Enforcement—Redemption before sale.

Whenever any real estate in the District of Columbia has been, or shall hereafter be, offered for sale for nonpayment of taxes or assessments of any kind whatsoever, and shall have been bid off in the name of the District of Columbia, and more than two years shall have elapsed since such property was bid off as aforesaid and the same has not been redeemed as provided by law, the Commissioners of said District may, in the name of the District aforesaid, petition the District Court of the United States for the District of Columbia, sitting in equity, to enforce the lien of said District for taxes or other assessments on the aforesaid property by decreeing a sale thereof; and up to the time of the sale hereinafter provided for such property may be redeemed by the owner or other person having an interest therein by the payment of all taxes or assessments due the District of Columbia upon said property and all legal penalties and costs thereon, together with such other expenses as may have been incurred by said District prior to, and as a result of, the filing of the action herein provided for. (Mar. 2, 1936, 49 Stat. 1153, ch. 111, § 1.)

COMPILER'S NOTE

This act, §§ 47–1011 to 47–1014, repealed and superseded act of February 14, 1929, 45 Stat. 1173, ch. 197, § 1, D. C. Code 1929, title 20, § 800. Section 2 of the act of February 14, 1929, repealed all acts and parts of acts inconsistent therewith. Sections 47–1011 to 47–1014 provide an alternative method for selling property bid in for the District at tax sales. For the older method, see § 47–1003.

NOTES TO DECISIONS

LAND SUBJECT TO EASEMENTS

Sale of real property for non-payment of taxes does not extinguish an easement with which the property is burdened. *District of Columbia* v. *Capital Mortg. & Title Co.* (D. C. D. C. 1949, 84 F. Supp. 788).

PRIOR LAW

Sections 47–1001 to 47–1003 providing in part for public sale of delinquent tax property is not inconsistent with former section 800 of Title 20 of the 1929 D. C. Code providing an additional method for collecting taxes, and said former section 800 of former Title 20 did not repeal said §§ 47–1001 to 47–1003. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

REDEMPTION

Where the "date of redemption" column in assessor's tax record was used for both genuine redemptions within statutory period and payments made on issue of tax deed, tax deed was not objectionable on ground that sale made in January, 1932, stood redeemed on March 10, 1934, on tax records where evidence established that amounts entered in the "date of redemption column" were amounts paid by purchaser in return for tax deed. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

TAX LIEN

Tax liens and sales of the District are governed by Title 47, and since no reference is made in the statute to a lien for taxes except in connection with taxes in arrears, it is a reasonable interpretation that the lien does not arise prior to the occurrence of a delinquency. *Cobb* v. *United States* (C. A. D. C. 1949, 172 F. 2d 277, 84 U. S. App. D. C. 228).

§ 47–1012 [20: 800b]. Real estate to be sold—Notice to owner—Parties defendant—Court order—Validity of service and sale.

Before any such action shall be instituted, the aforesaid Commissioners shall cause notice to be given

in the name appearing upon the records of the assessor as the owner of such property, by registered mail directed to the last known address of such person, and by publication once a week for three successive weeks in some daily newspaper published and circulated generally in the District of Columbia, against said person and "all other persons having or claiming to have any right, title, or interest in or to the real estate proposed to be proceeded against, their heirs, devisees, executors, administrators, and assigns," by such designation, to appear before them on a day certain, which day shall be at least ten days after the last publication of said notice, and show cause, if any they have, why the said real estate should not be proceeded against. For the purpose of the proceedings herein provided for, the person appearing by the assessor's records, at the time of the first publication of notice, as the owner of such property, and any other persons who may appear in response to the publication aforesaid and claim to have an interest in such property, shall be deemed proper parties defendant in any such proceedings. Upon the filing of the petition aforesaid, the court shall enter an order directed to the person or persons named as defendants therein and "to all other persons having or claiming to have any right, title, or interest in the real estate proposed to be sold, their heirs, devisees, executors, administrators, and assigns," by such designation, directing them to appear on a day certain, which day shall be not less than thirty days after the date of the last publication of said order, and show cause, if any they have, why said real estate should not be proceeded against and sold. The said order shall be published once a week for three successive weeks in some daily newspaper published and circulated generally in the District of Columbia, and such publication shall be considered as sufficient service upon such person or persons as cannot be found by the marshal within the District of Columbia or who are nonresident or unknown, their heirs, devisees, executors, administrators, and assigns; and the proceedings or sale of such real estate shall not be rendered invalid if the true owner or owners or any other person or persons having any right, title, or interest in said real estate shall not be included as a party to the suit, if it shall appear that the publication herein provided for shall have been duly made. (Mar. 2, 1936, 49 Stat. 1154, ch. 111, § 2.)

§ 47–1013 [20: 800c]. Court to decree sale by collector of taxes—No penalty if defect in tax sale.

Upon proof in said suit of the failure of the owner of any such property to redeem the same as provided by law, the court shall, without unreasonable delay, decree a sale of the property to satisfy the lien of the District of Columbia for taxes, assessments, penalties, interest, and costs, and any other costs or expenses that have been incurred by said District prior to or after the institution of suit and in connection therewith, which said costs shall include court costs, but in no such case shall there be any allowance by the court of a docket fee, attorney's fee, or trustee's commission. All such sales shall be conducted by the collector of taxes or his deputy, by public auction either in the office of said collector or in front of the premises to be sold, as the court may determine, after advertisement for ten consecutive days in some daily newspaper published and circulated generally in the District of Columbia: *Provided,* That if it shall appear that there were any substantial defects in any tax sale no part of the penalties and charges incidental to such sales shall be collectible; but nothing herein contained shall in any wise affect any cost incurred by the District of Columbia in the institution and prosecution of the suit. (Mar. 2, 1936, 49 Stat. 1154, ch. 111, § 3.)

§ 47–1014 [20: 800d]. Real estate sold—Confirmation of sale—Surplus paid into court—Delivery of deed.

Every such sale shall be reported to and confirmed by said equity court, and no sale shall be made for an amount less than such aggregate taxes, interest, and costs incurred in the institution of suit, including advertising and sale, unless by express order of the court. Any surplus remaining from sales made under sections 47–1011 to 47–1014 shall be paid by the collector of taxes into the registry of the court, to abide its further order for payment to the person or persons entitled thereto; and any such moneys remaining unclaimed for a period of five years after confirmation of any such sale shall be paid into the Treasury of the United States and credited to the revenues of the District of Columbia. Upon confirmation of such sale by order of court and payment of the purchase price, and upon full compliance with all of the terms of sale, the clerk of the court shall execute and deliver to the purchaser a deed to the property so sold, which deed shall convey to said purchaser all of the right, title, and estate of all persons whether named in such suit or not. (Mar. 2, 1936, 49 Stat. 1155, ch. 111, § 4.)

NOTES TO DECISIONS

PRIOR LAW

Where, under §§ 47–1001 to 47–1003, commissioners had no authority to convey property for less than all assessments, taxes, costs, penalties, and charges due District of Columbia, the purpose of former section 800 of Title 20 of the 1929 D. C. Code creating such authority and a method for selling the property was, not to repeal said sections 47–1001 to 47–1003, but rather to provide for disposition on terms not permissible prior thereto with safeguard of judicial approval when the sale should be made on the new terms. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

PROTECTION OF INTERESTS

Where interests under wills had apparently been extinguished by valid tax title to stranger before trustee under will acquired tax title in individual name, burden was on the trustee, not upon the commissioners, to act for protection of the beneficial interest, and the commissioners did not have burden of searching out the interests under the wills and making a decision regarding their validity. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

SALE FOR EXCESSIVE AMOUNT

Where tax sale was for more than full amount of accrued taxes, interest, and other charges, former section 800 of Title 20 of the 1929 D. C. Code requiring judicial approval of tax sale of property for less than all assessments, taxes, costs, penalties, and charges due the District of Columbia was inapplicable. *W. C. & A. N. Miller Devel-*

opment Co. v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

SALE, SETTING ASIDE

If proceedings on which tax sale is predicated substantially comply with the statutory directions, courts should not be astute to search for technical grounds on which to set aside the conveyance. *Deming* v. *Turner* (D. C., D. C. 1945, 63 F. Supp. 220).

TAX TITLE, EFFECT OF

Title evidenced by a tax deed given in compliance with statutory requirements expunges all interests which spring from record title and vests in the holder a new and complete title to the property in fee simple. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation,* 1943 (134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

§ 47–1015 [20: 801]. Validity of sales not affected by certain errors in computation.

No sale of any real property for taxes shall be impaired or made void by reason of any error of the proper officers in making a computation of the amount of taxes due, the expenses attendant on the advertisement and sale, or of the purchase-money and the interest thereon, notwithstanding the sum erroneously computed may have been paid by the purchaser, his heirs or assigns; but all such sales and the deeds which may be granted on the certificates then issued shall be valid and binding as if no such error had been made. (R. S., D. C., § 173.)

COMPILER'S NOTE

Family dwellings occupied by the owner are exempted from this provision, see § 47–904.

REFUND OF TAXES

§ 47–1016 [20: 821]. Taxes erroneously paid to be refunded.

The commissioners are hereby authorized and instructed to cause all taxes erroneously paid in the District of Columbia to be refunded by the proper accounting and disbursing officers of said District, upon the certificate of the collector of such erroneous payment, which certificate shall state the nature of the error, the name of the person or persons by whom such excessive payment was made, and such other particulars as may be necessary to satisfy the accounting officers that such claim for reimbursement is just and equitable; and the said accounting and disbursing officers shall pay all moneys so refunded out of, and charge the same to, the fund which was credited with the erroneous payment. (Leg. Assem., Jan. 19, 1872, ch. 31, § 1, p. 52; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

AMENDMENT

The 1874 act vested power in the Commissioners.

CROSS REFERENCES

Cancelation of street assessments, § 7–632.

Commissioners may grant refund of taxes and assessments where like assessments against similar property have been held void or erroneous by the courts, § 1–903.

Reassessment when tax declared void, §§ 7–632, 47–721, 47–1106.

Refund of business license fees and taxes, § 47–2350.

Refund of income taxes, § 47–1534.

Refund of motor vehicle taxes, § 47–1910.

Refund of overpaid assessments for laying water mains and sewers, § 43–1518.

Refund of unemployment compensation contributions, § 46–304.

Refund on appeal, § 47–2407.

Waiver of interest or penalties upon unpaid taxes, § 47–307.

Water rents erroneously paid refunded in the same manner as erroneously paid taxes, § 43–1519.

See notes to § 47–1017.

§ 47–1017 [20: 822]. Money paid for license not granted to be refunded.

Whenever any person shall deposit money with the collector for the purpose of procuring a license, and said license shall have been subsequently refused by legal authority, it shall be the duty of the collector to refund the money so deposited, deducting therefrom an amount justly proportionate to the time during which such license shall have been used by the applicant therefor, or his representatives, and charge the amount so refunded to the fund which was credited with the original deposit. (Leg. Assem., Jan. 19, 1872, ch. 31, § 2.)

CROSS REFERENCES

No refund of fees under Alcoholic Beverage Control Act when license is suspended or revoked for violations of the act or regulations promulgated thereunder, § 25–118.

Refunding taxes or fees erroneously or mistakenly paid by life insurance companies, § 35–403.

Refund of fees erroneously paid under Real Estate and Business Brokers' License Act, § 45–1403.

Refund of fees for building permits, § 5–430.

Refund of license fees under Real Estate and Business Brokers' License Act, § 45–1405.

§ 47–1018 [20: 823]. Money paid for redemption of property sold for taxes to go to redemption fund.

All moneys paid or deposited according to law, for the redemption of property sold for taxes, shall be paid by the accounting and disbursing officers of the District to the person or persons entitled to receive it, on the presentation of the certificate of the collector. (Leg. Assem., Jan. 19, 1872, ch. 31, § 4.)

Chapter 11.—SPECIAL ASSESSMENTS

Sec.

47–1101. Protest against special assessments—Hearing—Report and exceptions—Decision.
47–1102. Abatement, reduction, or adjustment of special assessment.
47–1103. Notice of levying of special assessment—Publication—Payment of special assessment—Interest.
47–1104. Payment of special assessment after ratification—Sale for nonpayment.
47–1105. Assessment for removal of nuisance—Sale for nonpayment.
47–1106. Reassessment where special assessment set aside—Hearing—Agent's report to Commissioners.
47–1107. Improvements of streets about the Capitol—Assessments by Secretary of the Interior.

§ 47–1101 [20: 746]. Protest against special assessment—Hearing—Report and exceptions—Decision.

Any property owner aggrieved by any special assessment levied by the District of Columbia for any public improvement, other than a special assessment levied by a jury in a condemnation proceeding, may, within sixty days after service of notice of such assessment as provided in section 47–1103, file with the Commissioners of the District of Columbia a protest in writing against such assessment setting

forth specifically the grounds of such protest and may request a hearing thereon. No ground of protest not specifically set forth need be considered by the Commissioners. If a hearing is requested the same shall be held, in the discretion of the Commissioners, either before them or before one or more agents designated by them. At such hearing, physical facts which may be ascertained by view may be considered whether proved or not. If the hearing is held before an agent or agents, such agent or agents shall report in writing to the Commissioners the substance of the evidence taken and the arguments made at the hearing, together with the findings (which may include a statement of any physical facts not proved at the hearing but which may be ascertained by view) and the recommendations of such agent or agents. A copy of such report, findings, and recommendations shall be mailed to the protestant ten days before being presented to the Commissioners, and the protestant may, before such report, findings, and recommendations are presented to the Commissioners, file with such agent or agents exceptions to such report and findings, which exceptions shall be presented to the Commissioners with such report, findings, and recommendations. If the Commissioners find that the property of the owner so protesting is not benefited by the improvement for which said assessment is levied, or is benefited less than the amount of such assessment or is unequally or inequitably assessed with relation to other property abutting such improvement, said commissioners shall abate, reduce, or adjust such assessment in accordance with such findings. In computing the time hereinafter provided in which a special assessment may be paid without interest there shall be excluded therefrom the time between the date of the filing of any such protest and the date of mailing notice of the action thereon by the Commissioners. This section shall be effective only as to assessments levied for work completed subsequent to the passage and approval of sections 47–1101 to 47–1106. (June 25, 1938, 52 Stat. 1198, ch. 702, § 1.)

CROSS REFERENCES

Assessment of damages and benefits in condemnation proceedings to obtain land for alleys and minor streets, §§ 7–315 to 7–321, 7–324.

Assessment of damages and benefits in condemnation proceedings to obtain land for streets, §§ 7–201, 7–207 to 7–212.

Assessments for street, sidewalk, and sewer construction and repair, water connections, permit plan, §§ 7–606, 7–608, 7–610 to 7–612, 7–622 to 7–634.

Assessments in improving streets around Capitol, § 47–1107.

Disposition of assessments for work done on the permit plan, § 47–129.

Payment of special assessments upon recording of plats, §§ 47–713, 47–714.

Property exempted from assessments for improvements, § 47–803.

Redistribution of assessments, § 47–715 et seq.

Special assessments for laying water mains and sewers, § 43–1510 et seq.

Special assessments in condemnation proceedings to close alleys or streets under Street Adjustment Act, § 7–406.

Special assessment to reimburse Federal Emergency Administration of Public Works, § 9–206.

Special provisions concerning payment of assessments on family dwellings, §§ 47–901 to 47–906.

Time for payment, delinquency, § 47–1209.

NOTES TO DECISIONS

PAVING AND IMPROVING STREETS

A different rule prevails as to assessments for paving and improving streets than that which applies for laying water mains in the District, and the legislature may create taxing districts to meet the expense of local improvements and may fix the basis of taxation without encountering the Fourteenth Amendment unless its action is palpably arbitrary or a plain abuse. *Johnson* v. *Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525).

FRONT-FOOT RULE

Assessment under front-foot rule held invalid. *Johnson* v. *Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525); *Dougherty* v. *American Secur. & Trust Co.* (59 App. D. C. 301, 40 Fed. (2d) 813, cert. den. 282 U. S. 854, 75 L. Ed. 757, 51 Sup. Ct. 31); *Taliaferro* v. *Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

In applying this general law as to front-foot rule, which extends throughout the District, to a special assessment for street improvement not exclusively benefiting adjacent property-owners, the assessment cannot be upheld if it is in excess of the benefits and is not equal and fair in view of existing physical conditions, as where there is no relative equality in the value and depth of the abuttng properties. *Johnson* v. *Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525.)

In applying the front-foot rule, the size, shape, improvements, or favorable location of property is not the test in determining validity of an assessment, but rather the relation of the property to other properties facing on the avenue and in the immediate vicinity. *Taliaferro* v. *Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

A road improvement assessment under the front-foot rule was canceled as inequitable as applied to a triangular-shaped lot. *Taliaferro* v. *Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

REVISION OF ASSESSMENTS

The front-foot rule cannot be applied to the assessment of a lot for paving an alley, which had a boundary of 233.17 feet facing two alleys, which could not be used commercially, and when the lot is assessed 222 percent higher than average assessment of other lots bordering the alleys, the assessment must be revised. *Willner* v. *Hazen* (71 App. D. C. 373, 111 Fed. (2d) 511).

One seeking to cancel an alley-paving assessment on a lot, facing two alleys, which, under zoning regulations was limited to one-family detached house, and which was assessed 222 percent higher than other lots, was entitled to trial on the merits, and dismissal of complaint was improperly granted. *Willner* v. *Hazen* (71 App. D. C. 373, 111 Fed. (2d) 511).

§ 47–1102 [20: 746a]. Abatement, reduction, or adjustment of special assessment.

The Commissioners of the District of Columbia are authorized, but not directed, whenever in their judgment and discretion any property upon which a special assessment has been levied by the District of Columbia is not benefited by the improvement for which such special assessment was levied, or is benefited less than the amount of such assessment, or is unequally or inequitably assessed with relation to other property abutting such improvement, to abate, reduce, or adjust such assessment in accordance with such finding. This section shall not apply to any assessment levied by a jury in a condemnation proceeding, or to any assessment levied for work completed subsequent to the passage and approval of sections 47–1101 to 47–1106, or to any assessment

levied under sections 7–622 to 7–633: *Provided, however,* That nothing in this section shall be construed as affecting protests filed under the provisions of sections 7–622 to 7–633 within the time prescribed in said sections. (June 25, 1938, 52 Stat. 1199, ch. 702, § 2.)

CROSS REFERENCE

See note to § 47–1101.

§ 47–1103 [20: 746b]. Notice of levying of special assessment—Publication—Payment of special assessment—Interest.

(a) When any special assessment for a public improvement, with the exception of assessments levied in condemnation proceedings, is levied by the District of Columbia upon any lot or parcel of land, notice of the levying of such assessment shall be served upon the record owner thereof in the manner herein provided and if there be more than one record owner of such lot or parcel of land notice served on one of the owners shall be sufficient. If the address of the owner be unknown or if the owner be a nonresident, such notice shall be served on his tenant or agent. The service of such notice shall be either personal or by leaving the same with some person of suitable age at the residence or place of business of such owner, agent, or tenant. If there be no tenant or agent known to the Commissioners, then they shall give notice of such assessment by advertisement once a week for two successive weeks in some daily newspaper of general circulation published in the District of Columbia. The cost of such publication shall be paid out of the general revenues of the District. The notice herein provided for shall be in lieu of any and all other notice now required by law.

This section shall apply to all assessments (other than assessments in condemnation proceedings) notice of which has not been served prior to the approval of sections 47–1101 to 47–1106.

(b) All special assessments authorized to be levied by the District of Columbia for public improvements, with the exception of assessments levied in condemnation proceedings, may be paid without interest within sixty days from the date of service of notice or of the last publication of notice as the case may be. Interest of one-half of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of sixty days from the date of service or last publication as the case may be. Any such assessment may be paid in three equal installments with interest thereon. If any such assessment or any part thereof shall remain unpaid after the expiration of two years from date of service of notice or last publication of notice as the case may be, the property against which said assessment was levied may be sold for such assessment or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said assessment with interest and penalties thereon shall not have been paid in full prior to said sale.

This section shall apply only to assessments for public improvements completed subsequent to June 25, 1938, and assessments for public improvements completed on or before said date shall be levied and collected and bear interest as if said sections had not been passed, except that where service sewers or water mains, or both, have been laid prior to the approval of said sections, but assessments therefor have not been levied for the reason that the property abutting the street, avenue, road, or alley in which the service sewer or water main is laid has not been subdivided, assessments for such sewers or water mains, or both, levied after the approval of said sections because of the subdivision of the property or its connection with the sewer or water main or both, shall be levied, collected, and bear interest as provided in this section. (June 25, 1938, 52 Stat. 1199, ch. 702, § 3.)

CROSS REFERENCE

See notes to § 47–1101.

§ 47–1104 [20: 746c]. Payment of special assessment after ratification—Sale for nonpayment.

Special assessments authorized to be levied in condemnation proceedings instituted by the District of Columbia may be paid without interest within sixty days after the ratification or confirmation of the verdict of the jury. Interest of one-third of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of sixty days from the date of the ratification or confirmation of the verdict of the jury. Any such assessment may be paid in five equal installments with interest thereon. If any such assessment or any part thereof shall remain unpaid after the expiration of four years from the date of the ratification or confirmation of the verdict of the jury the property against which said assessment was levied may be sold for such assessment or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said assessment with interest and penalties thereon shall not have been paid in full prior to said sale. This section shall apply only to assessments ratified or confirmed by the court after June 25, 1938 and assessments ratified or confirmed on or before June 25, 1938 shall be levied and collected and bear interest as if sections 47–1101 to 47–1106 had not been passed. (June 25, 1938, 52 Stat. 1200, ch. 702, § 4.)

CROSS REFERENCE

See notes to § 47–1101.

§ 47–1105 [20: 746d]. Assessment for removal of nuisance—Sale for nonpayment.

All assessments authorized to be levied by the District of Columbia to reimburse it for money expended in the removal of nuisances shall bear interest at the rate of one-half of 1 per centum per month or part thereof from the date such assessment was levied. If any such assessment shall remain unpaid after the expiration of sixty days from the date such assessment was levied the property against which such assessment was levied may be sold for such assessment with interest and penalties thereon at the

next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if such assessment with interest and penalties thereon shall not have been paid in full prior to said sale. (June 25, 1938, 52 Stat. 1200, ch. 702, § 5.)

CROSS REFERENCE

See note to § 47–1101.

§ 47–1106 [20: 746e]. Reassessment where special assessment set aside—Hearing—Agent's report to Commissioners.

The commissioners of the District of Columbia are hereby authorized and directed, in any case where a special assessment for public improvements in the District of Columbia, other than an assessment levied by a jury in a condemnation proceeding, has been or hereafter may be quashed, set aside, or declared void by any court for any reason other than the right of the public authorities to levy an assessment for such improvement, to reassess the property in accordance with the benefits received from such improvement, after notice to the owner of the property and an opportunity afforded him to be heard, the hearing to be had before such agent or agents as the commissioners may designate. At such hearing physical facts which may be ascertained by view may be considered, whether proved or not. Such agent or agents shall report in writing to the commissioners the substance of the evidence taken and the arguments made at the hearing, together with the findings (which may include a statement of any physical facts not proved at the hearing which may be ascertained by view) and the recommendations of such agent or agents. A copy of such report, findings, and recommendations shall be mailed to the protestant ten days before being presented to the commissioners, and the protestant may, before such report, findings, and recommendations are presented to the commissioners, file with such agent or agents exceptions to such report and findings, which exceptions shall be presented to the commissioners with such report, findings, and recommendations. The reassessment shall be made within one year from the date the judgment or decree quashing, setting aside, or declaring void the assessment becomes final and not subject to review. Notice of such reassessment shall be given the property-owner in the same manner as if such reassessment was an original assessment, and such reassessment shall bear interest and be collected in the same manner as if such reassessment was an original assessment. (June 25, 1938, 52 Stat. 1201, ch. 702, § 6.)

CROSS REFERENCES

Reassessment where tax or assessment has been declared void, §§ 7–632, 47–721.

Relevying assessments for laying water mains and sewers, § 43–1515.

§ 47–1107 [20: 961]. Improvements of streets about the Capitol—Assessments by Secretary of the Interior.

In the improvements of streets about the Capitol, the Secretary of the Interior shall assess and collect the cost of all improvements made in front of all private property in the same proportion as charged by the District authorities for the same purpose. (R. S., D. C., § 152.)

Chapter 12.—TAXATION OF PERSONAL PROPERTY

Sec.
47–1201. Three assistant assessors to assess personal property.
47–1202. Personal property to be assessed at its full value.
47–1203. Assessor to prepare printed blank forms—Mode of assessment, returns—False affidavit, penalty.
47–1204. Tangible personal property stored in transit.
47–1205. "Resident of the District of Columbia" defined.
47–1206. Returns to be made in July of each year.
47–1207. Rate of taxation—Exceptions.
47–1208. Personal property exempt from taxation.
47–1209. Payment of taxes—To be made semiannually—Mandamus to compel filing sworn return—Expenses.
47–1210. Assessment of motor vehicles—Dealers' stock excepted—Enforcement.
47–1211. Taxable status of motor vehicles as tangible personal property.
47–1212. Mercantile establishments and carriers by water.
47–1213. Board of Personal Tax Appeals—Constitution—Proceedings.
47–1214. Clerk of Board of Personal Tax Appraisers—Appointment.
47–1215. Taxation of rolling stock of railroad, sleeping-car, tank-car, etc., companies—Location within District—Location without District—Applicability of personal property tax laws—Effective date.

§ 47–1201 [20: 751]. Three assistant assessors to assess personal property.

The three members of the permanent Board of Assistant Assessors designated by the assessor, to assess personal property, shall under the direction and supervision of the said assessor, assess personal property in the District of Columbia as follows. (July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; July 3, 1926, 44 Stat. 832, ch. 759, § 1.)

COMPILER'S NOTES

The Revenue Act of July 26, 1939 (53 Stat. 1107, ch. 367, title IV, § 1) provided: "The tax on intangible personal property imposed by any law relating to the District shall not apply with respect to any year subsequent to the fiscal year ending June 30, 1939."

Title VII of said act of July 26, 1939, provided further: "The laws authorizing the imposition by the District of Columbia of intangible personal property taxes and business privilege taxes are hereby extended from and after June 30, 1939, for the following purposes in connection with the taxes accrued or due under such laws prior to July 1, 1939—

"(1) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with such laws and the regulations issued thereunder;

"(2) For requiring the making, filing, and submission of returns and reports required by such laws;

"(3) For the examination of all books, records, and other documents, and witnesses; and

"(4) For the assessment and collection of such taxes, and the filing of liens therefor."

AMENDMENT

The 1926 amendment changed the number of assistant assessors from five to six (see amendment note to § 47–604), and raised the number in this section from two to three.

CROSS REFERENCES

Board for assessment of personal property, § 47–605.
Board of personal-tax appeals, § 47–1213.
Criminal penalties, § 47–1303.

NOTES TO DECISIONS

CHARGE AGAINST OWNER OF PROPERTY

The personal property tax is a definite charge against the owner of the property and the real property tax is a definite charge against the property itself. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

§ 47–1202 [20: 752]. Personal property to be assessed at its full value.

All personal property in the District of Columbia subject to taxation shall be listed and assessed at not less than the full and true value thereof in lawful money. (July 3, 1926, 44 Stat. 833, ch. 759. § 4.)

CROSS REFERENCES

Intangible property, see compiler's note to § 47–1201.
Omitted property, § 47–1213.
Taxation of motor vehicle, § 47–1210.

NOTES TO DECISIONS

BASIS OF VALUATION

The assessor cannot be held to any fixed formula or specific catalog of data in determining his proposed personal property assessments and is entitled to base his action on the best information he can procure. *District of Columbia* v. *Morris* (App. D. C. 1946, 159 F. 2d 13).

If valuation of personal property proposed by assessor is correct in dollar amount, as the fair cash value, not less than the full and true value in lawful money, the assessment should be upheld even if the data or method used by him is incomplete or even erroneous, but, if proposed assessment is incorrect in dollar amount, the final assessment must be based on correct value, even though assessor's data and method of computation were correct. *District of Columbia* v. *Morris* (App. D. C. 1946, 159 F. 2d 13).

Where property consisted of tugs, scows and launches which came into the District on the average of once a day and spent more time out of the District than in it, the District could constitutionally tax tangibles used exclusively in interstate commerce, upon a fair apportionment of value, but could not tax them at full value. *Smoot Sand & Gravel Corp.* v. *District of Columbia* (C. A., D. C. 1949, 174 F. 2d 505, 84 U. S. App. D. C. 367, certiorari denied, 69 S. Ct. 1515, 337 U. S. 939, 93 L. Ed. 1744).

Where home furnishings and effects were owned by the children in common, each annual assessment on the furnishings of the home should be given a single total valuation and allowed but a single exemption. *National Bank of Washington* v. *District of Columbia* (C. A. D. C. 1949, 176 F. 2d 62, 85 U. S. App. D. C. 187).

REVIEW

Where the question of penalties and interest is not raised below, the court will not consider them on appeal since it is essential that the administrative remedy be fully available and exhausted before resort is had to judicial review. *National Bank of Washington* v. *District of Columbia* (C. A. D. C. 1949, 176 F. 2d 62, 85 U. S. App. D. C. 187).

§ 47–1203 [20: 753]. Assessor to prepare printed blank forms—Mode of assessment, returns—False affidavit, penalty.

The assessor of the District of Columbia, or his successor in office, shall annually cause to be prepared a printed blank schedule of all tangible personal property and all general merchandise or stock in trade, owned or held in trust or otherwise, subject to taxation under the provisions of sections 47–1201 to 47–1214, 47–1301 to 47–1305, 47–1701 to 47–1709, and of the classes of corporations and companies to be assessed, together with the rate of tax prescribed, to which shall be appended an affidavit in blank, setting forth that the foregoing presents a full and true statement of all such personal property, taxable capital, or other basis of assessment, or either, as the case may be. When said schedule is ready for delivery, notice thereof shall be given by the assessor by advertisement for three successive secular days in one or more of the daily newspapers published in said District, and a copy of said schedule shall be delivered to any citizen applying therefor at the office of the assessor. Every person, association, corporation, firm, or company in said District liable to taxation hereunder, and every association, company, executor, administrator, guardian, or trustee holding personal property in trust liable to taxation hereunder, shall, within thirty days after the last publication of said advertisement, as aforesaid, fill out the proper blanks in said schedule with a full and true statement, as in this section hereinbefore required, and make and sign an affidavit to the truth thereof, as aforesaid, before the assessor or one of the other members of the said board of personal-tax appraisers (and the members of the said board are hereby authorized to administer such and all oaths in connection with their duties as assessor and appraisers without charge), or before any person authorized by law to administer oaths; and the address in the District of Columbia of the person, corporation, or company making affidavit shall in each case be given below his, its, or their signature, and thereupon said board of personal-tax appraisers, or any one of the members thereof, shall assess said property at its fair cash value, and enter the same in the columns upon said blanks provided for that purpose, and the amount thus ascertained shall be entered upon the books for taxation for each fiscal year: *Provided,* That if any person, firm, association, corporation, company, administrator, executor, guardian, or trustee shall fail to make and deliver to the assessor or one of the said appraisers, within thirty days after the date of the last advertisement of the notice hereinbefore required, the schedule of his or its said personal property owned, held in trust, or otherwise, as provided for in this section, then the said board of personal-tax appraisers hereinbefore provided for shall without delay, from the best information they can procure, make an assessment against such person, firm, association, corporation, company, administrator, executor, guardian, or trustee, to which they shall add twenty per centum thereof: *Provided further,* That if the said board of personal-tax appraisers be not satisfied as to the correctness of the return of personal property made by any person, firm, association, corporation, company, administrator, executor, guardian, or trustee, said board may reject said return, and said board, or any one of the members thereof, may, from the best information he or they can procure, or by making such examination of the personal property as may be practicable, assess the same in such amount as may to him or them seem just; and notice of the rejection of the sworn return shall be given to the party interested by leaving the same at the address given in said return, and in all such cases there shall be a right of appeal from the action taken by said appraisers to the board of personal-tax appeals,

or to their successors in office, within fifteen days after delivery of said notice of rejection as aforesaid: *And provided further,* That if any person, firm, association, corporation, company, administrator, executor, guardian, or trustee shall make a false affidavit touching the matters herein provided for, he or they shall be deemed guilty of perjury, and upon conviction thereof shall be subject to the penalties for that offense now provided by section 22–2501. (July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1.)

CROSS REFERENCES

Omitted property, § 47–1213.
Other penal provisions, § 47–1303.
Penalties for perjury, § 22–2501.

NOTES TO DECISIONS

IN GENERAL

This is the only power under the statute for the reassessment of personal property except as provided in § 759 (§ 47–1212). *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

ESTOPPEL

Taxpayer was not estopped from denying, for personal property tax purposes, the figures set up by her in her income tax returns for depreciation purposes. *District of Columbia* v. *Morris* (App. D. C. 1946, 159 F. 2d 13).

MIGRATORY PROPERTY

Section 47–501 and this chapter authorizing taxation by District of Columbia of all tangible "personal property subject to taxation" contemplate personal property having a definite and permanent situs in the District and not temporarily brought into District by nonresident, and said § 47–501 and this chapter apply only to property that has acquired a fixed, definite and permanent taxable situs. *Queen City Brewing Co.* v. *District of Columbia,* 1943 (134 F. 2d 44, 77 U. S. App. D. C. 213, certiorari denied 63 S. Ct. 1330, 319 U. S. 767, 87 L. Ed. 1716).

To justify ad valorem assessment on migratory personal property belonging to a nonresident of taxing district, the statute must show not only the kind and character of migratory property to be taxed, but must provide a method of determining whether articles present on a particular day fairly average the kind, quantity and value of the replacement calculated on an annual basis, and there must be adequate machinery to determine and assess the valuation. *Queen City Brewing Co.* v. *District of Columbia,* 1943 (134 F. 2d 44, 77 U. S. App. D. C. 213, certiorari denied 63 S. Ct. 1330, 319 U. S. 767, 87 L. Ed. 1716).

Where Maryland beer manufacturer, which was not engaged in business in District of Columbia, delivered beer sold to District of Columbia distributor in containers which remained in District only until they were empty, containers which were found in the District on the statutory tax assessment date were not subject to ad valorem assessment, since the District of Columbia statutes do not place ad valorem assessment on migratory personal property belonging to nonresident not engaged in business in the District. *Queen City Brewing Co.* v. *District of Columbia,* 1943 (134 F. 2d 44, 77 U. S. App. D. C. 213, certiorari denied 63 S. Ct. 1330, 319 U. S. 767, 87 L. Ed. 1716).

NONRESIDENT

Where this section, which required filing of return as basis for ad valorem assessment, applied only to persons, associations, corporations or companies in the District of Columbia, a company which did no business in the District and maintained no agencies therein was not required to pay a tax. *Queen City Brewing Co.* v. *District of Columbia,* 1943 (134 F. 2d 44, 77 U. S. App. D. C. 213, certiorari denied 63 S. Ct. 1330, 319 U. S. 767, 87 L. Ed. 1716).

To justify taxation of personal property belonging to nonresident not engaged in business in taxing district, the assessment on which tax is based must, in addition to other safeguards to insure fairness, be required by a statute definitely identifying the kind and character of the property subject to the tax. *Queen City Brewing Co.* v. *District of Columbia,* 1943 (134 F. 2d 44, 77 U. S. App. D. C. 213, certiorari denied 63 S. Ct. 1330, 319 U. S. 767, 87 L. Ed. 1716).

PLACE TAXABLE

Personal property, in absence of a law to the contrary, follows the person of the owner and has its "situs" at his domicile, but one exception is that for purpose of taxation personal property may be taxed at the place where it is actually located. *Queen City Brewing Co.* v. *District of Columbia,* 1943 (134 F. 2d 44, 77 U. S. App. D. C. 213, certiorari denied 63 S. Ct. 1330, 319 U. S. 767, 87 L. Ed. 1716).

TAX RETURNS

This section and § 47–1206 require that every resident shall file with the assessor of the District a tax return as of July 1, of each year, containing a true statement of his personal property for the purpose of taxation. *Hunt* v. *District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10.)

VALIDITY OF ASSESSMENT

It is fundamental to tax validity that there be a valid assessment. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

It is a rule without exception that if a property tax assessment is not properly made, there is no proper basis for a tax, and a tax attempted to be collected is void. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

§ 47–1204 [20: 755a]. Tangible personal property stored in transit.

Nothing in the District of Columbia Revenue Act of 1939 contained, nor shall any prior Act of Congress relating to the District of Columbia be deemed to impose upon any person, firm, association, company, or corporation a tax based upon tangible personal property owned and stored by such person in a public warehouse in the District of Columbia for a period of time no longer than is necessary for the convenience or exigencies of reshipment and transportation to its destination without the District of Columbia. (July 26, 1939, 53 Stat. 1110, ch. 367, title IV, § 6.)

CROSS REFERENCE

This section is part of the Revenue Act of 1939, see compiler's notes to § 47–1401.

§ 47–1205 [20: 756]. "Resident of the District of Columbia" defined.

Any person maintaining a place of abode in the District of Columbia on the 1st day of July of a taxable year, and for the three months prior thereto, shall be considered as a resident for the purpose of assessment on intangible property wherever located, unless evidence shall be submitted to the assessor of the District of Columbia, satisfactory to him, that such intangible personal property or the income thereof is taxed to said person in some other jurisdiction, or that the assets of a corporation or association represented by shares or certificates constituting such intangible personal property are taxed by the state in which such corporation or association is chartered or organized and in which such person has a legal residence, in lieu of a tax upon such shares or certificates: *Provided,* That Cabinet officers and persons in the service of the United States Government elected for a definite term of office shall not be considered as residents of the District of Columbia for the purposes of this section. (July

3, 1926, 44 Stat. 833, ch. 759, § 2; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 4.)

COMPILER'S NOTE

Insofar as any provision of this section applies exclusively to taxation of intangible personal property, it is inoperative, see Compiler's Note to § 47–1201.

AMENDMENT

The 1929 amendment deleted the words, "January 1 of any year, and for six months or more" and inserted in lieu thereof the following: "The 1st day of July of a taxable year, and for three months."

NOTES TO DECISIONS

BUSINESS OF HANDLING AND INVESTING FUNDS

Handling, investment, and reinvestment of substantial funds, by what must be a considerable staff of officers, agents, and employees, clearly constitutes the carrying on of business in the District within the meaning of the statute and the applicable decisions. *Hazen* v. *National Rifle Assn.* (69 App. D. C. 339, 101 Fed. (2d) 432).

CONSTITUTIONALITY

One who questions the constitutionality of this act must show that he is within the class of persons with respect to whom the act is alleged to be unconstitutional, and the alleged unconstitutional feature injures him. *Heald* v. *District of Columbia* (259 U. S. 114, 66 L. Ed. 852, 42 Sup. Ct. 434).

GOVERNMENT EMPLOYEE

A resident of Boston who, upon his discharge from military service, entered the Government service in Washington, D. C., always intending to return to Boston when his service had expired, was not liable to tax on his intangible personalty imposed by the District, since Boston continued to be his domicil. *Sweeney* v. *District of Columbia* (72 App. D. C. 30, 113 Fed. (2d) 25).

PAYING TAX NOT CONCLUSIVE AS TO RESIDENCE

Fact that appellant paid tax on home in District of Columbia did not create a residence there, for the statute expressly recognizes that persons "maintaining a place of abode" there may have a legal residence elsewhere. *Nixon* v. *Nixon* (329 Pa. 256, 198 Atl. 154).

"RESIDENT" CONSTRUED

"Resident" as used in this section means "domiciled," which is the normal and usual meaning of "resident." *Sweeney* v. *District of Columbia* (72 App. D. C. 30, 113 Fed. (2d) 25).

A nonstock co-operative membership corporation incorporated under Maryland laws and comprising some 1,150 dairy farmers as members, by carrying on commercial transactions in the District of Columbia, established its "commercial domicile" in the District and was "engaged in business" in the District and was thus subject to intangible personal property tax there, even though its "legal residence" was in Maryland. *Maryland & Virginia Milk Producers' Ass'n* v. *District of Columbia,* 1941 (119 F. 2d 787, 73 App. D. C. 399, certiorari denied 62 S. Ct. 87, 314 U. S. 646, 86 L. Ed. 518).

RETURN REQUIRED

A resident of the District must file personal property return for taxation whether the taxing statute of 1926 is constitutional or not, since it would be taxable under the 1916 act. *Cogger* v. *Hazen* (66 App. D. C. 196, 85 Fed. (2d) 695, Cert. den. 299 U. S. 598, 81 L. Ed. 441, 57 Sup. Ct. 191).

A report must be had of the appellant's property in order that an assessment may be made, and this is so whether it is under the act of 1916 or the amending act of 1926. *Cogger* v. *Hazen* (66 App. D. C. 196, 85 Fed. (2d) 695).

Claim made by appellant concerning his payment of taxes upon the income of the stocks owned by him to the Federal collector at Baltimore was without merit, and it was still necessary to file a personal property return with the assessor of the District. *Cogger* v. *Hazen* (66 App. D. C. 196, 85 Fed. (2d) 695).

§ 47–1206 [20: 757]. Returns to be made in July of each year.

Returns of all personal property other than automobiles shall be made in the month of July in the fiscal year in which the assessment is levied and the value of such property shall be made as of the first day of that month except that merchants shall continue to return their average stock in trade as provided in section 47–1212. (July 3, 1926, 44 Stat. 833, ch. 759, § 6; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 6.)

AMENDMENT

This section in the 1926 act provided, "That the returns of personal property provided for in section 6 of the said act of July 1, 1902, shall be made during the month of March in the fiscal year preceding the one under which the assessment is to be levied, and, except as otherwise provided by law, the value of tangible and intangible property shall be taken as of January 1 for a basis of assessment for the next fiscal year."

COMPILER'S NOTE

Section 47–1212 is the act of Congress making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1903, approved July 1, 1902.

CROSS REFERENCE

See note to § 47–1203. *Hunt* v. *District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

NOTES TO DECISIONS

ERROR IN VALUATION

Taxpayer complied with his duty. He made a true statement of his investment in marginal stocks according to the legal requirement and was taxed on the item. The difference between the amount of the investment and the value of the stocks was, at most, an error in valuation and not an omission, since omitted property means property which is not assessed at all and not property which is merely undervalued. *Hunt* v. *District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

§ 47–1207 [20: 754]. Rate of taxation—Exceptions.

On all tangible personal property, assessed at a fair cash value (over and above the exemptions provided in section 47–1208), including vessels, ships, boats, tools, implements, horses, and other animals, carriages, wagons, and other vehicles, there shall be paid to the collector of taxes of the District of Columbia the rate of tax provided by law. (July 1, 1902, 32 Stat. 618, ch. 1352, § 6, par. 2; June 29, 1922, 42 Stat. 669, ch. 249.)

COMPILER'S NOTES

This section formerly provided for a tax of 1½ per centum of the assessed value of the property, but the act of 1922, cited to the text, provided that the rates should be fixed annually by the Commissioners.

Acts of September 1, 1916, 39 Stat. 717, ch. 433, § 11, and March 3, 1917, 39 Stat. 1046, ch. 160, § 9, added the following paragraph: "The moneys and credits, including moneys loaned and invested, bonds and shares of stock (except the stock of banks and other corporations within the District of Columbia the taxation of which banks and corporations is herein provided for) of any person, firm, association, or corporation resident or engaged in business within said District shall be scheduled and appraised in the manner provided by paragraph one of said section six (section 47–1203) for listing and appraisal of tangible personal property and assessed at their fair cash value, and as taxes on said moneys and credits there shall be paid to the tax collector of said District not less than five-tenths of one per centum (.5%) of the value thereof: *Provided,* That savings deposits of individuals in a sum not in excess of five hundred dollars ($500) deposited in

banks, trust companies, or building associations, subject to notice of withdrawal and not subject to check, shall be exempt from this tax: *Provided, further,* That such tax on moneys and credits shall not apply to bank notes or notes discounted or negotiated by any bank or banking institution, savings institution, or trust company, nor to savings institutions having no capital stock, building associations, firemen's relief associations, secret and beneficial societies, labor unions, and labor-union relief associations, nor to beneficial organizations paying sick or death benefits, or either or both, from funds received from voluntary contributions or assessments upon members of such associations, societies, or unions; nor shall the provisions of this section apply to life or fire insurance companies having no capital stock, nor to the shares of stock of business companies which by reason of or in addition to incorporation receive no special franchise or privilege, but all such corporations shall be rated, assessed, and taxed as individuals conducting business in similar lines are rated, assessed, and taxed: *And provided further,* That corporations, limited partnerships, and joint-stock associations within said District liable to tax under the laws of said District on earnings or capital stock shall not be required to make any report or pay any further tax under this section on the mortgages, bonds, and other securities owned by them in their own right, but such corporations, partnerships, and associations holding such securities as trustees, executors, administrators, guardians, or in any other manner shall return and pay the tax imposed by this section upon all securities so held by them as in the case of individuals." The provisions of this paragraph expired as of June 30, 1939, under act of July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 1, except for the purposes set out in the compiler's note under § 47–1201.

NOTES TO DECISIONS

Bond Exemptions

Considering the sweeping language of exemption in the bonding acts, there is no difficulty in holding that they apply to the District of Columbia as well as all other portions of the United States. *District of Columbia* v. *Riggs Nat. Bank* (58 App. D. C. 349, 30 Fed. (2d) 873).

Cash Used in Business

Where this section required moneys and credits to be assessed at their fair cash value but Maryland corporation operating department stores in New York, Baltimore and Washington reported only cash on hand and in banks in District of Columbia on tax date, taxpayer constantly shifted cash as needs of stores required, and considerably more cash was usually deposited in local bank than was on deposit in local banks on the tax day, determination that all taxpayer's cash was available for use by its Washington store and assessment against taxpayer of a percentage of its cash wherever deposited, fixed by the ratio of Washington sales and profits to total sales and profits, was proper. *Hecht Co.* v. *District of Columbia,* 1942 (129 F. 2d 353, 76 U. S. App. D. C. 142).

Constitutionality

Federal taxation of the District of Columbia is valid even though residents have not the suffrage and may not vote on the expenditure of money raised. *Heald* v. *District of Columbia* (259 U. S. 114, 66 L. Ed. 852, 42 Sup. Ct 434).

Should it ultimately be determined that Congress, disregarding the authoritative rulings of the Supreme Court, intended in this act to tax here property located elsewhere, it would by no means follow that as to persons and property clearly subject to taxation here the act would be void. *Heald* v. *District of Columbia* (50 App. D. C. 231, 269 Fed. 1015).

Constitutionality of section which levies tax on intangible personal property cannot be questioned in a mandamus proceeding to compel the District resident to file a return of his personal property. *Cogger* v. *Hazen* (66 App. D. C. 196, 85 Fed. (2d) 695).

Engaging in Business

The handling, investment, and reinvestment of substantial funds, by what must have been a considerable staff of officers, agents, and employees, clearly constitutes the carrying on of business in the District of Columbia within the meaning of this section. *Hazen* v. *National Rifle Assn.* (69 App. D. C. 339, 101 Fed. (2d) 432).

Original Package Doctrine

The original package doctrine urged by the petitioner concerns only the question whether the property is or is not an import, but the doctrine is immaterial in this case because the tax is imposed even if the property retains its character as an import. *Mercury Press* v. *District of Columbia* (C. A. D. C. 1948, 173 F. 2d 636, 84 U. S. App. D. C. 203, certiorari denied, 69 S. Ct. 1495, 337 U. S. 931, 93 L. Ed. 1738).

Power to Tax

When Congress legislates for the District of Columbia alone, it acts under the direct authority of the Constitution and in so acting has plenary legislative power. There is no constitutional prohibition upon the Federal Government in respect to the taxation of imports and there was ample power for the tax in the case involved. *Mercury Press* v. *District of Columbia* (C. A., D. C. 1948, 173 F. 2d 636, 84 U. S. App. D. C. 203, certiorari denied 69 S. Ct. 1495, 337 U. S. 931, 93 L. Ed. 1738).

Residents of District

As appellants are residents of the District and the property taxed is within the District, they are clearly subject to the provisions of this act. *Heald* v. *District of Columbia* (50 App. D. C. 231, 269 Fed. 1015).

Review by Supreme Court

Where the Court of Appeals of the District of Columbia attempts to interpret this statute it is not entitled to certify questions to the Supreme Court as to the validity of the statute, in view of prior decisions of this court holding that such interpretation would be subject to review by appeal to this court. *Heald* v. *District of Columbia* (254 U. S. 20, 65 L. Ed. 106, 41 Sup. Ct. 42).

§ 47–1208 [20: 755]. Personal property exempt from taxation.

The following personal property shall be exempt from taxation.

First. The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain.

Second. Libraries, schoolbooks, wearing apparel, and all family portraits.

Third. Household and other belongings, not held for sale, to the value of one thousand dollars, owned by the occupant of any dwelling-house or other place of abode, in which such household and other belongings may be located.

Fourth. Household and other belongings not held for sale and owned by any person in the public service temporarily residing in the District of Columbia who is a citizen of any state or territory and who is taxed on such personal property in such state or territory. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 10; Apr. 28, 1904, 33 Stat. 564, ch. 1815; Mar. 4, 1913, 37 Stat. 1006, ch. 150, § 10.)

Amendments

The 1904 amendment deleted the words "articles of personal adornment" preceding and "and heirlooms" following the words "all family portraits" in the second subsection.

The 1913 amendment added the fourth subsection.

Cross References

Credit unions exempted from taxation except on real estate, § 26–516.

Exemptions from income taxes, § 47–1502.
Exemptions from real estate taxes, § 47–801 et seq.

NOTES TO DECISIONS

RETURN BY STATUTORY ASSIGNEE

Inasmuch as the statute imposes duty on bank president to file return, the receiver being the statutory assignee said duty devolves upon him. *Hazen* v. *Hardee* (64 App. D. C. 346, 78 Fed. (2d) 230).

§ 47–1209 [20: 758]. Payment of taxes—To be made semiannually—Mandamus to compel filing sworn return—Expenses.

Real-estate taxes and personal taxes of all kinds, excepting the tax on motor vehicles as herein provided, shall hereafter be payable semiannually in equal instalments in the months of September and March. If either of said instalments on real or personal property shall not be paid within the months when the same is due, said instalments shall thereupon be in arrears and delinquent, and there shall be added and collected with said tax a penalty of 1 per centum per month upon the amount thereof for the period of such delinquency, and such instalment or instalments, with the penalties thereon, shall constitute a delinquent tax to be collected in the manner now provided by law.

If any person neglects or refuses to file a return of personal property as required by law, and the assessor certifies to the Board of Commissioners that, in his opinion, the best information obtainable does not afford a satisfactory basis for assessment, the Board of Commissioners may, by petition to the District Court of the United States for the District of Columbia for mandamus against such person, compel the filing of a sworn return, and in such case the court shall require the person at fault to pay all expenses of the proceeding. (July 3, 1926, 44 Stat. 833, ch. 759, § 5; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 5.)

RULES OF CIVIL PROCEDURE

Writs of mandamus have been abolished in District Courts, similar relief may be obtained by appropriate action on motion, rule 81 (b).

AMENDMENT

The 1929 amendment added the first sentence of the first paragraph and the second paragraph.

CROSS REFERENCES

Payment of taxes on family dwellings, §§ 47–901 to 47–906.
Time within which assessments may be made and collected, § 47–1408.

NOTES TO DECISIONS

RETURNS

Receiver of insolvent bank is obligated to file tax return, although 100 percent assessment on stock had been levied. *Hazen* v. *Hardee* (64 App. D. C. 346, 78 Fed. (2d) 230).

Claim made by appellant concerning his payment of taxes upon the income of the stocks owned by him to the Federal collector at Baltimore was without merit, and it was still necessary to file a personal property return with the assessor of the District. *Cogger* v. *Hazen* (66 App. D. C. 196, 85 Fed. (2d) 695).

Commissioners are specifically authorized to compel the filing of a sworn return by any person required by law to file such a return. *Hazen* v. *National Rifle Assn.* (69 App. D. C. 339, 101 Fed. (2d) 432).

VOID ASSESSMENT

A tax based upon a void assessment may be questioned or attacked wherever found. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

§ 47–1210 [20: 758a]. Assessment of motor vehicles—Dealers' stock excepted—Enforcement.

Motor vehicles taxable by the District of Columbia shall be assessed at their value as of April 1, each year, by the Board of Personal Tax Appraisers, subject to revision on appeal by the Board of Personal Tax Appeals, at the rate fixed for the taxation of other tangible personal property for the fiscal year ending the following June 30. The tax so assessed shall constitute the personal-property tax on such vehicles for the ensuing calendar year, and no motor vehicle registration tag for any tax year shall be issued for motor vehicles subject to taxation on April 1 each year by the District of Columbia until the amount of such tax has been paid in full: *Provided,* That this section shall not apply to motor vehicles constituting the stock in trade of dealers, which shall be taxed as now provided by law. The Commissioners of the District of Columbia shall make such rules and regulations as may be necessary or desirable to enforce the provisions of this section. (Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 3; July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 4.)

COMPILER'S NOTE

This section is not affected by the motor vehicle fuel tax, § 47–1915.

AMENDMENT

The 1939 act changed the date in this section from "January first" to "April first."

CROSS REFERENCE

Registration dates, § 40–102.
Rules and regulations, § 47–2502.

§ 47–1211 [20: 758b]. Taxable status of motor vehicles as tangible personal property.

Notwithstanding any other provision of law, the tangible personal-property tax on motor vehicles, except when consisting of stock in trade of merchants, shall be prorated according to the number of months such property has a situs within the District; and all such motor vehicles shall be assessed at their value as of April 1 each year: *Provided, however,* That where a motor vehicle shall be registered in the District of Columbia for the first time on a date between April 1 of one year and April 1 of the succeeding year, such motor vehicle shall be assessed, for taxation for the period ending with the succeeding April 1, at its value as of date of application for such first registration. (July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 4.)

CROSS REFERENCE

This section is part of the Revenue Act of 1939. See compiler's note to § 47–1401.

§ 47–1212 [20: 759]. Mercantile establishments and carriers by water.

It shall be unlawful for any person or persons entering the District of Columbia subsequent to June 30th in each year and establishing a place of business for the sale of goods, wares, or merchandise, either at private sale or at auction, or engaging in the business of common carrier by vessels, ships, or boats,

to conduct such business until a sworn statement of the value of such stock, vessels, ships, and boats has been filed with the assessor of the District of Columbia, who shall thereupon render a bill for the unexpired portion of the fiscal year at the same rate as other personal taxes are levied: *Provided,* That this shall not apply to vessels, ships, or boats if it shall be made to appear by affidavit that any vessel, ship, or boat has been assessed for taxation and the taxes paid elsewhere.

The assessor is hereby authorized to reassess said stock whenever in his judgment it has been undervalued. The goods, wares, and merchandise of any person or persons who shall fail to pay the tax required by this section within three days after beginning business shall be subject to distraint, and it shall be the duty of the assessor to place bills therefor in the hands of the collector of taxes, who shall seize sufficient of the goods of the delinquent to satisfy said tax: *Provided,* That said owner shall have the right of redemption within thirty days on payment of said tax, to which shall be added a penalty of one per centum, together with the cost of seizure. The collector shall sell such goods as are not redeemed at public auction, after advertisement for the three days preceding said sale. (July 1, 1902, 32 Stat. 618, ch. 1352, § 6, par. 3; Apr. 28, 1904, 33 Stat. 563, ch. 1815, § 2.)

AMENDMENT

The 1904 amendment added words: "or engaging in the business of common carrier by vessels, ships, or boats" after the word "auction" as it appears in the first paragraph; the words "vessels, ships, and boats" after the word "stock" as it appears in the first paragraph; and, the proviso in the first paragraph.

NOTES TO DECISIONS

MERCHANDISE TAXABLE

This section relates to the assessment of merchandise belonging to persons who enter the District subsequent to June 30th and establish a place of business for the sale of goods, wares, and merchandise either at private sale or at auction. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

REGULATIONS EFFECTIVE

Where regulations provided that average inventory means net cost of goods delivered or the actual cost of goods minus any cash discounts from which a further deduction of 5 per cent, will be allowed, and taxpayer estimated its cost according to retail inventory method of accounting by deducting from resale price the average percentage of markup over cost, the taxpayer was not entitled to an additional 8 per cent, for markdown, since no markdown from resale price could affect cost. *Hecht Co.* v. *District of Columbia,* 1942 (129 F. 2d 353, 76 U. S. App. D. C. 142).

Where taxpayer made incorrect returns and underpaid its personal property taxes, assessor's practice of applying new regulations permitting greater deductions in determining value of accounts receivable was unauthorized and taxpayer's tax liability was to be determined in accordance with regulations in force when tax returns were filed. *Hecht Co.* v. *District of Columbia,* 1942 (129 F. 2d 353, 76 U. S. App. D. C. 142).

§ 47–1213 [20: 769]. Board of Personal Tax Appeals—Constitution—Proceedings.

The Board of Assistant Assessors hereinbefore provided for, with the assessor of the District of Columbia as chairman, shall compose a Board of Personal Tax Appeals, and as such Board of Personal Tax Appeals shall convene in a room, to be provided therefor by the said assessor, on the first Monday of September each year and shall continue in session to and including the first Monday of March of the following year, or until such time as their work shall have been completed, and public notice of the time and place of such meeting shall be given by advertisement for two consecutive secular days in two daily newspapers published in the District of Columbia. All appeals to said board shall be made within thirty days after notice of fixing an assessment. It shall be the duty of the Board of Personal Tax Appeals to hear all appeals made by any person or persons against the assessments made by the Board of Personal Tax Appraisers and to impartially equalize the value of said personal property as a basis for assessment. Any four members of the said board shall constitute a quorum for business, and in the absence of the assessor a temporary chairman shall be selected. They shall be empowered to diminish or increase such assessments as they may believe to have been returned at other than their true value to such amount as, in their opinion, may be the value thereof, and the action of said board in such cases shall be final. Said board of assistant assessors shall also perform such other official duties as may be required of them by the assessor of the District of Columbia: *Provided,* That in case the personal tax appraisers shall fail to complete any of the duties in sections 47–1201 to 47–1214, 47–1301 to 47–1305, 47–1701 to 47–1709 to be by them performed within the time provided therefor the taxation provided by this section shall not by reason thereof be invalid; but such appraisers shall proceed with all reasonable diligence to complete such duties, and their acts shall be valid as if performed within the time fixed therefor. If, at any time within any current year, property subject to taxation under the provisions of sections 47–1201 to 47–1214, 47–1301 to 47–1305, 47–1701 to 47–1709 shall have been omitted from assessment, said Board of Personal Tax Appraisers shall immediately proceed to assess the same for the then current year, giving notice in writing to the persons or corporations so assessed, who shall have a right of appeal within ten days from date of said notice. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 11; July 3, 1926, 44 Stat. 834, ch. 759, § 7; Feb. 18, 1929, 45 Stat. 1228, ch. 259, § 7.)

AMENDMENTS

The 1926 amendment added the second sentence of the first paragraph.

The 1929 amendment changed the time for convening and continuing in session in the first paragraph.

NOTES TO DECISIONS

NOTICE

The statute provides that notice must be given and the opportunity presented to be heard in respect to the assessment of omitted property. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

The admission of the District that no such notice of the assessments was ever given to the company is fatal to the entire claim of the District. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

REASSESSMENT

It is not the policy of the law to favor reassessments. Unless the taxing statute expressly provides for a reas-

sessment, such action is void. *Hunt* v. *District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

When taxpayer complied with the duty and made a true statement of his investment in marginal stocks according to the legal requirement and was taxed on the item, the tax authorities could not reassess on a new basis on the theory that the shares of stock were omitted property, since omitted property means property which is not assessed at all and not property which is merely undervalued. *Hunt* v. *District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

§ 47–1214 [20: 770]. Clerk of Board of Personal Tax Appraisers—Appointment.

The Commissioners of the District of Columbia are authorized and directed to appoint a clerk and assistant clerk to said Board of Personal Tax Appraisers, and three inspectors, all of whom shall perform such duties as may be assigned to them by the chairman of said board. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 19; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)

AMENDMENT

The law as enacted provided for salaries for these employees. Their salaries are now governed by the Classification Act of 1923.

§ 47–1215. Taxation of rolling stock of railroad, sleeping-car, tank-car, etc., companies—Location within District—Location without District—Applicability of personal property tax laws—Effective date.

(a) The rolling stock of railroad companies, refrigerator-car companies, parlor-car companies, sleeping-car companies, tank-car companies, express companies, car-renting companies, and all other companies owning parlor, sleeping, dining, tank, freight, or any other cars which are operated or run over or upon the line or lines of any railroad or terminal company in the District of Columbia, shall be deemed to be located in said District for purposes of taxation, whether or not the individual units are continuously in the District or are constantly changing, and such property shall be reported, assessed, and taxed within the time, and at the rates prescribed by law for the reporting and taxation of other personal property in the District of Columbia.

(b) Such rolling stock as is primarily located in the District of Columbia shall be reported and taxed at its full and true value on the last day of the calendar year preceding the tax date.

(c) Such rolling stock as is not primarily located in the District of Columbia shall be reported and taxed in the manner following:

(1) Every railroad company operating rolling stock over or upon the line or lines of any railroad or terminal company in the District shall report to the Assessor of the District of Columbia the various classes of such rolling stock so operated by such company whether owned by it or any other railroad company; the number of miles traveled by each class of such rolling stock within the District during the calendar year next preceding the tax date; the total number of miles traveled by each class of such rolling stock on all lines over which such company operates during the calendar year next preceding the tax date; the total full and true value of each class of such rolling stock owned by such company on the last day of the calendar year next preceding the tax date; and such other facts and information as said assessor may require. The taxable portion of the rolling stock of each such company shall be determined by applying the mileage traveled in the District by the various classes of such rolling stock operated in the District by such company to the total mileage traveled by the various classes of such rolling stock on all lines over which such company operates, and the tax shall be assessed on that portion of such rolling stock owned by such company on the last day of the calendar year next preceding the tax date. The mileage and value of the rolling stock owned by such company which is permanently located outside of the District of Columbia shall not be included in the computation of such assessment.

(2) Every parlor-car company and sleeping-car company owning parlor and sleeping cars (except those owned by railroad companies and described in paragraph (1) of this subsection) which are operated in the District over or upon the tracks of any railroad or terminal company, shall report to the Assessor of the District of Columbia the total number of miles traveled by all such cars, and also the miles traveled by such cars within the District, during the calendar year next preceding the tax date; the total full and true value of all of such cars so used as of the last day of the calendar year next preceding the tax date; and such other facts and information as said assessor may require. The taxable portion of the value of the cars owned by any such company and used within the District shall be determined by applying to such value the ratio between the mileage traveled by such cars in the District and the total mileage traveled by such cars within and without the District.

(3) Every car company, mercantile company, corporation or individual (other than railroad, parlor-car and sleeping-car companies described in paragraphs (1) and (2) of this subsection) owning or leasing any stock cars, furniture cars, fruit cars, refrigerator cars, meat cars, oil cars, tank cars, or other similar cars, which are run over or upon the line or lines of any railroad or terminal company in the District of Columbia, shall furnish to the Assessor of the District of Columbia, on forms prescribed by said assessor, a true, full, and accurate statement, verified by the affidavit of the officer or person making the same, showing the aggregate number of miles made by their several cars over or upon the several lines of railroad within the District of Columbia during the calendar year next preceding the tax date; the average number of miles traveled per day within the District of Columbia by the cars covered by the statement in the ordinary course of business during the year; and such other pertinent facts and information as said assessor may require.

Every railroad company whose lines run through or into the District of Columbia shall annually furnish to the said assessor a statement showing the name and address of every car company, mercantile company, corporation, or individual (other than railroad, parlor-car and sleeping-car companies described in paragraphs (1) and (2) of this subsection) whose cars made mileage over its tracks in the

District of Columbia during the calendar year next preceding the tax date, and the total number of miles made within the District of Columbia by each during said period.

It shall be the duty of the said assessor to ascertain from the best and most reliable information that can be obtained and from said statements the number of cars required to make the total mileage of each such car company, mercantile company, corporation, or individual within the District of Columbia during the period aforesaid, and to ascertain and fix the valuation upon each particular class of such cars, and the number so ascertained to be required to make the total mileage within the District of Columbia of the cars of each such car company, mercantile company, corporation, or individual within said period shall be assessed against the respective car companies, mercantile companies, corporations, or individuals. The valuation thus obtained shall be the full and true value and shall be the taxable portion of the cars owned by any such car company, mercantile company, corporation, or individual and used within the District of Columbia.

(d) All of the provisions of law relating to the filing of returns, assessment, payment, and collection of personal property taxes in the District of Columbia shall be applicable to the companies described in the foregoing subsections.

(e) Any individual, partnership, unincorporated association, or corporation aggrieved by any assessment of taxes made pursuant to the provisions of this section may appeal therefrom to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2411.

(f) The provisions of this section shall be applicable to the taxable year beginning July 1, 1945, and each taxable year thereafter. (Dec. 15, 1945, 59 Stat. 610, ch. 579.)

Chapter 13.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY DISTRAINT OR LEVY

Sec.

47–1301. Distraint of property for nonpayment of taxes—Sale—Disposition of surplus.
47–1302. Sale of distrained goods for nonpayment of taxes.
47–1303. Penalties.
47–1304. Remedies for collection of intangible tax—Common-law and equitable remedies available for collection of all taxes and assessments.
47–1305. Sale of real estate to satisfy personal tax.

§ 47–1301 [20: 771]. Distraint of property for nonpayment of taxes—Sale—Disposition of surplus.

When the taxes on personal property due and payable in each year shall not be paid as provided in section 47–1209, then and in that event the collector of taxes of the District of Columbia, or his deputy, may distrain sufficient goods and chattels found within the District of Columbia and belonging to the person, firm, association, corporation, company, administrator, executor, guardian, or trustee charged with such tax to pay the taxes remaining due, under the provisions of this law, from such person, firm, association, corporation, company, administrator, executor, guardian, or trustee, together with the penalty thereon and the costs that may accrue; and for want of such goods and chattels said collector of taxes may levy upon and sell at auction the estate and interest of such person, firm, association, corporation, company, administrator, executor, guardian, or trustee in any parcel of land in said District; and in the case of the levy on any estate or interest in land the proceedings subsequent to sale thereof shall be the same as provided by law in the case of sales for arrears of taxes against real estate; and in the case of distraint of personal property or the levy upon real estate as aforesaid the collector of taxes shall immediately proceed to advertise the same by public notice to be posted in the office of said collector and by advertisement, three times within one week, in one or more of the daily newspapers published in said District, stating the time when and the place where such property shall be sold, the last publication to be at least six days before the date of sale, and if the said taxes and penalty thereon, and the costs and expenses which shall have accrued thereon, shall not be paid before the day fixed for such sale, which shall not be less than ten days after said levy or taking of said property, the collector shall proceed to sell at public auction, such property, or so much thereof as may be needed to pay such taxes, penalty, and accrued costs and expenses of such distraint and sale. Said collector shall report in detail, in writing, every distraint and sale of personal property to the Commissioners of the District of Columbia or their successors in office, and his accounts in respect to every such distraint or sale shall forthwith be submitted to the auditor of the District of Columbia and be audited by him. Any surplus resulting from such sale over and above such taxes, costs, and expenses shall be paid into the Treasury, and upon being claimed by the owner or owners of the goods and chattels aforesaid shall be paid to him or them upon the certificate of the collector of taxes stating in full the amount of such excess. (July 1, 1902, 32 Stat. 621, ch. 1352, § 6, par. 12.)

Compiler's Note

This chapter is not repealed by the provisions of chapter 14 of this title, § 47–1409.

Cross References

Distraint of goods of merchant entering District after June 30th for failure to pay taxes for balance of year, § 47–1212.

Provisions of this chapter apply to collection of income taxes, § 47–1527.

Special provisions concerning family dwellings, §§ 47–901 to 47–906.

NOTES TO DECISIONS

In General

There is no provision in the statute for a lien on personal property; there is no provision of the statute to assess taxes on personal property when the owner is unknown; and there is no provision for the assessing of personal property taxes after the end of the current fiscal year. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

Property To Be Distrained

Any goods and chattels of the person charged with the taxes may be distrained. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

§ 47–1302 [20: 772]. Sale of distrained goods for nonpayment of taxes.

When the collector of taxes shall distrain any goods and chattels in order to enforce payment of such taxes, the goods and chattels so seized shall be kept in a safe and convenient place until the day of the sale thereof; and the sale of said goods and chattels shall be at public auction, at such place as the collector of taxes may designate: *Provided, however,* That no such goods and chattels shall be sold upon any bid not sufficient to meet the amount of tax, penalty, and costs; but in case the highest bid therefor is not sufficient to meet the amount of tax, penalty, and costs thereon, said property thereupon shall be bid off by the said collector of taxes in the name of and by the District of Columbia, and the Commissioners of the District of Columbia may sell the same at private sale to satisfy the tax penalty, and cost thereafter without further notice. (Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

§ 47–1303 [20: 773]. Penalties.

Any person or persons violating any of the provisions of sections 47–1201 to 47–1214, 47–1301 to 47–1305, and 47–1701 to 47–1709 shall be liable to a penalty of not exceeding five hundred dollars for each offense, said penalty to be imposed, upon conviction in the police court of the District of Columbia, as other fines and penalties are imposed, and said court is hereby invested with jurisdiction thereof; and in default of the payment of said penalty the person or persons so convicted shall be imprisoned, in the discretion of the court, not exceeding six months. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 18.)

CROSS REFERENCE

False returns, penalties, § 47–1203.

§ 47–1304 [20: 774]. Remedies for collection of intangible tax—Common-law and equitable remedies available for collection of all taxes and assessments.

The remedies provided in sections 47–1201 to 47–1214, 47–1301 to 47–1305, 47–1701 to 47–1709 for the collection of taxes on tangible personal property, shall be available also for the collection of taxes on intangible property.

In addition to the statutory remedies, all common-law and all equitable remedies shall also be available, either separately or concurrently with statutory remedies, as may be deemed advisable, for the collection of all taxes and special assessments of any kind whatsoever. (Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 1.)

COMPILER'S NOTE

The first paragraph of this section will become obsolete when all intangible personal property taxes accrued or due prior to July 1, 1939, are collected. See note to § 47–1201. It is retained here because it indicates the law applicable to the collection of such prior taxes.

§ 47–1305 [20: 775]. Sale of real estate to satisfy personal tax.

Where real estate is levied upon for the nonpayment of personal taxes of any kind, and the best price offered at an auction sale is not sufficient to pay taxes, interest, and penalties, said real estate may be sold under decree of the equity court as provided by law. (Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 2.)

CROSS REFERENCE

Special provisions concerning family dwellings, §§ 47–901 to 47–906.

Chapter 14.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY ACQUISITION OF LIEN

Sec.

47–1401. Examinations and hearings by assessor—Examination of books—Proceedings brought in Police Court.
47–1402. Collection of personal property taxes—Neglect or refusal to pay, collection by distraint—Levy—Public notice of intended sale—Sale to be public—Report—Disposition of surplus above taxes.
47–1403. Collection of personal property taxes—Surrender to collector unless subject to attachment.
47–1404. Collection of personal property taxes—Liability for failure to surrender property.
47–1405. Collection of personal property taxes—Exhibition of evidence or statements—Penalty.
47–1406. Collection of personal property taxes—Certificates of delinquent personal tax—Filing—Lien—Enforcement.
47–1407. Collection of personal property taxes—Wrongful distraints—Recoveries.
47–1408. Collection of personal property taxes—Time limitations—False returns—Delinquency.
47–1409. Collection of personal property taxes—Remedies under this chapter considered additional.
47–1410. Collection of personal property taxes—Failure to file reurn—Penalty.
47–1411. Collection of personal property taxes—Definitions.
47–1412. Collection of personal property taxes—Secrecy of returns.

§ 47–1401 [20: 965]. Examinations and hearings by assessor—Examination of books—Proceedings brought in police court.

The assessor of the District of Columbia or any person designated by him for the purpose of ascertaining the correctness of any return of personal property, tangible or intangible, for taxation or for the purpose of making a return where none has been made is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear before him and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return and to give testimony or answer interrogatories under oath respecting the same, and the assessor, or assistant assessor, shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan police department. If any person, having been personally summoned, shall neglect or refuse to obey the summons issued as herein provided, then in that event the assessor, or any assistant assessor, may report that fact to the District Court of the United States for the District of Columbia, or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to said summons to the same extent as witness may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters

required to be included in such returns, who shall refuse to permit the examination by the assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than $300. All prosecutions under this section shall be brought in the police court of the District of Columbia on information by the corporation counsel of the District of Columbia in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 673, ch. 690, title I, § 1; May 16, 1938, 52 Stat. 356, ch. 223, § 1.)

COMPILER'S NOTES

The first sentence of the act of August 17, 1937, 50 Stat. 673, ch. 690 (cited to the text) provided that "This Act divided into titles and sections may be cited as the District of Columbia Revenue Act of 1937." That act is set forth in §§ 40–101 to 40–105, 47–1401 to 47–1412, 47–1601 to 47–1629, 47–1801 to 47–1808, 47–1901 to 47–1903, 47–1905, 47–1907, 47–1908, 47–1911, 47–2501 to 47–2504.

The first sentence of the act of July 26, 1939 (53 Stat. 1085–1119, ch. 367) provided that "This Act divided into titles and sections may be cited as the District of Columbia Revenue Act of 1939." That act is set forth in sections 11–332, 47–134, 47–1204, 47–1211, 47–1501 to 47–1543, 47–1601 to 47–1629, 47–1701, 47–2402, 47–2403, 47–2405, 47–2412, 47–2501, 47–2503.

Section 47–2501 (part of the revenue acts of 1937 and 1939) provides for the advancement of funds on requisition of commissioners, notwithstanding provisions of the District Appropriation Act of June 29, 1922.

Section 47–2502 gives the Commissioner authority to make rules and regulations to carry out the provisions of the revenue acts of 1937 and 1939.

Section 47–2503 provides as follows: "If any provision of the District of Columbia Revenue Act of 1937 and the Revenue Act of 1939, or the application thereof to any person or circumstance is held invalid, the remainder of the act, and the application of such provisions to other persons or circumstances, shall not be affected thereby."

AMENDMENT

The 1938 amendment added the words "of any person" after the word "memoranda" the first time it appears, and the last two sentences.

CROSS REFERENCE

Provisions of this chapter apply to collection of income taxes, § 47–1527.

NOTES TO DECISIONS

CONSTITUTIONAL LAW

In exercising its power to legislate for the District of Columbia, Congress acts as a legislature of national character and is not subject to constitutional limitations imposed on State legislatures, and, therefore, this statute (50 Stat. 673, 688) is not invalid as a violation of the commerce clause or the 14th amendment. *Neild* v. *District of Columbia* (71 App. D. C. 306, 110 Fed. (2d) 246).

This statute (50 Stat. 673, 688) is an exercise of the power of Congress to legislate for the District of Columbia and not an exercise of its power to regulate commerce, and, therefore, is not invalid on the theory that the burden imposed must be uniform throughout the Nation, or that the exercise of this power is improvident. *Neild* v. *District of Columbia* (71 App. D. C. 306, 110 Fed. (2d) 246).

LIEN FOR DELINQUENT TAXES

Congress took notice of the problem of taxes on personalty and among other things provided a method for the obtainment of a lien against a taxpayer delinquent in the payment of personal property taxes. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

POWER TO TAX

The delegation to Congress of power to exercise exclusive legislation in all cases over the District of Columbia, includes the power to tax. *Neild* v. *District of Columbia* (71 App. D. C. 306, 110 Fed. (2d) 246).

§ 47–1402 [20: 965a]. Collection of personal property taxes—Neglect or refusal to pay, collection by distraint—Levy—Public notice of intended sale—Sale to be public—Report—Disposition of surplus above taxes.

If any person liable to pay any personal property tax to the District of Columbia neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector of taxes for the District of Columbia, or any person designated by him, to collect the said taxes, with interest and penalties thereon, by distraint and sale in the manner hereinafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, evidences of debt, and credits of the person delinquent as aforesaid. In case of such neglect or refusal of the person delinquent as aforesaid the collector, or the person designated by him, may levy upon all such property and rights to such property belonging to such person for the payment of the sum due with interest and penalties thereon and the costs that may accrue and the collector of taxes shall immediately proceed to advertise the same by public notice to be posted in the office of said collector and by advertisement three times in one week in one or more daily newspapers in said District, stating the time when and the place where such property shall be sold, the last publication to be at least six days before the date of sale and if the said taxes, with interest and penalties thereon, and the costs and expenses which shall have accrued thereon, shall not be paid before the date fixed for such sale, which shall not be less than ten days after said levy or taking of said property, the collector shall proceed to sell at public auction such property or interest therein or so much thereof as may be needed to pay such taxes, interest, penalties, and accrued costs and expenses of such distraint and sale. Said collector shall report in detail in writing every distraint and sale of personal property to the Commissioners of the District of Columbia, and his accounts in respect of every such distraint or sale shall forthwith be submitted to the auditor of the District of Columbia and shall be audited by him. Any surplus resulting from such sale over and above such taxes, interest, penalties, costs, and expenses shall be paid into the Treasury of the United States to the credit of the District of Columbia, and upon being claimed by the owner or owners of the property aforesaid shall be paid to him or them by the accounting officers of said District upon the certificate of the collector of taxes stating in full the amount of such excess. (Aug. 17, 1937, 50 Stat. 673, ch. 690, title I, § 2.)

COMPILER'S NOTE

This section and succeeding ten sections provide additional method of collection to that set out in §§ 47–1301 to 47–1305.

CROSS REFERENCES

This section is part of the Revenue Act of 1937, see compiler's notes to § 47–1401.

Time for payment, delinquency, § 47–1209.

§ 47–1403 [20: 965b]. Collection of personal property taxes—Surrender to collector unless subject to attachment.

Any person in possession of property or rights to property subject to distraint upon which a levy has been made shall, upon demand by the collector, or the person designated by him, surrender such property or rights to such collector or the person designated by him, unless such property or right is at the time of such demand subject to an attachment or execution under any judicial process. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 3.)

CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

§ 47–1404 [20: 965c]. Collection of personal property taxes—Liability for failure to surrender property.

Any person who fails or refuses so to surrender any of such property or rights shall be liable in his own person and estate to the District of Columbia in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes including interest and penalties for the collection of which such levy has been made, together with costs and interest thereon, from the date of such levy. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 4.)

CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

§ 47–1405 [20: 965d]. Collection of personal property taxes—Exhibition of evidence or statements—Penalty.

All persons and officers of companies and corporations are required, on demand of the collector, or the person designated by him, about to distrain or having distrained on any property or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint or the property or rights of property liable to distraint for the tax due. A violation of this section shall be punished by a fine of not exceeding $500 or by imprisonment not exceeding thirty days, or both, in a prosecution filed in the police court of the District of Columbia by the corporation counsel of the District in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 5.)

CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

§ 47–1406 [20: 965e]. Collection of personal property taxes—Certificates of delinquent personal tax—Filing—Lien—Enforcement.

In case of the neglect or refusal of any person to pay a personal-property tax within ten days after notice and demand, the collector of taxes, or the person designated by him, may file a certificate of such delinquent personal tax with the clerk of the District Court of the United States for the District of Columbia, which certificate from the date of its filing shall have the force and effect, as against the delinquent person named in such certificate, of the lien created by a judgment granted by said court, which lien shall remain in force and effect until the taxes set forth in said certificate, with interest and penalties thereon, shall be paid and said lien may be enforced by a bill in equity filed in said court. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 6.)

CROSS REFERENCES

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

Time for payment, delinquency, § 47–1209.

§ 47–1407 [20: 965f]. Collection of personal property taxes—Wrongful distraints—Recoveries.

When a recovery is had in any suit or proceeding against the collector of taxes, or any person designated by him, under the District of Columbia Revenue Act of 1937 for a wrongful distraint or any other act done by him or for the recovery of any money exacted by or paid to him and by him paid into the Treasury of the United States in the performance of his official duty and the court certifies that there was probable cause for the act done by the collector or the person designated by him or that he acted under the directions of the Commissioners of the District of Columbia, no execution shall issue thereon, but the amount so recovered shall, upon final judgment, be paid by the District of Columbia in the same manner as judgments against the said District are paid. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title I, § 7.)

CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

§ 47–1408 [20: 965g]. Collection of personal property taxes—Time limitations—False returns—Delinquency.

Taxes on property reported in any return filed by a taxpayer shall be assessed within two years after the filing of such return; and such taxes may be collected by distraint or by proceeding in court within three years after the date of the assessment of such taxes. In the case of a false or incorrect return, whether in good faith or otherwise, or of a failure to file a return within the time prescribed by law or of a failure to include taxable property or assets belonging to the taxpayer in any return filed by such taxpayer, whether in good faith or otherwise, the tax may be assessed at any time, and the tax may be collected by distraint or by proceeding in court within three years after the assessment of such tax. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title I, § 8; May 16, 1938, 52 Stat. 357, ch. 223, § 1 (b).)

AMENDMENT

The 1937 act provided, "The taxes to which this title relates shall be assessed within four years after such taxes became due and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return within the time required by law, the tax may be assessed or a proceeding in court for the collection of such tax may be begun without assessment at any time. Where the

assessment of any tax to which this title relates has been made within such statutory period of limitation, such tax may be collected by distraint or by a proceeding in court only if begun within six years after the assessment of the tax."

CROSS REFERENCES

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

Time for payment, delinquency, § 47–1209.

See note to § 47–1213 for decision under earlier law. *Tumulty* v. *District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

NOTES TO DECISIONS

ADDITIONAL ASSESSMENTS

Under this section and section 1409 of this title, an additional assessment of business privilege tax could properly be made after tax year during which tax was assessed and paid, the same as additional assessments of intangible personal property taxes could be made after tax years in which they were assessed and paid, and the Board of Tax Appeals had authority to affirm, cancel, reduce, or increase assessments. *Maryland & Virginia Milk Producers' Ass'n* v. *District of Columbia,* 1941 (119 F. 2d 787, 73 App. D. C. 399, certiorari denied 62 S. Ct. 87, 314 U. S. 646, 86 L. Ed. 518).

A taxpayer had no "vested right" in the fruits of incorrect or incomplete returns made for intangible personal property tax purposes for fiscal years ended on June 30 in 1936, 1937, and 1938, and this section and section 1409 of this title and additional assessments made under their authority in August 1938, imposed no new taxes but merely provided a new remedy in addition to remedies available, as against contention that, because taxpayer made returns and paid during fiscal years in question taxes assessed during those years, assessors could not after those years make additional assessments. *Maryland & Virginia Milk Producers' Ass'n* v. *District of Columbia,* 1941 (119 F. 2d 787, 73 App. D. C. 399, certiorari denied 62 S. Ct. 87, 314 U. S. 646, 86 L. Ed. 518).

§ 47–1409 [20: 965h]. Collection of personal property taxes—Remedies under this chapter considered additional.

The remedies provided by this chapter for the collection of personal property taxes are in addition to any other remedies available for the collection of said taxes. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title I, § 9.)

CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

§ 47–1410 [20: 965i]. Collection of personal property taxes—Failure to file return—Penalty.

Any person required to file a return or schedule, by the terms of an act entitled "An Act making appropriation[s] to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes," approved July 1, 1902, as amended, who shall fail or refuse to file the same within the time required by said Act as amended shall, upon conviction thereof, be fined not more than $300 for each and every failure or refusal and each and every day that such failure or refusal continues shall constitute a separate and distinct offense. All prosecutions under this section shall be brought in the police court of the District of Columbia on information by the corporation counsel of the District of Columbia in the name of the District of Columbia. The penalty herein provided shall be in addition to the other penalties provided in said Act of July 1, 1902, as amended. (Aug. 17, 1937, 50 Stat. 673, ch. 690, § 10, as added May 16, 1938, 52 Stat. 357, ch. 223, § 1 (c).)

COMPILER'S NOTES

Bracketed letter [s] inserted by compiler.

The Act of July 1, 1902, as amended, appears in this code as §§ 1–237, 7–211, 7–507, 11–206, 22–702, 22–1208, 26–318, 28–2701, 35–105, 43–1105, 47–119, 47–121, 47–211, 47–604, 47–605, 47–709, 47–801, 47–802 47–1001 to 47–1009, 47–1201, 47–1203, 47–1207 to 47–1209, 47–1212 to 47–1214, 47–1301 to 47–1303, 47–1701 to 47–1704, 47–1706 to 47–1709, 47–2301 to 47–2350.

§ 47–1411 [20: 965j]. Collection of personal property taxes—Definitions.

As used in this chapter—

(a) The term "person" includes any individual, firm, copartnership, joint adventure, association, corporation (domestic or foreign), trust, trustee, estate, or receiver.

(b) The term "return" means any return required to be filed by said sections of this chapter. (Aug. 17, 1937, 50 Stat. 673, ch. 690, § 11, as added May 16, 1938, 52 Stat. 357, ch. 223, § 1 (c).)

§ 47–1412 [20: 965k]. Collection of personal property taxes—Secrecy of returns.

Except in accordance with proper judicial order and as otherwise provided by law, it shall be unlawful for the Commissioners of the District of Columbia or any persons having an administrative duty under this title to divulge or make known in any manner any information contained in any return required under this chapter. The persons charged with the custody of such returns shall not be required to produce any of them in any action or proceeding in any court except on behalf of the United States or the District of Columbia or on behalf of any party to any action or proceeding under the provisions of this chapter, when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of and may admit in evidence so much of such returns or the facts shown thereby as are pertinent to the action or proceeding, and no more. Nothing herein contained shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return filed by him in connection with his tax, nor prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the corporation counsel of the District of Columbia or any of his assistants of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty and failure to file any return or schedule required by law. Any violator of the provisions of this section shall be subject to the punishment provided by section 47–1410 of this title. (Aug. 17, 1937, 50 Stat. 673, ch. 690, § 12, as added May 16, 1938, 52 Stat. 357, ch. 223, § 1 (c).)

CROSS REFERENCE

Secrecy of information received from Bureau of Internal Revenue, § 47–2504.

Chapter 15.—INCOME TAX

Sec.
47–1501—47–1547. Repealed.

ARTICLE I—INCOME AND FRANCHISE TAX

TITLE I—REPEAL OF PRIOR INCOME TAX LAW AND APPLICABILITY OF THIS ARTICLE; GENERAL DEFINITIONS

47–1551. Repeal of sections 47–1501 to 47–1547 and retention of certain provisions thereof.
47–1551a. Applicability of this article.
47–1551b. Returns under sections 47–1501 to 47–1547 and returns for first taxable year to which this article is applicable.
47–1551c. General definitions.

TITLE II—EXEMPT ORGANIZATIONS

47–1554. Exempt organizations.

TITLE III—NET INCOME, GROSS INCOME AND EXCLUSIONS THEREFROM, AND DEDUCTIONS

47–1557. Net income defined.
47–1557a. Gross income and exclusions therefrom.
47–1557b. (a) Deductions allowed.
(b) Deductions not allowed.

TITLE IV—ACCOUNTING PERIODS, INSTALLMENT SALES, AND INVENTORIES

47–1561. Accounting periods.
47–1561a. Period in which items of gross income included.
47–1561b. Period for which deductions and credits taken.
47–1561c. Installment sales.
47–1561d. Inventories.
47–1561e. Assessor may reject method of accounting employed by taxpayer.

TITLE V—RETURNS

47–1564. (a) Forms of returns.
(b) Taxpayer to make return whether form sent or not.
(c) Information returns.
47–1564a. Requirement—who must file.
(a) Residents and nonresidents.
(b) Fiduciaries.
(c) Joint fiduciaries.
(d) In case of taxpayer unable to make own return.
(e) Corporations.
(f) Unincorporated businesses.
(g) Partnerships.
47–1564b. (a) Time and place for filing returns.
(b) Extension of time for filing returns.
47–1564c. (a) Secrecy of returns.
(b) Reciprocal exchange of information with the United States and the several States.
(c) Publication of statistics.
(d) Information which may be disclosed.
(e) Penalties for violation of this section.
(f) Preservation of returns.

TITLE VI—TAX ON RESIDENTS AND NONRESIDENTS

47–1567. Definitions.
47–1567a. Personal exemptions and credit for dependents.
47–1567b. Imposition and rates of tax.
47–1567c. Optional method of computation.
47–1567d. Credit against tax allowed residents.

TITLE VII—TAX ON CORPORATIONS

47–1571. Taxable income defined.
47–1571a. Imposition and rate of tax.

TITLE VIII—TAX ON UNINCORPORATED BUSINESSES

47–1574. Definition of unincorporated businesses.
47–1574a. Taxable income defined.
47–1574b. Imposition and rate of tax.
47–1574c. Exemption.
47–1574d. By whom taxes payable.
47–1574e. Partners only taxable.

TITLE IX—TAX ON ESTATES AND TRUSTS

47–1577. Resident and nonresident estates and trusts defined.
47–1577a. Residence or situs of fiduciary not to control.
47–1577b. Imposition of tax.
47–1577c. Computation of tax.
47–1577d. Net income.
47–1577e. Different taxable year.
47–1577f. Revocable trusts.
47–1577g. Income for benefit of grantor.
47–1577h. Definition of "in discretion of grantor".
47–1577i. Employees' trusts.

TITLE X—PURPOSE OF ACT AND ALLOCATION AND APPORTIONMENT

47–1580. Purpose of article.
47–1580a. Allocation and apportionment.
47–1580b. Allocation of income and deductions between organizations, etc.

TITLE XI—BASES

47–1583. Basis for determining gain or loss.
47–1583a. (a) Computation of gain or loss.
(b) Amount realized.
47–1583b. Exchange in reorganizations.
47–1583c. Basis for dividends paid in property.
47–1583d. Exception to applicability of sections 47–1583 through 47–1583b.
47–1583e. Depreciation.

TITLE XII—ASSESSMENT AND COLLECTION; TIME OF PAYMENT

47–1586. Duties of Assessor.
47–1586a. Statements and special returns.
47–1586b. Examination of books and witnesses.
47–1586c. Return by Assessor.
47–1586d. Determination and assessment of deficiency.
47–1586e. Jeopardy assessment.
47–1586f. (a) Time of payment.
(b) Extension of time for payments.
(c) Voluntary advance payment.
47–1586g. Withholding of tax at source.
47–1586h. Tax a personal debt.
47–1586i. Period of limitation upon assessment and collection.
47–1586j. Refunds.
47–1586k. Closing agreements.
47–1586*l*. Compromises.
47–1586m. Definition of person.
47–1586n. Payment to Collector and receipts.

TITLE XIII—PENALTIES AND INTEREST

47–1589. Failure to file return.
47–1589a. (a) Interest on deficiencies.
(b) If extension granted for payment of deficiency.
47–1589b. Additions to tax in case of deficiency.
47–1589c. Additions to tax in case of nonpayment.
(a) Tax shown on return.
(b) Deficiency.
47–1589d. Time extended for payment of tax shown on return.
47–1589e. Penalties.

TITLE XIV—LICENSES

47–1591. Requirement.
47–1591a. Duration of license.
47–1591b. Licenses to be posted.
47–1591c. Repealed.
47–1591d. Revocation.
47–1591e. Renewal.
47–1591f. Penalty for failure to obtain license.

TITLE XV—APPEAL

47–1593. Appeal to the Board of Tax Appeals for the District of Columbia.
47–1593a. Election of remedy.

TITLE XVI—RULES AND REGULATIONS

47–1595. Commissioners to prescribe and publish rules.

§§ 47–1501 to 47–1547. Repealed July 16, 1947, 61 Stat. 331, ch. 258, Art. I, Title 1, § 1.

EXTENT OF REPEAL

Section 1 of Article I, Title I of the Act July 16, 1947, provided:

"SEC. 1. *Repeal of prior income tax act.*—The District of Columbia Income Tax Act as approved and enacted July

26, 1939, and as amended, is hereby repealed with respect to taxable years or portions thereof beginning on and after the 1st day of January 1947 for all purposes, except the following purposes in connection with taxes due or accrued under said District of Columbia Income Tax Act:

(a) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with any provisions of such Act and the regulations prescribed thereunder;

(b) For requiring the making, filing, and submission of returns and reports required by such Act;

(c) For the examination of all books, records, and other documents, and witnesses;

(d) For the assessment and collection of the taxes imposed by such Act, and the filing of liens therefor; and

(e) For the allowance of refunds of overpayments of any taxes assessed under the provisions of such Act."

NOTES TO DECISIONS PRIOR TO REPEAL

CAPITAL ASSETS

The Board of Tax Appeals did not consider certain phases of the case obviously for the reason that the District of Columbia statute does not levy a tax on gains from the sale or exchange of capital assets. Hence, the Board was not concerned with the taxability of the exchange in a reorganization. *Seaboard Realty* v. *District of Columbia* (C. A. D. C. 1950, 184 F. 2d 269).

INTENTION

For District of Columbia income tax purposes, a person in government employ here does not retain his former domicile unless he has a fixed and definite intent to return to it, since without any intent one way or the other, he is domiciled here if he is here. *Arbaugh* v. *District of Columbia* (C. A., D. C. 1949, 176 F. 2d 28, 85 U. S. App. D. C. 97).

INTERPRETATIONS UNDER FEDERAL LAW

The local statute requires that the District assessor apply as far as possible the administrative and judicial interpretations of the federal income tax law, so that computations of income for purposes of this title shall be, as nearly as possible, identical with the calculations required for federal income tax purposes. The District Board of Tax Appeals should first ascertain what the federal disposition of the basic question in this case was and then determine what effect should be given that determination in the specific matter of local taxes. *Seaboard Realty* v. *District of Columbia* (C. A. D. C. 1950, 184 F. 2d 269).

SALE OR EXCHANGE

Where a sum of money was paid by the lessors to the lessee who consented to cancel a lease that had some years to run, such transaction was not a sale or exchange of capital assets and gains therefrom were taxable, since a lease that is cancelled is not transferred but terminated and termination or destruction is not a sale or exchange. *United Cigar-Whalen Stores Corp.* v. *District of Columbia* (C. A. D. C. 1949, 176 F. 2d 952, 85 U. S. App. D. C. 301).

TRADE OR BUSINESS

The finding of the Board of Tax Appeals that houses, at and before the times of the sales, were held by petitioner primarily for sale to customers in the ordinary course of petitioner's "trade or business" was correct, since they were not capital assets within the meaning of the statute and proceeds therefrom were taxable as income. *Riggs Development Co.* v. *District of Columbia* (C. A., D. C. 1950, 184 F. 2d 698).

ARTICLE I.—INCOME AND FRANCHISE TAX

TITLE I.—REPEAL OF PRIOR INCOME TAX LAW AND APPLICABILITY OF THIS ARTICLE; GENERAL DEFINITIONS

§ 47–1551. Repeal of sections 47–1501 to 47–1547, and retention of certain provisions thereof.

Sections 47–1501 to 47–1547 are hereby repealed with respect to taxable years or portions thereof beginning on and after the 1st day of January 1947 for all purposes, except the following purposes in connection with taxes due or accrued under said sections:

(a) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with any provisions of such sections and the regulations prescribed thereunder;

(b) For requiring the making, filing, and submission of returns and reports required by such sections;

(c) For the examination of all books, records, and other documents, and witnesses;

(d) For the assessment and collection of the taxes imposed by such sections and the filing of liens therefor; and

(e) For the allowance of refunds of overpayments of any taxes assessed under the provisions of such sections. (July 16, 1947, 61 Stat. 331, ch. 258, Art. I, Title I, § 1.)

SEPARABILITY CLAUSE

Art. VII of Act July 16, 1947, cited to text, provided:

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to the other persons or circumstances, shall not be affected thereby.

§ 47–1551a. Applicability of this article.

The provisions of this Article shall apply to the taxable year or part thereof beginning on the 1st day of January 1947 and to succeeding taxable years. (July 16, 1947, 61 Stat. 331, ch. 258, Art. I, Title I, § 2.)

§ 47–1551b. Returns under sections 47–1501 to 47–1547 and returns for first taxable year to which this article is applicable.

If the taxable year of any person ends on the last day of any month other than December prior to the 1st day of January 1947, such person shall file his return for such taxable year under the provisions of sections 47–1501 to 47–1547, and pay the taxes imposed by said Act on his income for such taxable year at the times specified therefor in said sections. Such taxpayer shall also file his return of income, received or accrued, according to his method of accounting, during the period between the last day of such taxable year and the 1st day of January 1947 under the provisions of sections 47–1501 to 47–1547, and pay the taxes imposed by said Act on his income for such period at the times specified therefor in said sections. Such portion of such person's income as is received or accrued, according to his method of accounting, during taxable years or parts thereof to which this article is applicable shall be reported and taxed under the provisions of this article: *Provided, however,* That any person whose taxable year ends subsequent to the 1st day of January 1947 may irrevocably elect to file his return of his income for such entire taxable year and pay the taxes imposed thereon under the provisions of this article. (July 16, 1947, 61 Stat. 331, ch. 258, Art. I, Title I, § 3.)

§ 47–1551c. General definitions.

For the purposes of this article and wherever appearing herein, unless otherwise required by the context—

(a) The word "District" means the District of Columbia.

(b) The word "Commissioners" means the Commissioners of the District of Columbia or their duly authorized representative or representatives.

(c) The word "Assessor" means the Assessor of the District of Columbia or his duly authorized representative or representatives.

(d) The word "Collector" means the Collector of Taxes of the District of Columbia or his duly authorized representative or representatives.

(e) The word "person" means an individual (other than a fiduciary), a fiduciary, a partnership (other than an unincorporated business), an association, an unincorporated business, and a corporation.

(f) The word "individual" means all natural persons (other than fiduciaries), whether married or unmarried.

(g) The word "fiduciary" means a guardian, trustee, executor, committee, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any person.

(h) The words "trade or business" include the engaging in or carrying on of any trade, business, profession, vocation or calling or commercial activity in the District of Columbia; and include the performance of the functions of a public office: *Provided, however,* That the words "trade or business" shall not include, for the purposes of this article—

(1) Sales of tangible personal property whereby title to such property passes within or without the District, by a corporation or unincorporated business which does not physically have or maintain an office, warehouse, or other place of business in the District, and which has no officer, agent, or representative having an office or other place of business in the District, during the taxable year; or

(2) Sales of tangible personal property by a corporation or unincorporated business which does not maintain an office or other place of business in the District and which has no office, agent, or representative in the District except for the sole purpose of doing business with the United States, but such corporations and unincorporated businesses shall be subject to the licensing provisions in title XIV of this article.

For purposes of this proviso, the words "agent" or "representative" shall not include any independent broker engaged independently in regularly soliciting orders in the District for sellers and who holds himself out as such.

(i) The word "taxpayer" means any person required by this Article to pay a tax, file a return or report, or apply for a license.

(j) The words "fiscal year" mean an accounting period of twelve months ending on the last day of any month other than December.

(k) The words "taxable year" mean the calendar year or the fiscal year, upon the basis of which the net income of the taxpayer is computed under this Article; if no fiscal year has been established by the taxpayer, they mean the calendar year. The phrase "taxable year" includes, in the case of a return made for a fractional part of a calendar or fiscal year under the provisions of this Article or under regulations prescribed by the Commissioners, the period for which such return is made: *Provided, however,* That no taxpayer may change from a calendar year to a fiscal year or from a fiscal year to a calendar year within any taxable year without the written permission of the Assessor.

(*l*) The words "capital assets" mean any property, whether real or personal, tangible or intangible, held by the taxpayer for more than two years (whether or not connected with his trade or business), but do not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the end of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(m) The word "dividend" means any distribution made by a corporation (domestic or foreign) to its stockholders or members, out of its earnings, profits, or surplus (other than paid-in surplus), whenever earned by the corporation and whether made in cash or any other property (other than stock of the same class in the corporation if the recipient of such stock dividend has neither received nor exercised an option to receive such dividend in cash or in property other than stock instead of stock) and whether distributed prior to, during, upon, or after liquidation or dissolution of the corporation: *Provided, however,* That in the case of any dividend which is distributed other than in cash or stock in the same class in the corporation and not exempted from tax under this article, the basis of tax to the recipient thereof shall be the market value of such property at the time of such distribution: *And provided, however*, That the word "dividend" shall not include any dividend paid by a mutual life insurance company to its shareholders.

(n) The word "stock" includes a share in any association, joint-stock company, or insurance company.

(*o*) The word "shareholder" includes a member in an association, joint-stock company, or insurance company.

(p) The words "include", "includes", or "including", when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the word or words defined.

(q) The word "deficiency" as used in this Article with respect to any tax imposed by this article means—

(1) the amount or amounts by which the tax imposed by this article as determined by the Assessor exceeds the amount shown as the tax by the taxpayer upon his return; or

(2) the amount assessed as a tax by the Assessor if no return is filed by the taxpayer.

(r) The word "corporation" includes any trust, association, joint-stock company, or partnership which is classed or should be classed as a corporation for purposes of Federal income taxation.

(s) The word "resident" means every individual domiciled within the District on the last day of the taxable year, and every other individual who maintains a place of abode within the District for more

than seven months of the taxable year, whether domiciled in the District or not. The word "resident" shall not include any elective officer of the Government of the United States or any employee on the staff of an elected officer in the legislative branch of the Government of the United States if such employee is a bona fide resident of the State of residence of such elected officer, or any officer of the executive branch of such Government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, unless such officers are domiciled within the District on the last day of the taxable year.

(t) The word "nonresident" means every individual other than a resident.

(u) The term "dependent" means any of the following persons over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

(1) A son or daughter of the taxpayer, or a descendant of either.

(2) A stepson or stepdaughter of the taxpayer.

(3) A brother, sister, stepbrother, or stepsister of the taxpayer.

(4) The father or mother of the taxpayer, or an ancestor of either.

(5) A stepfather or stepmother of the taxpayer.

(6) A son or daughter of a brother or sister of the taxpayer.

(7) A brother or sister of the father or mother of the taxpayer.

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer.

(9) The spouse of the taxpayer, if living with the taxpayer on the last day of the taxable year.

The terms "brother" and "sister" include a brother or sister of the half-blood. For the purposes of determining whether any of the foregoing relationships exist, a legally adopted child of a person shall be considered a child of such person by blood. The term "dependent" does not include any individual who is a citizen or subject of a foreign country unless such individual is a resident of the United States or of a country contiguous to the United States. (July 16, 1947, 61 Stat. 332, Art. I, Title I, § 4; May 3, 1948, 62 Stat. 206, ch. 246, § 1; May 27, 1949, 63 Stat. 129, ch. 146, Title IV, §§ 401, 402.)

AMENDMENTS

The Act of May 3, 1948, cited to text, added the proviso in paragraph (h). Sec. 4 of said Act made such amendment applicable to the taxable year or part thereof beginning on the 1st day of January 1948, and to succeeding taxable years.

The Act of May 27, 1949, cited to text, amended the definition of "resident" contained in paragraph (s), and added subparagraph (9) to paragraph (u). Sec. 421 of said Act made such amendments applicable to taxable years beginning after the 31st day of December 1949.

TITLE II.—EXEMPT ORGANIZATIONS

§ 47–1554. Exempt organizations.

The following organizations shall be exempt from taxation under this Article:

(a) Labor organizations.

(b) Fraternal beneficiary societies, orders, or associations, (1) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (2) providing for the payment of life, sick, or accident benefits to the members of such society, order, or association, or their dependents.

(c) Cemetery companies owned and operated exclusively for the benefit of their members and which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private individual or shareholder.

(d) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, to a substantial extent within the District, no part of the net earnings of which inures to the benefit of any private individual or shareholder, and no part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

(e) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private individual or shareholder.

(f) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted principally to charitable, educational, or recreational purposes within the District.

(g) Banks, trust companies, building and loan associations, insurance companies, companies which guarantee the fidelity of any individual or individuals, such as bonding companies, and companies which furnish abstracts of title or which insure titles to real estate, all of which pay taxes on their gross earnings, premiums, or gross receipts under existing laws of the District.

(h) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this article.

(i) Corporations organized under Acts of Congress, if such corporations are instrumentalities of the United States and if, under such Acts, as amended and supplemented, such corporations are exempt from Federal income taxes.

(j) Voluntary employees' beneficiary associations providing for the payment of life, sick, or accident benefits to the members of such association or their dependents, if (1) no part of their net earnings inures (other than through such payments) to the benefit of any private individual or shareholder, and (2) 85 per centum or more of the income consists of

amounts collected from members for the sole purpose of making such payments and meeting expenses.

(k) Voluntary employees' beneficiary associations providing for the payment of life, sick, or accident benefits to the members of such association or their dependents or their designated beneficiaries, if (1) admission to membership in such association is limited to individuals who are officers or employees of the United States Government or the Government of the District of Columbia, and (2) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private individual or shareholder. (July 16, 1947, 61 Stat. 334, ch. 258, Art. I, Title II.)

Title III.—Net Income, Gross Income and Exclusions Therefrom, and Deductions

§ 47–1557. Net income.

For the purposes of this article and wherever appearing herein, unless otherwise required by the context, the words "net income" mean the gross income of a taxpayer less the deductions allowed by this article. (July 16, 1947, 61 Stat. 335, ch. 258, Art. I, Title III, § 1.)

§ 47–1557a. Gross income and exclusions therefrom.

(a) The words "gross income" include gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, including salaries, wages, and compensation paid by the United States to its officers and employees to the extent the same is not exempt under this article, or income derived from any trade or business or sales or dealings in property, whether real or personal, other than capital assets as defined in this article, growing out of the ownership, or sale of, or interest in, such property; also from rent, royalties, interest, dividends, securities, or transactions of any trade or business carried on for gain or profit, or gains or profits, and income derived from any source whatever.

(b) The words "gross income" shall not include the following:

(1) *Proceeds of life-insurance policies.*—The proceeds of life-insurance policies paid by reason of the death of the insured, whether in a single sum or otherwise (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income).

(2) *Annuities, and so forth.*—(A) Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life-insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year), then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this title in respect to such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life-insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under subsection (1) or this subsection. This subsection and subsection (1) shall not apply with respect to so much of a payment under a life-insurance, endowment, or annuity contract, or any interest therein as, under section 47–1557b (a) (10), is includible in the gross income of the recipient.

(B) *Employees' annuities.*—If an annuity contract is purchased by an employer for an employee under a plan with respect to which the employer's contribution is deductible under subsection 47–1557b (a) (11), the employee shall include in his income the amounts received under such contract for the year received except that if the employee paid any of the consideration for the annuity, the annuity shall be included in his income as provided in subsection 47–1557a (b) (2) (A), the consideration for such annuity being considered the amount contributed by the employee. In all other cases, if the employee's rights under the contract are nonforfeitable except for failure to pay future premiums, the amount contributed by the employer for such annuity contract on and after such rights become nonforfeitable shall be included in the income of the employee in the year in which the amount is contributed, which amount together with any amounts contributed by the employee shall constitute the consideration paid for the annuity contract in determining the amount of the annuity required to be included in the income of the employee under subsection 47–1557a (b) (2) (A).

(3) *Gifts, bequests, and devises.*—The value of property acquired by gift, devise, or inheritance (but the income from such property shall be included in gross income).

(4) *Tax-free interest.*—Interest upon (a) the obligations of a State, Territory of the United States, or any political subdivision thereof, or the District of Columbia; and (b) obligations of the United States, its agencies, or instrumentalities.

(5) *Compensation for injuries or sickness.*—Amounts received, through accident or health insurance or under workmen's compensation or employer's liability acts, or by way of damages for personal injuries, whether by suit or agreement.

(6) *In the case of ministers.*—The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation.

(7) *Income exempt under treaty.*—Income of any kind to the extent required by any treaty obligation of the United States.

(8) *Income of foreign governments.*

(9) *Payments made under laws relating to veterans.*—Payments of benefits made to or on account of a beneficiary under any of the laws relating to veterans.

(10) *Income from unincorporated business.*—In the case of any person entitled to a share in the net income of any unincorporated business subject to tax under the provisions of sections 47–1574 to 47–1574e, an amount equal to the proportionate share of such person in such part of such net income as is in excess of the exemption provided in section 47–1577c: *Provided, however,* That such part so excluded from the gross income of such person shall be reported by and taxed against the unincorporated business under the provisions of sections 47–1574 to 47–1574e.

(11) *Capital gains.*—Gains from the sale or exchange of any capital asset as defined in this article.

(12) *Personal services.*—If at least 80 per centum of the total compensation for personal services covering a period of thirty-six calendar months or more (from the beginning to the completion of such services) is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual.

(13) Income derived from the sale of tangible personal property to the United States by corporations and unincorporated businesses having their principal places of business located outside the District, which property is delivered from places outside the District for use outside the District: *Provided, however,* That the taxpayer shall furnish to the Assessor a statement in writing of the amount of gross sales so made and, if required by the Assessor, a list of the names of the agencies of the United States through which such property was sold.

(14) Dues and initiation fees in the case of any club organized and operated exclusively for pleasure and recreation, no part of the net earnings of which inures to the benefit of any private individual or shareholder. As used in this subsection, the word "dues" means only sums paid or incurred by members on a monthly, quarterly, annual, or other periodic basis for the privilege of being members of such club and any pro rata assessment made against the members as such; the word "dues" does not include any sums paid or incurred by members or their guests for food, beverages, or other tangible personal property purchased or for the use of the club's social, athletic, sporting, and other facilities; and the term "initiation fees" includes any payment, contribution, or loan, required as a condition precedent to membership, whether or not any such payment, contribution, or loan is evidenced by a certificate of interest or indebtedness.

(c) *Adjusted gross income.*—The words "adjusted gross income" as used in this article mean gross income less deductions allowed under section 47–1557b (a) of this title: *Provided, however,* That such deductions were directly incurred in carrying on a trade or business: *And provided further,* That in determining adjusted gross income, no deductions shall be allowed for charitable contributions, alimony payments, medical and dental expenses, an optional standard deduction, losses of property not connected with trade or business, or for an allowance for salaries or compensation for personal services of the person or persons liable for the tax. (July 16, 1947, 61 Stat. 335, Art. I, Title III, § 2; May 3, 1948, 62 Stat. 207, ch. 246, § 3; May 27, 1949, 63 Stat. 130, ch. 146, Title IV, §§ 403, 420.)

AMENDMENTS

The Act of May 3, 1948, cited to text, added paragraph (13). Section 4 of said Act made such amendment applicable to the taxable year or part thereof beginning on the 1st day of January 1948, and to succeeding taxable years.

The Act of May 27, 1949, cited to text, added subsections (b) (14) and (c). Section 421 of said Act made such amendments applicable to taxable years or portions thereof beginning after the 31st day of December 1948.

§ 47–1557b. (a) Deductions allowed.

The following deductions shall be allowed from gross income in computing net income:

(1) *Expenses.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business (except as otherwise provided herein), traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(2) *Interest.*—All interest paid or accrued, according to the taxpayer's method of accounting, within the taxable year.

(3) *Taxes.*—All taxes imposed upon the taxpayer and paid or accrued during the taxable year except—

(A) income taxes;

(B) franchise taxes imposed by this article;

(C) estate, inheritance, legacy, succession, and gift taxes;

(D) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(E) taxes paid to any State, Territory, county, or municipality on property, business, or occupation the income from which is not taxable under this article.

(4) *Losses.*—Losses sustained during the taxable year and not compensated for by insurance or otherwise—

(A) if incurred in a trade or business; or

(B) if incurred in any transaction entered into for the production or collection of income subject to tax under this article, or for the management, conservation, or maintenance of property held for the production of income subject to tax under this article, though not connected with any trade or business; or

(C) of property not connected with a trade or business; if such losses arise from fires, storms, shipwrecks, thefts, or other casualty: *Provided, however,* That no such loss shall be allowed as a deduction under this subsection if such loss is claimed as a deduction for inheritance- or estate-tax purposes: *And provided further,* That this subsection shall not be construed to permit the deduction of a loss of any capital asset as defined in this article.

(5) *Bad debts.*—Debts ascertained to be worthless and charged off within the taxable year or, in the discretion of the Assessor, a reasonable addition to a reserve for bad debts. When satisfied that a debt is recoverable only in part, the Assessor may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction. No debt which existed prior to January 1, 1939, shall be allowed as a deduction.

(6) *Insurance premiums.*—All fire-, tornado-, and casualty-insurance premiums paid during the taxable year in connection with property held for investment or used in a trade or business, the income from which is taxable under this article.

(7) *Depreciation.*—A reasonable allowance for exhaustion, wear, and tear of property used in the trade or business, including a reasonable allowance for obsolescence; and including in the case of natural resources allowances for depletion as permitted by reasonable rules and regulations which the Commissioners are hereby authorized to promulgate. The basis upon which such allowances are to be computed is the basis provided for in section 47–1583e.

(8) *Charitable contributions.*—Contributions or gifts, actually paid within the taxable year to or for the use of any religious, charitable, scientific, literary, military, or educational institution, the activities of which are carried on to a substantial extent in the District, and no part of the net income of which inures to the benefit of any private shareholder or individual: *Provided, however,* That such deductions shall be allowed only in an amount which in the aggregate of all such deductions does not exceed 15 per centum of the adjusted gross income.

(9) *Medical, dental, and so forth, expenses of individuals.*—Expenses in the case of residents, paid by the taxpayer during the taxable year, not compensated for by insurance or otherwise, for the medical care of the taxpayer, his spouse, or dependents as defined in this article. The term "medical care", as used in this subsection, shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of diseases, or for the purpose of effecting healthier function of the body (including amounts paid for accident or health insurance): *Provided, however,* That a taxpayer may deduct only such expenses as exceed 5 per centum of his adjusted gross income: *And provided further,* That the maximum deduction for the taxable year shall not exceed $1,250.

(10) *Alimony or separate maintenance.*—In the case of residents, amounts paid as alimony or separate maintenance pursuant to and under a decree or judgment of a court of record of competent jurisdiction to adjudge or decree that the taxpayer pay such alimony or separate maintenance: *Provided, however,* That all amounts allowed as a deduction under this subsection shall be reported and taxed as income of the recipient thereof if such recipient is a resident as defined in this article.

(11) *Contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.*—In the return of an employer, contributions made by such employer to an employees' trust or annuity plan and compensation under a deferred-payment plan to the extent that deductions for the same are allowed the taxpayer under the provisions of section 23 (p) of Title 26, U. S. Code.

(12) *Nontrade or nonbusiness expense.*—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income taxable under this article.

(13) In lieu of the foregoing deductions, any resident may irrevocably elect to deduct for the taxable year an optional standard deduction of 10 per centum of the net income or $500, whichever is lesser: *Provided, however,* That the option provided in this subsection shall not be permitted on any return filed for any period less than a full calendar or fiscal year.

(14) *Allocation of deductions.*—In the case of corporations and unincorporated businesses, the deductions provided for in this section shall be allowed only for and to the extent that they are connected with income arising from sources within the District within the meaning of sections 47–1580 to 47–1580b; and the proper apportionment and allocation of the deductions to be allowed shall be determined by the Assessor under formula or formulas provided for in section 47–1580a.

(15) *Reasonable allowance for salaries.*—A reasonable allowance for salaries or other compensation for personal services actually rendered: *Provided, however,* That in the case of an unincorporated business the aggregate deduction for services rendered by the individual owners or members actively engaged in the conduct of the unincorporated business shall in no event exceed 20 percentum of the net income of such business computed without benefit of this deduction: *Provided further,* That nothing herein contained shall be construed to exempt any salary or other compensation for personal services from taxation as a part of the taxable income of the person receiving the same.

(b) Deductions not allowed.—In computing net income, no deductions shall be allowed in any case for—

(1) Personal, living, or family expenses;

(2) Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; and

(4) Premiums paid on any life-insurance policy covering the life of any officer or employee or of any

person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under such policy.

(5) If the net income of an unincorporated business for the taxable year is in excess of the exemption provided in section 47–1574c, no deduction which is allowed or allowable under section 47–1557b (a) from the gross income of any unincorporated business subject to the tax imposed by sections 47–1574 to 47–1574e shall be allowed as deduction in the return and computation of the net income of any person entitled to share in the net income of such unincorporated business.

(6) *Capital losses.*—Losses from the sale or exchange of any capital asset as defined in this article. (July 16, 1947, 61 Stat. 337, ch. 258, Art. I, Title III, § 3; May 27, 1949, 63 Stat. 130, ch. 146, Title IV, §§ 404–409.)

AMENDMENTS

The Act of May 27, 1949, cited to text, amended subsections (a) (1), (a) (4) (C), (a) (8), (a) (9), (a) (13), and added subsection (a) (15). Section 421 of said Act made such amendments applicable to taxable years or portions thereof beginning after the 31st day of December 1948.

TITLE IV.—ACCOUNTING PERIODS, INSTALLMENT SALES, AND INVENTORIES

§ 47–1561. Accounting periods.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Assessor does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 47–1551c (j) or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. If the taxpayer makes a Federal income-tax return, his income shall be computed, for the purposes of this title, on the basis of the same calendar or fiscal year as in such Federal income-tax return, if the basis is accepted and approved by the Commissioner of Internal Revenue. (July 16, 1947, 61 Stat. 339, ch. 258, Art. I, Title IV, § 1.)

§ 47–1561a. Period in which items of gross income included.

The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer unless, under methods of accounting permitted under section 47–1561, any such amounts are to be properly accounted for as of a different period. In the case of death of a taxpayer on the cash basis, no amount will be accrued on his final return; and on the accrual basis, amounts (except amounts includible in computing a partner's net income) accrued only by reason of the death of the taxpayer shall not be included in computing net income for the period in which falls the date of the taxpayer's death, but such amounts shall be included in the income of the person receiving such amounts by inheritance or survivorship from the decedent. (July 16, 1947, 61 Stat. 339, ch. 258, Art. I, Title IV, § 2.)

§ 47–1561b. Period for which deductions and credits taken.

The deductions and credits provided for in this article shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed unless, in order to clearly reflect the income, the deductions or credits should be taken as of a different period. In the case of death of a taxpayer on the cash basis, no amount will be allowed as a deduction which was accrued up to the date of the taxpayer's death; and on the accrual basis, no amount (except amounts includible in computing a partner's net income) accrued only by reason of the death of the taxpayer shall be included in computing net income for the period in which falls the date of the taxpayer's death but such amounts shall be deductible by the estate or other person who paid them or is liable for their payment. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I, Title IV, § 3.)

§ 47–1561c. Installment sales.

If a person reports any portion of his income from installment sales for Federal income-tax purposes under section 44 of the Federal Internal Revenue Code, and as the same may hereafter be amended and if such income is subject to tax under this article, he may report such income under this article in the same manner and upon the same basis as the same was reported by him for Federal income-tax purposes, if such method of reporting is accepted and approved by the Commissioner of Internal Revenue. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I, Title IV, § 4; May 27, 1949, 63 Stat. 131, ch. 146, Title IV, § 410.

AMENDMENT

The Act of May 27, 1949, cited to text, substituted the words "the Federal Internal Revenue Code" in place of the words "Title 26, U. S. Code". Section 421 of said Act made such amendment applicable to taxable years or portions thereof beginning after the 31st day of December 1948.

§ 47–1561d. Inventories.

Whenever in the opinion of the Assessor the use of inventories is necessary in order to properly determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Assessor may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I, Title IV, § 5.)

§ 47–1561e. Assessor may reject method of accounting employed by taxpayer.

Notwithstanding any other provisions of this article, the Assessor is hereby authorized to reject any

return of income reported on a cash basis where, in his opinion, the net income of the taxpayer is not properly reflected and cannot be determined on such basis, and to require the return to be filed on such a basis as in his opinion will properly reflect the net income of the taxpayer. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I, Title IV, § 6.)

Title V.—Returns

§ 47–1564. (a) Form of returns.

The Assessor is hereby authorized and directed to prescribe the forms of returns. All returns required under this title shall be filed on the forms and in the manner prescribed by the Assessor.

(b) Taxpayer to make return whether form is sent or not.—Blank forms of returns of income shall be supplied by the Assessor. It shall be the duty of the Assessor to obtain an income-tax return from every taxpayer who is liable under this article to file such return; but this duty shall in no manner diminish the obligation of the taxpayer to file a return without being called upon to do so.

(c) Information returns.—Every person subject to the jurisdiction of the District in whatever capacity acting, including receivers or mortgagors of real or personal property, fiduciaries, partnerships, and employers making payment of dividends, interest, rent, premiums, annuities, compensations, remunerations, emoluments, or other income to any person subject to tax under this article, shall render such returns thereof to the Assessor as he may by rule prescribe. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I, Title V, § 1.)

§ 47–1564a. Requirement—Who must file.

Each of the following persons shall file a return with the Assessor stating specifically the items of his gross income and the items claimed as deductions and credits allowed under this article, and such other information for the purpose of carrying out the provisions of this article as the Assessor may require:

(a) *Residents and nonresidents.*—Every nonresident of the District receiving income subject to tax under this article and every resident of the District, except fiduciaries, when—

(1) his gross income for the taxable year exceeds $4,000; or

(2) his gross sales or gross receipts from any trade or business, other than an unincorporated business subject to tax under sections 47–1574 to 47–1574e, exceeds $4,000, regardless of the amount of his gross income; or

(3) the combined gross income for the taxable year of husband and wife living together exceeds $4,000 and each spouse has a gross income in excess of $500, or the gross sales or gross receipts received or accrued by such husband and wife from any trade or business, other than an unincorporated business subject to tax under sections 47–1574 to 47–1574e, in the aggregate exceeds $4,000. In such cases a separate return shall be filed by each spouse showing his respective portion of such gross income, gross sales, or gross receipts as the case may be, and no joint return of income or computation thereof by them shall be required or permitted under this article except such returns as are required under subsections (c), (f) and (g) of section 47–1564a.

(b) *Fiduciaries.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) for—

(1) every individual for whom he acts having a gross income for the taxable year of $4,000 or over, regardless of the amount of the individual's net income;

(2) every estate for which he acts, the gross income of which for the taxable year is $4,000 or over, regardless of the amount of the net income of the estate; and

(3) every trust for which he acts, the net income of which for the taxable year is $100 or over.

(c) *Joint fiduciaries.*—A return by one of two or more joint fiduciaries filed with the Assessor shall be sufficient compliance with the provisions of section 47–1564a (b).

(d) If any resident or nonresident or any fiduciary is unable to make his own return, the return shall be made by his duly authorized agent.

(e) (1) *Corporations.*—Every corporation engaging in or carrying on any trade or business within the District or receiving income from sources within the District within the meaning of sections 47–1580 to 47–1580b. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or are engaged in or carrying on the trade or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns.

(2) Affiliated corporations shall file separate returns unless permitted by the Assessor to file consolidated returns.

(f) *Unincorporated businesses.*—Every unincorporated business engaging in or carrying on any trade or business within the District or receiving income from sources within the District within the meaning of sections 47–1580 to 47–1580b having a gross income of more than $10,000, regardless of whether or not it has a net income. Such returns shall be made by the taxpayer or taxpayers liable for the payment of the tax.

(g) *Partnerships.*—Every partnership, other than partnerships subject to the taxes imposed by sections 47–1574 to 47–1574e on unincorporated businesses, engaged in any trade or business, or receiving income from sources within the District. There shall be included in such return the names and addresses of the individuals who would be entitled to share in the net income of the partnership, if distributed, and the amount of distributive share of each individual. (July 16, 1947, 61 Stat. 341, ch. 258, Art. I, Title V, § 2; May 27, 1949, 63 Stat. 131, ch. 146, Title IV, § 411.)

Amendment

The Act of May 27, 1949, cited to text, amended subsections (a) and (b). Section 421 of said Act made such amendment applicable to taxable years beginning after the 31st day of December 1949.

§ 47–1564b. (a) Time and place for filing returns.

All returns of income for the preceding taxable year required to be filed under the provisions

of section 47–1564 shall be filed with the Assessor on or before the 15th day of April in each year, except that such returns, if made on the basis of a fiscal year, shall be filed on or before the fifteenth day of the fourth month following the close of such fiscal year.

(b) Extension of time for filing returns.—The Assessor may grant a reasonable extension of time for filing the returns required by section 47–1564a whenever in his judgment good cause exists therefor, and he shall keep a record of every such extension. Except in case of a taxpayer who is not within the continental limits of the United States, no such extension shall be granted for more than six months, and in no case shall such extension be granted for more than one year. (July 16, 1947, 61 Stat. 342, ch. 258, Art. I, Title V, § 3.)

§ 47–1564c. (a) Secrecy of returns.

Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the amount of income or any particulars relating thereto or the computation thereof set forth or disclosed in any return required to be filed under section 47–1564, and neither the original nor a copy of any such return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of such litigation, whether or not the request is contained in an order of the court: *Provided, however,* That nothing herein contained shall be construed to prevent the furnishing to a taxpayer of a copy of his return upon the payment of a fee of $2.

(b) Reciprocal exchange of information with the United States and the several States.—Notwithstanding the provisions of this section, the Assessor may permit the proper officer of the United States or of any State imposing an income tax or his authorized representative to inspect income-tax returns filed with the Assessor or may furnish to such officer or representative a copy of any such income-tax returns provided the United States or such State grant substantially similar privileges to the Assessor or his representative or to the proper officer of the District charged with the administration of this title. The Bureau of Internal Revenue of the Treasury Department of the United States is authorized and required to supply such information as may be requested by the Assessor or Collector relative to any person subject to the taxes imposed by this article.

(c) Publication of statistics.—Nothing contained in section 47–1564c (a) shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items thereof, or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with any relevant information which in the opinion of the Assessor may assist in the collection of such delinquent taxes.

(d) Information which may be disclosed.—Nothing contained in section 47–1564c (a) shall be construed to prohibit the Assessor, in his discretion, from divulging or making known any information contained in, or relating to, any report, application, license, or return required under the provisions of this article other than such information as may be contained therein relating to the amount of income or any particulars relating thereto or the computation thereof.

(e) Penalties for violation of this section.—Any violation of the provisions of this section shall be a misdemeanor and shall be punishable by a fine not exceeding $1,000 or imprisonment for six months, or both, in the discretion of the court. All prosecutions under this section shall be brought in the Municipal Court of the District of Columbia on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

(f) Preservation of returns.—All reports, applications, and returns received by the Assessor under the provisions of this article shall be preserved for six years, and thereafter until the Assessor orders them to be destroyed. (July 16, 1947, 61 Stat. 342, ch. 258, Art. I, Title V, § 4.)

Title VI.—Tax on Residents and Nonresidents

§ 47–1567. Definitions.

For the purposes of this article, and unless otherwise required by the context, the words "taxable income" mean the entire net income of every resident, in excess of the personal exemptions and credits for dependents allowed by section 47–1567a and that portion of the entire net income of every nonresident which is subject to tax under sections 47–1574 to 47–1574e. (July 16, 1947, 61 Stat. 343, ch. 258, Art. I, Title VI, § 1.)

§ 47–1567a. Personal exemptions and credit for dependents.

There shall be allowed to residents the following credits against net income:

(a) An exemption of $4,000 for the taxpayer.

(b) An exemption of $500 for each dependent, as defined in this article, whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $500.

(c) Beginning with the first taxable year to which this article is applicable and in succeeding taxable years, the amount allowed under subsection (a) of this section shall be prorated to the day of death in the final return of a decedent dying before the end of the taxable year, and as of the date of death the personal exemption is terminated and not extended over the remainder of the taxable year.

(d) In the case of a return made for a fractional part of a year, the personal exemption and credits for dependents shall be reduced, respectively, to amounts which bear the same ratio to the full credits provided as the number of months in the period for which the return is made bears to twelve months. (July 16, 1947, 61 Stat. 343, ch. 258, Art. I, Title VI, § 2; May 27, 1949, 63 Stat. 132, ch. 146, Title IV, § 412.)

AMENDMENT

The Act of May 27, 1949, cited to text, amended the section generally. Section 421 of said Act made such amendment applicable to taxable years beginning after the 31st day of December 1949.

§ 47–1567b. Imposition and rates of tax.

There is hereby annually levied and imposed for each taxable year upon the taxable income of every resident a tax at the following rates:

One and one-half per centum on the first $5,000 of taxable income.

Two per centum on the next $5,000 of taxable income.

Two and one-half per centum on the next $5,000 of taxable income.

Three per centum on the taxable income in excess of $15,000. (July 16, 1947, 61 Stat. 344, ch. 258, Art. I, Title VI, § 3; May 27, 1949, 63 Stat. 132, ch. 146, Title IV, § 413.)

AMENDMENT

The Act of May 27, 1949, cited to text, amended the section generally. Section 421 of said Act made such amendment applicable to taxable years beginning after the 31st day of December 1949.

§ 47–1567c. Repealed May 27, 1949, 63 Stat. 132, ch. 146, Title IV, § 414.

EXTENT OF REPEAL

Section 414 of Title IV of the Act of May 27, 1949, repealed the entire section, which related to optional method of computation, and section 421 of said Act made such repeal applicable to taxable years beginning after the 31st day of December 1949.

§ 47–1567d. Credit against tax allowed residents.

The amount of tax payable under this title by an individual who, although a resident of the District of Columbia as defined in this article, was nevertheless a bona fide domiciliary of any State or Territory of the United States or political subdivision thereof during the taxable year shall be reduced by the amount required to be paid by such individual as income or intangible personal property taxes, or both, for such taxable year to the State, Territory, or political subdivision thereof of which he was a domiciliary. The Assessor may require proof, satisfactory to him, of the payment of such income or intangible personal property taxes: *Provided, however,* That the credit provided for by this section shall not be allowed against any tax imposed under sections 47–1574 to 47–1574e. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, Title VI, § 5.)

TITLE VII.—TAX ON CORPORATIONS

§ 47–1571. Taxable income defined.

For the purposes of this title, and unless otherwise required by the context, the words "taxable income" mean the amount of net income derived from sources within the District within the meaning of sections 47–1580 to 47–1580b. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, Title VII, § 1.)

§ 47–1571a. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied for each taxable year a tax at the rate of 5 per centum upon the taxable income of every corporation, whether domestic or foreign (except those expressly exempt under section 47–1554). (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, Title VII, § 2.)

TITLE VIII.—TAX ON UNINCORPORATED BUSINESSES

§ 47–1574. Definition of unincorporated business.

For the purposes of this article (not alone of this title) and unless otherwise required by the context, the words "unincorporated business" mean any trade or business, conducted or engaged in by any individual, whether resident or nonresident, statutory or common-law trust, estate, partnership, or limited or special partnership, society, association, executor, administrator, receiver, trustee, liquidator, conservator, committee assignee, or by any other entity or fiduciary, other than a trade or business conducted or engaged in by any corporation; and include any trade or business which if conducted or engaged in by a corporation would be taxable under sections 47–1571 to 47–1571a. The words "unincorporated business" do not include any trade or business which by law, customs, or ethics cannot be incorporated or any trade or business in which more than 80 per centum of the gross income is derived from the personal services actually rendered by the individual or members of the partnership or other entity in the conducting or carrying on of any trade or business and in which capital is not a material income-producing factor. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, Title VIII, § 1.)

NOTES TO DECISIONS

STOCK BROKERAGE BUSINESS

Stock brokerage is little different from any business whose activities are essentially those of agents for purchase and sale and such business would find neither the general corporation statute of the District, specific statutes, nor a body of case law erecting a barrier against incorporation. Consequently, it is not exempt from an unincorporated business tax. *Hendrick* v. *District of Columbia* (C. A., D. C. 1950, 183 F. 2d 1002).

§ 47–1574a. Taxable income defined.

For the purposes of this title, and unless otherwise required by the context, the words "taxable income" mean the amount of net income derived from sources within the District within the meaning of sections 47–1580 to 47–1580b in excess of the exemption granted by section 47–1574c. (July 16, 1947, 61 Stat. 346, Art. I, Title VIII, § 2.)

§ 47–1574b. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied for each taxable year a tax at the rate of 5 per centum upon the taxable income of every unincorporated business, whether domestic or foreign (except those expressly exempt under section 47–1554). (July 16, 1947, 61 Stat. 346, Art. I, Title VIII, § 3.)

§ 47–1574c. Exemption.

Before computing the tax upon the taxable income of an unincorporated business, there shall be

deducted therefrom an exemption of $5,000, except that where the period covered by a return is less than a year, or where a return shows that an unincorporated business has been carried on for less than twelve months, such exemption shall be prorated on a daily basis: *Provided, however,* That any amount exempted under this section from the tax imposed by section 47–1574b shall be reported and included in the gross income of that person or those persons entitled to a share therein in proportion to the share to which each person is entitled, and shall be reported in the return of each of such persons for his taxable year in which is ended the taxable year of the unincorporated business. (July 16, 1947, 61 Stat. 346, Art. I, Title VIII, § 4; May 27, 1949, 63 Stat. 132, ch. 146, Title IV, § 416.)

AMENDMENT

The Act of May 27, 1949, cited to text, deleted the figure "$10,000" and inserted in lieu thereof the figure "$5,000". Section 421 of said act made such amendment applicable to taxable years or portions thereof beginning after the 31st day of December 1948.

§ 47–1574d. By whom payable.

The taxes imposed by section 47–1574b shall be payable by the person or persons, jointly and severally, conducting the unincorporated business. The taxes imposed under this title may be assessed in the name of the unincorporated business or in the name or names of the person or persons liable for the payment of such taxes, or both. (July 16, 1947, 61 Stat. 346, ch. 258, Art. I, Title VIII, § 5.)

§ 47–1574e. Partners only taxable.

Individuals carrying on any trade or business in partnership in the District, other than an unincorporated business, shall be liable for income tax only in their individual capacities. The tax on all such income shall be assessed against the individual partners under sections 47–1567 to 47–1567d. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year; or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the taxable year upon the basis of which the partner's net income is computed. (July 16, 1947, 61 Stat. 346, ch. 258, Art. I, Title VIII, § 6.)

TITLE IX.—TAX ON ESTATES AND TRUSTS

§ 47–1577. Resident and nonresident estates and trusts defined.

For the purposes of this title, estates and trusts are (a) resident estates or trusts, or (b) nonresident estates or trusts. If the decedent was at the time of his death domiciled within the District, his estate is a resident estate, and any trust created by his will is a resident trust. If the decedent was not at the time of his death domiciled within the District, his estate is a nonresident estate, and any trust created by his will is a nonresident trust. If the creator of a trust was at the time the trust was created domiciled within the District, or if the trust consists of property of a person domiciled within the District, the trust is a resident trust. If the creator of the trust was not at the time the trust was created domiciled within the District, the trust is a nonresident trust. If the trust resulted from the dissolution of a corporation organized under the laws of the District of Columbia the trust is a resident trust. If the trust resulted from the dissolution of a foreign corporation, the trust is a nonresident trust. (July 16, 1947, 61 Stat. 346, ch. 258, Art. I, Title IX, § 1.)

§ 47–1577a. Residence or situs of fiduciary not to control.

The residence or situs of the fiduciary shall not control the classification of estates and trusts as resident or nonresident under the provisions of section 47–1577. (July 16, 1947, 61 Stat. 347, ch. 258, Art. I, Title IX, § 2.)

§ 47–1577b. Imposition of tax.

The taxes imposed by sections 47–1567 to 47–1567d upon residents shall apply to the income of resident estates, and income from any kind of property held in resident trusts, including—

(a) income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(b) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of any infant or incompetent person which is to be held or distributed as the court may direct;

(c) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(d) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated. (July 16, 1947, 61 Stat. 347, ch. 258, Art. I, Title IX, § 3.)

§ 47–1577c. Computation of the tax.

The tax shall be computed upon the taxable net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 47–1577f (relating to revocable trusts) and section 47–1577g (relating to income for benefit of the grantor). (July 16, 1947, 61 Stat. 347, ch. 258, Art. I, Title IX, § 4.)

§ 47–1577d. Net income.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except as to the personal exemptions and credits for dependents, and except that—

(a) there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the

amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (b) of this section in the same or any succeeding taxable year;

(b) in the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary;

(c) there shall be allowed as a deduction (in lieu of the deductions for charitable contributions authorized by section 47–1557b (a) (8)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating a trust, is during the taxable year paid or permanently set aside for the purposes and in the manner provided in section 47–1557b (a) (8), or is to be used exclusively for the purposes enumerated in section 47–1557b (a) (8);

(d) there shall be allowed to an estate the same exemption as is allowed residents under the provisions of section 47–1567a (a);

(e) there shall be allowed to a trust a credit against net income of $100. (July 16, 1947, 61 Stat. 347, ch. 258, Art. I, Title IX, § 5; May 27, 1949, 63 Stat. 132, ch. 146, Title IV, § 415.)

AMENDMENT

The Act of May 27, 1949, cited to text, added subsections (d) and (e). Section 421 of said Act made such amendment applicable to taxable years or portions thereof beginning after the 31st day of December 1948.

§ 47–1577e. Different taxable year.

If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under section 47–1577d (a), to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust ending within his taxable year. (July 16, 1947, 61 Stat. 348, ch. 258, Art. I, Title IX, § 6.)

§ 47–1577f. Revocable trusts.

The income of a trust shall be included in computing the net income of the grantor of such trust where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(a) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom; or

(b) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom. (July 16, 1947, 61 Stat. 348, ch. 258, Art. I, Title IX, § 7.)

§ 47–1577g. Income for benefit of grantor.

So much of the income of any trust shall be included in computing the net income of the grantor as—

(a) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(b) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(c) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 47–1557b (a) (8), relating to the so-called "charitable contribution" deduction). (July 16, 1947, 61 Stat. 348, ch. 258, Art. I, Title IX, § 8.)

§ 47–1577h. Definition of "In discretion of grantor."

As used in this title, the term "in the discretion of the grantor" means in the discretion of the grantor either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question. (July 16, 1947, 61 Stat. 348, ch. 258, Art. I, Title IX, § 9.)

§ 47–1577i. Employees' trusts—(a) Exemption from tax.

A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall not be taxable under this article and no other provision of this article shall apply with respect to such trust or to its beneficiary, except as hereinafter in this section expressly provided, if such trust meets the requirements for exemption from Federal income tax under section 165 of Title 26, U. S. Code.

(b) Taxability of beneficiary.—The amount actually distributed or made available to any distributee by any such trust shall be taxable to him, in the year in which so distributed or made available, under section 47–1557a (b) (2) as if it were an annuity the consideration for which is the amount contributed by the employee.

(c) Treatment of beneficiary of trust not exempt under subsection (a).—Contribution to a trust made by an employer during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt under subsection (a) of this section shall be included in the gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made. (July 16, 1947, 61 Stat. 348, ch. 258, Art. I, Title IX, § 10.)

TITLE X.—PURPOSE OF ARTICLE AND ALLOCATION AND APPORTIONMENT

§ 47–1580. Purpose of article.

It is the purpose of this article to impose (1) an income tax upon the entire net income of every resident and every resident estate and trust, and (2) a franchise tax upon every corporation and unincorporated business for the privilege of carrying on or engaging in any trade or business within the District and of receiving such other income as is derived from sources within the District: *Provided, however,* That, in the case of any corporation, the amount received as dividends from a corporation which is subject to taxation under this article, and, in the case of a corporation not engaged in carrying on any trade or business within the District, interest received by it from a corporation which is subject to taxation under this article shall not be considered as income from sources within the District for the purposes of this article. The measure of the franchise tax shall be that portion of the net income of the corporation and unincorporated business as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District; *Provided further,* That income derived from the sale of tangible personal property by a corporation or unincorporated business not carrying on or engaging in trade or business within the District as defined in sections 47–1551 to 47–1551c shall not be considered as income from sources within the District for purposes of this article, with the exception of income from sales to the United States not excluded from gross income as provided in section 47–1557a (b) (13). (July 16, 1947, 61 Stat. 349, ch. 258, Art. I, Title X, § 1; May 3, 1948, 62 Stat. 207, ch. 246, § 2.)

AMENDMENTS

The Act of May 3, 1948, cited to text, added the second proviso. Section 5 of said Act made such amendment applicable to the taxable year or part thereof beginning on the 1st day of January 1948, and to succeeding taxable years.

§ 47–1580a. Allocation and apportionment.

The entire net income of any corporation or unincorporated business, derived from any trade or business carried on or engaged in wholly within the District shall, for the purposes of this article, be deemed to be from sources within the District, and shall, along with other income from sources within the District, be allocated to the District. If the trade or business of any corporation or unincorporated business is carried on or engaged in both within and without the District, the net income derived therefrom shall, for the purposes of this article, be deemed to be income from sources within and without the District. Where the net income of a corporation or unincorporated business is derived from sources both within and without the District, the portion thereof subject to tax under this article shall be determined under regulation or regulations prescribed by the Commissioners. The Assessor is authorized to employ any formula or formulas provided in any regulation or regulations prescribed by the Commissioners under this article which, in his opinion, should be applied in order to properly determine the net income of any corporation or unincorporated business subject to tax under this article. (July 16, 1947, 61 Stat. 349, ch. 258, Art. I, Title X, § 2.)

§ 47–1580b. Allocation of income and deductions between organizations, and so forth.

In any of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the District, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Assessor is authorized to distribute, apportion, or allocate gross income or deductions between or among such organizations, trades, or businesses, whenever in his opinion such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. The provisions of this section shall apply, but shall not be limited in application to any case of a common carrier by railroad subject to the Interstate Commerce Act and jointly owned or controlled directly or indirectly by two or more common carriers by railroad subject to said Act. (July 16, 1947, 61 Stat. 349, ch. 258, Art. I, Title X, § 3.)

TITLE XI.—BASES

§ 47–1583. Basis for determining gain or loss.

The basis for determining the gain or loss from the sale, exchange, or other disposition of property shall be the cost of such property, except that—

(a) If the property is of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, the basis shall be the last inventory value thereof.

(b) In respect of any real or tangible property acquired after December 31, 1938, the cost thereof shall be adjusted as follows:

(1) By adding to its original cost to the taxpayer the amount of all expenditures connected therewith, including real-estate taxes upon the property, which were properly chargeable to capital account and were not deducted in any income-tax return which the taxpayer was required to file under the provisions of this article or sections 47–1501 to 47–1547; but such additions as are herein provided for shall include only those expenditures made by the taxpayer between the time the property was acquired by him and the date of sale or other disposition of the property.

(2) By deducting from such cost the full loss sustained since acquisition for exhaustion, wear and tear, obsolescence, amortization, and depletion to the extent allowed or allowable (whichever amount is the greater) on such property in all returns required to be filed by the taxpayer under the provisions of this article or of sections 47–1501 to 47–1547.

(3) In the case of property (including intangible personal property) acquired by gift or inheritance, where the transfer thereof to the taxpayer was subject to tax by the United States or by any jurisdiction in which the property had a taxable situs at that

time, the basis of the property so acquired shall be the highest valuation then placed upon such transfer by the United States or by any authorized taxing State or Territory thereof. If such transfer of the property was not subject to the aforesaid transfer tax, the base shall be the fair market value of such property at the time acquired. For the purpose of this subsection, the time such inherited property was acquired shall be the date of death of the decedent. The basis herein provided for shall be subject to the appropriate adjustment or adjustments defined in section 47–1583 (b).

(c) If the property was acquired before January 1, 1939, the basis shall be the fair market value as of that date or, at the option of the taxpayer, the cost of such property, and in the case of real or tangible property such cost shall be diminished by exhaustion, wear and tear, obsolescence, and depletion actually sustained before such date: *Provided, however,* That the preceding valuation so determined shall be adjusted by the appropriate additions and deductions provided for in section 47–1583 (b) to cover the period from January 1, 1939, to the date of sale or other disposition of the property. (July 16, 1947, 61 Stat. 350, ch. 258, Art. I, Title XI, § 1.)

§ 47–1583a. (a) Computation of gain or loss.

The gain or loss, as the case may be, from the sale or other disposition of property shall be the difference between (a) the amount realized from such sale or other disposition of the property and (b) the basis as defined in section 47–1583.

(b) Amount realized.—The amount realized from the sale or exchange of property shall be its selling price, and such price shall include cash payments received or to be received subsequently therefor, plus the sum of any mortgage and other encumbrances thereon at the time of such sale or exchange. The amount realized shall also include at its then market value any property received in part or in full settlement of the property sold or exchanged, adjusted to include the then existing encumbrances on such property received in exchange. (July 16, 1947, 61 Stat. 350, ch. 258, Art. I, Title XI, § 2.)

§ 47–1583b. Exchange in reorganizations.

When in connection with the reorganization of a corporation, a taxpayer receives, in place of stock or securities owned by him, any stock or securities of the reorganized corporation, no gain or loss shall be deemed to occur from the exchange until the new stock or securities are sold or realized upon and the gain or loss is definitely ascertained, until which time the new stock or securities received shall be treated as taking the place of the stock and securities exchanged. For the purposes of this section, the word "reorganization" means (1) a statutory merger or consolidation; or (2) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of another corporation; or (3) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of substantially all the properties of another corporation, but in determining whether the exchange is solely for voting stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded; or (4) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its shareholders or both are in control of the corporation to which the assets are transferred; or (5) a recapitalization; or (6) a mere change in identity, form, or place of organization, however effected. (July 16, 1947, 61 Stat. 351, ch. 258, Art. I, Title XI, § 3.)

§ 47–1583c. Basis for dividends paid in property.

Where any property other than money is paid by a corporation as a dividend, the base to the recipient thereof shall be the market value of such property at the time of its distribution by such corporation. (July 16, 1947, 61 Stat. 351, ch. 258, Art. I, Title XI, § 4.)

§ 47–1583d. Exception to applicability of sections 47–1583 through 47–1583b.

The provisions of sections 47–1583 through 47–1583b shall not apply to the sale or exchange of any property defined as a capital asset by section 47–1551c (1). (July 16, 1947, 61 Stat. 351, ch. 258, Art. I, Title XI, § 5.)

§ 47–1583e. Depreciation.

The bases used in determining the amount allowable as a deduction from gross income under the provisions of section 47–1557b (a) (7) shall be—

(a) where the property was acquired after December 31, 1938, by purchase, the basis shall be the cost thereof to the taxpayer;

(b) where the property was received in exchange for other property after December 31, 1938, the basis shall be the market value thereof at the time of such exchange;

(c) where the property was inherited or acquired by gift after December 31, 1938, the basis shall be that defined in subsection 47–1583 (b) (3);

(d) if the property was acquired prior to January 1, 1939, the appropriate basis set forth in subsection (a), (b), or (c) of this section shall be used: *Provided, however,* That the taxpayer may, at his option, use as the basis the market value of such property as of January 1, 1939;

(e) the taxpayer may deduct in each taxable year only such amount of depreciation as was actually sustained during that year and such annual deduction shall be based upon the useful life of the property remaining after the date used by the taxpayer in establishing the valuation: *Provided, however,* That the allowance for depreciation actually sustained during any taxable year may not be increased by any depreciation of the property which was allowable as a deduction in any earlier taxable year: *And provided further,* That any basis so established may not be changed in a subsequent taxable year, unless written approval of the Assessor has been first obtained. (July 16, 1947, 61 Stat. 351, ch. 258, Art. I, Title XI, § 6.)

TITLE XII.—ASSESSMENT AND COLLECTION; TIME OF PAYMENT

§ 47–1586. Duties of Assessor.

The Assessor is hereby required to administer the provisions of this article. As soon as practicable after the return is filed, the Assessor shall examine it and shall determine the correct amount of tax. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, Title XII. § 1.)

§ 47–1586a. Statements and special returns.

Every person upon whom the duty is imposed by this article to file any applications, returns, or reports or who is liable for any tax imposed by this article shall keep such records, render under oath such statements, and comply with such rules and regulations as the Assessor from time to time may prescribe. Whenever the Assessor deems it necessary, he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as he believes sufsary, he may require any person, by notice served tax under this article and the extent of such liability. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, Title XII, § 2.)

§ 47–1586b. Examination of books and witnesses.

The Assessor, for the purpose of ascertaining the correctness of any return filed hereunder, or for the purpose of making an estimate of the taxable income of any taxpayer, is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return, and to give testimony or answer interrogatories under oath respecting the same, and the Assessor shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then, and in that event, the Assessor may report that fact to the District Court of the United States for the District of Columbia, or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the Assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the Assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than $300. All prosecutions under this section shall be brought in the Municipal Court of the District of Columbia on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, Title XII, § 3.)

§ 47–1586c. Return by Assessor.

If any person fails to make and file a return at the time prescribed by law or by regulations made under authority of law, or makes, willfully or otherwise, a false or fraudulent return, the Assessor shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return so made and subscribed by the Assessor shall be prima facie good and sufficient for all legal purposes. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, Title XII, § 4.)

§ 47–1586d. Determination and assessment of deficiency.

If a deficiency in tax is determined by the Assessor, the taxpayer shall be notified thereof and given a period of not less than thirty days, after such notice is sent by registered mail, in which to file a protest and show cause or reason why the deficiency should not be paid. Opportunity for hearing shall be granted by the Assessor, and a final decision thereon shall be made as quickly as practicable. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, Title XII, § 5.)

§ 47–1586e. Jeopardy assessment.

(a) *Authority for making.*—If the Assessor believes that the collection of any tax imposed by this article will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties, the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful.

(b) *Bond to stay collection.*—The collection of the whole or any part of the amount of such assessment may be stayed by filing with the Collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties as the Collector deems necessary, conditioned upon the payment of the amount the collection of which is stayed, at the time at which, but for this section, such amount would be due. (July 16, 1947, 61 Stat. 353, ch. 258, Art. I, Title XII, § 6.)

§ 47–1586f. (a) Time of payment.

One-half of the total amount of the tax due as shown on the taxpayer's return shall be paid to the Collector on the 15th day of April following the close of the calendar year and the remaining one-half of such tax shall be paid to the Collector on the 15th day of October following the close of the calendar year, or, if the return be made on the basis of a fiscal year, then one-half of the total amount of such tax shall be paid on the 15th day of the fourth month following the close of the fiscal year and the remaining one-half of such tax shall be paid on the 15th

day of the tenth month following the close of the fiscal year. Any deficiency in tax determined by the Assessor under the provisions of section 5 of this title shall be due and payable within ten days from the date of the assessment.

(b) Extension of time for payments.—At the request of the taxpayer the Assessor may extend the time for payment by the taxpayer of the amount determined as the tax for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof: *Provided, however,* That where the time for filing a return is extended for a period exceeding six months under the provisions of section 47–1564b (b), the Assessor may extend the time for payment of the tax, or the first installment thereof, to the same date to which he has extended the time for filing the return. In such case the amount in respect to which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) Voluntary advance payment.—A tax imposed by this article, or any installment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment. (July 16, 1947, 61 Stat. 353, ch. 258; Art. I, Title XII, § 7.)

§ 47–1586g. Withholding of tax at source.

Whenever the Assessor shall deem it necessary in order to satisfy the District's claim for a tax payable by any foreign corporation or unincorporated business, he may, by rules and regulations, require any person subject to the jurisdiction of the District to withhold and pay to the Collector an amount not in excess of 5 per centum of all income payable by such person to such foreign corporation or unincorporated business. After such foreign corporation or unincorporated business shall have filed all returns required under this title, and the same shall have been audited, the Collector shall refund any overpayment to the taxpayer. (July 16, 1947, 61 Stat. 353, ch. 258, Art. I, Title XII, § 8.)

§ 47–1586h. Tax a personal debt.

Every tax imposed by this article, and all increases, interest, and penalties thereof, shall become, from the time it is due and payable, a personal debt, from the person or persons liable to pay the same to the District and shall be entitled to the same priority as other District taxes, and the taxes levied under this article and the interest and penalties thereon shall be collected by the Collector in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection. (July 16, 1947, 61 Stat. 353, ch. 258, Art. I, Title XII, § 9.)

§ 47–1586i. Period of limitation upon assessment and collection.

(a) *General rule.*—Except as provided in subsection (b) of this section—

(1) the amount of income taxes imposed by this article shall be assessed within three years after the return is filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period;

(2) in the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun within twelve months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of three years after the return is filed. This subsection shall not apply in the case of a corporation unless—

(A) such written request notifies the Assessor that the corporation contemplates dissolution at or before the expiration of such twelve-month period; and

(B) the dissolution is in good faith begun before the expiration of such twelve-month period; and

(C) the dissolution is completed;

(3) if the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed;

(4) For the purposes of subsections (a) (1), (a) (2), and (a) (3), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(b) *False return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *Waiver.*—Where before the expiration of the time prescribed in subsection (a) for the assessment of the tax, both the Assessor and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) *Collection after assessment.*—Where the assessment of any income tax imposed by this article has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within three years after the assessment of the tax or (2) prior to the expiration of any period for collection agreed upon in writing by the Assessor and the taxpayer before the expiration of such three-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. (July 16, 1947, 61 Stat. 354, ch. 258, Art. I, Title XII, § 10; May 27, 1949, 63 Stat. 132, ch. 146, Title IV, § 417.)

AMENDMENT

The Act of May 27, 1949, cited to text, amended subsection (a) (4) by deleting the proviso following the word "day" the second time it appears. Section 421 of said Act made such amendment applicable to taxable years or portions thereof beginning after the 31st day of December 1948.

§ 47–1586j. Refunds.

Except as to any deficiency taxes assessed under the provisions of section 47–1586d, where there has been an overpayment of any tax imposed by this article, the amount of such overpayment shall be credited against any income tax or installment thereof, whether such tax was assessed as a deficiency or otherwise, then due from the taxpayer, and the balance shall be refunded to the taxpayer. No such credit or refund shall be allowed after three years from the time the tax was paid unless before the expiration of such period a claim therefor is filed by the taxpayer, and no tax or part thereof which the Assessor may determine to have been an overpayment shall be refunded after the period prescribed therefor in the Act appropriating the funds from which such refund would otherwise be made. The amount of such credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of such credit or refund. Every claim for credit or refund must be in writing, under oath; must state the specific grounds upon which the claim is founded, and must be filed with the Assessor: *Provided,* That if it shall be determined by the Assessor, the Board of Tax Appeals for the District of Columbia, or any court that any part of any tax which was assessed as a deficiency under the provisions of section 47–1586d was an overpayment, interest shall be allowed and paid upon such overpayment at the rate of 4 per centum per annum from the date such overpayments were paid until the date of refund, and in addition thereto any interest upon such overpayment which was paid by the taxpayer shall be refunded. (July 16, 1947, 61 Stat. 355, ch. 258, Art. I, Title XII, § 11; May 27, 1949, 63 Stat. 133, ch. 146, Title IV, § 418.)

AMENDMENT

The Act of May 27, 1949, cited to text, added the words which follow the word "refund" in the proviso. Section 421 of said Act made such amendment applicable to taxable years or portions thereof beginning after the 31st day of December 1948.

§ 47–1586k. Closing agreements.

The Assessor is authorized to enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any income tax for any period ending prior to the date of the agreement. If such agreement is approved by the Commissioners within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—the case shall not be reopened as to the matters agreed upon or the agreement modified; and in any suit or proceeding relating to the tax liability of the taxpayer such agreement shall not be annulled, modified, set aside, or disregarded. (July 16, 1947, 61 Stat. 355, ch. 258, Art. I, Title XII, § 12.)

§ 47–1586*l*. Compromises.

(a) *Authority to make.*—Whenever in the opinion of the Commissioners there shall arise with respect of any tax imposed under this article any doubt as to the liability of the taxpayer or the collectibility of the tax for any reason whatsoever, the Commissioners may compromise such tax.

(b) *Concealment of assets.*—Any person who, in connection with any compromise under this section or offer of such compromise or in connection with any closing agreement under this title or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the District of Columbia any property belonging to the estate of the taxpayer or other person liable with respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book, document, or record or makes under oath any false statement relating to the estate or the financial condition of the taxpayer or to the person liable in respect of the tax, shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year, or both. All prosecutions under this section shall be brought in the Municipal Court of the District of Columbia on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

(c) *Of penalties and interest.*—The Commissioners shall have the power for cause shown to compromise any penalty which may be imposed by the Assessor under the provisions of this article. The Assessor may adjust any interest where, in his opinion, the facts in the case warrant such action. (July 16, 1947, 61 Stat. 355, ch. 258, Art. I, Title XII, § 13.)

§ 47–1586m. Definition of "person".

The term "person" as used in this title includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under duty to perform the act in respect to which the violation occurs. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, Title XII, § 14.)

CODIFICATION

The term "title" as used in this section refers to §§ 47–1586 to 47–1586n.

§ 47–1586n. Payment to Collector and receipts.

The taxes provided under this article shall be collected by the Collector and the revenues derived therefrom shall be turned over to the Treasury of the United States for credit to the District in the same manner as other revenues are turned over to the United States Treasury for credit to the District. The Collector shall, upon written request, give to the person making payment of any income tax a full written or printed receipt therefor. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, Title XII, § 15.)

TITLE XIII.—PENALTIES AND INTEREST

§ 47–1589. Failure to file return.

In case of any failure to make and file a return required by this article, within the time prescribed by law or prescribed by the Commissioners or Assessor in pursuance of law, 5 per centum of the tax

shall be added to the tax for each month or fraction thereof that such failure continues, not to exceed 25 per centum in the aggregate, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect, no such addition shall be made to the tax. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be assessed and collected. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, Title XIII, § 1.)

§ 47–1589a. (a) Interest on deficiencies.

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the Collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed.

(b) If extension granted for payment of deficiency.—If the time for payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended at the rate of 6 per centum per annum for the period of the extension. If a part of the deficiency the time for payment of which is so extended is not paid in full, together with all penalties and interest due thereon, prior to the expiration of the period of the extension, then interest at the rate of 6 per centum per annum shall be added and collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, Title XIII, § 2.)

§ 47–1589b. Additions to the tax in case of deficiency.

(a) Negligence.—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(b) Fraud.—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, Title XIII, § 3.)

§ 47–1589c. Additions to the tax in case of nonpayment—(a) Tax shown on return.

(1) *General rule.*—Where the amount determined by the taxpayer as the tax imposed by this article, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax interest upon such unpaid amount at the rate of 6 per centum per annum from the date prescribed for its payment until it is paid.

(2) *If extension granted.*—Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any installment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 47–1589d is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in subsection (a) (1) of this section, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Deficiency.—Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 47–1589a or under section 47–1589b, or any addition to the tax in case of delinquency provided for in section 47–1589 is not paid in full within ten days from the date of assessment thereof, there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, Title XIII, § 4.)

§ 47–1589d. Time extended for payment of tax shown on return.

If the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, is extended under the authority of section 47–1586f (b), there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, Title XIII, § 5.)

§ 47–1589e. Penalties.

(a) ***Willful violation.***—Any person required under this article to pay or collect any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of this article, who willfully refuses to pay or collect such tax, to make such return, to keep such records, or to supply such information, or who makes a false or fraudulent return, or who willfully attempts in any manner to defeat or evade the tax imposed by sections 47–1551 to 47–1595, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both, together with costs of prosecution. All prosecutions under this section shall be brought in the Municipal Court of the District of Columbia on information by the Corporation Counsel or one of his assistants in the name of the District.

(b) ***Definition of "person".***—The term "person" as used in this title includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under duty to perform the act in respect to which the violation occurs. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, Title XIII, § 6.)

CODIFICATION

The term "title", as used in this section, refers to sections 47–1589 to 47–1589e.

TITLE XIV.—LICENSES

§ 47–1591. Requirement.

No corporation or unincorporated business, except such corporations or unincorporated businesses as are expressly exempt under the provisions of section 47–1554, shall engage in or carry on any trade or business in the District without a license so to do issued under this article in addition to all other licenses and permits required by law, except as hereinafter provided. For the first calendar year to which this article is applicable, no license shall be required of any corporation licensed under the provisions of sections 47–1501 to 47–1547. Every corporation not so licensed and every unincorporated business shall obtain such license within sixty days after the approval of sections 47–1551 to 47–1595. Every corporation or unincorporated business which commences to engage in or carry on any trade or business in the Distict after the passage of sections 47–1551 to 47–1595 shall obtain a license under this article within sixty days after the date of the commencement of such trade or business in the District. Applications for licenses shall be filed with the Assessor prior to January 1 of each year upon forms prescribed and furnished by the Assessor, and each application shall be accompanied by a fee of $10: *Provided, however,* That any unincorporated business having a gross income for the taxable year of $5,000 or less shall not be required to obtain the license provided for in this title. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, Title XIV, § 1; May 27, 1949, 63 Stat. 133, ch. 146, Title IV, § 419.)

AMENDMENT

The Act of May 27, 1949, cited to text, added the proviso. Section 421 of said Act made such amendment applicable to taxable years or portions thereof beginning after the 31st day of December 1948.

§ 47–1591a. Duration of license.

All licenses issued under this title shall be in effect for the duration of the calendar year for which issued, unless revoked as provided in this title, and shall expire at midnight on the 31st day of December of each year. No license may be transferred to any other corporation or unincorporated business. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, Title XIV, § 2.)

CODIFICATION

The term "title", as used in this section, refers to sections 47–1591 to 47–1591f.

§ 47–1591b. Licenses to be posted.

All licenses granted under this title to corporations or unincorporated businesses having an office or place of business in the District must be conspicuously posted in the office or on the premises of the licensee, and said license shall be accessible at all times for inspection by the police or other officers duly authorized to make such inspection. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, Title XIV, § 3.)

§ 47–1591c. Repealed. May 3, 1948, 62 Stat. 207, ch. 246, § 4.

Act of July 16, 1947, 61 Stat. 358, ch. 258, Art. I, Title XIV, § 4, provided for license or certificate of agent or employee of corporation or unincorporated business having no office or place of business in the District.

§ 47–1591d. Revocation.

The Commissioners may, after hearing, revoke any license issued hereunder for failure of the licensee to file a return or corrected return within the time required by this article, or to pay any installment of tax when due. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, Title XIV, § 5.)

§ 47–1591e. Renewal.

Licenses shall be renewed for the ensuing calendar year upon application as provided in section 47–1591. No license shall be issued or renewed if the taxpayer has failed or refused to pay any tax or installment thereof, or penalties or interest thereon, imposed by this article: *Provided, however,* That the Commissioners, in their discretion, for cause shown, may, on such terms or conditions as they may determine or prescribe, waive the provisions of this section. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, Title XIV, § 6.)

§ 47–1591f. Penalty for failure to obtain license.

Any corporation or unincorporated business engaged in or carrying on any trade or business in the District or receiving income from sources within the District within the meaning of sections 47–1580 to 47–1580b without having obtained a license so to do, within the time prescribed by section 47–1591, and any person engaging in or carrying on any trade or business in the District or receiving income from sources within the District within the meaning of sections 47–1580 to 47–1580b for or on behalf of any corporation or unincorporated business not having a license so to do, shall, upon conviction thereof, be fined not more than $300 for each and every failure, refusal, or violation, and each and every day that such failure, refusal, or violation continues shall constitute a separate and distinct offense. All prosecutions under this section shall be brought in the Municipal Court of the District of Columbia on information by the Corporation Counsel or any of his assistants in the name of the District: *Provided, however,* That the provisions of this section shall not apply to mere collection by an agent of income of a corporation or unincorporated business not having the license required under this title. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, Title XIV, § 7.)

CODIFICATION

The term "title", as used in this section, refers to §§ 47–1591 to 47–1591f.

TITLE XV.—APPEAL

§ 47–1593. Appeal to Board of Tax Appeals for the District of Columbia.

Any person aggrieved by any assessment of a deficiency in tax determined and assessed by the Assessor under the provisions of section 47–1586d and any person aggrieved by the denial of any claim for refund made under the provisions of section

47–1586j, may, within ninety days from the date of the assessment of the deficiency or from the date of the denial of a claim for refund, as the case may be, appeal to the Board of Tax Appeals for the District of Columbia, in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2411. (July 16, 1947, 61 Stat. 359, ch. 258, Art. I, Title XV, § 1.)

§ 47–1593a. Election of remedy.

The remedy provided in section 47–1593 shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law, but no suit by the taxpayer for the recovery of any part of any tax shall be instituted in any court if the taxpayer has elected to file an appeal with respect to such tax in accordance with the provisions of section 47–1593. (July 16, 1947, 61 Stat. 359, ch. 258, Art. I, Title XV, § 2.)

TITLE XVI.—RULES AND REGULATIONS

§ 47–1595. Commissioners to prescribe and publish rules.

The Commissioners shall prescribe and publish such rules and regulations, consistent with the provisions of this article, as may be necessary and proper for its enforcement and efficient administration. (July 16, 1947, 61 Stat. 359, ch. 258, Art. I, Title XVI, § 1.)

Chapter 16.—INHERITANCE AND ESTATE TAXES

ARTICLE I—INHERITANCE TAX

Sec.
47–1601. Imposition of tax.
47–1602. Based on market value—Appraisal.
47–1603. Appraisal deemed true value—Tax to be lien—Exceptions.
47–1604. Report by decedent's personal representative—Contents—Payment.
47–1605. Collection of distributive share.
47–1606. Property not under control of personal representative.
47–1607. Life and future estates—Payment of tax—Lien.

ARTICLE II—ESTATE TAX

47–1608. Imposition of tax—Additional levy on transfers.
47–1609. Credits—Restriction.
47–1610. Not to exceed difference between maximum credit and levy by States.
47–1611. Benefits to District.
47–1612. Tax on transfer of nonresidents' real and personal property.
47–1613. Executor to file copy of Federal return with assessor.
47–1614. Assessment on basis of return.
47–1615. Tax payable within seventeen months.

ARTICLE III—GENERAL

47–1616. Liability of bond for assessments—Limitation.
47–1617. Monthly report of names of decedents by register of wills.
47–1618. Administration—Rules—Appeal—Hearing—Decision—Testimony—Production of books and records.
47–1619. Arrears.
47–1620. Enforcement.
47–1621. Failure to file return—False return—Penalty.
47–1622. Wilful failure to pay taxes, make return—Penalty.
47–1623. Release of lien.
47–1624. Transfers of assets—Notice—Portion retained to pay tax—Assessor to examine assets—Issuance of certificate.
47–1625. Bureau of Internal Revenue to supply information to Commissioners.
47–1626. Assessor to determine tax if return not filed when due.
47–1627. Assessor may compound and settle tax.
47–1628. Definitions.
47–1629. Situs of intangibles—Trust estates—Aliens.
47–1630. Compromise and settlement of taxes.

ARTICLE I—INHERITANCE TAX

§ 47–1601 [20: 969]. Imposition of tax.

Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates, and gifts as hereinafter provided:

(a) All real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship, and all such property, or interest therein, transferred by deed, grant, bargain, gift, or sale (except in cases of a bona fide purchase for full consideration in money or money's worth), made or intended to take effect in possession or enjoyment after the death of the decedent, or made in contemplation of death, to or for the use of, in trust or otherwise (including property of which the decedent has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from such property or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom), to the father, mother, husband, wife, children by blood or legally adopted children, or any other lineal descendants or lineal ancestors of the decedent, shall be subject to a tax as follows: 1 per centum of so much of said property as is in excess of $5,000 and not in excess of $50,000; 2 per centum of so much of said property as is in excess of $50,000 and not in excess of $100,000; 3 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 4 per centum of so much of said property as is in excess of $500,000 and not in excess of $1,000,000; 5 per centum of so much of said property as is in excess of $1,000,000.

(b) So much of said property so transferred to each of the brothers and sisters of the whole or half blood of the decedent shall be subject to a tax as follows: 3 per centum of so much of said property as is in excess of $2,000 and not in excess of $25,000; 4 per centum of so much of said property as is in excess of $25,000 and not in excess of $50,000; 6 per centum of so much of said property as is in excess of $50,000 and not in excess of $100,000; 8 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 10 per centum of so much of said property as is in excess of $500,000.

(c) So much of said property so transferred to any person other than those included in paragraphs (a) and (b) of this section and all firms, institutions, associations, and corporations shall be subject to a tax as follows: 5 per centum of so much of said property

as is in excess of $1,000 and not in excess of $25,000; 7 per centum of so much of said property as is in excess of $25,000 and not in excess of $50,000; 9 per centum of so much of said property as is in excess of $50,000 and not in excess of $100,000; 12 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 15 per centum of so much of said property as is in excess of $500,000.

(d) Executors, administrators, trustees, and other persons making distribution shall only be discharged from liability for the amount of such tax, with the payment of which they are charged, by paying the same as hereinafter described.

(e) Property transferred exclusively for public or municipal purposes, to the United States or the District of Columbia, or exclusively for charitable, educational, or religious purposes within the District of Columbia, and property transferred to the American National Red Cross, shall be exempt from any and all taxation under the provisions of this section.

(f) Where any beneficiary has died or may hereafter die within six months after the death of the decedent and before coming into the possession and enjoyment of any property passing to him, and before selling, assigning, transferring, or in any manner contracting with respect to his interest in such property, such property shall be taxed only once, and if the tax on the property so passing to said beneficiary has not been paid, then the tax shall be assessed on the property received from such share by each beneficiary thereof, finally entitled to the possession and enjoyment thereof, as if he had been the original beneficiary, and the exemptions and rates of taxation shall be governed by the respective relationship of each of the ultimate beneficiaries to the first decedent.

(g) The provisions of sections 47–1601 to 47–1607 shall apply to property in the estate of every person who shall die after this chapter becomes effective.

(h) The transfer of any property, or interest therein, within 2 years prior to death, shall, unless shown to the contrary, be deemed to have been made in contemplation of death.

(i) All property and interest therein which shall pass from a decedent to the same beneficiary by one or more of the methods specified in this section, and all beneficial interests which shall accrue in the manner herein provided to such beneficiary on account of the death of such decedent, shall be united and treated as a single interest for the purpose of determining the tax hereunder.

(j) Whenever any person shall exercise a general power of appointment derived from any disposition of property, made either before or after the passage of this chapter, such appointment, when made, shall be deemed a transfer taxable, under the provisions of said sections, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power; and whenever any person possessing such power of appointment so derived shall omit or fail to exercise the same, within the time provided therefor, in whole or in part, a transfer taxable under the provisions of said sections shall be deemed to take place to the extent of such omissions or failure in the same manner as though the person or persons thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by the will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(k) The doctrine of equitable conversion shall not be invoked in the assessment of taxes under sections 47–1601 to 47–1607. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 1; May 16, 1938, 52 Stat. 360, ch. 223, § 5 (a); July 26, 1939, 53 Stat. 1111, ch. 367, title V, art. I, § 1, June 24, 1946, 60 Stat. 303, ch. 462, § 1.)

AMENDMENTS

The 1938 amendment added paragraphs (j) and (k).

The 1939 amendment deleted the words "and upon" following the word "decedents" the first time it appears, added the word "to" following the parenthetical statement in paragraph (a) and changed the rate provisions to that which now appears. The former rates provided in paragraph (a), 1% on the amount in excess of $5,000; in paragraph (b), 3% on the amount in excess of $2,000; and 5% on the amount in excess of $1,000.

The act of June 24, 1946, cited to text, added the clause in subsection (e) relating property transferred to the American National Red Cross.

Section 2 of said act provided:

"SEC. 2. This Act shall not authorize nor require the refund of any taxes paid for the transfer of any property to the American National Red Cross except such taxes as may have been paid under protest."

CROSS REFERENCES

Additional tax on right to transfer estate, § 47–1608 et seq.

General provisions for administration of act, § 47–1616 et seq.

Situs of intangibles, § 47–1629.

The sections of this chapter are part of the Revenue Acts of 1937 and 1939, see compiler's notes to § 47–1401.

NOTES TO DECISIONS

ALIENATION OF PROPERTY

That decedent's real estate was subject to statutory lien to secure payment of decedent's debt did not prevent devisee from coming into possession and enjoyment of devise within provision of paragraph (f) of this section providing that where beneficiary dies within six months after death of decedent and before coming into the possession and enjoyment of any property, such property shall be taxed only once. *Fisher* v. *District of Columbia* (App. D. C. 1947, 164 F. 2d 707).

CONSTRUCTION

The sections of this chapter forming complementary parts of death tax plan for the District of Columbia must be construed together. *District of Columbia* v. *Safe Deposit & Trust Co. of Baltimore,* 1940 (116 F. 2d 21, 72 App. D. C. 197).

DOMICILE

In determining whether federal employee was, at time of his death, legally domiciled in Florida or in District of Columbia which sought to impose inheritance tax, court could review legal effect attached to evidence before board of tax appeals since a domiciliary determination involves a compound consideration of fact and law. *Pace* v. *District of Columbia,* 1943 (135 F. 2d 249, 77 U. S. App. D. C. 332, certiorari granted 64 S. Ct. 41, 320 U. S. 726, 88 L. Ed. 428, affirmed 64 S. Ct. 406, 320 U. S. 698, 88 L. Ed. 408).

Where district court, sitting in probate, concluded that federal employee died a resident of Florida and ordered his will transmitted to clerk of appropriate court in that state and a few weeks later granted ancillary letters testamentary, such orders were entitled to weight but

were not conclusive on question whether the federal employee was domiciled in the District of Columbia so as to permit the District to impose an inheritance tax. *Pace* v. *District of Columbia*, 1943 (135 F. 2d 249, 77 U. S. App. D. C. 332, certiorari granted 64 S. Ct. 41, 320 U. S. 726, 88 L. Ed. 428, affirmed 64 S. Ct. 406, 320 U. S. 698, 88 L. Ed. 408).

EVIDENCE

Evidence established that federal employee who died after 27 years of official service in District of Columbia was legally domiciled in Florida, his domicile of origin, at time of his death, and therefore petitioner was not subject to the District of Columbia inheritance tax. *Pace* v. *District of Columbia*, 1943 (135 F. 2d 249, 77 U. S. App. D. C. 332, certiorari granted 64 S. Ct. 41, 320 U. S. 726, 88 L. Ed. 428, affirmed 64 S. Ct. 406, 320 U. S. 698, 88 L. Ed. 408).

GENERAL POWER OF APPOINTMENT

Where irrevocable trust instrument, which provided for distribution of remainder of corpus to income beneficiary at age 45, gave beneficiary general power of appointment, but provided that in default of appointment undistributed corpus should be transferred to persons who would be entitled to distribution of beneficiary's personal estate as of date of his death, and beneficiary executed, under seal, an instrument releasing all power of appointment and died before reaching 45, value of corpus passing on death of beneficiary was not subject to inheritance tax. *District of Columbia* v. *Lloyd* (App. D. C. 1947, 160 F. 2d 581).

Where during her lifetime, the beneficiary received the income from a trust without restriction upon its use, with principal held in trust so that she could not encumber or dispose of it even if there had been no restrictive provisions and where by will she could dispose of principal to those whom she might direct, she possessed a general power of appointment subject to taxation. *Lane* v. *District of Columbia* (C. A. D. C. 1950, 182 F. 2d 105, 86 U. S. App. D. C. 337).

PURCHASE FOR CONSIDERATION

Where contract between stockholders provided that minority stockholders would surrender their stock to a trustee together with insurance policies on their lives, the proceeds of which would be payable to their wives in event of death and would constitute payment of the stock, which would then be returned to corporation and reissued, majority stockholder having power to terminate contract at any time, and minority stockholders had paid their own insurance premiums, additional stock so acquired by majority stockholder was not exempt from inheritance tax as having been acquired by bona fide purchaser for full "consideration in money or money's worth". *O'Connor* v. *District of Columbia* (App. D. C. 1946, 153 F. 2d 225, 80 U. S. App. D. C. 351).

TESTAMENTARY TRANSFERS

Where contract between stockholders provided that minority stockholders would surrender their stock to a trustee together with insurance policies on their lives, the proceeds of which would be paid to the wives of minority stockholders upon death and would constitute payment for the stock, which was then to be returned to the corporation and reissued, additional stock so acquired by majority stockholder was not acquired by an inter vivos transfer, but by a transfer testamentary in character and was subject to inheritance tax. *O'Connor* v. *District of Columbia* (App. D. C. 1946, 153 F. 2d 225, 80 U. S. App. D. C. 351).

§ 47–1602 [20: 969a]. Based on market value—Appraisal.

The tax provided in section 47–1601 shall be paid on the market value of the property or interest therein at the time of the death of the decedent as appraised by the assessor or, in the discretion of the assessor, upon the value as appraised by the probate court of the District. The taxable portion of real or personal property held jointly or by the entireties shall be determined by dividing the value of the entire property by the number of persons in whose joint names it was held. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 2; July 26, 1939, 53 Stat. 1112, ch. 367, title V, art. I, § 2.)

AMENDMENT

The 1939 amendment deleted the words "of the District of Columbia" following the word "assessor" the first time said word appears, and deleted the word "said" and inserted in lieu thereof the word "the" following the words "probate court of."

NOTES TO DECISIONS

FOREIGN CORPORATIONS

Where Delaware Corporation doing a title insurance business has its principal and sales office in the District, keeps all its corporate records in the District office, and concedes it transacts all its business in the District, it is subject to the District tax on gross receipts in the District. It is immaterial that its business related entirely to Maryland land. *Suburban Title & Investment Corp* v. *District of Columbia* (C. A. D. C. 1950, 180 F. 2d 387, 86 U. S. App. D. C. 112).

LAW GOVERNING

Where sections 704–709 of this title provided for annual assessment of real estate in District of Columbia and that annual valuation of real estate should constitute basis of taxation for next succeeding year, and this section provided that inheritance tax should be paid on market value of property or interest therein at time of the death of deceased as appraised by assessor and that appraisal should be taken as true value of property or interest therein, market value of property or interest as determined by appraiser controlled and not annual valuation placed upon property for purposes of property tax. *Fisher* v. *District of Columbia* (App. D. C. 1947, 164 F. 2d 707).

§ 47–1603 [20: 969b]. Appraisal deemed true value—Tax to be lien—Exceptions.

The appraisal thus made shall be deemed and taken to be the true value of the said property or interest therein upon which the said tax shall be paid, and the amount of said tax and the tax imposed by sections 47–1608 to 47–1615 shall be a lien on said property or interest therein for the period of ten years from the date of death of the decedent: *Provided, however,* That such lien shall not attach to any personal property sold or disposed of for value by an administrator, executor, or collector, of the estate of such decedent appointed by the District Court of the United States for the District of Columbia or by a trustee appointed under a will filed with the register of wills for the District or by order of said court, or his successor approved by said court, but a lien for said taxes shall attach on all property acquired in substitution therefor for a period of ten years after the acquisition of such substituted property: *And provided further,* That such lien upon such substituted property shall, upon sale by such personal representatives, be extinguished and shall reattach in the manner as provided with respect of such original property. (Aug. 17, 1937, 50 Stat. 684, ch. 690, title V, § 3; May 16, 1938, 52 Stat. 361, ch. 223, § 5 (b); July 26, 1939, 53 Stat. 1113, ch. 367, title V, art. I, § 3.)

AMENDMENTS

The 1938 amendment added the two proviso clauses.

The 1939 amendment deleted the words "of the District of Columbia" and inserted in lieu thereof the words "for the District" following the word "wills."

§ 47–1604 [20: 969c]. Report by decedent's personal representative—Contents—Payment.

The personal representative of every decedent, the gross value of whose estate is in excess of $1,000 shall, within fifteen months after the death of the decedent, report under oath to the assessor, on forms provided for that purpose an itemized schedule of all the property (real, personal, and mixed) of the decedent, the market value thereof at the time of the death of the decedent, the name or names of the persons to receive the same and the actual value of the property that each will receive, the relationship of such persons to the decedent, and the age of any persons who receive a life interest in the property, and any other information which the assessor may require. Said personal representative shall, within eighteen months of the date of the death of the decedent and before distribution of the estate, pay to the collector of taxes the taxes imposed by section 47–1601 upon the distributive shares and legacies in his hands and the tax imposed by section 47–1601 against each distributive share or legacy shall be charged against such distributive share or legacy unless the will shall otherwise direct. (Aug. 17, 1937, 50 Stat. 684, ch. 690, title V, § 4; July 26, 1939, 53 Stat. 1113, ch. 367, title V, art. I, § 4.)

AMENDMENT

The 1939 amendment added the word "gross" before the word "value" the first time said word appears, and deleted the words "of the District of Columbia" following the words "collector of taxes."

NOTES TO DECISIONS

CONSTRUCTION

There is no conflict between this section and 47–2403; they are merely alternative. *Rynex* v. *District of Columbia* (72 App. D. C. 346, 114 Fed. (2d) 842).

To same effect as original annotation, see *Rynex* v. *District of Columbia,* 1940 (114 F. 2d 842, 72 App. D. C. 386).

TIME OF PAYMENT

Section 47–2403 requires payment of the tax within 90 days after receipt of assessment as a condition precedent to the taking of an appeal although this due date falls before the end of the eighteen months provision of this section. *Rynex* v. *District of Columbia* (72 App. D. C. 346, 114 Fed. (2d) 842).

§ 47–1605 [20: 969d]. Collection of distributive share.

The personal representative of the decedent shall collect from each beneficiary entitled to a distributive share or legacy the tax imposed upon such distributive share or legacy in section 47–1601, and if the said beneficiary shall neglect or fail to pay the same within fifteen months after the date of the death of the decedent such personal representative shall, upon the order of the District Court of the United States for the District of Columbia, sell for cash so much of said distributive share or legacy as may be necessary to pay said tax and all the expenses of said sale. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 5; July 26, 1939, 53 Stat. 1113, ch. 367, title V, art. I, § 5.)

AMENDMENT

The 1939 act reenacted this section without change.

§ 47–1606 [20: 969e]. Property not under control of personal representative.

Every person entitled to receive property taxable under section 47–1601, which property is not under the control of a personal representative, and is over $1,000 in value, shall, within six months after the death of the decedent, report under oath to the assessor, on forms provided for that purpose an itemized schedule of all property (real, personal, and mixed) received or to be received by such person; the market value of the same at the time of the death of the decedent and the relationship of such person to the decedent; and any other information which the assessor may require. The tax on the transfer of any such property shall be paid by such person to the collector of taxes within nine months after the date of the death of the decedent: *Provided, however,* That with respect to real estate passing by will or inheritance such report shall be made within fifteen months after the death of the decedent, and the tax on the transfer thereof shall be paid within eighteen months after the date of the death of the decedent. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, § 7; May 16, 1938, 52 Stat. 361, ch. 223, § 5 (c); July 26, 1939, 53 Stat. 1113, ch. 367, title V, art. I, § 6.)

AMENDMENTS

The 1938 amendment added the proviso.

The 1939 act reenacted this section as it appeared in the 1937 act, amended by the 1938 act.

§ 47–1607 [20: 969f]. Life and future estates—Payment of tax—Lien.

In the case of any grant, deed, devise, descent, or bequest of a life interest or term of years, the donee for life or years shall pay a tax only on the value of his interest, determined in a manner as the Commissioners by regulation may prescribe, and the donee of the future interest shall pay a tax only on his interest as based upon the value thereof at the time of the death of the decedent creating such interest. The value of any future interest shall be determined by deducting from the market value of such property at the time of the death of such decedent the value of the precedent life interest or term of years. Where the future interest is vested the donee thereof shall pay the tax within the time in which the tax upon the precedent life interest or term of years is required to be paid under the provisions of sections 47–1604 and 47–1606, as the case may be. Where the future interest is contingent the personal representative of such decedent or the persons interested in such contingent future estate shall have the option of (1) paying, within the time herein provided for the payment of taxes due upon vested future interests, a tax equal to the mean between the highest possible tax and the lowest possible tax which could be imposed under any contingency or condition whereby such contingent future interest might be wholly or in part created, defeated, extended, or abridged; or (2) paying the tax upon such transfer at the time when such future interest shall become vested at rates and with exemptions in

force at the time of the death of the decedent: *Provided,* That the personal representative or trustee of the estate of the decedent or the persons interested in the future contingent interest shall deposit with the assessor a bond in the penal sum of an amount equal to twice the tax payable under option (1) hereof. Such bonds shall be payable to the District and shall be conditioned for the payment of such tax when and as the same shall become due and payable. The tax upon the transfer of future interests or remainders shall be a lien upon the property or interest transferred from the date of the death of the decedent creating the interests and shall remain in force and effect until ten years after the date when such remainder or future interest shall become vested in the donee thereof. If the tax upon the transfer of a contingent future interest is paid before the same shall become vested, such tax shall be paid by the personal representative out of the corpus of the estate of the decedent, otherwise by the person or persons entitled to receive the same. (Aug. 17, 1937, 50 Stat. 686, ch. 690, title V, § 10; May 16, 1938, 52 Stat. 361, ch. 223, § 5 (d); July 26, 1939, 53 Stat. 1114, ch. 367, title V, art. I, § 7.)

AMENDMENTS

The 1938 amendment added the words "determined in a manner as the Commissioners by regulation may prescribe" following the word "interest" the second time said word appears; deleted, following the word "tax" the second time it appears, the following words "when his right of possession and enjoyment accrues. In the case of a decree, descent, bequest, or grant to take effect in possession or enjoyment after the expiration of one or more life estates or a term of years, the tax shall be assessed on the value of the property or interest therein coming to the beneficiary at the time when he becomes entitled to the same in possession or enjoyment. Said tax shall be a lien for the period of ten years on the property or interest therein from the date when said beneficiary becomes entitled to the same in possession or enjoyment" and inserted in lieu thereof the present remainder of the section.

The 1939 amendment deleted the word "such" and inserted in lieu thereof the word "the" before the word "decedent" immediately before the proviso and deleted the words "of Columbia" following the word "District".

CROSS REFERENCE

Rules and regulations, § 47–2502.

NOTES TO DECISIONS

CHARACTER OF INTEREST

The critical date for the determination of the character of a vested interest is the date of the deceased's death. *District of Columbia* v. *Clark* (C. A. D. C. 1948, 175 F. 2d 821, 84 U. S. App. D. C. 88).

REMAINDER INTERESTS TAXABLE

Under the statutory definition of vested interests, the interests herein presented were vested remainders, while at the same time, the remainder interests were subject to be divested should the remaindermen, or any of them, fail to survive the life estate, and as such were subject to taxation. *Keep* v. *District of Columbia* (C. A. D. C. 1950, 181 F. 2d 789, 86 U. S. App. D. C. 206).

TAXABLE INTEREST

Where grantor devised residue to widow in trust and provided that upon her death or remarriage the residue was to be divided among the children until they reached thirty-seven, such estates were vested for the purposes of taxation. *District of Columbia* v. *Clark* (C. A. D. C. 1948, 175 F. 2d 821, 84 U. S. App. D. C. 88).

VESTED AND CONTINGENT INTERESTS

Where the characteristics of a vested interest and a contingent interest had been firmly established in District of Columbia by repeated court decisions and by statutory enactment, Congress in using terms "vested" and "contingent" in this section distinguishing between a vested interest and a contingent interest and providing a different method of taxation for each without defining such terms, recognized as valid for tax purposes, the well established distinction between those two classes of estates. *O'Neill* v. *District of Columbia,* 1942 (132 F. 2d 601, 77 U. S. App. D. C. 79).

Where testator devised his residuary estate to his wife for life and on her death to testator's daughters in fee simple share and share alike and "in the event that either of them be then dead unto the survivor of them", the daughters acquired a "vested interest" and not a "contingent interest" within this section which recognizes and taxes separately vested interest and contingent interest. *O'Neill* v. *District of Columbia,* 1942 (132 F. 2d 601, 77 U. S. App. D. C. 79).

ARTICLE II—ESTATE TAX

§ 47–1608 [20: 969g]. Imposition of tax—Additional levy on transfers.

In addition to the taxes imposed by sections 47–1601 to 47–1607, there is hereby imposed upon the transfer of the estate of every decedent who, after this chapter becomes effective, shall die a resident of the District, a tax equal to eighty per centum of the Federal estate tax imposed by section 810, Title 26, U. S. Code, as amended, or as hereafter amended or reenacted. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 18; July 26, 1939, 53 Stat. 1114, ch. 367, title V, art. II, § 1.)

AMENDMENT

The 1939 amendment deleted the words "of Columbia" following the word "District."

CROSS REFERENCES

General provisions for administration of act, § 47–1616 et seq.

Situs of intangibles, § 47–1629.

Tax imposed by §§ 47–1608 to 47–1615 shall be lien for 10 years from death of decedent, § 47–1603.

Transfer tax on property of nonresidents, § 47–1612 et seq.

NOTES TO DECISIONS

AMOUNT OF TAX

Under sections of this chapter providing unified system of death taxes for the District of Columbia, amount payable to District as estate tax was not 80 percent of the Federal estate tax, but was merely the difference between that amount and the inheritance tax which had been paid to the District on account of the same estate. *District of Columbia* v. *Safe Deposit & Trust Co. of Baltimore,* 1940 (116 F. 2d 21, 72 App. D. C. 197).

§ 47–1609 [20: 969h]. Credits—Restriction.

There shall be credited against and applied in reduction of the tax imposed by section 47–1608 the amount of any estate, inheritance, legacy, or succession tax lawfully imposed by any State or Territory of the United States, in respect of any property included in the gross estate for Federal estate tax purposes as prescribed in U. S. Code, title 26, chapter 3 (subchapter A), and section 3655, as amended, or as hereafter amended or reenacted: *Provided, however,* That only such taxes as are actually paid and which are proper allowances against the Federal estate tax may be applied as a credit against and in reduction of the tax imposed by section 47–1608.

(Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 19; July 26, 1939, 53 Stat. 1114, ch. 367, title V, art. II, § 2; Feb. 2, 1942, 56 Stat. 46, ch. 33, § 3 (a).)

AMENDMENTS

The act of Feb. 2, 1942, cited to text, amended section by substituting words "which are proper allowances" for words "credit therefor claimed and allowed" in the proviso.

STATUTORY REFERENCE

The words "U. S. Code, title 26, chapter 3 (subchapter A), and section 3655" are substituted for the words "Title III of the Revenue Act of 1926" used in the original enactment. Said chapter, with the exception of section 840 thereof is derived from title III of said Revenue Act, and comprises Chapter 3, subchapter A of the Internal Revenue Code.

AMENDMENT

The 1939 act reenacted the section as it appeared in the 1937 act making internal cross-reference changes.

§ 47–1610 [20: 969i]. Not to exceed difference between maximum credit and levy by States.

In no event shall the tax imposed by section 47–1608 of this chapter exceed the difference between the maximum credit which might be allowed against the Federal estate tax imposed by U. S. Code, title 26, chapter 3 (subchapter A) and section 3655, as amended, or as hereafter amended or re-enacted, and the aggregate amount of the taxes described in section 47–1609 (but not including the tax imposed by section 47–1608) allowable as a credit against the Federal estate tax. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 20; July 26, 1939, 53 Stat. 1114, ch. 367, title V, art. II, § 3.)

STATUTORY REFERENCE

See note to § 47–1609.

AMENDMENT

The 1939 act reenacted this section as it appeared in the 1937 act making only internal cross reference changes.

§ 47–1611 [20: 969j]. Benefits to District.

The purpose of section 47–1608 is to secure for the District the benefit of the credit allowed under the provisions of U. S. Code, title 26, section 810, as amended, or as hereafter amended or re-enacted, to the extent that the District may be entitled by the provisions of said section, by imposing additional taxes, and the same shall be liberally construed to effect such purpose: *Provided,* That the amount of the tax imposed by section 47–1608 shall not be decreased by any failure to secure the allowance of credit against the Federal estate tax. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 21; July 26, 1939, 53 Stat. 1115, ch. 367, title V, art. II, § 4.)

COMPILER'S NOTE

The words of the original enactment "credit allowed under the provisions of section 301 (c) of title III of the Revenue Act of 1926" have been translated to "U. S. Code, title 26, § 813 (b)," the section where such credit is now provided for.

AMENDMENT

The 1939 amendment deleted the words "of Columbia" following the word "District" both times it appears.

§ 47–1612 [20: 969k]. Tax on transfer of nonresidents' real and personal property.

A tax is hereby imposed upon the transfer of real property or tangible personal property in the District of every person who at the time of death was a resident of the United States but not a resident of the District, and upon the transfer of all property, both real and personal, within the District of every person who at the time of death was not a resident of the United States, the amount of which shall be a sum equal to such proportion of the amount by which the credit allowable under the applicable Federal Revenue Act for estate, inheritance, legacy, and succession taxes actually paid to the several States exceeds the amount actually so paid for such taxes, exclusive of estate taxes based upon the difference between such credit and other estate taxes and inheritance, legacy, and succession taxes, as the value of the property in the District bears to the value of the entire estate, subject to estate tax under the applicable Federal Revenue Act. (Aug. 17, 1937, ch. 690, § 27, as added May 16, 1938, 52 Stat. 363, ch. 223, § 5 (g); July 26, 1939, 53 Stat. 1115, ch. 367, title V, art. II, § 5.)

AMENDMENT

The 1939 amendment deleted the words "of Columbia" following the word "District" each time it appears.

CROSS REFERENCES

General provisions for administration of act, § 47–1616 et seq.
Situs of intangibles. § 47–1629.

§ 47–1613 [20: 969*l*]. Executor to file copy of Federal return with assessor.

Every executor or administrator of the estate of a decedent dying a resident of the District or of a nonresident decedent owning real estate or tangible personal property situated in the District, or of an alien decedent owning any real estate, tangible or intangible personal property situated in the District, or, if there is no executor or administrator appointed, qualified, and acting, then any person in actual or constructive possession of any property forming a part of an estate subject to estate tax under this chapter shall, within sixteen months after the death of the decedent file with the assessor a copy of the return required by U. S. Code, title 26, sections 820, 821 (a) (b) (c), and 864 (a) (b) (c), verified by the affidavit of the person filing said return with the assessor, and shall, within thirty days after the date of any communication from the Commissioner of Internal Revenue, confirming, increasing, or diminishing the tax shown to be due, file a copy of such communication with the assessor. With the copy of the Federal estate tax return there shall be filed an affidavit as to the several amounts paid or expected to be paid as taxes within the purview of section 47–1609: *Provided, however,* That in any case where the time for the filing of such return as required by U. S. Code, title 26, sections 820, 821 (a) (b) (c), and 864 (a) (b) (c), is extended without penalty by the Bureau of Internal Revenue, then the copy thereof verified as aforesaid may be filed with the assessor within thirty days after the expiration of said extended period. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 22; July 26, 1939, 53 Stat. 1115, ch. 367, title V, art. II, § 6.)

AMENDMENT

The 1939 amendment inserted the words "the estate of" following the words "administrator of" the first time said words appear; deleted the words "of Columbia" following the word "District" the first time said word appears and inserted in lieu thereof the next 34 words; deleted the words "within the District of Columbia" following the word "acting"; deleted the words "the gross" following the words "forming a part of" and inserted in lieu thereof the word "an"; inserted, following the word "estate" the fourth time the said word appears, the words "subject to estate tax under this title shall, within sixteen months after the death of the decedent"; and added the proviso.

§ 47–1614 [20: 969m]. Assessment on basis of return.

The assessor shall, upon receipt of the return and accompanying affidavit, assess such amount as he may determine, from the basis of the return, to be due the District. Upon receipt of a copy of any communication from the Commissioner of Internal Revenue, herein required to be filed, the assessor shall make such additional assessment or shall make such abatement of the assessment as may appear proper. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 23; July 26, 1939, 53 Stat. 1115, ch. 367, title V, art. II, § 7.)

AMENDMENT

The 1939 act deleted the words "of the District of Columbia" following the word "assessor" the first time the said word appears, and deleted the words "of Columbia" following the word "District."

§ 47–1615 [20: 969n]. Tax payable within 17 months.

The estate taxes imposed by sections 47–1608 to 47–1615 shall be paid to the collector of taxes within seventeen months after the death of the decedent: *Provided, however,* That in any case where the time for the payment of taxes imposed by U. S. Code, Title 26, sections 810, 813 (a) (2), and 860, is extended by the Bureau of Internal Revenue, then the tax imposed by sections 47–1608 to 47–1615 shall be paid within sixty days after the expiration of such extended period, together with interest as provided in section 47–1619: *Provided further,* That any additional assessment found to be due under section 47–1614 shall be paid to the collector of taxes within thirty days after the determination of such additional assessment by the assessor. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 24; July 26, 1939, 53 Stat. 1116, ch. 367, title V, art. II, § 8.)

AMENDMENT

The 1939 act deleted the section as it appeared in the 1937 act and inserted in lieu thereof the section as it now appears. The former section read as follows: "The tax imposed by this article shall be paid to the collector of taxes within thirty days after the determination of said taxes by the assessor of the District of Columbia."

ARTICLE III—GENERAL

§ 47–1616 [20: 969o]. Liability of bond for assessments—Limitation.

The bond of the personal representative of the decedent shall be liable for all taxes and penalties assessed under this chapter, except inheritance taxes and penalties imposed in relation to the transfer of property not under the control of such personal representative: *Provided,* That in no case shall the bond of the personal representative be liable for a greater sum than is actually received by him. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, § 6; July 26, 1939, 53 Stat. 1116, ch. 367, title V, art. III, § 1.)

AMENDMENT

The 1939 act added the exception.

§ 47–1617 [20: 969p]. Monthly report of names of decedents by register of wills.

The register of wills of the District shall report to the assessor on forms provided for the purpose every qualification in the District upon the estate of a decedent. Such report shall be filed with the assessor at least once every month, and shall contain the name of the decedent, the date of his death, the name and address of the personal representative, and the value of the estate, as shown by the petition for administration or probate. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 8; July 26, 1939, 53 Stat. 1116, ch. 367, title V, art. III, § 2.)

AMENDMENT

The 1939 act deleted the words "of Columbia" following the word "District" both times said word appears.

§ 47–1618 [20: 969q]. Administration — Rules — Appeal—Hearing—Decision—Testimony—Production of books and records.

The commissioners shall have supervision of the enforcement of this chapter and shall have the power to make such rules and regulations, consistent with said sections, as may be necessary for enforcement of said sections and efficient administration and to provide for the granting of extension of time within which to perform the duties imposed by this chapter. The assessor shall determine all taxes assessable under this chapter, and immediately upon the determination of same, shall forward a statement of the taxes determined to the person or persons chargeable with the payment thereof and shall give advice thereof to the collector of taxes.

The assessor is hereby authorized and empowered to summon any person before him to give testimony on oath or affirmation or to produce all books, records, papers, documents, or other legal evidence as to any matter relating to this chapter and the assessor is authorized to administer oaths and to take testimony for the purposes of the administration of this chapter. Such summons may be served by any member of the Metropolitan police department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event the assessor may report that fact to the District Court of the United States for the District of Columbia or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpenas of that court. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, § 9; July 26, 1939, 53 Stat. 1116, ch. 367, title V, art. III, § 3.)

AMENDMENT

The 1939 amendment added the words "of the District of Columbia" following the word "commissioners" in the first paragraph and the word "assessor" the first time said word appears in the second paragraph; deleted the words "or any member of the Board of Assistant Assessors or Board of Personal Tax Appeals" in the second paragraph

following the word "him" the first time said word appears and following the word "assessor" the second time said word appears; and, deleted three sentences from the end of the first paragraph which provided for an appeal to the Board of Personal Tax Appeals.

§ 47–1619 [20: 969r]. Arrears.

If the taxes imposed by this chapter are not paid when due, 1 per centum interest for each month or portion of a month from the date when the same were due until paid shall be added to the amount of said taxes and collected as a part of the same, and said taxes shall be collected by the collector of taxes in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection: *Provided, however,* That where the time for payment of the tax imposed by this chapter is extended by the assessor or where the payment of the tax is lawfully suspended under the regulations for the administration of this chapter, or where the date for payment of any tax imposed by § 47–1608 to § 47–1615 is extended by the provisions of § 47–1615 beyond seventeen months after the date of death of the decedent, interest shall be paid at the rate of 6 per centum per annum from the date on which the tax would otherwise be payable. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 11; July 26, 1939, 53 Stat. 1116, ch. 367, title V, art. III, § 4; Feb. 2, 1942, 56 Stat. 47, ch. 33, § 3 (c).).

AMENDMENTS

The act of Feb. 2, 1942, cited to text, amended section by adding all words between words "administration of this chapter" and "interest shall".

AMENDMENT

The 1939 amendment deleted the words "of the District of Columbia" following the words "collector of taxes," and the words "of Columbia" following the word "District," and added the proviso.

§ 47–1620 [20: 969s]. Enforcement.

If any person shall fail to perform any duty imposed upon him by the provisions of this chapter or the regulations made hereunder the Commissioners may proceed by petition for mandamus to compel performance and upon the granting of such writ the court shall adjudge all costs of such proceeding against the delinquent. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 12; July 26, 1939, 53 Stat. 1117, ch. 367, title V, art. III, § 5.)

AMENDMENT

The 1939 amendment deleted the words "of the District of Columbia" following the word "commissioners."

CROSS REFERENCE

Writ of mandamus has been abolished in District Courts, similar relief may be obtained by appropriate action on motion, rule 81 (b).

§ 47–1621 [20: 969t]. Failure to file return—False return—Penalty.

Any person required by this chapter to file a return who fails to file such return within the time prescribed by this chapter, or within such additional time as may be granted under regulations promulgated by the commissioners, shall become liable in his own person and estate to the District in an amount equal to 10 per centum of the tax found to be due. In case any person required by this chapter to file a return knowingly files a false or fraudulent return, he shall become liable in his own person and estate to the said District in an amount equal to 50 per centum of the tax found to be due. Such amounts shall be collected in the same manner as is herein provided for the collection of the taxes levied under this chapter. (Aug. 17, 1937, 50 Stat. 686, ch. 690, title V, § 13; May 16, 1938, 52 Stat. 362, ch. 223, § 5 (e); July 26, 1939, 53 Stat. 1117, ch. 367, title V, art. III, § 6.)

AMENDMENTS

The 1938 amendment reduced the first penalty from 25% per annum to 10% per annum.

The 1939 amendment deleted the words "of the District of Columbia" following the word "Commissioners," and the words "of Columbia" following the word "District."

§ 47–1622 [20: 969u]. Wilful failure to pay taxes, make return—Penalty.

Any person required by this chapter to pay a tax or required by law or regulation made under authority thereof to make a return or keep any records or supply any information for the purposes of computation, assessment, or collection of any tax imposed by this chapter, who wilfully fails to pay such tax, make any such return, or supply any such information at the time or times required by law or regulation shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000 or imprisoned for not more than one year, or both. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 14; July 26, 1939, 53 Stat. 1117, ch. 367, title V, art. III, § 7.)

AMENDMENT

The 1939 act re-enacted this section as it appeared in the 1937 act.

§ 47–1623 [20: 969v]. Release of lien.

When the assessor is satisfied that the tax liability imposed by this chapter has been fully discharged or provided for, he may, under regulations prescribed by the Commissioners, issue his certificate, releasing any or all property from the lien herein imposed by this chapter. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 15; July 26, 1939, 53 Stat. 1117, ch. 367, title V, art. III, § 8.)

AMENDMENT

The 1939 amendment deleted the words "of any estate" and inserted in lieu thereof the words "imposed by this title" following the word "liability," deleted the words "of said District" following the word "Commissioners," and deleted the words "of such estate" following the word "property."

§ 47–1624 [20: 969w]. Transfers of assets—Notice—Portion retained to pay tax—Assessor to examine assets—Issuance of certificate.

No person holding, within the District tangible or intangible assets of any resident or nonresident decedent, of the value of $300 or more, shall deliver or transfer the same or any part thereof to any person other than an executor, administrator, or collector of the estate of such decedent appointed by the District Court of the United States for the District of Columbia, unless notice of the date and place of such intended transfer be served upon the assessor of the District of Columbia at least ten days prior to such delivery or transfer, nor shall any person

holding, within the District of Columbia, any assets of a resident or nonresident decedent, of the value of $300 or more, deliver or transfer the same or any part thereof to any person other than an executor, administrator, or collector of the estate of such decedent appointed by said District Court without retaining a sufficient portion or amount thereof to pay any tax which may be assessed on account of the transfer of such assets under the provisions of sections 47–1601 to 47–1624 without an order from the assessor of the District of Columbia authorizing such transfer. It shall be lawful for the assessor of the District, personally, or by his representatives, to examine said assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain as herein required a sufficient portion or amount to pay the taxes imposed by this chapter shall render such person liable to the payment of such taxes. The assessor of the District may issue a certificate authorizing the transfer of any such assets whenever it appears to the satisfaction of said assessor that no tax is due thereon: *Provided, however*, That any corporation, foreign or domestic to the District having outstanding stock or other securities registered in the sole name of a decedent whose estate or any part thereof is taxable under this chapter may transfer the same, without notice to the assessor and without liability for any tax imposed thereon under this chapter, upon the order of an administrator, executor, or collector of the estate of such decedent appointed by the District Court of the United States for the District of Columbia, or by a trustee appointed under a will filed with the register of wills of the District, or appointed by said court, or his successor approved by said court: *Provided further*, That the lessor of a safe-deposit box standing in the joint names of a decedent and a survivor or survivors may deliver the entire contents of such safe-deposit box to the survivor or survivors, after examination of such contents by the assessor or his representative, without any liability on the part of the said lessor for the payment of such tax. (Aug. 17, 1937, 50 Stat. 687, ch. 690, title V, § 16; May 16, 1938, 52 Stat. 362, ch. 223, § 5 (f); July 26, 1939, 53 Stat. 1117, ch. 367, title V, art. III, § 9.)

AMENDMENTS

The 1938 amendment added the second proviso.

The 1939 amendment added the first proviso, and deleted the words "of Columbia" following the word "District" the first time the said word appears in the first, second, and fourth sentences and added the words "of the value of $300 or more" both times they appear.

§ 47–1625 [20: 969x]. Bureau of Internal Revenue to supply information to Commissioners.

The Bureau of Internal Revenue of the Treasury Department of the United States is authorized and required to supply such information as may be requested by the Commissioners relative to any person subject to the taxes imposed under this chapter or relative to any person whose estate is subject to the provisions of said sections. (Aug. 17, 1937, ch. 690, § 26, as added May 16, 1938, 52 Stat. 363, ch. 223, § 5 (g); July 26, 1939, 53 Stat. 1118, ch. 367, title V, art. III, § 10.)

AMENDMENT

The 1939 amendment re-enacted the section as it appeared in the 1938 act.

CROSS REFERENCE

Secrecy of information, § 47–2504.

§ 47–1626 [20: 969y]. Assessor to determine tax if return not filed when due.

If any return required by this chapter is not filed with the assessor when due, the assessor shall have the right to determine and assess the tax or taxes from such information as he may possess or obtain. (July 26, 1939, 53 Stat. 1118, ch. 367, title V, art. III, § 11.)

§ 47–1627 [20: 969z]. Assessor may compound and settle tax.

The assessor is authorized to enter into an agreement with any person liable for a tax on a transfer under sections 47–1601 to 47–1607, in which remainders or expectant estates are of such nature or so disposed and circumstanced that the value of the interest is not ascertainable under the provisions of this chapter, and to compound and settle such tax upon such terms as the assessor may deem equitable and expedient. (July 26, 1939, 53 Stat. 1118, ch. 367, title V, art. III, § 12.)

§ 47–1628 [20: 969aa]. Definitions.

In the interpretation of this chapter unless the context indicates a different meaning the term "tax" means the tax or taxes mentioned in this title.

(a) The term "District" means the District of Columbia.

(b) The term "Commissioners" means the Commissioners of the District of Columbia, or their duly authorized representative or representatives.

(c) The term "assessor" means the assessor of the District of Columbia or his duly authorized representative or representatives.

(d) The term "collector of taxes" means the collector of taxes for the District of Columbia, or his duly authorized representative or representatives.

(e) The term "Metropolitan Police Department" means the Metropolitan Police Department of the District of Columbia.

(f) The term "include" when used in a definition contained in this chapter shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(g) The term "resident" means domiciled and the term "residence" means domicil. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 17; July 26, 1939, 53 Stat. 1118, ch. 367, title V, art. III, § 13.)

AMENDMENT

The 1939 act deleted the section of the 1937 act and inserted in lieu thereof the section as it now appears The former section read, "The word 'person' when used in this title shall include individuals, partnerships, associations, and corporations."

EFFECTIVE DATE

Section 14 of article III, title V, of the act of July 26, 1939, cited to the text provided that the provisions of this title should become effective at 12:01 antemeridian, the day immediately following its approval.

§ 47–1629. Situs of intangibles—Trust estates—Aliens.

Credits, securities, and other intangible personal property within the District not employed in carrying on any business therein by the owner shall be deemed to be located at the domicil of the owner for purposes of taxation under this chapter, and, if held in trust, shall not be deemed to be located in the District for purposes of taxation under this chapter solely because of the trustee being domiciled in the District: *Provided further,* That this section shall not apply to property owned by alien decedents, and that nothing herein contained shall affect the taxation by the District of any property owned by alien decedents which, at the time of the death of such decedents, shall be under the jurisdiction of the District or over which the District has control. (July 26, 1939, ch. 367, title V, § 15, as added July 10, 1940, 54 Stat. 747, ch. 568.)

§ 47–1630. Compromise and settlement of taxes.

In all cases where the assessor claims that a decedent was domiciled in the District at the time of his death and the taxing authorities of a State or States make a similar claim with respect to their State or States, the assessor may, with the approval of the Commissioners, compromise and settle the taxes imposed by this chapter. (July 26, 1939, ch. 367, title V, § 16, as added June 22, 1942, 56 Stat. 377, ch. 433, § 5.)

EFFECTIVE DATE

Section 6 of act June 22, 1942, cited to text, provided as follows: "The amendment made by section 5 of this Act shall apply to estates of decedents dying before or after its enactment."

Chapter 17.—FINANCIAL INSTITUTION, GUARANTY COMPANY, AND PUBLIC UTILITY TAXES

Sec.

47–1701. Banks, gas, electric-lighting, and telephone companies.
47–1702. Bonding, title, guaranty and fidelity companies.
47–1703. Savings banks.
47–1704. Building associations.
47–1705. Insolvent building or homestead associations.
47–1706. Private banks.
47–1707. Washington Stock Exchange.
47–1708. Note brokers.
47–1709. Private banks and note brokers to pay annual tax on the first day of July each year.

§ 47–1701 [20: 760]. Banks, gas, electric-lighting, and telephone companies.

Each national bank as the trustee for its stockholders, through its president or cashier, and all other incorporated banks and trust companies in the District of Columbia, through their presidents or cashiers, and all gas, electric lighting, and telephone companies, through their proper officers, shall make affidavit to the board of personal-tax appraisers on or before the 1st day of August each year as to the amount of its or their gross earnings or gross receipts, as the case may be, for the preceding year ending the 30th day of June, and each national bank and all other incorporated banks and trust companies respectively shall pay to the collector of taxes of the District of Columbia per annum 6 per centum on such gross earnings and each gas company, electric-lighting company, and telephone company shall pay to the collector of taxes of the District of Columbia per annum 4 per centum on such gross receipts, from the sale of public utility commodities and services within the District of Columbia. And in addition thereto the real estate owned by each national or other incorporated bank, and each trust, gas, electric-lighting, and telephone company in the District of Columbia shall be taxed as other real estate in said District: *Provided,* That street railroad companies shall pay 3 per centum per annum on their gross receipts and other taxes as provided by existing law, and insurance companies shall continue to pay the 2 per centum on premium receipts as provided by existing law. Each gas, electric-lighting, telephone and street railroad company shall pay, in addition to the tax herein mentioned, the corporate income tax imposed by sections 47–1501 to 47–1543, and the personal property tax on merchandise stock in trade. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5; April 28, 1904, 33 Stat. 564, ch. 1815, § 2; July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 2.)

TAX ON PRIVILEGE OF DOING BUSINESS

The District of Columbia Revenue Act of 1937, August 17, 1937, 50 Stat. 688, ch. 690, title VI, § 16, as added by act of May 16, 1938, 52 Stat. 369, ch. 223, § 6 (a), provided that the entire title VI, imposing a tax on the privilege of doing business, should expire June 30, 1939. This title appeared as sections 970 to 970r of title 20 of the 1929 District of Columbia Code, Supp. V, Title VII of the Revenue Act of 1939, July 26, 1939, 53 Stat. 1119, ch. 367, provided that "The laws authorizing the imposition by the District of Columbia of intangible personal property taxes and business privilege taxes are hereby extended from and after June 30, 1939, for the following purposes in connection with the taxes accrued or due under such laws prior to July 1, 1939—

"(1) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with such laws and the regulations issued thereunder;

"(2) For requiring the making, filing, and submission of returns and reports required by such laws;

"(3) For the examination of all books, records, and other documents, and witnesses; and

"(4) For the assessment and collection of such taxes, and the filing of liens therefor."

COMPILER'S NOTE

Section 2 (b) of title IV of the 1939 act, cited to the text, provided as follows: "This section shall not apply to gross earnings or gross receipts for any fiscal year ending the 30th day of June prior to the fiscal year ending June 30, 1940. Taxes shall be levied and collected for the fiscal years preceding the fiscal year ending June 30, 1940, under said paragraph 5 of section 6 of said act of July 1, 1902, as if this title had not been enacted."

AMENDMENTS

The 1904 amendment provided that that part of the section as it appeared in the 1902 act "shall be construed to mean that all street railroad companies shall pay four per centum per annum on their gross receipts within the District of Columbia and other taxes as provided by existing law."

The 1939 amendment added the words "or gross receipts, as the case may be" following the words "gross earnings" the first time said words appear; added after the word "June" in the first paragraph the words "and each national bank and all other incorporated banks and trust companies respectively shall pay to the collector of taxes of the District of Columbia per annum 6 per centum on

such gross earnings and each gas company, electric lighting company, and telephone company"; changed the percentages in the proviso of the first paragraph; added the words "existing law" in the first sentence of the proviso; and, deleted the words added by and above quoted from the 1904 act.

REPEAL

The final sentence of (a) of act of July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 2, read: "So much of the act approved October 1, 1890, entitled 'An act to provide for the incorporation of trust, loan, mortgage, and certain other corporations within the District of Columbia' as is inconsistent with the provisions of this section is hereby repealed." 26 Stat. 625, ch. 1246, D. C. Code, 1901, §§ 715–748, D. C. Code, 1940, §§ 26–301, 26–304 to 26–336.

CROSS REFERENCE

This section is part of the Revenue Act of 1939, see Compiler's Notes to § 47–1401.

NOTES TO DECISIONS

IN GENERAL

This statute is all inclusive covering gross earnings from whatever source. *Potomac Elec. Power Co.* v. *Hazen* (67 App. D. C. 161, 90 Fed. (2d) 406).

This being a measure to tax the gross earnings of gas, electric and telephone companies, said tax is merely franchise in nature and therefore is not a burden on commerce. *Potomac Elec. Power Co.* v. *Hazen* (67 App. D. C. 161, 90 Fed. (2d) 406).

CLASSIFICATION OF BANKS

A difference in tax rate on gross earnings as between savings banks and national and all other incorporated banks constituted a valid classification for tax purposes. *Hamilton Nat. Bank* v. *District of Columbia* (App. D. C. 1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied, 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

Where national banks and savings banks in District of Columbia all engaged in both savings account and commercial banking business, administrative classification of state banks as savings banks and national banks as not savings banks for tax purposes was improper. *Hamilton Nat. Bank* v. *District of Columbia* (App. D. C. 1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

CONSTRUCTION

The Loan Shark Law, § 26–601 et seq., the usury law, § 28–703 et seq., and this chapter are to be read together and when so read constitute a comprehensive code for business of lending money in the District of Columbia. *Hartman* v. *Lubar,* 1942 (133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

ELECTRIC COMPANY

Street equipment of electric power company, held not "real estate." *Rudolph* v. *Potomac Elec. Power Co.* (58 App. D. C. 54, 24 Fed. (2d) 882, 57 A. L. R. 865, cert. den. 278 U. S. 656, 73 L. Ed. 565, 49 Sup. Ct. 185).

FEDERAL LAWS

12 U. S. C. § 548 relating to state taxation of national bank shares was addressed to state legislatures and was inapplicable to gross earnings tax to which banks in District of Columbia were subject, although said section was relevant as indication of congressional policy. *Hamilton Nat. Bank* v. *District of Columbia* (App. D. C. 1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

FRANCHISE TAX

Franchise tax distinguished from property tax. *Potomac Electric P. Co.* v. *Rudolph* (58 App. D. C. 261, 29 Fed. (2d) 634, cert. den. 278 U. S. 656, 73 L. Ed. 565, 49 Sup. Ct. 185).

GAS COMPANY

A company engaged in the manufacture and supplying of gas may deduct from gross receipts the amount expended for raw materials from which gas is manufactured when the money that was spent for the raw materials had been taken from the capital of the company. *District of Columbia* v. *Georgetown Gas-Light Co.* (45 App. D. C. 63).

INTEREST, DEDUCTION OF

Interest paid by national bank in District of Columbia to depositors on savings accounts was not deductible in computing gross earnings within this section. *Hamilton Nat. Bank* v. *District of Columbia* (App. D. C. 1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

INTEREST ON GOVERNMENT BONDS

The act of April 24, 1917, § 1 (U. S. C., title 31, § 746) exempting interest on government bonds, etc., from taxation, held applicable to the tax imposed by this paragraph. *District of Columbia* v. *Riggs Nat. Bank* (58 App. D. C. 349, 30 Fed. (2d) 873, cert. den. 279 U. S. 846, 73 L. Ed. 991, 49 Sup. Ct. 343).

MOTION TO DISMISS

Where plaintiff bank seeks recovery of taxes allegedly paid by it involuntarily after they were illegally and erroneously assessed by the District over the amount actually due, motion to dismiss complaint will be denied, since the taxes were paid involuntarily and parties were not on terms of equality. *American Security & Trust Co.* v. *District of Columbia* (D. C. D. C. 1950, 91 F. Supp. 713).

TELEPHONE COMPANY

Where all telephone company's services were performed within District of Columbia, its receipts from all its services including handling of interstate calls, which services were necessarily performed in conjunction with services which connecting companies performed outside the District, were subject to tax imposed on gross receipts from sale of public utility services within the District. *Chesapeake & Potomac Telephone Co.* v. *District of Columbia,* 1943 (137 F. 2d 674, 78 U. S. App. D. C. 53).

Where telephone company did not print telephone directories but bought them as finished products, the company was entitled to deduct amount which it paid for the directories from its gross receipts, in order to determine its "gross earnings" subject to gross earnings tax. *Chesapeake & Potomac Telephone Co.* v. *District of Columbia,* 1943 (137 F. 2d 674, 78 U. S. App. D. C. 53).

§ 47–1702 [20: 761]. Bonding, title, guaranty and fidelity companies.

All companies, incorporated or otherwise, who guarantee the fidelity of any individual or individuals, such as bonding companies, and all companies who furnish abstracts of titles to real property, or who insure real estate titles, shall pay to the collector of taxes of the District of Columbia one and one-half per centum of their gross receipts in the District of Columbia. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 6; Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

AMENDMENT

The 1904 amendment struck out the 1902 section and inserted in lieu thereof the section as it now appears.

NOTES TO DECISIONS

CONSTRUCTION

The words "gross receipts" here construed are not equivalent to the words "consideration received" used in a section not in issue imposing a tax on consideration received on all insurance contracts on risks in the District. *Surburban Title & Investment Corp.* v. *District of Columbia* (C. A. D. C. 1950, 180 F. 2d 387, 86 U. S. App. D. C. 112).

§ 47–1703 [20: 762]. Savings banks.

Savings banks having no capital stock and paying interest to their depositors shall, through their presi-

dent or cashier, make affidavit to the board of personal-tax appraisers on or before the 1st day of August in each year as to the amount of their surplus and undivided profits, and shall pay to the collector of taxes of the District of Columbia a sum equal to one and one-half per centum on the amount of their surplus and undivided profits on the 30th day of June preceding.

Incorporated savings banks paying interest to their depositors shall, through their president or cashier, make report under oath to the board of personal-tax appraisers on or before the 1st day of August in each year as to the amount of their gross earnings, less the amount paid as interest to their depositors for the preceding year ending June 30th, and shall pay thereon to the collector of taxes of the District of Columbia four per centum per annum. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 7; Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

AMENDMENT

The 1904 amendment added the second paragraph.

NOTES TO DECISIONS

CLASSIFICATION OF BANKS

A difference in tax rate on gross earnings as between savings banks and national and all other incorporated banks constituted a valid classification for tax purposes. *Hamilton Nat. Bank* v. *District of Columbia* (App. D. C. 1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied, 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

Where national banks and savings banks in the District of Columbia engaged in both savings account and commercial banking business, administrative classification for gross earnings tax purposes of state banks as savings banks and national banks as not savings banks was invalid as not in harmony with this chapter. *Hamilton Nat. Bank* v. *District of Columbia* (App. D. C. 1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied, 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

Where a bank is an incorporated savings bank under any and all tests pursuant to which that status is accorded to state banks, and when the character of its business and its methods of conducting it are identified with those of state institutions, it is taxable under § 47–1703 and not under § 47–1701. *Hamilton National Bank* v. *District of Columbia* (C. A., D. C. 1949, 176 F. 2d 624, 85 U. S. App. D. C. 109, certiorari denied, 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

The Board of Tax Appeals was justified in holding state chartered banks to be taxable under § 47–1703 as incorporated savings banks, and not taxable under § 47–1701. *Hamilton National Bank* v. *District of Columbia* (C. A., D. C. 1949, 176 F. 2d 624, 85 U. S. App. D. C. 109, certiorari denied, 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 146).

FRANCHISE TAX

The tax imposed by this statute is clearly a franchise tax, and not a property tax on the earnings of banks as such. *Security Sav. & Commercial Bank* v. *District of Columbia* (51 App. D. C. 316, 279 Fed. 185).

MOTION TO DISMISS

Where plaintiff bank seeks recovery of taxes allegedly paid by it involuntarily after they were illegally and erroneously assessed by the District over the amount actually due, motion to dismiss complaint will be denied, since the taxes were paid involuntarily and parties were not on terms of equality. *American Security & Trust Co.* v. *District of Columbia* (D. C., D. C. 1950, 91 F. Supp. 713).

§ 47–1704 [20: 764]. Building associations.

Building associations in the District of Columbia shall pay to the collector of taxes of the District of Columbia two per centum per annum on their entire gross earnings for the preceding year ending June 30th. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 9; Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

AMENDMENT

In the 1902 act this section read as follows: "Building associations shall pay to the collector of taxes of the District of Columbia four per centum per annum on their gross earnings for the preceding year ending June thirtieth."

§ 47–1705 [20: 764a]. Insolvent building or homestead associations.

Whenever and after any building or homestead association, which was incorporated or doing business under the law of the District of Columbia, has ceased to do business by reason of insolvency no tax on personal property, either tangible or intangible, shall be levied, assessed, or collected by the District of Columbia against or from such association if such tax shall diminish the assets of such association necessary for the payment of the full amount due on share accounts in, or on shares of, such association to the holders thereof, and such tax, if heretofore levied, shall be abated as against any such associations as are or have been found by the comptroller of the currency to be insolvent. (Aug. 5, 1939, 53 Stat. 1210, ch. 446.)

§ 47–1706 [20: 765]. Private banks.

Private banks or bankers not incorporated shall pay a tax of five hundred dollars per annum. Every person, firm, company, or association not incorporated having a place of business where credits are opened by the deposit or collection of moneys or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bills of exchange or promissory notes are received for discount or for sale, shall be regarded as a private bank or banker. (July 1, 1902, 32 Stat. 621, ch. 1352, § 6, par. 14.)

§ 47–1707 [20: 766]. Washington Stock Exchange.

The Washington Stock Exchange, through its president or treasurer, shall pay to the collector of taxes of the District of Columbia a sum equal to five hundred dollars per annum in lieu of tax on the members thereof for business done on said exchange. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 15.)

COMPILER'S NOTE

That part of section 6, par. 15, of the 1902 act, cited to the text, which imposed a tax of $250 per annum upon general brokers, and of $100 per annum upon any broker who is a member of a regularly organized stock exchange outside of the District, has been omitted in view of the case cited below holding in effect that the statute, by imposing an unreasonable burden on the right of a citizen to pursue a lawful occupation open to his competitors upon less onerous terms operates substantially as the taking of property without due process of law, and was therefore within the prohibition of the 5th Amendment of the Constitution. *Lappin* v. *District of Columbia* (22 App. D. C. 68, 80).

§ 47–1708 [20: 767]. Note brokers.

Note brokers shall pay a tax of one hundred dollars per annum. Every person, firm, company, or

association not incorporated (except private banks and bankers) that loans money on promissory notes without real estate or collateral security or advances money on personal property as security without possession of said personal property shall be deemed a note broker: *Provided,* That exception shall be made of cooperative associations whose business is restricted to the members of such association. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 16.)

§ 47–1709 [20: 768]. Private banks and note brokers to pay annual tax on the first day of July each year.

The taxes for said private banks and bankers, and note brokers shall be paid to the collector of taxes of the District of Columbia, and shall date from the 1st day of July in each year and expire on the 30th day of June following. Said taxes shall date from the 1st day of the month in which the liability begins, and payment shall be made for a proportionate amount. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 17.)

Chapter 18—INSURANCE COMPANIES

Sec.
47–1801. Taxes on insurance companies.
47–1802. Penalty clause.
47–1803. Prosecutions in police court.
47–1804. Annual statements required—Filing fee.
47–1805. Revocation of license if statement not filed.
47–1806. Rates on insurance companies—Exceptions—Definitions—Marine insurance excluded.
47–1807. Penalty.
47–1808. Exemption of nonprofit relief associations.

§ 47–1801 [20: 966]. Taxes on insurance companies.

Every domestic, foreign, or alien company organized as a stock, mutual, reciprocal, Lloyd's, fraternal, or any other type of insurance company or association, before issuing contracts of insurance against loss of life or health, or by fire, marine, accident, casualty, fidelity and surety title guaranty, or other hazard not contrary to public policy, shall obtain from the superintendent of insurance of the District of Columbia an annual license or certificate of authority, upon payment of a fee of $25 to the collector of taxes of the District of Columbia. All licenses for insurance companies who may apply for permission to do business in the District of Columbia shall date from the first of the month in which application is made, and expire on the 30th day of April following, and payments shall be made in proportion. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 1.)

COMPILER'S NOTES

The original act contains these words before the present first word, "On and after the first day of September 1937."

This chapter superseded in whole or in part §§ 35–406 to 35–409, which relate to annual statements by life insurance companies.

This chapter partially supersedes § 35–202.

This chapter supersedes in whole or in part § 35–402 which requires life insurance companies and agents to pay certain fees.

CROSS REFERENCES

Fees for fraternal benefit associations, § 35–906.

Taxation of marine insurance companies, § 35–1108 et seq.

The sections in this chapter are part of the Revenue Act of 1937, see Compiler's Note to § 47–1401.

See notes to § 47–1808. *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107, Fed. (2d) 239).

§ 47–1802 [20: 966a]. Penalty clause.

Any such company issuing contracts of insurance in the District of Columbia, without first having obtained license or certificate of authority from the superintendent of insurance so to do, shall upon conviction be subject to a fine of $100 per day for each day it shall engage in business without such license or certificate of authority. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 2.)

CROSS REFERENCE

See notes to § 47–1801.

§ 47–1803 [20: 966b]. Prosecutions in police court.

All prosecutions for violations of this chapter shall be in the police court of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 3.)

§ 47–1804 [20: 966c]. Annual statements required—Filing fee.

Each of such companies shall file an annual statement, in the form prescribed by the superintendent of insurance, before March 1 of each year, of its operations for the year ending December 31 immediately preceding. Such statement shall be verified by the oath of the president and secretary or in their absence by two other principal officers. The fee for filing said statement shall be $20 and payment therefor shall be made to the collector of taxes of the District of Columbia. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 4.)

COMPILER'S NOTE

This chapter supersedes, in whole or in part, §§ 35–103 to 35–105.

CROSS REFERENCE

Annual statement by fire, casualty, and marine insurance companies, § 35–1311.

§ 47–1805 [20: 966d]. Revocation of license if statement not filed.

If any such company shall fail to file the annual statement herein required, the superintendent of insurance may thereupon revoke its license or certificate of authority to transact business in the District of Columbia. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 5.)

§ 47–1806 [20: 966e]. Rates on insurance companies—Exceptions—Definitions—Marine insurance excluded.

All such companies, including companies which issue annuity contracts, shall also pay to the collector of taxes of the District of Columbia a sum of money as taxes equal to 2 per centum of their policy and membership fees and net premium receipts or consideration received on all insurance and annuity contracts on risks in the District of Columbia, said taxes to be paid before the 1st day of March of each year on the amount of such income for the year ending December 31, next preceding. Such tax shall be in lieu of all other taxes except (1) taxes upon real estate and (2) fees and charges provided

for by the insurance laws of the District including amendments made to such laws by this title.

Net premium receipts or consideration received means gross premiums or consideration received less the sum of the following:

1. Premiums received for reinsurance assumed and premiums or consideration returned on policies or contracts canceled or not taken.

2. Dividends paid in cash or used by the policyholders in payment of renewal premiums.

Nothing contained in this section or in sections 47–1801, 47–1807 shall apply with respect to marine insurance written within the said District and reported, taxed, and licensed under the provisions of sections 35–1101 to 35–1132. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 6; May 16, 1938, 52 Stat. 358, ch. 223, § 2.)

AMENDMENT

The 1938 amendment added the words "including companies which issue annuity contracts" following the word "companies" the first time said word appears; the words "or consideration" following the word "receipts" the first time said word appears; the words "and annuity" following the word "insurance" the first time said word appears; the words "or consideration received" and "or consideration" in the second paragraph; the words "received for reinsurance assumed and premiums or consideration returned" and "or contracts" in the third paragraph (numbered (1)); and deleted the words "Premiums paid for reinsurance where the same are paid to companies duly licensed to do business in the District, and."

NOTES TO DECISIONS

CONSTRUCTION

Where section not in issue imposes a tax on "consideration received" the words "gross receipts" being construed in the instant case are not equivalent to "consideration received." *Surburban Title & Investment Corp.* v. *District of Columbia* (C. A. D. C. 1950, 180 F. 2d 387, 86 U. S. App. D. C. 112).

INSURANCE COMPANIES

Title insurance companies, whose business consisted solely of issuing either certificates of title or title policies to real estate in District of Columbia and such further incidental transactions as related to such main objectives, were "insurance companies" within this section imposing tax on membership fees and premium receipts of insurance companies in lieu of all other taxes. *Real Estate Title Ins. Co.* v. *District of Columbia* (App. D. C. 1947, 161 F. 2d 887).

§ 47–1807 [20: 966f]. Penalty.

If any such company shall fail to pay the tax herein required, it shall be liable to the District of Columbia for the amount thereof, and in addition thereof a penalty of 8 per centum per month thereafter until paid. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 7.)

§ 47–1808 [20: 966g]. Exemption of nonprofit relief associations.

Nothing contained in this chapter shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army or Navy, or solely of employees of any other branch of the United States Government service or solely of employees of the District of Columbia government, or solely of employees of any individual, company, firm, or corporation or to any fraternal organization which issues contracts of insurance exclusively to its own members. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 8.)

NOTES TO DECISIONS

GROUP HEALTH ASSOCIATION

Group Health Association falls within exempting proviso of statute. *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

The word "corporation" as used in the exemption obviously refers to private concerns, not governmental agencies, and Group Health is relieved from the requirements of this section. *Jordan* v. *Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

Chapter 19.—MOTOR FUEL TAX

Sec.
47–1901. Rate—Use restricted.
47–1901a. Repealed.
47–1901b. Increase in rate.
47–1902. Definitions.
47–1903. Importers — License — Application for — Contents—Fee—Bond—Issuance—Revocation.
47–1904. To render monthly report to assessor of amount of fuel sold.
47–1905. Invoices to be rendered by importers to all purchasers except in cases of retail sales.
47–1906. Tax to be paid to collector not later than twenty-fifth day of next succeeding calendar month.
47–1907. Importer's records of transactions subject to inspection of assessor and collector.
47–1908. Penalty for accepting fuel from importer without an itemized sale statement.
47–1909. Fuel to be exported from District of Columbia exempted from taxation.
47–1910. Motor fuel used for any purpose other than motor vehicle—Refund of tax payment.
47–1911. Violations—Penalty.
47–1912. Tax on fuel sold by United States agency in the District of Columbia.
47–1913. Violations to be prosecuted by corporation counsel.
47–1914. Construction—Not to affect public hackers.
47–1915. Construction—Personal tax laws not affected.
47–1916. Commissioners to make necessary regulations.
47–1917. Street paving—Assessments.
47–1918. Revenue and disbursements.
47–1919. Continuation of uncompleted projects at end of fiscal year.

§ 47–1901 [20: 831]. Rate—Use restricted.

A tax of 2 cents per gallon on all motor-vehicle fuels within the District of Columbia, sold or otherwise disposed of by an importer, or used by him in a motor vehicle operated for hire or for commercial purposes, shall be levied, collected, and paid in the manner hereinafter provided.

All proceeds of the taxes imposed under the District of Columbia Revenue Act of 1937, except as otherwise provided in section 47–1910, and all moneys collected from fees charged for the registration and titling of motor vehicles including fees charged for the issuance of permits to operate motor vehicles, shall be deposited in a special account in the Treasury of the United States entirely to the credit of the District of Columbia, and shall be appropriated and used solely and exclusively for the following purposes:

(1) For the construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith;

(2) For the expenses of the office of the director of vehicles and traffic incident to the regulation and control of traffic and the administration of the same; and

(3) For the expenses necessarily involved in the police control, regulation, and administration of traffic upon the highways: *Provided, however,* That the total amount to be expended under this item shall not exceed 15 per centum of the total amount appropriated for pay and allowances of officers and members of the Metropolitan police force. For the fiscal year 1938 all moneys appropriated for the construction, reconstruction, improvement, and maintenance of highways and administrative expenses in connection therewith, all moneys appropriated for the department of vehicles and traffic, and 15 per centum of all moneys appropriated for pay and allowances of officers and members of the Metropolitan police force shall be paid from and chargeable against the fund hereby created. (Apr. 23, 1924, 43 Stat. 106, ch. 131, § 1; Aug. 17, 1937, 50 Stat. 676, ch. 690, title III, § 1.)

AMENDMENT

The 1937 amendment deleted the following sentence from the first paragraph: "The proceeds of the tax, except as provided in section 10, shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia and shall be available for appropriation by the Congress exclusively for road and street improvement and repair," and added the second and following paragraphs of the section.

CROSS REFERENCES

Disposition of taxes, § 40–103.

Refunds, § 47–1910.

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

See § 1–224 as to the authority of the Commissioners to regulate the storage of inflammables.

NOTES TO DECISIONS

SPECIAL ASSESSMENT

A special repaving assessment under acts authorizing assessments on frontage basis was invalid. *Reichelderfer* v. *Hechinger* (61 App. D. C. 104, 57 Fed. (2d) 943).

§ 47–1901a. Repealed. July 16, 1947, 61 Stat. 360, ch. 258, Art. III, § 2, effective Aug. 1, 1947.

Section, act Dec. 26, 1941, 55 Stat. 871, ch. 635, § 1, provided for temporary increase in rate of one cent per gallon from July 1, 1942, to June 30, 1951.

§ 47–1901b. Increase in rate.

The tax of 2 cents per gallon on motor-vehicle fuels within the District of Columbia, sold or otherwise disposed of by an importer, or used by him in a motor vehicle operated for hire or for commercial purposes, imposed by section 47–1901, and increased by section 47–1901a, to 3 cents per gallon effective January 1, 1942, and extending to and including June 30, 1951, is hereby further increased to 4 cents per gallon effective on the first day of the first month following the approval of this section and extending to and including June 30, 1952, and thereafter the tax shall be 3 cents per gallon. When, pursuant to section 47–1912, gasoline or other motor-vehicle fuel is sold by any agency of the United States within the District of Columbia, for use in privately owned vehicles, such agency of the United States shall, by agreement with the Commissioners of the District of Columbia, arrange for the collection of the full amount of the tax per gallon herein authorized to be imposed and as increased by this section, and shall account to the collector of taxes of the District of Columbia for the proceeds of such tax collections. (July 16, 1947, 61 Stat. 359, Art. III, § 1.)

§ 47–1902 [20: 832]. Definitions.

As used in sections 47–1901—47–1916—

(a) The term "motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam, except traction engines, road rollers, and vehicles propelled only upon rails and tracks.

(b) The term "motor vehicle fuels" means gasoline and other volatile and inflammable liquid fuels produced or compounded for the purpose of operating or propelling internal-combustion engines: *Provided,* That kerosene shall not be considered to be a motor-vehicle fuel in the meaning of this chapter.

(c) The term "importer" means any person who brings into, or who produces, refines, manufactures, or compounds, in the District of Columbia motor-vehicle fuel to be used by him or to be sold, kept for sale, bartered, delivered for value, or exchanged for goods. The term "distributor" means any person other than an importer, who purchases motor-vehicle fuel for sale to another person for resale.

(d) The term "person" includes individual, partnership, corporation, and association.

(e) The term "commissioners" means the Board of Commissioners of the District of Columbia.

(f) The term "highways" means the right of way of streets, avenues, and roads, bridges, viaducts, underpasses, drainage structures, guard rails, signs, signals, curbing, and dikes, fills, and retaining walls necessary to support or protect the highway.

(g) The term "construction" means the supervising, inspecting, actual building, and all expenses incidental to the construction of a highway, including the acquisition of the necessary rights of way.

(h) The term "reconstruction" means a widening or a rebuilding of the highway or any portion thereof and of sufficient width and strength to care adequately for traffic needs, including all expenses incidental to the reconstruction of a highway and the acquisition of the necessary rights of way.

(i) The term "maintenance" means the constant making of needed repairs to preserve the highway.

(j) The term "improvement" means the betterment of a highway by construction, reconstruction, or resurfacing. (Apr. 23, 1924, 43 Stat. 106, ch. 131, § 2; Aug. 17, 1937, 50 Stat. 677, ch. 690, title III, § 2; May 16, 1938, 52 Stat. 358, ch. 223, § 3.)

AMENDMENTS

The 1937 amendment deleted from subsection (c) the words "or otherwise disposed of by him or to be used by him in a motor vehicle operated for hire or for commercial purposes" and inserted in lieu thereof the words which follow the word "sold" to the end of the subsection, and added subsections (f), (g), (h), and (i).

The 1938 amendment in subsection (f) deleted the words "and protective structures in connection with highways" and inserted in lieu thereof the words following the word "signals," and added subsection (j).

CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Note to § 47–1401.

NOTES TO DECISIONS

GASOLINE IMPORTED BY UNITED STATES

United States is not an "importer" or "person" within the meaning of the act. *District of Columbia* v. *American Oil Co.* (59 App. D. C. 260, 39 Fed. (2d) 510).

§ 47–1903 [20: 833]. Importers — License — Application for—Contents—Fee—Bond—Issuance—Revocation.

(a) No person shall bring into, or produce, refine, manufacture, or compound in the District of Columbia motor-vehicle fuel to be used by him or to be sold, bartered, delivered for value, or exchanged for goods, and no person shall engage in the business of importer of motor-vehicle fuels in the District of Columbia unless such person is the holder of an unrevoked license authorizing him so to do issued by the commissioners. The application for such license shall contain (1) the name of the applicant; (2) the name under which the applicant intends to transact business and the name and place of business of the local representative; (3) the location of the applicant's place of business; (4) the date such business was established; and (5) any other information required under regulations promulgated by the commissioners of the District of Columbia. In case the applicant is a corporation, the application shall also contain the corporate name, place, and time of incorporation, and the names of the officers and directors, and, if a foreign corporation, the name of its resident general agent, and in case the applicant is a partnership the names and addresses of the several persons constituting the partnership. Such application shall be signed and sworn to by the owner of such business, if owned by an individual; by the partners, if owned by a partnership; or by the president and secretary of the corporation, or by its manager or resident general agent, if owned by a corporation. At the time of applying for such license the applicant shall pay to the collector of taxes as an annual license fee the sum of $5 and shall file with the commissioners of the District of Columbia a bond in the form to be prescribed by said commissioners, in the approximate sum of three times the average monthly motor-fuel tax due from said such importer during the next preceding twelve months, or estimated to be so due in the next succeeding twelve months, to be executed by a surety company duly licensed to do business under the laws of the District of Columbia, payable to the District of Columbia and conditioned upon the prompt payment of any and all taxes and penalties, levied and imposed in sections 47–1901 and 47–1903 to the collector of taxes of the District of Columbia, and generally upon faithful compliance with the terms of sections 47–1901 to 47–1916 by such importer: *Provided,* That in no case shall such bond be less than $5,000 nor more than $20,000.

(b) Upon filing such application and bond and the payment of the fee, the assessor shall issue to such applicant a license which shall authorize the applicant to engage in the business of importer of motor-vehicle fuels for one year unless such license is sooner revoked.

(c) If any importer fails, refuses, or neglects to file the monthly report within the time required by section 47–1904, or to pay the tax within the time required by section 47–1906 there shall be added to such tax an amount equal to the sum of 20 per centum of the amount of such tax, and the assessor shall promptly notify the importer and the bonding company by notice sent by registered mail to such importer requiring him to show cause why the license should not be revoked. If in the opinion of the assessor the importer fails within ten days after the mailing of such notice to show that failure to file the monthly report or to pay the tax as the case may be within the time required was due to accident or justifiable oversight, the assessor shall forthwith revoke such license. Any importer whose license has been revoked shall not be issued another license for twelve months following the date of said revocation.

(d) Before any person whose license has been revoked may obtain another license to engage in the business of importer of motor-vehicle fuels, such person shall pay all delinquent taxes and penalties due hereunder remaining unpaid by him. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 3; Aug. 17, 1937, 50 Stat. 678, ch. 690, title III, § 3.)

AMENDMENT

The 1937 amendment is, in effect, a new enactment superseding this section as contained in the 1924 act.

CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Note to § 47–1401.

NOTES TO DECISIONS

SALE TO UNITED STATES

Congress did not intend to permit the United States to import gasoline, tax-free, and yet impose a tax if delivery to the United States by the vendor should be made in the District instead of across the line in Virginia. *District of Columbia* v. *American Oil Co.* (59 App. D. C. 260, 39 Fed. (2d) 510).

§ 47–1904 [20: 834]. To render monthly report to assessor of amount of fuel sold.

Each importer engaged in the District of Columbia in the sale or other disposition or use of motor-vehicle fuel shall render to the assessor of the District of Columbia, on or before the twenty-fifth day of each calendar month, on forms prescribed, prepared, and furnished by the said assessor, a sworn report of the total number of gallons of motor-vehicle fuel within the District of Columbia sold or otherwise disposed of by such importer or used by him in a motor vehicle operated for hire or for commercial purposes, and of the number of gallons of such fuel so sold or otherwise disposed of for exportation from and resale without the District of Columbia, during the preceding calendar month. Such report shall be sworn to by one of the principal officers in case of a domestic corporation, by the resident general agent, or attorney in fact, or by a chief accountant or officer in case of a foreign corporation, or by the managing agent or owner in case of a partnership or associa-

tion. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 4; Dec. 26, 1941, 55 Stat. 871, ch. 635, § 2.)

AMENDMENT

The act of Dec. 26, 1941, cited to text, changed the word "last" to "twenty-fifth".

§ 47–1905 [20: 835]. Invoices to be rendered by importers to all purchasers except in cases of retail sales.

Invoices shall be rendered by importers and distributors to all purchasers from them of motor-vehicle fuel within the District of Columbia except in case of retail sales. Said invoices shall contain a statement, printed thereon in a conspicuous place, that the liability to the District of Columbia for the tax herein imposed has been assumed by a licensed importer named in said statement and that the importer has paid the tax or will pay it on or before the twenty-fifth day of the calendar month next succeeding the purchase. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 5; Aug. 17, 1937, 50 Stat. 676, ch. 690, title III, § 4; Dec. 26, 1941, 55 Stat. 871, ch. 635, § 2.)

AMENDMENT

The 1937 amendment inserted the words "and distributors" after "importers," and the words "by a licensed importer named in said statement" were inserted after the word "assumed."

The act of Dec. 26, 1941, cited to text, changed the word "last" to "twenty-fifth."

CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

§ 47–1906 [20: 836]. Tax to be paid to collector not later than twenty-fifth day of next succeeding calendar month.

The tax in respect to motor-vehicle fuel so sold or otherwise disposed of or used in any calendar month shall be paid by the importer on or before the twenty-fifth day of the next succeeding calendar month to the collector of taxes of the District of Columbia, who shall issue a receipt to the importer therefor. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 6; Dec. 26, 1941, 55 Stat. 871, ch. 635, § 2.)

AMENDMENT

The act of Dec. 26, 1941, cited to text, changed the word "last" to "twenty-fifth".

The catchline has been changed.

§ 47–1907 [20: 837]. Importer's records of transactions subject to inspection of assessor and collector.

The records of all purchases, receipts, sales, other dispositions, and uses of motor-vehicle fuel of every importer, distributor, or dealer shall, at all times during the business hours of the day, be subject to inspection by the assessor and the collector of taxes of the District of Columbia, or by their duly authorized agents or by any other agent duly authorized by the Commissioners to make such inspection. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 7; Aug. 17, 1937, 50 Stat. 676, ch. 690, title III, § 5.)

AMENDMENT

The 1937 amendment added the words "distributor, or dealer."

CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

§ 47–1908 [20: 838]. Penalty for accepting fuel from importer without an itemized sale statement.

It shall be unlawful for any person to accept or receive from any importer or distributor, except in cases of retail sales, any motor-vehicle fuel unless the statement provided for in section 47–1905 appears upon the invoice for the fuel. If any such motor-vehicle fuel is received and accepted by any person upon the invoice of which said statement does not appear, such person shall pay to the collector of taxes the tax herein imposed. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 8; Aug. 17, 1937, 50 Stat. 679, ch. 690, title III, § 6.)

AMENDMENT

The 1937 amendment added the words "or distributor" and deleted following the word "imposed" the words "or be liable to the District of Columbia for double the amount of the said tax, which amount may be recovered by civil suit or action in any court of competent jurisdiction."

CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

§ 47–1909 [20: 839]. Fuel to be exported from District of Columbia exempted from taxation.

No tax on motor-vehicle fuels exported or sold for exportation from the District of Columbia to any other jurisdiction or nation shall be imposed. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 9.)

§ 47–1910 [20: 840]. Motor fuel used for any purpose other than motor vehicle—Refund of tax payment.

Any person who purchases any motor-vehicle fuel in the District of Columbia to be used for operating or propelling any stationary gas engine, tractor used for agricultural purposes, motor-boat, aeroplane, or aircraft of any character, or for cleaning or dyeing, or for any other purpose other than use in a motor vehicle operated, or intended to be operated, in whole or in part upon any of the public highways of the District of Columbia, on which motor-vehicle fuel the tax imposed by sections 47–1901 to 47–1916 shall have been paid, shall be refunded the amount of such tax so paid by the importer, upon presenting to the collector of taxes of the District of Columbia a sworn statement accompanied by the invoices showing such purchase, which statement shall set forth the total amount of such motor-vehicle fuel so purchased and used by such consumer other than in motor vehicles operated, or intended to be operated, on any of the public highways of the District of Columbia. Such refunds shall be made by check by the collector of taxes from moneys paid for taxes on motor-vehicle fuels and retained on deposit as hereinafter in this section provided. For the purpose of such refunds the collector of taxes is authorized at all times to retain in a special fund on deposit in a Government depositary moneys paid him for such taxes, the total amount so retained on deposit not to exceed $1,000 at any one time. Applications for refunds as provided herein, must be filed with the collector of taxes of the District of Columbia within sixty days from the date of purchase: *Provided,* That before any refund shall be made the applicant shall furnish to the collector of taxes of the District of Columbia

satisfactory evidence by sworn statement of the exempted use of such fuel purchased by him. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 10; Aug. 11, 1939, 53 Stat. 1409, ch. 692.)

AMENDMENT

The 1939 amendment deleted the word "thirty" and inserted in lieu thereof the word "sixty."

CROSS REFERENCE

Refund of taxes, § 47–1017 and notes.

§ 47–1911 [20: 841]. Violations—Penalty.

Any person violating any provision of sections 47–1903 to 47–1906 inclusive, or section 47–1908, or refusing or obstructing inspection under section 47–1907, or falsely making any statement or report required by sections 47–1901 to 47–1916, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $500 or by imprisonment for not more than one year, or by both such fine and imprisonment. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 11; Aug. 17, 1937, 50 Stat. 679, ch. 690, title III, § 7.)

AMENDMENT

The 1937 amendment added the words "or section 8 (§ 47–1908)," and deleted the words "Any person who fails to pay any tax upon motor-vehicle fuels imposed by this act shall be liable to the District of Columbia for a penalty equal to twice the amount of such tax. Such penalty may be collected in a civil suit in any court of competent jurisdiction."

CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

§ 47–1912 [20: 844]. Tax on fuel sold by United States agency in the District of Columbia.

When under authority of law gasoline or other motor-vehicle fuel is sold by an agency of the United States within the District of Columbia, for use in privately owned vehicles, such agency of the United States shall, by agreement with the Commissioners of the District of Columbia, arrange for the collection of the tax of 2 cents per gallon herein authorized to be imposed, and for accounting to the collector of taxes of the District of Columbia for the proceeds of such tax collections. (Apr. 23, 1924, 43 Stat. 109, ch. 131, § 14.)

§ 47–1913 [20: 845]. Violations to be prosecuted by corporation counsel.

All prosecution for violations of the provisions of sections 47–1901 to 47–1906 or regulations prescribed thereunder may be in the police court of the District of Columbia, upon information filed by the corporation counsel of the District of Columbia or any of his assistants; and all suits for the collection of any tax or penalty under sections 47–1901 to 47–1906 or such regulations shall be instituted by the corporation counsel or any of his assistants. (Apr. 23, 1924, 43 Stat. 109, ch. 131, § 15.)

§ 47–1914 [20: 846]. Construction—Not to affect public hackers.

Nothing in this chapter shall be construed in any wise to affect the provisions of sections 47–2331 to 47–2333. (Apr. 23, 1924, 43 Stat. 109, ch. 131, § 16.)

COMPILER'S NOTE

The paragraphs of the 1902 act referred to appeared in D. C. 1929 as sections 879, 881, and 882 of title 20. The act of July 1, 1932, 47 Stat. 550, ch. 366, purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. The 1932 act appeared in Supplement V to D. C. 1929 as chapter 10 of title 20 and appears in this code as chapter 23 of this title. Paragraphs 11, 13, and 14 of the 1902 act contain subject matter closely akin to paragraphs 31, 32, and 33 of the 1932 act, which appear in this code, as they are now amended, as §§ 47–2331 to 47–2333.

§ 47–1915 [20: 847]. Construction—Personal tax laws not affected.

Nothing in sections 47–1901 to 47–1916 shall be construed as affecting the application to motor vehicles of the personal-property tax in force on May 3, 1924, which personal-property tax shall continue to be levied, assessed, and collected on motor vehicles. (Apr. 23, 1924, 43 Stat. 110, ch. 131, § 17.)

CROSS REFERENCE

Taxation of motor vehicles, § 47–1210.

NOTES TO DECISIONS

CONSTRUCTION

This act should be considered as a whole, and, if possible, given an interpretation that will harmonize and accord full force and effect to all of its provisions. *District of Columbia* v. *Bailey* (57 App. D. C. 151, 18 Fed. (2d) 367).

§ 47–1916 [20: 848]. Commissioners to make necessary regulations.

The commissioners may make such regulations as in their judgment are necessary for the administration of this chapter and may affix thereto such fines and penalties as in their judgment are necessary to enforce such regulations (in cases in which a penalty is not otherwise provided by law). (Apr. 23, 1924, 43 Stat. 110, ch. 131, § 18.)

CROSS REFERENCE

Rules and regulations, § 47–2502 and notes.

§ 47–1917. Street paving—Assessments.

Assessments in accordance with existing law shall be made for paving and repaving roadways, where such roadways are paved or repaved, with funds derived from the collection of the tax on motor-vehicle fuels. (Mar. 3, 1926, 44 Stat. 167, ch. 44, § 1.)

§ 47–1918 [20: 849]. Revenue and disbursements.

All moneys derived from assessments for paving and repaving roadways under provisions of existing law arising from the expenditure of the fund created by the tax on motor-vehicle fuels, shall be paid into the treasury of the United States and be credited to and constitute a part of said fund and shall thereafter be available for appropriation in the same manner as the proceeds of the tax on motor-vehicle fuels. (June 7, 1924, 43 Stat. 550, ch. 302.)

NOTES TO DECISIONS

PROVIDED BY EXISTING LAW

Term "provided by existing law" should be held to refer to the provision of the statute relating to the paving, and not to the assumed principle of common law relating to the relocation of the tracks. *District of Columbia* v. *Georgetown & T. R. Co.* (59 App. D. C. 335, 41 Fed. (2d) 424).

§ 47–1919 [20: 850]. Continuation of uncompleted projects at end of fiscal year.

Any projects or portions of projects chargeable to the gasoline-tax road and street improvement fund during the fiscal year 1925 and subsequent fiscal years and uncompleted at the close of those years shall be a continuing charge upon the fund until completed and shall, except in so far as conditions beyond the control of the commissioners prevent, be given priority over projects subsequently made a charge upon such fund. (Mar. 3, 1925, 43 Stat. 1226, ch. 477.)

NOTES TO DECISIONS

INVALIDITY

A special repaving assessment under acts authorizing assessments on frontage basis was invalid. *Reichelderfer* v. *Hechinger* (61 App. D. C. 104, 57 Fed. (2d) 943).

Chapter 20.—DOG TAX

Sec.
47–2001. Dog tax.
47–2002. Collector to furnish metallic tag.
47–2003. Impounding of dogs found at large without tag.
47–2004. Dogs wearing tag permitted to run at large—Exception.
47–2005. Owner of dog liable to civil action for damages caused by the dog.
47–2006. Dogs must wear collar with owner's name and tag.
47–2007. Removing dog's collar, insignia, or tag—Penalty.
47–2008. Poundmaster given power to make arrest.

§ 47–2001 [20: 915]. Dog tax.

There shall be levied a tax of $3 each per annum upon all dogs owned or kept in the District of Columbia; said tax to be collected as other taxes in said District are or may be collected. (June 19, 1878, 20 Stat. 173, ch. 323, § 1; July 5, 1945, 59 Stat. 409, ch. 267, § 1.)

AMENDMENTS

The act of July 5, 1945, cited to text, amended section by increasing tax from $2.00 to $3.00.

§ 47–2002 [20: 916]. Collector to furnish metallic tag.

It shall be the duty of the collector of taxes, upon receipt of said tax, to give to the person paying the same, for each dog so paid for, a suitable metallic tag, stamped with the year, showing that said tax has been duly paid; and he shall keep a record of all such payments, with the date thereof, and the name, color, and sex of such dog, and the name of the person claiming any dog so paid for; and a copy of such record, certified under the hand and official seal of the said collector, which shall be given to any person demanding the same, upon payment of twenty-five cents therefor, shall be prima-facie evidence of such payment in any court of the District of Columbia. (June 19, 1878, 20 Stat. 173, ch. 323, § 2.)

§ 47–2003 [20: 917]. Impounding of dogs found at large without tag.

The poundmaster of the District of Columbia shall, during the entire year, seize all dogs found running at large without the tax tag issued by the collector aforesaid attached, and all female dogs in heat found running at large, and shall impound the same; and if within forty-eight hours the same are not redeemed by the owners thereof by the payment of two dollars they shall be sold or destroyed, as the poundmaster may deem advisable; and any sale made by virtue hereof shall be deemed valid to all intents and purposes in all courts of the District of Columbia: *Provided,* That no owner, keeper, or purchaser, shall be permitted to redeem any dog seized and impounded as aforesaid, nor shall the Poundmaster deliver any dog to an owner, keeper, or purchaser, unless such owner, keeper, or purchaser shall first satisfy the Poundmaster that he has obtained for such dog the tax tag provided for in section 47–2002, and if at such time there shall be in force a proclamation of the Commissioners requiring dogs to be vaccinated against rabies, such owner, keeper, or purchaser shall also satisfy the Poundmaster that such dog has been vaccinated against rabies in accordance with such proclamation. (June 19, 1878, 20 Stat. 173, ch. 323, § 3; June 30, 1902, 32 Stat. 547, ch. 1332; July 5, 1945, 59 Stat. 409, ch. 267, § 2.)

AMENDMENTS

The act of July 5, 1945, cited to text, amended section by adding proviso.

CROSS REFERENCE

General provisions concerning animals running at large, § 1–230.

NOTES TO DECISIONS

EFFECT OF AMENDMENT

The amendment of this act without changing the particular provision that had previously been construed by the court does not modify the judicial interpretation previously given the act, as it will be presumed that such construction was in accordance with the legislative intent. *Bardwell* v. *Petty* (52 App. D. C. 310, 286 Fed. 772).

§ 47–2004 [20: 918]. Dogs wearing tag permitted to run at large—Exception.

Any dog wearing the tax tag hereinbefore provided for, except female dogs in heat, shall be permitted to run at large within the District of Columbia, and any dog wearing the tax tag hereinbefore provided for shall be regarded as personal property in all the courts of said District, and any person injuring or destroying the same shall be liable to a civil action for damages, which, upon proof of said injuring or killing, may be awarded in a sum equal to the value usually put upon such property by persons buying and selling the same, subject to such modifications as the particular circumstances of the case may make proper. (June 19, 1878, 20 Stat. 174, ch. 323, § 4; June 30, 1902, 32 Stat. 547, ch. 1332.)

NOTES TO DECISIONS

ABSENCE OF TAG

This section does not change the common law rule to extent that any dog not wearing tax tag is not "personal property" and that anyone injuring the same is not liable in damages. *Scharfeld* v. *Richardson,* 1942 (133 F. 2d 340, 77 U. S. App. D. C. 378, 145 A. L. R. 980).

The owner of dog which had not been provided with a tax tag as required by this chapter could recover for the loss of the dog as result of a fatal assault perpetrated by another dog whose owner had been apprised of its malevolent propensities. *Scharfeld* v. *Richardson,* 1942 (133 F. 2d 340, 77 U. S. App. D. C. 378, 145 A. L. R. 980).

COMMON LAW

At common law, a dog is "personal property" and its owner may recover for a willful or negligent injury thereto. *Scharfeld* v. *Richardson,* 1942 (133 F. 2d 340, 77 U. S. App. D. C. 378, 145 A. L. R. 980).

CONSTRUCTION

This section and § 47–2004 to be construed together. *Scharfeld v. Richardson,* 1942 (133 F. 2d 340, 77 U. S. App. D. C. 378, 145 A. L. R. 980).

§ 47–2005 [20: 919]. Owner of dog liable to civil action for damages caused by the dog.

Any person owning any dog so recorded in the collector's office shall be liable in a civil action for any damage done by said dog to the full amount of the injury inflicted. (June 19, 1878, 20 Stat. 174, ch. 323, § 5.)

NOTES TO DECISIONS

COMMON LAW

At common law, an owner may be liable in civil action for damage caused by his dog. *Sharfeld* v. *Richardson,* 1942 (133 F. 2d 340, 77 U. S. App. D. C. 378, 145 A. L. R. 980).

CONSTRUCTION

This section and § 47–2005 are to be construed together. *Scharfeld v. Richardson,* 1942 (133 F. 2d 340, 77 U. S. App. D. C. 378, 145 A. L. R. 980).

§ 47–2006 [20: 920]. Dogs must wear collar with owner's name and tag.

It shall be the duty of any person owning or possessing a dog to place, or cause to be placed and kept, around the neck of such dog, a collar, on which shall be marked and engraved, in legible and durable characters, the name of the owner or possessor, and the letters "D. C.," and to which collar must be attached the insignia or tax-tag furnished by the District tax-collector, in accordance with sections 47–2001, 47–2002, under the penalty of not less than five nor more than ten dollars; and if any person shall put, or cause to be put, a collar, with the insignia or tax-tag, around the neck of any dog owned or possessed by any person or persons residing in the District, without having obtained a license for keeping such animal, he, she, or they shall forfeit and pay the sum of not less than five nor more than ten dollars for each and every offense. (June 19, 1878, 20 Stat. 174, ch. 323, § 6.)

§ 47–2007 [20: 921]. Removing dog's collar, insignia, or tag—Penalty.

Any person who shall remove, or cause to be removed, the collar and insignia or tax-tag from the neck of any dog, or entice any properly licensed dog into any inclosure for the purpose of taking off its collar or insignia, or shall for such purpose decoy or entice any animal out of the inclosure or house of its owner or possessor, or shall seize or molest any dog while held or led by any person, or shall bring any dog into the District for the purpose of taking up and killing the same, shall forfeit and pay a sum of not more than twenty dollars. (June 19, 1878, 20 Stat. 174, ch. 323, § 8.)

§ 47–2008 [20: 921a]. Poundmaster given power to make arrest.

In order to carry out properly and effectively the duties imposed upon him by Congress the poundmaster is hereby given authority as a special police officer of the Metropolitan police department of the District of Columbia, with authority to make arrests in the performance of his duty. (June 6, 1930, 46 Stat. 522, ch. 411, § 1.)

COMPILER'S NOTE

This section as enacted contained the clause, "and he shall receive a salary at the rate of $3,080 per annum." That portion has been deleted because subsequent appropriation acts have provided a different salary.

Chapter 21.—PRIVATE EMPLOYMENT AGENCY LICENSES

Sec.
47–2101. Employment agencies—License required—Definitions.
47–2102. Bond.
47–2103. Registers.
47–2104. Receipts.
47–2105. Location of place in which conducted.
47–2106. Application of minor.
47–2107. Inspection.
47–2108. False information.
47–2109. Exceptions from license requirements.
47–2110. Employment contract.
47–2111. Character of employer—Fraud.

§ 47–2101 [20: 1742]. Employment agencies — License required—Definitions.

It shall be unlawful for any person to open, keep, operate, maintain, or carry on any private employment agency without first having obtained a license from the District of Columbia so to do. The fee for such license shall be $100 per annum. Any license may be denied, revoked, or suspended for cause by the said commissioners: *Provided,* That any person whose license shall be denied, revoked, or suspended by the commissioners may, within thirty days after such denial, revocation, or suspension, apply to any justice of the United States Court of Appeals for the District of Columbia for a writ of error to review such action. Such application shall not operate as a stay of any order issued in connection with such denial, revocation, or suspension.

(a) The term "private employment agency" means any business, enterprise, or undertaking that procures, offers to procure, promises to procure, attempts to procure, or aids in procuring, either directly or indirectly, help or employment for another, for any fee, remuneration, profit, or any consideration whatsoever, promises, paid, or received therefor, either directly or indirectly. It shall also include domestic, commercial, clerical, executive, professional, and general employment bureaus, and shall apply to theatrical employment agencies and nurses' registry conducted for profit or gain.

(a–1) The term "nurses' registry" means and includes the business of conducting an agency, bureau, office, or other place for the purpose of procuring, offering to procure, promising to procure, attempting to procure, or aiding in procuring employment or engagements for nurses of any kind.

(a–2) The term "theatrical employment agency" includes the business of conducting any agency, bureau, office, or other place providing engagements for circus, vaudeville, theatrical, and other entertainments or exhibitions or performances, or of giving information as to where such engagements may be procured or provided, but does not include the business of managing the artists or the attraction constituting such performances, where such business only incidentally involves the seeking of employment therefor.

(a–3) The term "applicant for employment" means any person seeking work, employment, or engagement of any character.

(a–4) The term "applicant for help" means any person seeking help, employees, or performers.

The singular shall include the plural and the masculine the feminine. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 42; July 1, 1932, 47 Stat. 559, ch. 366, par. 42.)

COMPILER'S NOTE

This chapter sets out that part of the 1932 License Law that deals with employment agencies. Penalties for violating §§ 47–2101 to 47–2109 are set out by § 47–2347.

AMENDMENT

Prior to amendment by the 1932 act, this paragraph provided as follows: "Proprietors or owners of intelligence offices, information bureaus, registries, or employment offices, by whatsoever name called, shall pay a license tax of ten dollars per annum."

CROSS REFERENCES

Exceptions from act, § 47–2109.

Refund of fees when license is refused, § 47–1018.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.

Commission may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

This chapter is not affected by provisions for licensing of motor vehicles, § 40–105.

See Compiler's Note to § 47–1201.

§ 47–2102 [20: 1743]. Bond.

No license shall become effective under section 47–2101 until bond in due form in the penal sum of $1,000, or such lesser amount as the commissioners may determine with two or more sureties or a duly authorized surety company to be approved by the commissioners, shall have been deposited with the commissioners. The bond shall be payable to the District of Columbia and shall be conditioned that the person applying for the license will comply with this chapter and shall pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud, or deceit, or any unlawful act or omission of any licensed person, made, committed, or omitted in the business conducted under such license, or caused by any other violation of this chapter in carrying on the business for which such license is granted. One or more recoveries upon such bond shall not vitiate the same, but it shall remain in full force and effect: *Provided, however,* That the aggregate amount of all such recoveries shall not exceed the full amount of the bond. Upon the commencement of any action or actions against the surety upon any such bond for a sum or sums aggregating or exceeding the amount of such bond the commissioners may require a new and additional bond in like amount as the original one which shall be filed with the commissioners within thirty days of the demand therefor. Failure to file such bond within the prescribed time shall constitute cause for the revocation of the license therefor issued. Any suit or action against the surety on any bond required by the provisions of this section shall be commenced within one year from the accruing of the cause of action thereon.

If at any time, in the opinion of the commissioners, the sureties, or any of them, shall become irresponsible, the person holding such license shall, upon notice from the commissioners, give a new bond, and the failure to give a new bond within ten days after such notice, in the discretion of the commissioners, shall operate as a revocation of such license.

The commissioners shall furnish to anyone applying therefor a certified copy of any such bond filed in their office upon the payment of a fee of $1, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person or corporation whose name appears therein. (July 1, 1902, ch. 1352, § 7, par. 42b, as added July 1, 1932, 47 Stat. 560, ch. 366.)

§ 47–2103 [20: 1744]. Registers.

It shall be the duty of every licensee to keep a register, approved by the commissioners, in which shall be entered, in the English language, the date of the application for employment, the name and address of the applicant to whom employment is promised or offered, the amount of the fee received, and, whenever possible, the names and addresses of former employers or persons to whom such applicant is known. Such licensee shall also enter in a separate register approved by the commissioners, in the English language, the name and address of every applicant accepted for help, the date of such application, kind of help requested, the names of the persons sent, with the designation of the one employed, and the amount of the fee received. The aforesaid registers of applicants for employment and help shall be open during office hours to inspection by the said commissioners. No such licensee shall make any false entry in such registers. It shall be the duty of every licensee, whenever possible, to communicate orally or in writing with at least one of the persons mentioned as references for every applicant for work in private families or employed in a fiduciary capacity, and the result of such investigation shall be kept on file in such agency: *Provided,* That if the applicant for help voluntarily waives in writing such investigation of references by the licensee, failure on the part of the licensee to make such investigation shall not be deemed a violation of this section. (July 1, 1902, ch. 1352, § 7, par. 42c, as added July 1, 1932, 47 Stat. 561, ch. 366.)

§ 47–2104 [20: 1745]. Receipts.

It shall be the duty of such licensee to give to every applicant for employment from whom a fee shall be received a receipt in which shall be stated the name of said applicant, the date and amount of the fee, and the purpose for which it was paid, and to every applicant for help a receipt stating the name and address of said applicant, the date and amount of the fee, and the kind of help to be provided. Every receipt given by such licensee shall bear the name and address of such licensee printed in large type thereon. Every receipt shall have printed on the back thereof a copy of § 47–2108 in the English language. (July 1, 1902, ch. 1352, § 7, par. 42d, as added July 1, 1932, 47 Stat. 561, ch. 366.)

§ 47–2105 [20: 1746]. Location of place in which conducted.

No private employment agency licensed under section 47–2101 shall be located in rooms used for living purposes, or in rooms where boarders or lodgers are kept, or where meals are served or persons sleep, or in any building or on premises wherein rooms are located and used for living purposes, or wherein boarders or lodgers are kept, or where meals are served, or persons sleep, or in any building wherein such rooms are located; nor shall any such private employment agency be located in any such building where the entrance thereto is not separate and apart from the entrance to the building proper, or where there is any entrance into the building proper from said private employment agency: *Provided,* That no one shall be precluded from keeping an employment agency in an office building by reason of there being a cafe or restaurant in another part of said building. (July 1, 1902, ch. 1352, § 7, par. 42e, as added July 1, 1932, 47 Stat. 561, ch. 366.)

§ 47–2106 [20: 1747]. Application of minor.

No licensee shall accept any application for employment made by or on behalf of any child, or shall place or assist in placing any such child in any employment whatever in violation of any compulsory education or child labor laws. (July 1, 1902, ch. 1352, § 7, par. 42f, as added July 1, 1932, 47 Stat. 561, ch. 366.)

§ 47–2107 [20: 1748]. Inspection.

All registers, books, records, and other papers required to be kept pursuant to this chapter in any private employment agency shall be open at all reasonable hours to the inspection of the commissioners, and every licensee shall post in a conspicuous place in such agency the license certificate. (July 1, 1902, ch. 1352, § 7, par. 42g, as added July 1, 1932, 47 Stat. 562, ch. 366.)

CROSS REFERENCE

See notes to § 47–2101.

§ 47–2108 [20: 1749]. False information.

No licensee conducting any private employment agency shall publish or cause to be published any false or fraudulent or misleading information, representation, notice, or advertisement, nor shall he give any false information, or make any false promise or false representation concerning an engagement or employment to any applicant who shall register or apply for an engagement or employment or help. (July 1, 1902, ch. 1352, § 7, par. 42h, as added July 1, 1932, 47 Stat. 562, ch. 366.)

§ 47–2109 [20: 1750]. Exceptions from license requirements.

This chapter shall not apply to employment bureaus conducted by registered medical institutions, duly incorporated hospitals, or duly incorporated alumni associations of registered nurses, or to any bureau maintained by persons for the purpose of securing help or employees where no fee is charged. (July 1, 1902, ch. 1352, § 7, par. 42i, as added July 1, 1932, 47 Stat. 562, ch. 366.)

§ 47–2110 [20: 949]. Employment contract.

No such person shall induce or attempt to induce any domestic employee to leave his employment with a view to obtaining other employment through such agency. Whenever any licensed person, or any other acting for him, agrees to send one or more persons, to work as contract laborers in any one place outside the city in which such agency is located, the said licensed person shall give to the applicant for employment, in writing, the name and address of the employer, name and address of the employee, nature of the work to be performed, wages offered, destination of the person employed, and terms of transportation. (June 19, 1906, 34 Stat. 308, ch. 3438, § 9.)

COMPILER'S NOTE

This is a section of the prior law which was deemed not to be in conflict with the foregoing sections of this chapter and hence not repealed.

§ 47–2111 [20: 950]. Character of employer—Fraud.

No such licensed person shall send, or cause to be sent, any female as a servant or inmate or performer to enter any place of bad repute, house of ill fame, or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purpose of prostitution, or gambling house, the character of which such licensed person could have ascertained upon reasonable inquiry. No such licensed person shall knowingly permit any person of bad character, prostitutes, gamblers, intoxicated persons, or procurers, to frequent such agency. No such person shall procure or offer to procure help or employment in rooms or on premises where intoxicating liquors are sold to be consumed on the premises, whether or not dues or a fee or privilege is exacted, charged, or received directly or indirectly: *Provided,* That it shall be unlawful for employment agents or agencies to send applicants for employment to employers other than those who have applied to such agents or agencies for help or labor. For the violation of any of the foregoing provisions of this section the penalty shall be a fine of not more than two hundred dollars and in default in payment thereof by imprisonment in the workhouse for a period of not more than one year, or both, at the discretion of the court. No such licensed person shall publish or cause to be published any false or fraudulent or misleading notice or advertisement. All advertisements of such employment agency by means of cards, circulars, or signs, and in newspapers and other publications, and all letter heads, receipts, and blanks shall contain the name and address of such employment agency, and no such licensed person shall give any false information, or make any false promise or false representation concerning employment to any applicant who shall register for employment or help. (June 19, 1906, 34 Stat. 308, ch. 3438, § 10.)

CROSS REFERENCE

The Compiler's Note under § 47–2210 applies to this section.

Chapter 22.—PUBLIC AUCTION PERMITS

Sec.
47–2201. Public auction—Auction of merchandise without permit from Commissioners prohibited.
47–2202. Application for permit—Fee—Information to be furnished.
47–2203. Personal effects, furniture, personal livestock, may be sold without permit.
47–2204. Suspension of licensee for violations.
47–2205. Auction of jewelry, plated wares, prohibited after certain hour.
47–2206. Misrepresenting merchandise—Prosecution for.
47–2207. Prosecution for violation to be in police court.
47–2208. Construction.

§ 47–2201 [20: 869]. Public auction—Auction of merchandise without permit from Commissioners prohibited.

Excepting sales made under authority of law, it shall be unlawful in the District of Columbia for any person, firm, or corporation, either for himself or itself, or for another, or for any firm, or corporation to sell or offer at public auction any stock or stocks of merchandise, in whole or in part, without first obtaining from the board of commissioners of the District of Columbia a written or printed permit so to do; and the said board of commissioners shall not issue a permit for any such sale or sales until they are satisfied that neither fraud nor deception of any kind is contemplated or will be practiced, and that neither the sale, the reasons therefor nor the goods to be sold have not already been or will not thereafter be fraudulently or falsely advertised or in any wise whatsoever misrepresented. (Sept. 8, 1916, 39 Stat. 846, ch. 473, § 1.)

COMPILER'S NOTE

Sections 47–2201 to 47–2208 were saved from repeal by the act of July 1, 1932, ch. 366, par. 9, 47 Stat. 552, (§ 47–2309).

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Jewelry auctioneers, § 47–2205.

Other provisions for licensing and supervising auctioneers, § 47–2309.

The commissioners may license, regulate, or inspect any business or calling, §§ 47–2344, 47–2345.

See Compiler's Note to § 47–1201.

§ 47–2202 [20: 870]. Application for permit—Fee—Information to be furnished.

Every such permit shall be issued for a definite period of time not exceeding twelve months from its date of issue, and the date and hour of its expiration shall be stated in the permit, and before such permit shall be issued the applicant therefor shall pay to the District of Columbia, through its collector of taxes, such fee as the said Board of Commissioners may deem sufficient to reimburse the District of Columbia for the work and expense of issuing the permit and gathering information concerning the applicant and his goods as the said board may deem prudent and best for the protection of the public, but which fee shall not exceed the sum of $50. The application for the said permit shall be by verified petition, stating the name of the applicant, residence, street, and number of the proposed place of selling, and shall set forth in detail the goods to be sold and what statements or representations are to be made or advertised as to the same, and the length of time for which the permit is desired; and, if previously engaged in a like or similar business, to designate all the places where the same was conducted, and shall furnish to said commissioners such further evidence as shall be deemed necessary to establish the truth of the statements made in the said petition. (Sept. 8, 1916, 39 Stat. 846, ch. 473, § 2.)

CROSS REFERENCE

Refund of fees when license refused, § 47–1018.

§ 47–2203 [20: 871]. Personal effects, furniture, personal livestock may be sold without permit.

No permit as herein provided for shall be required for the sale of any wagon, carriage, automobile, mechanics' tools, used farming implements, livestock, including game, poultry (dressed or undressed), vegetables, fruits, melons, berries, flowers, or for the sale of used household furniture and effects when being sold at the residence of the housekeeper selling them. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 3.)

§ 47–2204 [20: 872]. Suspension of licensee for violations.

The Board of Commissioners of the District of Columbia are hereby vested with authority to temporarily suspend the operation of the license herein provided for whenever they may believe that this chapter, or any part thereof, or regulations made in pursuance thereof, are about to be or are being violated, and they shall thereupon forthwith institute the appropriate proceeding in the police court in accordance with this chapter, and in the event that the said violation results in a conviction, then and in that event the license shall be and become null and void, but in the event that the said proceeding shall terminate in favor of the defendant, then and in that event the suspension of said license shall be at an end, and the license shall thereupon be restored and be in full force and effect. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 4.)

§ 47–2205 [20: 873]. Auction of jewelry, plated wares, prohibited after certain hour.

No person as herein provided for shall sell at public auction, from the 1st day of April until the 30th day of September, both inclusive, between the hours of seven o'clock in the evening and eight o'clock the following morning, nor from the 1st day of October until the 30th day of March, both inclusive, between the hours of six o'clock in the evening and eight o'clock in the morning, any jewelry, diamond, or other precious stone, watch, gold and silver ware, gold and silver plated ware, statuary, porcelains, bric-a-brac, or articles of virtu. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 5.)

CROSS REFERENCE

Commissioners have general police supervision, § 4–147.

§ 47–2206 [20: 874]. Misrepresenting merchandise—Prosecution for.

Any person selling or offering for sale any property under the provisions of this chapter shall, in describing the same, be truthful with respect to the character, quality, kind, and description of the same

and which, for the purpose hereof, shall be considered as warranties, and any breach of the same shall be punishable by prosecution in the police court, as hereinbefore set forth. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 6.)

§ 47–2207 [20: 875]. Prosecution for violation to be in police court.

All prosecutions under this chapter shall be in the police court of the District of Columbia upon information by the corporation counsel or one of his assistants. Any person violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not less than $10 nor more than $200 or imprisonment of not more than sixty days or both, in the discretion of the court. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 7.)

§ 47–2208 [20: 876]. Construction.

Nothing in this chapter shall be construed to excuse or release any person, firm or corporation, or property from the payment of any occupational or property tax, or any other tax imposed or levied by law. Neither shall anything herein be construed to obviate the application of any fraudulent or false advertisement statute of the District of Columbia to any person who may violate the same; nor shall anything herein be construed to prevent any prosecution for fraud, deceit, or larceny by trick; nor to in any way estop or hinder any remedy at law or in equity, or the right to cancel or estop any unconscionable bargain or fraudulent transaction. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 8.)

Chapter 23.—GENERAL LICENSE LAW

Sec.

47–2301. Licenses required for business or profession—Application—Transfer of license—Signing and sealing.
47–2302. Compliance with fire escape laws and regulations required before license is issued.
47–2303. Theater licenses—Revocation for failure to comply with regulations for decency.
47–2304. Separate license for each business, trade, or profession by same person—Place of business restricted to that designated in license—Operation under license by others prohibited.
47–2305. Date and expiration of license—Prorating for late application.
47–2306. Licenses to be posted on premises—Exhibition to police.
47–2307. Construction and definition of terms.
47–2308. Druggists, apothecaries, and patent-medicine sellers.
47–2309. Auctioneers—Penalty for failure to account.
47–2310. Barber shops and beauty parlors.
47–2311. Massage establishments—Turkish, Russian, or medicated baths.
47–2312. Public baths.
47–2313. Keeping or storing of moving-picture films.
47–2314. Gasoline, kerosene, oils, and explosives.
47–2315. Pyroxylin.
47–2316. Abattoirs or slaughterhouses.
47–2317. Laundries—Dry cleaning and dyeing establishments.
47–2318. Mattresses—Manufacture or renovation.
47–2319. Slot machines.
47–2320. Theaters, moving pictures, skating rinks, dances, exhibtions, lectures, entertainments, assignment of police and firemen and additional fees based thereon.
47–2321. Bowling alleys—Billiard and pool tables—Games.
47–2322. Shooting galleries.
47–2323. Baseball—Football—Athletic exhibitions—Amusement parks.
47–2324. Swimming pools.
47–2325. Circuses.
47–2326. Carnivals and fairs.
47–2327. Commission merchants in food—Bakeries—Bottling establishments — Groceries — Markets—Restaurants.
47–2328. Classification of buildings containing living quarters for licenses—Fees—Buildings exempt from license requirement.
47–2329. Apartment houses.
47–2330. Lodging houses.
47–2331. Routed passenger vehicles, vehicles for hire—Hackers' licenses — Identification tags on vehicles.
47–2332. Rental or leasing of motor vehicle without driver—Sightseeing vehicles for school children, occasional purposes—Ambulances, private vehicles for funeral purposes—Issuance of licenses—Payment of fees.
47–2333. Vehicles hauling goods from public space.
47–2334. Repairing of motor vehicles.
47–2335. Livery stables.
47–2336. Sales on streets or public places.
47–2337. Solicitors.
47–2338. Guides.
47–2339. Secondhand dealers.
47–2340. Dealers in dangerous weapons.
47–2341. Private detectives.
47–2342. Fortune telling.
47–2343. Exposing persons or animals as targets prohibited.
47–2344. Commissioners may regulate, modify, or eliminate license requirements.
47–2344a. Undertakers' licenses—Qualifications — Examination—License without examination—Authority of Commissioners—Appropriations—Definitions.
47–2345. Promulgation of regulations authorized—Revocation of licenses.
47–2346. Prosecutions.
47–2347. Penalties.
47–2348. Saving clause.
47–2349. Severable provisions.
47–2350. Refund of erroneously-paid fees.

§ 47–2301 [20: 1701]. Licenses required for business or profession—Application—Transfer of license—Signing and sealing.

No person shall engage in or carry on any business, trade, profession, or calling in the District of Columbia for which a license fee or tax is imposed by the terms of this chapter without having first obtained a license so to do. Applications for licenses shall be made to the commissioners of the District of Columbia or their designated agent, and no license shall be granted until payment for the same shall have been made. Every license shall specify by name the person, firm, or corporation to which it shall be issued, the business, trade, profession, or calling for which it is granted, and the location at which such business, trade, profession, or calling is to be carried on. Licenses granted under the terms of this chapter may be assigned or transferred on application upon the conditions applicable to granting the original licenses, and the commissioners of the District of Columbia or their designated agent shall issue a certificate of such assignment or transfer upon the payment to the District of Columbia of a fee of $1 therefor. All licenses and transfers issued or granted shall be signed by the commissioners of the

District of Columbia or their designated agent and impressed with a seal to be adopted by the commissioners of the District of Columbia. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7, par. 1; July 1, 1932, 47 Stat. 550, ch. 366.)

COMPILER'S NOTE

The enacting clause of the act cited to the text provided: "That section 7 of an act entitled 'An Act making appropriations to provide for the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes,' approved July 1, 1902, be, and the same is hereby, amended to read as follows:"

The second paragraph of that act reads: "Applications for licenses shall be made to the Commissioners of the District of Columbia or their designated agent in accordance with the provisions of the act of Congress, approved March 3, 1917, and no license shall be granted until payment for the same shall have been made."

The act of March 3, 1917 (39 Stat. 1006, ch. 160), to which reference was made was as follows: "All the authority, duties, discretion, and powers now vested by law in the assessor of the District of Columbia with respect to licenses and the issuance thereof, shall, on and after July first, nineteen hundred and seventeen, be transferred to and vest in the superintendent of licenses provided for in this act."

The superintendent of licenses was provided for in the act by merely appropriating one year's salary for the office.

The provision of the act of 1932 that application for licenses shall be made to and granted by "the Commissioners of the District of Columbia, or their designated agent" renders superfluous the following language in this section: "in accordance with the provisions of the Act of Congress, approved March 3, 1917," and the same was accordingly eliminated.

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect it is a new enactment superseding § 7 of the prior act. (See also compiler's note hereto.)

CROSS REFERENCES

Police powers generally, § 1–226, and notes.

Power of Commissioners over licenses, §§ 47–2344, 47–2345.

Refund of fees when license refused, § 47–2350.

Revocation or suspension of licenses for violation of Uniform Narcotic Drug Act, § 33–418.

This chapter is not affected by provisions for licensing of motor vehicles, § 40–105.

See Compiler's Notes to § 47–1201.

§ 47–2302 [20: 1702]. Compliance with fire escape laws and regulations required before license is issued.

No license shall be issued to any person for the operation of a business in any building or part thereof containing living or lodging quarters of any description required to be licensed under authority of this Act, nor for any place of public assembly required to be licensed as hereinafter provided, nor for any other building or place mentioned in sections 5–317 to 5–323, required to be licensed as hereinafter provided or required to be licensed in any other Act of Congress, until the Director of Inspection, the Chief Engineer of the Fire Department, and any other official of the District of Columbia who shall be designated by the Commissioners of the District of Columbia, have certified in writing to the Commissioners of the District of Columbia or their designated agent that the applicant for license has, as to such building or place, complied with all laws enacted and regulations made and promulgated for the protection of life and property. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 550, ch. 366, par. 2; July 22, 1947, 61 Stat. 402, ch. 296, § 1.)

EFFECTIVE DATE OF AMENDMENT

Sec. 4 of act July 22, 1947, cited to text, provided that it shall become effective sixty days after passage and approval.

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also compiler's note to § 47–2301.)

Act July 22, 1947, cited to text, amended section generally.

CROSS REFERENCES

Inspection fees for business required to have annual license, § 5–317.

Withholding licenses for failure to comply with safety regulations for buildings, § 5–308.

NOTES TO DECISIONS

PREVIOUS BUILDING CONSTRUCTION

Building regulations had no controlling effect in determining whether fan-shaped landing was improper construction where building was constructed before adoption of building regulations which were limited to new residential buildings. *Phillips* v. *Capital Investment & Guaranty Co.* (D. C. 1943, 32 A. 2d 249).

§ 47–2303 [20:1703]. Theater licenses—Revocation for failure to comply with regulations for decency.

Any license issued by the commissioners of the District of Columbia or their designated agent to the proprietor of a theater or other public place of amusement may be terminated by the commissioners whenever it shall appear to them that after due notice the person holding such license shall have failed to comply with such regulations as may be prescribed by the commissioners for the public decency. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 3.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2304 [20: 1704]. Separate license for each business, trade, or profession by same person—Place of business restricted to that designated in license—Operation under license by others prohibited.

When more than one business, trade, profession, or calling for which a license is prescribed in this section shall be carried on by the same person, the license fee or tax shall be paid for each such business, trade, profession, or calling, except where otherwise specifically provided in this section: *Provided,* That licenses issued under any of the provisions of this section shall be good only for the location designated thereon, except in the case of licenses issued under this section for businesses and callings which in their nature are carried on at large and not at a fixed place of business, and no license shall be issued for more than one place of business, profession, or calling, without the payment of a separate fee or tax for each, and if a business is conducted in more than one building a separate license shall be required for the business in each building: *Provided further,* That no person holding a license under the terms of this section shall willfully suffer or allow any other per-

son chargeable with a separate license to operate under his license. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 4; July 22, 1947, 61 Stat. 402, ch. 296, § 2.)

EFFECTIVE DATE OF AMENDMENT

Sec. 4 of act July 22, 1947, cited to text, provided that it shall become effective sixty days after passage and approval.

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

Act July 22, 1947, cited to text, amended section generally.

§ 47–2305 [20: 1705]. Date and expiration of license—Prorating for late application.

All licenses issued shall date from the 1st day of November in each year and expire on the 31st day of October following, except as hereinafter provided. Licenses issued at any time after the beginning of the license years shall date from the 1st day of the month in which the license was issued and end on the last day of the license year above prescribed, and payment shall be made of the proportionate amount of the annual license fee or tax: *Provided,* That where the license fee is $5 or less the fee shall not be prorated: *And provided further,* That no fee or tax shall be prorated to an amount less than $5. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 5.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

Theater license, § 47–2320.

§ 47–2306 [20: 1706]. Licenses to be posted on premises—Exhibition to police.

All licenses granted under the terms of this chapter must be conspicuously posted on the premises of the licensee and said licenses shall be accessible at all times for inspection by the police or other officers duly authorized to make such inspections. Licensees having no located place of business shall exhibit their licenses when requested to do so by any of the officers above named. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 6.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2307 [20: 1707]. Construction and definition of terms.

For the purposes of this chapter the word "person" shall signify and include firms, corporations, companies, associations, executives, administrators, guardians, or trustees; the word "agent" shall signify and include every person acting for another; the word "merchandise" shall signify and include every article of commerce whether sold in bulk or otherwise; the word "dealers" shall signify and include every person engaged in selling or offering for sale any description of merchandise or property. Words of one number shall signify and include words of both numbers, respectively, and words of one gender shall signify and include words of every gender, respectively: *Provided,* That nothing in this chapter shall be interpreted as repealing any specific Act of Congress or any of the police or building regulations of the District of Columbia regarding the establishment or conduct of the businesses, trades, professions, or callings named in this chapter, and not inconsistent with the provisions of this chapter. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 7.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2308 [20: 1708]. Druggists, apothecaries, and patent-medicine sellers.

Apothecaries or druggists shall pay a license fee of $12 per annum. Every person who sells patent medicines, or manufactures, compounds, sells, or dispenses medicines by prescription or otherwise from a located place of business shall be regarded as an apothecary or druggist. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 8.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCES

Board of pharmacy, powers and duties, § 2–601 et seq.
Uniform Narcotic Drug Act, § 33–418.

§ 47–2309 [20: 1709]. Auctioneers—Penalty for failure to account.

Auctioneers shall pay a license fee of $5 per annum. No license shall issue hereunder without the approval of the major and superintendent of police. If any licensed auctioneer, his agent or employee, shall convert to his own use in the District of Columbia any goods, wares, merchandise, or personal property of any description, or the proceeds of the same, and shall fail to pay over the avails or proceeds from the sale thereof, less his proper charges, within five days after receiving the money or its equivalent from the purchaser or purchasers of said goods, wares, merchandise, or personal property of any description, and after demand made therefor by the person entitled to receive the same, or his or her duly authorized agent, he shall be deemed guilty of a misdemeanor, and upon information and conviction in the police court of the District of Columbia shall be fined not more than $1,000 or be imprisoned not exceeding six months, or both, in the discretion of the court. Nothing herein contained shall be construed to repeal or alter the provisions of §§ 47–2201 to 47–2208. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 9.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCES

Embezzlement, penalties, § 22–1206 et seq.

Other provisions for licensing and regulating auctioneers, §§ 47–2201 to 47–2208.

Police supervision of auctioneers of watches and jewelry, § 4–147.

Similar provisions, § 22–1208.

§ 47–2310 [20: 1710]. Barber shops and beauty parlors.

Owners or managers of barber shops, beauty parlors, beauty salons, vanity shops, or shingle shops, by whatsoever name called, where hair cutting, hairdressing, hair dyeing, manicuring, and kindred acts are practiced shall pay a license fee of $5 per annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 10.)

COMPILER'S NOTE

This section has probably been superseded by the creation of the Barber Board, §§ 2–1101 to 2–1118; and the Cosmetology Board, §§ 2–1301 to 2–1328.

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2311 [20: 1711]. Massage establishments — Turkish, Russian, or medicated baths.

Owners or managers of massage establishments and Turkish, Russian, or medicated baths shall pay a license fee of $5 per annum. No license shall be issued under this section without the approval of the major and superintendent of police. It shall be unlawful for any female to give or administer massage treatment or any bath to any person of the male sex, or for any person of the male sex to give or administer massage treatment or any bath to any person of the female sex, in any establishment licensed under this section. Any person violating the provisions of this section shall, upon conviction, be punished as hereinafter provided in this chapter; and, in addition to such penalty, it shall be the duty of the Commissioners of the District of Columbia to revoke the license of the owner or manager of the establishment wherein the provisions of this section shall have been violated. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 11.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2312 [20: 1712]. Public baths.

Owners or managers of establishments where public baths are supplied to transients shall pay a license fee of $5 per annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 12.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2313 [20: 1713]. Keeping or storing of moving-picture films.

Owners or managers of establishments where moving-picture films are kept or stored shall pay a license fee of $65 per annum. No license shall be issued hereunder without the approval of the fire marshal of the District of Columbia. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 13.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

Power of Commissioners to make police regulations to regulate the storage of highly inflammable substances and to prohibit use of fireworks or explosives, §§ 1–224, 1–227.

§ 47–2314 [20: 1714]. Gasoline, kerosene, oils, and explosives.

(a) Owners or managers of establishments where gasoline or oils of like grade are sold shall pay a license fee of $3 per annum for each pump used in dispensing said gasoline or oils.

(b) Owners or managers of establishments where kerosene or oils of like grade are stored or are kept for sale shall pay a license fee of $5 per annum.

(c) Owners or managers of establishments where explosives of any kind are stored or are kept for sale shall pay a license fee of $5 per annum.

(d) No license shall be issued under this section without the approval of the fire marshal of the District of Columbia. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 14.)

AMENDMENT

The 1932 act purports to amend the 1901 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

See note to § 47–2313.

§ 47–2315 [20: 1715]. Pyroxylin.

Owners or managers of establishments where pyroxylin is kept or stored for painting or spraying shall pay a license fee of $5 per annum. No license shall issue hereunder without the approval of the fire marshal of the District of Columbia. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 15.)

AMENDMENT

The 1932 act purports to amend the 1901 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

See notes to § 47–2313.

§ 47–2316 [20: 1716]. Abattoirs or slaughterhouses.

Owners or proprietors of abattoirs or slaughterhouses, by whatsoever name called, shall pay a license fee of $100 per annum. No license shall issue hereunder except with the approval of the director of public health of the District of Columbia and a compliance with existing laws concerning location. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 16.)

COMPILER'S NOTE

See note to § 33–302.

AMENDMENT

The 1932 act purports to amend the 1901 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2317 [20: 1717]. Laundries — Dry cleaning and dyeing establishments.

(a) Owners or managers of laundries operated other than by hand power shall pay a license fee of $18 per annum.

(b) Owners or managers of laundries operated by hand power shall pay a license fee of $5 per annum.

(c) Owners or managers of dry cleaning or dyeing establishments shall pay a license fee of $5 per annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 17.)

AMENDMENT

The 1932 act purports to amend the 1901 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2318 [20: 1718]. Mattresses—Manufacture or renovation.

(a) Persons engaged in the business of manufacturing or renovating mattresses shall pay a license fee of $75 per annum.

(b) Owners or managers of establishments where mattresses are stored, sold, or kept for sale, shall pay a license fee of $10 per annum.

(c) Within the meaning of this section, "mattress" shall be deemed to include "any quilt, comfort, pad, pillow, cushion, or bag stuffed with hair, down, feathers, wool, cotton, excelsior, jute, or any other soft material and designed for use for sleeping or reclining purposes." (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 18.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

General provisions governing manufacture, renovation, and sale of mattresses, §§ 6–601 to 6–608.

§ 47–2319 [20: 1719]. Slot machines.

Proprietors of slot weighing machines, or slot machines used for dispensing foodstuffs or refreshments of any kind, shall pay a license fee of $2 per annum for each such machine. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 19.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

Other provision for regulation and supervision of slot machines, § 10–109.

§ 47–2320 [20: 1720]. Theaters, moving pictures, skating rinks, dances, exhibitions, lectures, entertainments—Assignment of police and firemen and additional fees based thereon.

(a) Owners or managers of theaters having a stage and movable scenery, used for the purpose of acting, performing, or playing in any play, farce, interlude, opera, or other theatrical or dramatic performance, or any scene, section, or portion of any play, farce, burlesque, or drama of any description, for profit or gain, shall pay a license fee of $50 per annum.

When in the opinion of the Chief Engineer of the Fire Department of the District of Columbia, it is necessary to post firemen at, on, and about the licensed premises for the protection of the public safety, in addition to the license fee provided for above, such owners or managers shall pay a further monthly permit fee, to be determined monthly by the said Chief Engineer, based upon a reasonable estimate of the number of hours to be spent by firemen at, on, and about the licensed premises, such fee to be payable in advance on the first day of the month for which the permit is sought. The firemen so assigned shall be charged for by the hour at the wage rate of the firemen so assigned in effect on the first day of the month for which the permit is sought.

(b) Owners or managers of theaters in which moving pictures are displayed, for profit or gain, shall pay a license fee of $30 per annum.

(c) Owners or managers of buildings in which skating rinks, fairs, carnivals, balls, dances, exhibitions, lectures, or entertainments of any description are conducted, for profit or gain, shall pay a license fee of $8 per annum: *Provided,* That for entertainments, concerts, or performances of any kind where the proceeds are intended for church or charitable purposes, and where no rental is charged, no license shall be required: *Provided further,* That when, in the opinion of the Major and Superintendent of Police and the Chief Engineer of the Fire Department of the District of Columbia, or either of them, it is necessary to post policemen or firemen, or both, at, on, and about the licensed premises for the protection of the public safety, in addition to the license fee provided for above, such owners or managers shall pay a further monthly permit fee, to be determined monthly by the said Major and Superintendent and Chief Engineer, or either of them, based upon a reasonable estimate of the number of hours to be spent by policemen and firemen at, on, and about the licensed premises, this fee to be payable in advance on the first day of the month for which the permit is sought. Policemen and firemen so assigned shall be charged for by the hour at the basic daily wage rate of policemen and firemen so assigned in effect the first day of the month for which the permit is sought. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 20; June 29, 1948, 62 Stat. 1109, ch. 735, §§ 1, 2.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

Section 1 of act June 29, 1948, amended subsection (a) by adding the second paragraph and section 2 of act June 29, 1948, amended subsection (c) by adding the last proviso to subsection (c).

CROSS REFERENCE

Revocation for public indecency, § 47–2303.

§ 47–2321 [20: 1721]. Bowling alleys—Billiard and pool tables—Games.

Owners or managers of establishments where bowling alleys, billiard or pool tables, or any table, alley, or board upon which legitimate games are played, shall, when they are operated or conducted

for public use, or for profit or gain, pay a license tax of $12 per annum for each such alley, board, or table. No license shall issue under this section without the approval of the major and superintendent of police: *Provided,* That in case of refusal of said major and superintendent to approve said license, or upon written protest of a majority or more of the property owners or residents of the block in which it is proposed to grant such license, an appeal may be taken to the commissioners of the District of Columbia, whose decision shall be final. All establishments licensed under this section shall be closed during the entire twenty-four hours of each and every Sunday and between the hours of one o'clock antemeridian and eight o'clock antemeridian on the secular days of the week:

Provided, however, That bowling-alley establishments licensed under this section shall be closed at midnight on Saturday night and shall remain closed until 2 o'clock postmeridian. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 21; Apr. 14, 1937, 50 Stat. 63, ch. 77.)

COMPILER'S NOTE

Some portions of D. C. 1929, title 20, §§ 907–910, may still be in effect. For this reason they are set out herein as notes. They read as follows:

"*907. Billiard, pool, bagatelle tables, etc.*—It shall be unlawful for any person or persons to keep any billiard table, bagatelle table, shuffleboard, jenny-lind table, pool table, or any table upon which legitimate games are played, in any saloon, room, or place of business within the District of Columbia for public use or for profit or gain, without a license therefor first had and obtained from the superintendent of licenses of the District of Columbia. (Feb. 25, 1897, 29 Stat. 594, ch. 315, § 1.)"

"*908. Same; date of license.*—Every person taking out such license shall pay to the collector of taxes of said District a license fee of twelve dollars per annum for each table. Said license may be granted or refused in the discretion of the superintendent of licenses of said District, and all licenses so granted shall date from the first day of the month in which the liability began and expire on the thirty-first day of October in each year: *Provided,* That in all cases of refusal of said superintendent of licenses to grant said license, or upon written protest of a majority or more of the property owners or residents of the block in which it is proposed to grant such license, an appeal may be taken to the Commissioners of the District of Columbia, whose decision shall be final. Proprietors of bowling alleys in the District of Columbia shall pay to the collector of taxes of said District an annual license tax of twelve dollars for each alley. (Feb. 25, 1897, 29 Stat. 594, ch. 315, § 2; July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 45; Apr. 28, 1904, 33 Stat. 565, ch. 1815.)"

"*909. Same; penalty for failure to procure license.*—Every person who shall own, keep, or use any billiard table, bagatelle table, pool table, or any table or board of the kind mentioned in section 907 of this title, for public use or profit without such license first had and obtained, shall, on conviction in the police court, be fined twenty dollars or imprisoned not exceeding three months for each offense, or both, in the discretion of the court. (Feb. 25, 1897, 29 Stat. 594, ch. 315, § 3.)"

"*910. Same; to be closed twenty-four hours every Sunday.*—It shall not be lawful for the proprietors of billiard tables, pool tables, bagatelle tables, jenny lind tables, or other tables of the kind mentioned in section 907 of this title, shuffleboards and bowling alleys, kept for public hire and gain in the District of Columbia to sell or to allow to be sold in the same room, spirituous, vinous, or malt liquors, and all such places shall be closed during the entire twenty-four hours of each and every Sunday, and also between twelve o'clock midnight and four o'clock in the morning. And it shall be unlawful for the proprietor or proprietors of any billiard or pool room or billiard or pool table operated in connection with a barroom or other place where intoxicating liquors are sold to suffer or permit any minor under eighteen years of age to frequent, visit, or patronize the same.

"Any person violating the provisions of this section shall, on conviction, be punished by a fine of not less than five nor more than forty dollars, and shall in addition forfeit his or her license, in the discretion of the Commissioners of the District of Columbia. (Mar. 3, 1893, 27 Stat. 565, ch. 204, § 6; Feb. 25, 1897, 29 Stat. 595, ch. 315, § 4; May 22, 1902, 32 Stat. 202, ch. 819.)"

AMENDMENTS

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

The 1937 amendment added the second proviso.

§ 47–2322 [20: 1722]. Shooting galleries.

Owners or managers of shooting galleries shall pay a license fee of ten dollars per annum. No shooting gallery shall be licensed until the inspector of buildings for the District of Columbia shall furnish a certificate that suitable precautions have been taken for the public safety by the erection of suitable shields and such appliances as, in his judgment, may be necessary. Before such license shall be issued the proprietor shall furnish to the commissioners of the District of Columbia or their designated agent the written consent of a majority of the occupants and residents on the same side of the square or block in which the proposed gallery is to be located and also on the confronting side of the square fronting opposite to the same. The major and superintendent of police is hereby authorized to prescribe the caliber of firearms and kind of cartridges to be used in such licensed places. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 22.)

AMENDMENT

The 1932 act purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2323 [20: 1723]. Baseball—Football—Athletic exhibitions—Amusement parks.

(a) Owners or managers of grounds used for baseball, football, or other athletic exhibitions to which an admission fee is charged, directly or indirectly, shall pay a license fee of $5 per annum.

When, in the opinion of the Major and Superintendent of Police and Chief Engineer of the Fire Department of the District of Columbia, or either of them, it is necessary to post policemen or firemen, or both, at, on, and about the licensed premises for the protection of the public safety, in addition to the license fee provided for above, such owners or managers shall pay a further monthly permit fee, to be determined monthly by the said Major and Superintendent and Chief Engineer, or either of them, based upon a reasonable estimate of the number of hours to be spent by policemen and firemen, or either of them, at, on, and about the licensed premises, such fee to be payable in advance on the first day of the month for which the permit is sought. Policemen and firemen so assigned shall be charged for by the hour at the basic hourly wage rate of the policemen and firemen so assigned in effect on the first day of the month for which the permit is sought.

(b) Owners or managers of grounds used for amusement parks, to which an admission is charged, directly or indirectly, other than those used for athletic exhibitions, shall pay a license fee of $65 per annum. Annual licenses issued under this section shall date from April 1 in each year. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 23; June 29, 1948, 62 Stat. 1109, ch. 735, § 3.)

AMENDMENT

The 1932 act purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

Section 3 of act June 29, 1948, cited to text, added last paragraph of subsec. (a).

§ 47–2324 [20: 1724]. Swimming pools.

Owners or managers of swimming pools, indoor or outdoor, shall pay a license fee of $15 per annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 24.)

AMENDMENT

The 1932 act purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2325 [20: 1725]. Circuses.

Proprietors or owners of any circus transported by railroad into the District of Columbia shall pay a license fee of $3 per day for each carload of circus equipment, and proprietors or owners of any circus transported by wagons or motor trucks into the District of Columbia shall pay a license tax of $2 per day for each motor-truck load or wagon load of circus equipment, but not to exceed $250 per day. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 25.)

AMENDMENT

The 1932 act purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also, Compiler's Note to § 47–2301.)

§ 47–2326 [20: 1726]. Carnivals and fairs.

Owners or managers of carnivals or fairs, by whatsoever name called, conducted for profit or gain, and not held in any building or structure licensed under this chapter, shall pay a license fee of $35 per day. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 26.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2327 [20: 1727]. Commission merchants in food—Bakeries—Bottling establishments—Groceries—Markets—Restaurants.

(a) Commission merchants dealing in food or food products shall pay a license fee of $5 per annum.

(b) Owners or managers of bakeries, bottling establishments, candy-manufacturing establishments, grocery stores, ice-cream manufacturing establishments, meat shops, and market stands handling food or food products shall pay a license fee of $5 per annum: *Provided,* That if any licensee hereunder shall conduct upon the same premises more than one of the callings herein listed, no additional fee shall be required.

(c) Owners or managers of delicatessens, ice-cream parlors, restaurants, soda fountains, or soft-drink establishments shall pay a license fee of $15 per annum: *Provided,* That if any licensee hereunder shall conduct upon the same premises more than one of the callings herein listed, or listed in paragraph (b) of this section, no additional fee shall be required. Within the meaning of paragraph (c) of this section a restaurant shall be any place where food or refreshments are served to transient customers to be eaten on the premises where sold.

(d) Wholesale dealers in fish or other marine products shall pay a license fee of $30 per annum.

(e) Owners or managers of dairies shall pay a license fee of $160 per annum.

(f) All dealers in food or food products not listed herein, or elsewhere in this chapter, shall pay a license fee of $5 per annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 27.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

Conversion by commission merchants, § 22–1208.

§ 47–2328 [20: 1728]. Classification of buildings containing living quarters for licenses—Fees—Buildings exempt from license requirement.

The Commissioners of the District of Columbia are authorized and empowered to classify, according to use, method of operation, and size, buildings containing living or lodging quarters of every description, to require licenses for the business operated in each such building as in their judgment requires inspection, supervision or regulation by any municipal agency or agencies, and to fix a schedule of license fees therefor in such amount as, in their judgment, will be commensurate with the cost to the District of Columbia of such inspection, supervision or regulation: *Provided, however,* That no license shall be required for single-family or two-family dwellings, nor for a rooming house offering accommodations for no more than four roomers. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 555, ch. 366, par. 28, 29 and 30, as renumbered par. 28, July 22, 1947, 61 Stat. 402, ch. 296, § 3.)

EFFECTIVE DATE OF AMENDMENT

Sec. 4 of act July 22, 1947, cited to text, provided that it shall become effective sixty days after passage and approval.

AMENDMENT

The 1932 act purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

Act July 22, 1947, cited to text, struck out former provisions of this section and §§ 47–2329 and 47–2330, and substituted language set out above as new paragraph 28.

§ 47–2329 [20: 1729]. Apartment houses.

AMENDMENTS

Act July 22, 1947, 61 Stat. 402, ch. 296, § 3, struck out the provisions of this section and substituted in lieu thereof the new provisions contained in § 47–2328, effective sixty days after passage and approval under § 4 of said Act.

NOTES TO DECISIONS

PAYMENT UNDER PROTEST

Fact that a party pays a license fee for an apartment house under protest does not make the payment involuntary. *Blanks* v. *Hazen* (66 App. D. C. 118, 85 Fed. (2d) 284).

§ 47–2330 [20: 1730]. Lodging houses.

AMENDMENTS

Act July 22, 1947, 61 Stat. 402, ch. 296, § 3, struck out the provisions of this section and substituted in lieu thereof the new provisions contained in § 47–2328, effective sixty days after passage and approval under § 4 of said Act.

§ 47–2331. Routed passenger vehicles, vehicles for hire—Hackers' licenses—Identification tags on vehicles—Sightseeing vehicles for school children, occasional purposes—Ambulances, private vehicles for funeral purposes—Issuance of licenses—Payment of fees.

(a) Every passenger vehicle for hire licensed under this section shall be considered a public vehicle.

(b) Any person, partnership, association, trust, or corporation operating or proposing to operate any vehicle or vehicles not confined to rails or tracks for the transportation of passengers for hire over all or any portion of any defined route or routes in the District of Columbia, except when such vehicle or vehicles are to be operated solely for sight-seeing purposes, shall, on or before the 1st day of October in each year, or before commencing such operation, submit to the Public Utilities Commission of the District of Columbia, in triplicate, an application for license, stating therein the name of such person, partnership, association, trust, or corporation, the number and kind of each type of vehicle to be used in such operation, the schedule or schedules and the total number of vehicle-miles to be operated with such vehicles within the District of Columbia during the twelve month period beginning with the 1st day of November in the same year. The Public Utilities Commission shall thereupon verify and approve, or return to the applicant for correction and resubmission, each such statement, and when approved, forward one copy thereof to the commissioners of the District of Columbia or their designated agents and return one copy to the applicant. Upon receipt of the approved copy, and prior to the 1st day of November in the same year, or before commencing such operation, each such applicant shall pay to the collector of taxes, in lieu of any other franchise, personal or license tax, in connection with such operation, the sum of eight-tenths of 1 cent for each vehicle-mile proposed to be operated in the District of Columbia in accordance with the application as approved. Upon presentation of the receipt for such payment, the commissioners of the District of Columbia or their designated agent shall issue a license authorizing the applicant to carry on the operations embodied in the approved application. No increase of operations shall be commenced or continued unless and until an application similar to the original and covering such increase in operation shall have been approved and forwarded in the same manner and the corresponding additional payment made and license issued. No license shall be issued under the terms of paragraph (b) of this section without the approval of the Public Utilities Commission of the District of Columbia.

(c) Owners of passenger vehicles for hire having a seating capacity of eight passengers or more, in addition to the driver or operator, other than those licensed to the preceding paragraph, shall pay a license tax of $100 per annum for each vehicle used. No such vehicle shall be operated unless there shall be conspicuously displayed therein a license issued under the terms of this paragraph. Licenses issued under this paragraph shall date from April 1 of each year, but may be issued on or after March 15 of such year: *Provided, however,* That all licenses issued for a period prior to April 1, 1940, shall expire on March 31, 1940, and the license fee therefor shall be prorated accordingly.

(d) Owners of passenger vehicles for hire, whether operated from a private establishment or from public space, other than those licensed under the two preceding paragraphs and under paragraph (i) of this section, shall pay a license tax of $25 per annum for each such vehicle used in the conduct of their business. Stands for such vehicles upon public space, adjacent to hotels or otherwise, may be established in the manner provided in section 40–603. The Public Utilities Commission is hereby authorized to make and enforce all such reasonable and usual police regulations as it may deem necessary for the proper conduct, control, and regulation of all vehicles described in this and the preceding paragraphs and section 47–2333. Licenses issued under this paragraph shall date from April 1 of each year, but may be issued on or after March 15 of such year: *Provided, however,* That all licenses issued for a period prior to April 1, 1940, shall expire on March 31, 1940, and the license fee therefor shall be prorated accordingly.

(e) No person shall engage in driving or operating any vehicle licensed under the terms of paragraphs (c) and (d) of this section without having procured from the commissioners of the District of Columbia or their designated agent a license and a badge numbered to correspond with the number of said license, neither of which shall be issued except upon evidence satisfactory to the director of motor vehicles under the direction of the commissioners of the District of Columbia that the applicant is a person of good moral character and is qualified to operate such vehicle, and upon payment of an annual license fee of $5. Such license shall be displayed within the vehicle and such badge prominently worn upon the driver's breast at all times while engaged in driving any vehicle licensed under the terms of paragraphs (c) and (d). Application for such license shall be made in such form as shall be prescribed to the commissioners of the District of Columbia or their designated agent. Each annual license issued under the provisions of this paragraph shall be numbered, and there shall be kept in the Department of Vehicles and Traffic a record containing the name of each person so licensed, his annual license number, and all matters affecting his qualifications to be licensed

hereunder. No license issued under the provisions of this paragraph shall be assigned or transferred.

(f) All vehicles licensed under this section shall bear such identification tags as the commissioners of the District of Columbia may from time to time direct; and nothing herein contained shall exempt such vehicles from compliance with the traffic and motor-vehicle regulations of the District of Columbia, nor shall it deprive the Public Utilities Commission of the District of Columbia from assuming control over such vehicles, under such regulations as the Public Utilities Commission may from time to time adopt and promulgate: *Provided*, That nothing contained in this chapter shall be construed so as to diminish the powers conferred on the commissioners of the District of Columbia under the provisions of sections 40–301 to 40–303, 40–601 to 40–605, 40–609 to 40–611, and 40–613 to 40–615, nor to diminish the powers conferred on the Public Utilities Commission of the District of Columbia by said sections and by sections 40–1001 to 40–1007 creating the Public Utilities Commission.

(g) Nothing in this paragraph shall be construed to require the procuring of a license, or the payment of a tax, with respect to a vehicle operated for sightseeing purposes if the only passengers transported in such sightseeing operations are school children, their teachers, or escorts, and transported to the District of Columbia from the State in which their school is located in such vehicle and if a certificate for each such vehicle is obtained from the Public Utilities Commission of the District of Columbia. Application for such certificate shall be made to the Public Utilities Commission of the District of Columbia stating the name of the school, the date or dates on which such operations would be conducted, and sufficient information for identification of the vehicle to be so engaged. The said Commission shall furnish to such school a certificate for each such vehicle upon which there shall be entered the name of the school, the date or dates on which such vehicle may be operated, and identification of the vehicle for which the said certificate is granted. Such certificate shall be conspicuously displayed in or on said vehicle when operated in the District of Columbia.

(h) Nothing in this paragraph shall be construed to require the procuring of a license, or the payment of a tax, with respect to a vehicle operated for sightseeing purposes if such sightseeing operations are only occasional and the only passengers transported in such sightseeing operations are persons transported to the District of Columbia from a point or points outside of said District in such vehicle, and if a certificate for such operation is obtained from the Public Utilities Commission of the District of Columbia. Application for such certificate shall be made to the Public Utilities Commission of the District of Columbia, stating the date or dates on which occasional sightseeing operations would be conducted and the number of vehicles to be operated. The said Commission shall furnish such applicant a certificate for each such vehicle upon which shall be entered the date or dates such operations may be conducted without a license from the District of Columbia: *Provided*, That such certificates shall not be issued for such occasional sightseeing operations under the same ownership, management, control, or arrangement for a greater number of days than authorized in this paragraph. The certificate herein authorized shall be conspicuously displayed in each such vehicle when operated in the District of Columbia. The operation in the District of Columbia by the same ownership, management, control, or arrangement of any such vehicle or vehicles in sightseeing operations shall not be construed to be occasional if such ownership, management, control, or arrangement shall operate any such vehicle or vehicles for sightseeing purposes in the District of Columbia for more than fifteen calendar days in any license year. Motor vehicles transporting school children for sightseeing purposes as exempted under the preceding paragraph (g) shall not be included in such computation of operations. Sightseeing operations shall not be construed to include transportation to or from the hotel or terminal en route into or out of said District.

(i) Owners of ambulances for hire and owners of passenger vehicles which, when used for hire, are used exclusively for funeral purposes shall pay a license tax of $25 per annum for each such vehicle used in the conduct of their business. Licenses used under this paragraph shall date from July 1 in each year.

(j) No person shall engage in driving or operating any vehicle licensed under the terms of paragraph (i) without having procured from the Commissioners of the District of Columbia or their designated agent a license which shall only be issued upon evidence satisfactory to the Director of Motor Vehicles, under the direction of the Commissioners of the District of Columbia, that the applicant is a person of good moral character and is qualified to operate such vehicle, and upon payment of an annual license fee of $5. Such license shall be carried upon the person of the licensee or in the vehicle while engaged in driving such vehicle when such vehicle is being used for hire. Application for such license shall be made in such form as shall be prescribed by the Commissioners of the District of Columbia or their designated agent. Each annual license issued under the provisions of this paragraph shall be numbered, and there shall be kept in the Department of Vehicles and Traffic a record containing the name of each person so licensed, his annual license number and all matters affecting his qualifications to be licensed hereunder. No license issued under the provisions of this paragraph shall be assigned or transferred. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 555, ch. 366, par. 31; Apr. 5, 1939, 53 Stat. 570, ch. 41; July 17, 1939, 53 Stat. 1046, ch. 313, § 3; Jan. 15, 1942, 56 Stat. 3, ch. 2; June 20, 1942, 56 Stat. 375, ch. 428.)

COMPILER'S NOTE

The reference to the various sections of chapters 3 and 6 of title 40 (District of Columbia Traffic Acts) should be read to include the powers conferred upon the Commissioners by the Act of Feb. 27, 1931, 46 Stat. 1424, ch. 317,

where such act amends §§ 11–601, 11–616, 11–621, 11–623, and 11–1407.

AMENDMENTS

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2401.)

The April 5, 1939, amendment added the last sentence of (c) and the July 17, 1939 amendment changed the dates therein provided as follows: March 1 to April 1; February 15 to March 15; March 1, 1940, to April 1, 1940; and, February 29, 1940, to March 31, 1940.

The April 5, 1939, amendment deleted the words "Licenses issued under this subparagraph shall date from July 1, in each year. There shall be carried on each such vehicle a number corresponding to the number of the license issued therefor, in such place and of such character and dimensions as may be prescribed by the Public Utilities Commission of the District of Columbia. Said commission is hereby authorized to establish stands upon the public space, adjacent to hotels, or otherwise for occupancy by said vehicles, and is further authorized" and inserted in lieu thereof in (d) the second sentence and the first seven words of the third sentence; deleted the words "subject to the approval of the joint board created by section 6 (e) of the act entitled 'An act to amend the acts approved March 3, 1925, and July 3, 1926,' known as the District of Columbia Traffic Acts, and so forth, approved February 27, 1931" and inserted in lieu thereof in (d) the last eleven words of the third sentence thereof and the last sentence.

The act of Jan. 15, 1942, cited to text, amended section by adding pars. (g) and (h).

The act of June 20, 1942, cited to text, amended section by adding words "and under paragraph (i) of this section" to par. (d), and by adding pars. (i) and (j).

CROSS REFERENCES

General license fee required, § 40–103.

Prosecution of violations of laws or regulations, § 43–907.

NOTES TO DECISIONS

BUSSES

Statute requires, in respect of bus transportation, the licensing of vehicles rather than uses or businesses, and contemplates but one license for such a vehicle, which, under the stipulated facts operates primarily in regularly-routed passenger service and but occasionally in charter-bus and sight-seeing service. If the drafters intended to require a separate license for occasional charter-bus and sight-seeing service, they did not provide for it. *Capital Transit Co.* v. *District of Columbia* (66 App. D. C. 351, 87 Fed. (2d) 748).

This section is not restricted to those who are engaged in business in the District of Columbia, but it requires, in respect of bus transportation, the licensing of vehicles rather than uses or businesses. *District of Columbia* v. *Monumental Motor Tours,* 1941 (122 F. 2d 195, 74 App. D. C. 147).

CONSTRUCTION

A taxicab is a "common carrier" and use by it of the public streets is not a right but a privilege or license which can be granted on such conditions as the Legislature may impose for the protection of the public, and this section must be construed with that purpose in mind. *Stewart* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 247).

CONSTRUCTION WITH OTHER LAWS

The reciprocity provision of section 40–303 exempting certain foreign vehicle owners and drivers from the requirements of a District driver's permit and District vehicle registration has no other effect, and compliance with that act exempts no one, resident or nonresident, from the license tax imposed on owners of passenger vehicles for hire having a seating capacity of eight passengers or more in addition to the driver or operator. *District of Columbia* v. *Monumental Motor Tours,* 1941 (122 F. 2d 195, 74 App. D. C. 147).

FOREIGN BUSSES OPERATING IN DISTRICT

This section does not interfere with interstate operation as applied to a Maryland corporation and its employee operating a sightseeing bus from Baltimore to the District of Columbia by way of Annapolis and return, but interferes only with operation from point to point within the District, and hence can be constitutionally applied to them. *District of Columbia* v. *Monumental Motor Tours,* 1941 (122 F. 2d 195, 74 App. D. C. 147).

LICENSE AS TRANSFERABLE

The license which owner of a taxicab is required to obtain is for the vehicle and not for the use or business, and is personal and not transferable. *Stewart* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 247).

NECESSITY FOR LICENSE

Taxicab owner could not operate taxicab without having taxicab operator's license, even though such operation was for his own private use, and while displaying an off-duty sign. *Stewart* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 247).

PASSENGER VEHICLES FOR HIRE

Vehicles are "passenger vehicles for hire" when hired by an undertaker or lodge as clearly as when hired by individual passengers, and subject to tax. *Cave* v. *District of Columbia* (67 App. D. C. 138, 90 Fed. (2d) 383).

Unless a restricted meaning is to be given to the word "passenger," it follows that ambulances are "passenger vehicles for hire." *Hazen* v. *Chambers* (71 App. D. C. 220, 108 Fed. (2d) 741).

Sick or well, one who is carried, for hire, through the streets in a vehicle kept and driven by another for such purposes is considered a passenger in the ordinary sense of the word, and whether the hire is greater or less than the cost of the service is not material. *Hazen* v. *Chambers* (71 App. D. C. 220, 108 Fed. (2d) 741).

§ 47–2332 [20: 1732]. Rental or leasing of motor vehicle without driver.

The owners or managers of establishments where automobiles or other motor vehicles are kept for rent or lease without a driver shall pay a license fee of $5 per annum for each such establishment: *Provided,* That nothing in this section shall be so construed as to exempt such owners or managers from paying additional license taxes required by this chapter. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 557, ch. 366, par. 32.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

See notes to § 47–2331.

§ 47–2333 [20: 1733]. Vehicles hauling goods from public space.

Owners of vehicles for hire, used in hauling goods, wares, or merchandise, and operating from public space, shall pay a license tax of $25 per annum for each vehicle. Stands for such vehicles upon public space may be established in the manner provided in section 40–603. Licenses issued under this section shall date from April 1 of each year, but may be issued on or after March 15 of such year: *Provided, however,* That all licenses issued for a period prior to April 1, 1940, shall expire on March 31, 1940, and the license fee therefor shall be prorated accordingly. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1,

1932, 47 Stat. 557, ch. 366, par. 33; Apr. 5, 1939, 53 Stat. 570, ch. 41; July 17, 1939, 53 Stat. 1046, ch. 313, § 3.)

AMENDMENTS

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

The April 5, 1939, amendment added the last sentence.

The July 17, 1939, amendment changed the dates therein contained as follows: March 1 to April 1; February 15 to March 15; March 1, 1940, to April 1, 1940; and, February 29, 1940, to March 31, 1940.

CROSS REFERENCE

See notes to § 47–2331.

§ 47–2334 [20: 1734]. Repairing of motor vehicles.

Owners or managers of establishments where motor vehicles of any description are washed, cleaned, greased, oiled, or repaired, for profit or gain, shall pay a license fee of $5 per annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 557, ch. 366, par. 34.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2335 [20: 1735]. Livery stables.

Owners or managers of livery stables shall pay a license fee of $5 per annum: *Provided,* That nothing in this section shall be so construed as to exempt such owners or managers from paying additional license taxes required by this chapter. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 557, ch. 366, par. 35.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2336 [20: 1736]. Sales on streets or public places.

No person shall sell any article of merchandise, or anything whatever, excepting newspapers sold at large and not from a fixed location, upon the public streets, or from public space in the District of Columbia, without a license first having been obtained under this section. Persons so licensed shall be considered as venders, whether selling from a fixed location, on foot from house to house, or from a vehicle of any description, and shall pay a license tax of $12 per annum. Every vender so licensed shall be furnished with a badge corresponding to the number of his license, which badge shall be worn conspicuously whenever transacting business, and where sales are made from a vehicle such vender shall be provided with a metal plate containing a number similar to the number of his license, which plate shall be conspicuously attached to the vehicle at all times when such vender is transacting business: *Provided,* That no license shall be required of any person bringing to and selling at the several markets produce of his own raising: *And provided further,* That raisers of produce shall not be exempt from the license tax imposed unless they sell such produce at the several markets or by the wholesale in cart, wagon, or carload lots. The commissioners of the District of Columbia are hereby authorized and empowered to make, modify, and enforce necessary regulations governing the conduct upon the public streets and public spaces of venders licensed hereunder, including the power to locate the places where licensed venders on the public streets and public spaces shall stand, and to change them as often as the public interests require. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 557, ch. 366, par. 36.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

Police and traffic regulations, §§ 1–224, 40–603.

NOTES TO DECISIONS

LICENSE FEE, AMOUNT OF

Where there was no evidence, and no clear probability, that District of Columbia license fee did not exceed cost of policing sales of religious propaganda, conviction for selling religious magazines on streets without having paid license fee could not be sustained. *Busey* v. *District of Columbia,* 1944 (138 F. 2d 592, 78 U. S. App. D. C. 189, conforming to mandate 63 S. Ct. 1277, 319 U. S. 579, 87 L. Ed. 1589, certiorari granted 63 S. Ct. 1154, 319 U. S. 735, 87 L. Ed. 1695).

PURPOSE

This section is a regulatory measure, and its aim is not to impose a tax for general revenue purposes but to provide a fee commensurate with costs of inspection, supervision, or regulation. *Busey* v. *District of Columbia,* 1944 (138 F. 2d 592, 78 U. S. App. D. C. 189, conforming to mandate 63 S. Ct. 1277, 319 U. S. 579, 87 L. Ed. 1589, reversing 129 F. 2d 24, 75 U. S. App. D. C. 352, certiorari granted 63 S. Ct. 1154, 319 U. S. 735, 87 L. Ed. 1695).

SALE

Where defendants stood on street corner and by signs which they carried, offered magazines to the public at 5 cents each, and each defendant handed a magazine to prosecuting witness and collected 5 cents, each defendant made a "sale" within this section. *Busey* v. *District of Columbia,* 1944 (138 F. 2d 592, 78 U. S. App. D. C. 189, conforming to mandate 63 S. Ct. 1277, 319 U. S. 579, 87 L. Ed. 1589, reversing 129 F. 2d 24, 75 U. S. App. D. C. 352, certiorari granted 63 S. Ct. 1154, 319 U. S. 735, 87 L. Ed. 1695).

§ 47–2337 [20: 1737]. Solicitors.

Solicitors shall pay a license fee of five dollars per annum. Any person who goes from house to house, or place to place, within the District of Columbia, selling or taking orders for or offering to sell or take orders for goods, wares, merchandise, or any article or thing of value for future delivery, or for services to be performed in the future or for the making, manufacturing, or repairing of any article or thing whatsoever for future delivery, and requiring or accepting a deposit for such future delivery or service, shall be deemed to be a "solicitor," within the meaning of this section: *Provided, however,* That this definition shall not apply to persons selling goods, wares, merchandise, or any article or thing of value for resale to retailers in that commodity. Any person desiring a solicitor's license shall make application to the commissioners of the District of Columbia or their designated agent on forms to be provided for that purpose, stating the name of the applicant, the name and address of the person whom he represents, the class and kind of goods offered for sale, or the kind

of service to be performed. Such application shall be accompanied by a bond in the penal sum of five hundred dollars, running to the District of Columbia, conditioned upon the making of final delivery of the goods ordered, or services to be performed, in accordance with the terms of such order, or failing therein, that the advance payment on such order be refunded. Any person aggrieved by the action of any such solicitor shall have the right of action on the bond for the recovery of money, or damages, or both. All orders taken by licensed solicitors shall be in writing in duplicate, stating the terms thereof and the amount paid in advance, and one copy shall be given to the purchaser. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 557, ch. 366, par. 37.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2338 [20:1738]. Guides.

No person shall, for hire, guide or escort any person through or about the District of Columbia, or any part thereof, unless he shall have first secured a license so to do. The fee for each such license shall be ten dollars per annum. No license shall be issued hereunder without the approval of the major and superintendent of police. The commissioners of the District of Columbia are authorized and empowered to make reasonable regulations for the examination of all applicants for such licenses and for the government and conduct of persons licensed hereunder, including the power to require said persons to wear a badge while engaged in their calling. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 558, ch. 366, par. 38.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2339 [20: 1739]. Secondhand dealers.

Dealers in secondhand personal property, including the return or other unused portion of any ticket, order, or token purporting to evidence the right of the holder or possessor thereof to be transported by any railroad or other common carrier, however operated, from one state or territory of the United States, or from the District of Columbia, to any other state or territory of the United States or to the District of Columbia, shall pay a license tax of fifty dollars per annum. Every person engaged in the business of buying, selling, trading, exchanging, or dealing in secondhand personal property of any description, including the return or unused portion of any such ticket, order, or token, shall be regarded as a secondhand dealer. When any piping or other household fixtures or secondhand goods of any description whatever have been stolen and sold to a dealer in junk, or secondhand dealer, in the District of Columbia, under such circumstances that the commissioners of the District of Columbia, after hearing granted, are satisfied that said dealer should have had reasonable ground to believe, or could have ascertained by reasonable inquiry or investigation, that the goods were stolen, and that the dealer did not make reasonable inquiry or investigation as to the title of the seller before making the purchase, the commissioners are authorized and directed to revoke the license of said dealer; and this action shall not be a bar to criminal prosecution for receiving stolen goods. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 558, ch. 366, par. 39.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

Other provisions for regulation and supervision of secondhand dealers, §§ 1–224, 4–147.

NOTES TO DECISIONS

UNDER 1902 LAW

Provision in paragraph 27 of § 7 of the act of July 1, 1902, 32 Stat. 626 requiring consent of property-owners to issuance of licenses to conduct enumerated businesses is not applicable to junk dealers' licenses under paragraphs 27, 43. *Coombe* v. *United States ex rel. Selis* (55 App. D. C. 190, 3 Fed. (2d) 714).

SALES WITHOUT LICENSE

Engaging in the business of selling secondhand property without a license was not indictable at common law. Today it is at most but an infringement of local police regulations, and its moral quality is relatively inoffensive. *District of Columbia* v. *Clawans* (300 U. S. 617, 81 L. Ed. 843, 57 Sup. Ct. 660, affg. 66 App. D. C. 11, 84 Fed. (2d) 265).

§ 47–2340 [20: 1740]. Dealers in dangerous weapons.

Dealers in dangerous or deadly weapons shall pay a license tax of $50 per annum. No license shall issue hereunder without the approval of the major and superintendent of police, and the commissioners of the District of Columbia are authorized and empowered to make and promulgate regulations for the conduct of the business of persons licensed hereunder, including the power to require a record to be kept of all sales of deadly or dangerous weapons, to prescribe a form therefor, and to require reports of all such sales to the major and superintendent of police at such time as the Commissioners may deem advisable. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 558, ch. 366, par. 40.)

COMPILER'S NOTE

This section may be superseded by § 22–3209 et seq.

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

On the authority of section 22–3210, it would appear that the prior approval of the major and superintendent of police is unnecessary.

§ 47–2341 [20: 1741]. Private detectives.

(a) Private detectives, or detective agencies, by whatsoever name called, shall pay a license tax of $100 per annum: *Provided,* That no license shall be issued under this section without the approval of the major and superintendent of police.

(b) For the purpose of this section, the term "detective" or "detective agency" shall mean and include

any person, firm, or corporation engaged in the business of, or advertising, or representing himself, or itself, as being engaged in the business of detecting, discovering, or revealing crime or criminals, or securing information for evidence relating thereto, or discovering or revealing the identity, whereabouts, character, or actions of any person or persons, thing or things.

(c) It shall be unlawful for any person to engage in the business of detective, or operate, manage, or conduct a detective agency, for profit or gain, or to advertise or represent his business to be that of a detective, or that of conducting, managing, or operating a detective agency, without first obtaining a license so to do.

(d) The Commissioners of the District of Columbia are authorized and empowered to make such reasonable regulations as they deem advisable for the government and conduct of the business of private detectives licensed hereunder, and are further authorized and empowered to revoke the license of a private detective when in their judgment such is deemed advisable in the public interest.

(e) All laws which govern the Metropolitan police force of the District of Columbia in the matters of persons, property, or money shall be applicable to all private detectives licensed hereunder, and such detectives shall make like returns and dispositions of such matters as is required by existing law and the rules of the Commissioners of the District of Columbia governing the Metropolitan police department. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 559, ch. 366, par. 41.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

Other provisions concerning private detectives, §§ 4–168 to 4–174.

NOTES TO DECISIONS

DAMAGES

$1,250 to private detective for malicious prosecution of administrative proceedings resulting in refusal to renew detective's license was not excessive in view of interruption of business, expense of defending against charge, including attorneys' fees, injury to business and personal reputation, and emotional disturbance involved. *Melvin* v. *Pence,* 1942 (130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149, affirming 38 F. Supp. 759).

In private detective's action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, injury to reputation and mental suffering were proper elements of damage, and there was no error in instructions permitting those elements to be considered by jury. *Melvin* v. *Pence,* 1942 (130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149, affirming 38 F. Supp. 759).

DEFENSES

In private detective's action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, defendants could not successfully contend that they did not institute or instigate proceedings, where they did not deny making charge to licensing officials with intent to secure revocation of license or refusal to renew it, and defendants' complaint brought about official action and all that followed. *Melvin* v. *Pence,* 1942 (130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149, affirming 38 F. Supp. 759).

INSTRUCTIONS

In private detective's action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, injury to reputation and mental suffering were proper elements of damage, and there was no error in instructions permitting those elements to be considered by jury. *Melvin* v. *Pence,* 1942 (130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149, affirming 38 F. Supp. 759).

MALICIOUS PROSECUTION ACTION

That private detective kept his office open for collection of money previously earned or that he later secured permission to operate pending disposition of appeal did not preclude detective from maintaining malicious prosecution action based on institution of administrative proceedings resulting in refusal to renew his license, and that factor went only to reduce his damages. *Melvin* v. *Pence,* 1942 (130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149, affirming 38 F. Supp. 759).

QUESTIONS FOR JURY

In private detective's action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, the existence of malice and the absence of probable cause were for the jury under conflicting evidence. *Melvin* v. *Pence,* 1942 (130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149, affirming 38 F. Supp. 759).

In private detective's action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, the existence of malice and the absence of probable cause were for the jury under conflicting evidence. *Melvin* v. *Pence,* 1942 (130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149, affirming 38 F. Supp. 759).

RENEWAL OF LICENSE

As affecting private detective's right to maintain an action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, absence of right of appeal to the courts was immaterial, and if some judicial element was essential, it would be supplied by fact that District Commissioners' action in arbitrarily refusing or revoking a license would be reviewable, if in no other way, by independent action in equity. *Melvin* v. *Pence,* 1942 (130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149, affirming 38 F. Supp. 759).

SPECIAL INJURY

Private detective sustained "special injury" sufficient to sustain action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, where proceedings in no way involved protection of defendants' interests, detective's livelihood depended on license, license was in effect revoked, and for nearly a month detective was disabled from carrying on his work. *Melvin* v. *Pence,* 1942 (130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149, affirming 38 F. Supp. 759).

§ 47–2342 [20: 1751]. Fortune telling.

Mediums, clairvoyants, soothsayers, fortune tellers, palmists, or phrenologists, by whatsoever name called, conducting business for profit or gain, directly or indirectly, shall pay a license tax of $250 per annum. No license shall be issued hereunder without the approval of the major and superintendent of police, nor shall any license be issued hereunder to any person not an actual resident of the District of Columbia for two years next preceding his date of application: *Provided,* That no license shall be required of persons pretending to tell fortunes or practice palmistry, phrenology, or any of the callings herein listed, in a regular licensed theater, or as a part of any play, exhibition, fair, or show presented or offered in aid of any benevolent, charitable, or educational purpose:

And provided further, That no license shall be required of any ordained priest or minister, or accredited representative of any such priest or minister, the fees for whose ministrations are not the private property of such ordained priest, minister, or accredited representative of such priest or minister. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 562, ch. 366, par. 43.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2343 [20: 1752]. Exposing persons or animals as targets prohibited.

No person shall set up, operate, or conduct any business or device by or in which any person, animal, or living object shall act or be exposed as a target for any ball, projectile, missile, or thing thrown or projected for or in consideration of profit or gain, directly or indirectly. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 562, ch. 366, par. 44.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2344 [20: 1753]. Commissioners may regulate, modify, or eliminate license requirements.

The commissioners of the District of Columbia are authorized and empowered, when in their discretion such is deemed advisable, to require a license of other businesses or callings not listed in this chapter and which, in their judgment, require inspection, supervision, or regulation by any municipal agency or agencies and to fix the license fee therefor in such amount as, in their judgment, will be commensurate with the cost to the District of Columbia of such inspection, supervision, or regulation, and are further authorized and empowered in their discretion to modify any of the provisions of this chapter so far as eliminating therefrom any business or calling in this chapter required to be licensed, or to raise or lower the amount of the license fee provided in this chapter, as the cost of inspection, supervision, or regulation is raised or lowered. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 562, ch. 366, par. 45.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

NOTES TO DECISIONS

QUESTIONS FOR JURY

Whether occupant of a sleeping room with an alcove used for cooking was a roomer, having no exclusive right of possession, so that proprietor of rooming house had right to enter and inspect room at reasonable times, or was a tenant and had right to exclusive possession was for jury. *Vaughn* v. *Neal* (D. C. Mun. App. 1948, 60 A. 2d 234).

REGULATIONS

A regulation of the commissioners of the District of Columbia defining a rooming house for licensing purposes as a building occupied for a consideration by more than four persons who are not members of owner's immediate family was valid, notwithstanding sections 301 et seq. of Title 5 relating to fire escapes and safety provisions defined a rooming house as a building in which rooms are rented and sleeping quarters are provided to accommodate 10 or more persons. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562).

This section authorizing commissioners of District of Columbia when in their discretion such is advisable to require a license of other businesses or callings not listed is a proper delegation of power, and regulations promulgated thereunder are valid provided determination of commissioners is made by reasonable standards and is not arbitrary. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562).

ROOMING HOUSES

One who occupies a room in consideration for services rendered occupies sleeping accommodations for a "consideration", within regulations of the Commissioners of the District of Columbia defining a rooming house and requiring a license therefor. *Byrd* v. *District of Columbia* (D. C. Mun. App. 1945, 43 A. 2d 46).

Under the regulations issued by the Commissioners of the District of Columbia defining a rooming house and requiring a license therefor, it was not intended that servants be counted toward the more than four persons occupying a house. *Byrd* v. *District of Columbia* (D. C. Mun. App. 1945, 43 A. 2d 46).

In the absence of contract to the contrary, one who had only a sleeping room with an alcove used for cooking, in view of District of Columbia rooming house regulations which define sleeping accommodations, was a "roomer," not a "tenant" of a self-contained "apartment" unit, and, hence, under regulations could not deny to proprietor a key to the room or the right to make reasonable inspections thereof. *Vaughn* v. *Neal* (D. C. Mun. App. 1948, 60 A. 2d 234).

§ 47–2344a. Undertakers' licenses—Qualifications—Examination—License without examination—Authority of commissioners—Appropriations—Definitions.

(a) On and after ninety days from August 1, 1947, no person shall, in the District of Columbia, discharge any of the duties, of an undertaker, unless there has been issued to him by the Commissioners of the District of Columbia a license therefor in full force and effect. The fee for such license shall be $20 per annum, which shall be paid to the Collector of Taxes of the District of Columbia. Such license shall be issued at the time and in the manner provided in paragraph numbered 5 of this section.

(b) An applicant for a license shall submit proof satisfactory to the Commissioners, on such forms as the Commissioners may prescribe, that he is not less than twenty-one years of age, a citizen of the United States, of good moral character; that he is a graduate of a recognized high school or educational equivalent; that he is a graduate of a school or college of embalming, whose course of instruction is not less than nine months, comprising not less than eight hundred and forty hours of study, and that he has had not less than two years' practical experience in the business or profession. Such applicant shall be examined theoretically and practically in anatomy, embalming, embalming fluids, sanitation, disinfection, the care and preparation of dead human bodies for burial and the shipment of same, laws and regulations pertaining to communicable diseases, and such other subjects as the Commissioners deem appropriate and proper.

An examination of applicants for a license shall be held not less frequently than once each year at such time and place as the Commissioners shall deter-

mine; notice of such examination shall be given at least thirty days prior to the date set therefor.

(c) Every person, who, at the time of enactment of this paragraph, is registered as an undertaker with the Health Department of the District of Columbia and who was actually engaged, at any time during the five-year period immediately preceding the date of enactment of this paragraph, in discharging the duties of an undertaker and who desires to continue to discharge such duties shall be entitled to a license therefor without examination upon application therefor and upon furnishing proof satisfactory to the Commissioners that he was so registered and so discharging such duties; that he is not less than twenty-one years of age, a citizen of the United States, of good moral character; and that he is a graduate of a school or college of embalming whose course of instruction is not less than nine months, comprising not less than eight hundred and forty hours of study, or that he has had actual experience equivalent thereto; and upon payment of the license fee hereinbefore provided.

(d) The Commissioners are hereby authorized:

(1) After notice and open hearing, to refuse to issue or renew or to suspend or revoke a license for fraud or misrepresentation in the application therefor, or for misconduct during an examination therefor, or for any act or practice detrimental to the public health or safety, including the act of removing a dead human body without the prior consent of a person who, under the law, is authorized to give such consent, or for violation of the laws and regulations of the District of Columbia relating to the removal or burial or disposal of dead human bodies or the provisions of this paragraph or of the rules and regulations hereinafter authorized to be promulgated, or for conviction of a felony as shown by a certified copy of the record of the court of conviction.

(2) To appoint a committee of five persons of good moral character, two of whom shall have been actually and continuously engaged in discharging the duties of an undertaker or embalmer in the District of Columbia for at least five years next preceding their appointment and the Health Officer of the District of Columbia, or a member of the personnel of the Health Department designated by said Health Officer, who shall serve ex officio as a member of said committee, to conduct the examination of applicants for a license hereinbefore provided; the appointment of each such person shall be for a period of one year unless sooner terminated by the Commissioners for cause; such appointees, except the Health Officer or person designated by him, shall be entitled to a per diem of $10 for each day they are actually engaged in discharging their duties pursuant to this paragraph.

(3) To issue licenses without examination to persons licensed by other Territories and States upon the same terms and conditions as such States and Territories issue licenses without examination to persons licensed by the District of Columbia.

(4) To prescribe the terms, conditions, and license fee, not to exceed $10 per annum, under which apprenticeship shall be served.

(5) To employ, and provide for necessary travel, in accordance with the Classification Act of 1923, as amended, such additional employees as may be necessary and to make such expenditures as may be necessary for the proper enforcement of the provisions of this paragraph and the rules and regulations promulgated by authority thereof. There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, funds to carry out the provisions of this paragraph.

(6) To promulgate and enforce, and from time to time to alter, such rules and regulations, not inconsistent with the provisions of this paragraph, as they deem necessary, for the proper execution and enforcement of the provisions of this paragraph.

(7) To designate as their agent for the purpose of carrying out the provisions of this paragraph, the Health Officer of the District of Columbia.

(e) The provisions of paragraph numbered 1 of this section relative to the assignment or transfer of a license and the provisions of paragraph numbered 7 of this section relative to the definition of the word "person" shall not apply to licenses issued under the provisions of this paragraph. The word "person" as used in this paragraph shall be construed to mean a natural person only, and licenses issued under the provisions of this paragraph shall not be assignable or transferable.

(f) As used in this paragraph the term "undertaker" includes a funeral director, mortician, embalmer, and any person who performs services with respect to the care and preparation of dead human bodies for burial or cremation. (July 1, 1902, ch. 1352, § 7, July 1, 1932, ch. 336, par. 44a, as added Aug. 1, 1947, 61 Stat. 711, ch. 428.)

§ 47–2345 [20: 1754]. Promulgation of regulations authorized—Revocation of licenses.

The commissioners are further authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this chapter and to revoke any license issued hereunder when, in their judgment, such is deemed desirable in the interest of public decency or the protection of lives, limbs, health, comfort, and quiet of the citizens of the District of Columbia, or for any other reason they may deem sufficient. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 46.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

NOTES TO DECISIONS

RECOVERY OF POSSESSION

Roomer's act in changing lock on door and refusing to provide proprietor of rooming house with a key, thereby preventing proprietor from compliance with regulations relative to inspection and repair and jeopardizing renewal of proprietor's rooming house license sufficiently constituted "disorderly conduct" or "nuisance" and the violation of obligation of her tenancy to the injury of the proprietor so as to entitle proprietor to possession. *Vaughn* v. *Neal* (D. C. Mun. App. 1948, 60 A. 2d 234).

§ 47–2346 [20: 1755]. Prosecutions.

Prosecutions for violations of any of the provisions of this chapter, or of any section added hereto from time to time by the commissioners of the District of Columbia, or of any regulation made by the commissioners under authority of this chapter, shall be on information in the police court of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 47.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

NOTES TO DECISIONS

JUDICIAL NOTICE

The court would take judicial notice that license regulations applying to rooming houses were adopted during war emergency when thousands of people were coming to Washington to live in rooming houses and that it was vitally necessary to protect their health. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562).

MOTION TO QUASH

Whether premises on which violations of rooming house regulations allegedly occurred were within the operation of such regulations though licensed as an apartment house could not be determined on motion to quash information. *District of Columbia* v. *Basiliko* (D. C. Mun. App. 1945, 44 A. 2d 407).

PREMISES INCLUDED

That premises were licensed as an apartment house did not preclude prosecution for violations of rooming house regulations which allegedly occurred on such premises. *District of Columbia* v. *Basiliko* (D. C. Mun. App. 1945, 44 A. 2d 407).

§ 47–2347 [20: 1756]. Penalties.

Any person violating any of the provisions of this chapter, or additions thereto made from time to time by the commissioners of the District of Columbia, where no specific penalty is fixed, or the violation of any regulation made by the commissioners under the authority of this chapter, shall upon conviction be fined not more than $300 or imprisoned for not more than ninety days. Any person failing to file any information required by this chapter, or by any regulation of the commissioners of the District of Columbia made under the provisions hereof, or who in filing any such information makes any false or misleading statement, shall upon conviction be fined not more than $300 or imprisoned for not more than ninety days. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 48.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

NOTES TO DECISIONS

RIGHT TO TRIAL BY JURY

The penalty imposed by this section is not one as to which there is a constitutional right to a trial by jury. *District of Columbia* v. *Clawans* (300 U. S. 617, 81 L. Ed. 843, 57 Sup. Ct. 660, affg. 66 App. D. C. 11, 84 Fed. (2d) 265).

A single offense of using premises for a purpose other than a single family dwelling without an occupancy permit or of operating a rooming house without a license, is a petty offense not involving moral turpitude nor indictable at common law, and therefore a jury trial is not demandable as of right. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562).

Where accused was charged under three separate informations which were consolidated for trial, with using premises without a certificate of occupancy, operating the premises as a rooming house between certain dates without a license, and using the same premises as a rooming house without a license between certain other dates, jury trial was properly denied. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562).

§ 47–2348 [20: 1757]. Saving clause.

Any violation of any provision of law or regulation issued hereunder which is repealed by this chapter and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal, be prosecuted to the same extent as if this chapter had not been enacted. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 49.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2349 [20: 1758]. Severable provisions.

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the chapter and the applicability of such provision to other persons and circumstances shall not be affected thereby. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 50.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

§ 47–2350 [20: 1759]. Refund of erroneously-paid fees.

The commissioners of the District of Columbia are authorized to refund any license fee or tax, or portion thereof, erroneously paid or collected under this chapter. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 51.)

AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47–2301.)

CROSS REFERENCE

General provisions for refund of fees and taxes, § 47–1017 et seq.

Chapter 24.—BOARD OF TAX APPEALS

Sec.

47–2401. Tax appeals—Definitions.
47–2402. Board of Tax Appeals.
47–2403. Appeal from assessment—Payment under protest—Hearing and decision.
47–2404. Review by court—Procedure—Decision of board, when final—Modification or reversal.
47–2405. Appeals of real estate assessments.
47–2406. Appeal from imposition of tax involuntarily paid—Suit.
47–2407. Refund of erroneous collections.
47–2408. Rules of procedure.
47–2409. Summons—Authority to take testimony.

Sec.
47–2410. Certain suits forbidden.
47–2411. Manner of serving notices.
47–2412. Reference by Commissioners to the Board.

§ 47–2401 [20: 972]. Tax appeals—Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning—

The word "tax" means the tax or taxes mentioned in this chapter.

The word "appeal" means the appeal provided in this chapter.

The word "board" means the Board of Tax Appeals for the District of Columbia created by this chapter.

The word "commissioners" means the commissioners of the District of Columbia or their duly authorized representative or representatives.

The word "District" means the District of Columbia.

The word "person" includes any individual, firm, copartnership, joint adventure, association, corporation (domestic or foreign), trust, estate, or receiver.

The word "court" shall mean the United States Court of Appeals for the District of Columbia.

The word "assessor" shall mean the assessor of the District of Columbia.

The words "Board of Equalization and Review" shall mean the Board of Equalization and Review of the District of Columbia. (Aug. 17, 1937, ch. 690, title IX, § 1, as added May 16, 1938, 52 Stat. 370, ch. 223, § 8.)

§ 47–2402 [20: 973]. Board of Tax Appeals.

The commissioners shall appoint a board of one person, subject to removal by the commissioners, to be called the "Board of Tax Appeals for the District of Columbia," which person shall be a citizen of the United States. Such person shall be appointed for a term of four years, except such appointment as may be made for the remainder of an unexpired term. Any vacancy caused by death, resignation, or otherwise shall be filled by the commissioners only for an unexpired term. Such person shall be eligible for reappointment. Such person shall be an attorney and in active practice of law for at least ten years next preceding his appointment.

The salary of such person so appointed shall be $8,000 per annum. The commissioners are authorized to employ such other personal services as may be necessary to carry out the provisions of this title and to provide for the expenses of the board. The salaries of employees other than the board shall be fixed in accordance with the Classification Act of 1923 (U. S. C., title 5, § 673), as amended, but such employees shall be appointed without regard to civil-service requirements. The commissioners shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized. (Aug. 17, 1937, ch. 690, title IX, § 2, as added May 16, 1938, 52 Stat. 370, ch. 223, § 8; July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 5 (a).)

AMENDMENT

The 1939 amendment raised the salary from $7,500 to $8,000.

CROSS REFERENCE

The sections of this chapter are part of the Revenue Act of 1939, see Compiler's Notes to § 47–1401.

NOTES TO DECISIONS

NATURE OF BOARD

The Board of Tax Appeals for the District of Columbia is not a "court" but it is an "administrative agency" to which a taxpayer seeking relief may appeal an alleged excessive assessment of the Board of Equalization and Review. *Watrous* v. *District of Columbia,* 1943 (135 F. 2d 654, 77 U. S. App. D. C. 295).

The Board of Tax Appeals for the District of Columbia is an "administrative agency" established to furnish more efficient, speedy, and less expensive method of determining validity of assessments, and is "quasi judicial" in nature, but is not a "court". *Lindner* v. *District of Columbia* (D. C. 1943, 32 A. 2d 540).

§ 47–2403 [20: 974]. Appeal from assessment—Payment under protest—Hearing and decision.

Any person aggrieved by any assessment by the District against him of any personal-property, inheritance, estate, business-privilege, gross-receipts, gross-earnings, insurance-premiums, or motor-vehicle-fuel tax or taxes, or penalties thereon, may, within ninety days after notice of such assessment, appeal from such assessment to the board, provided such person shall first pay such tax, together with penalties and interest due thereon, to the collector of taxes of the District of Columbia under protest in writing. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect of such taxes. The board shall hear and determine all questions arising on said appeal and shall make separate findings of fact and conclusions of law, and shall render its decision thereon in writing. The board may affirm, cancel, reduce, or increase such assessment. (Aug. 17, 1937, ch. 690, title IX, § 3, as added May 16, 1938, 52 Stat. 371, ch. 223, § 8; July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 5 (b).)

AMENDMENT

The 1939 amendment deleted the word "or" before the words "insurance-premiums" and added thereafter the words "or motor-vehicle-fuel," and hyphenated the following pairs of words, "personal property," "business privilege," "gross receipts," "gross earnings," and "insurance premiums" as they appear.

NOTES TO DECISIONS

GENERALLY

Prior to creation of Board of Tax Appeals for District of Columbia, taxpayer was subject to common-law rule prohibiting challenge of tax unless involuntarily paid, and a mere statement tax is being paid under protest does not make it an "involuntary payment". *Lindner* v. *District of Columbia* (D. C. 1943, 32 A. 2d 540).

BURDEN OF PROOF

Taxpayer asserting invalidity of personal property assessment has the burden of proof. *District of Columbia* v. *Morris* (App. D. C. 1946, 159 F. 2d 13).

CONSTRUCTION

There is no conflict between this section and § 47–1604; they are merely alternative. *Rynex* v. *District of Columbia* (72 App. D. C. 386, 114 Fed. (2d) 842).

This section was general section applicable to all taxes referred to therein, and to all time situations which might arise, and reference to interest and penalties was used in respect of taxes whose due dates might antedate expiration of 90 days after receipt of notice of assessment within

which appeal was to be taken. *Rynex* v. *District of Columbia,* 1940 (114 F. 2d 842, 72 App. D. C. 386).

ELECTION OF REMEDIES

As to taxpayer paying voluntarily, this chapter creating Board of Tax Appeals for District of Columbia created new right and the remedy provided by it is exclusive, but, as to taxpayer paying involuntarily within common-law meaning, remedy before the board is cumulative and such taxpayer may elect between statutory remedy and common-law remedy. *Lindner* v. *District of Columbia* (D. C. 1943, 32 A. 2d 540).

ESTOPPEL

Taxpayer was not estopped from denying, for personal property tax purposes, the figures set up by her in her income tax returns for depreciation purposes. *District of Columbia* v. *Morris* (App. D. C. 1946, 159 F. 2d 13).

EXCLUSIVENESS OF REMEDY

A taxpayer may contest validity of tax voluntarily paid, which is a new right created by this chapter establishing Board of Tax Appeals for District of Columbia, and remedy provided by this chapter is the only remedy for such right. *Lindner* v. *District of Columbia* (D. C. 1943, 32 A. 2d 540).

The remedy before Board of Tax Appeals for District of Columbia, afforded an aggrieved taxpayer, is not exclusive of common law remedy. *Lindner* v. *District of Columbia* (D. C. 1943, 32 A. 2d 540).

JURISDICTION—STIPULATION OF PARTIES

Where the Board of Tax Appeals for the District of Columbia was without jurisdiction of a claim for refund of part of business privilege tax because there had been no overpayment when claim was made, the stipulation of the parties could not confer jurisdiction. *J. E. Dyer & Co.* v. *District of Columbia,* 1940 (115 F. 2d 945, 73 App. D. C. 52).

PARTIES

A national bank claiming that it was discriminated against by administrative application of §§ 47–1701, 47–1703, imposing tax on gross earnings of banks, was entitled to maintain proceeding before Board of Tax Appeals notwithstanding absence of bank favored by the administrative practice. *Hamilton Nat. Bank.* v. *District of Columbia* (App. D. C. 1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied, 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

PAYMENT AS CONDITION PRECEDENT

Under section 47–1604, providing for payment of inheritance tax within 18 months after decedent's death, and this section the payment of the tax within 90 days after receipt of notice of assessment was condition precedent to the taking of the appeal. *Rynex* v. *District of Columbia,* 1940 (114 F. 2d 842, 72 App. D. C. 386).

PERSONAL PROPERTY

When personal property assessment is challenged and is brought before the Board of Tax Appeals, the issue is the correct fair cash value, not merely the basis upon which the assessor proposed his assessment. *District of Columbia* v. *Morris* (App. D. C. 1946, 159 F. 2d 13).

REMEDY AS CUMULATIVE

Congress may provide an exclusive administrative remedy for recovery of illegally collected taxes, or abolish common-law right of action and substitute new statutory right, but, unless so declared expressly or impliedly, statutory remedy is "cumulative" of common law remedy. *Lindner* v. *District of Columbia* (D. C. 1943, 32 A. 2d 540).

TIME OF PAYMENT

The statute requires payment of the tax within 90 days after receipt of assessment as a condition precedent to the taking of an appeal although this due date falls before the end of the 18 months provision fixed by § 47–1604. *Rynex* v. *District of Columbia* (72 App. D. C. 386, 114 Fed. (2d) 842).

To same effect as original annotation, see *J. E. Dyer & Co.* v. *District of Columbia,* 1940 (115 F. 2d 945, 73 App. D. C. 52).

Where taxpayer overpaid its business privilege tax only because, on its own responsibility, it made incorrect returns and underpaid its personal property taxes, claim that business privilege taxes should be abated to extent of additional payment of tangible personal property taxes was barred in view of fact that appeal to Board of Tax Appeals was made more than 90 days after notice of assessment of business privilege taxes. *Hecht Co.* v. *District of Columbia,* 1942 (129 F. 2d 353, 76 U. S. App. D. C. 142).

§ 47–2404 [20:975]. Review by court—Procedure—Decision of board, when final—Modification or reversal.

(a) The decision of the board may be reviewed by the court as hereinafter provided if a petition for such review is filed by either the District or the taxpayer within thirty days after the decision is rendered. Such petition for review shall be filed with the board, and shall be in such form as the board by regulation shall provide. Upon such review the court shall have the power to affirm, or if the decision of the board is not in accordance with law, to modify or reverse the decision of the board, with or without remanding the case for hearing, as justice may require. The court shall have the exclusive jurisdiction to review the decisions of the board, and the judgment of the court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari in the manner provided in section 347, Title 28, U. S. Code. The court is authorized to adopt rules for the filing of the record on review, the preparation of the record for review, and the conduct of the proceedings upon such review and, until the adoption of such rules, the rules of the court relating to appeals in cases in equity, so far as applicable, shall govern. The findings of fact by the board shall have the same effect as a finding of fact by an equity court or a verdict of a jury.

(b) The board is authorized to fix a fee, not in excess of the fee usually charged and collected therefor by the clerk of the District Court of the United States for the District of Columbia, for comparing and preparing the transcript of record, and to fix charges for supplying copies of testimony or copies of other documents and papers. The fees and charges so fixed shall be paid to the collector of taxes of the District and deposited in the treasury of the United States to the credit of the District of Columbia.

(c) The decision of the board shall become final (1) upon the expiration of the time allowed for filing a petition for review, if no such petition be duly filed within such time; or (2) upon the expiration of time allowed for filing of petition for certiorari if the decision of the board has been affirmed or the petition for review dismissed by the court, or no petition for certiorari has been filed; or (3) upon denial of a petition for certiorari if the decision of the board has been affirmed or the petition for review dismissed by the court; or (4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the board be affirmed or the petition for review dismissed.

(d) If the Supreme Court directs that the decision of the board be modified or reversed, the decision of the board rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered unless within such thirty days either the District or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Board shall become final when so corrected.

(e) If the decision of the board is modified or reversed by the court and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the decision of the board rendered in accordance with the mandate of the court shall become final upon the expiration of thirty days from the time such decision of the board was rendered, unless within such thirty days either the District or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the board shall become final when so corrected.

(f) If the Supreme Court orders a rehearing, or if the case is remanded by the court for rehearing and if (1) the time allowed for filing of a petition for certiorari has expired and no such petition has been duly filed; or (2) the petition for certiorari has been denied; or (3) the decision of the court has been affirmed by the Supreme Court, then the decision of the board rendered upon such rehearing shall become final in the same manner as though no prior decision of the board had been rendered.

(g) As used in this section the term "mandate," in case a mandate has been recalled prior to the expiration of thirty days from the date of the issuance thereof, means the final mandate. (Aug. 17, 1937, 50 Stat. 673, ch. 690, title IX, § 4, as added May 16, 1938, 52 Stat. 371, ch. 223, § 8.)

CROSS REFERENCE

Rules and regulations, § 47–2502 and notes.

NOTES TO DECISIONS

CONCLUSIVENESS OF FINDINGS

In proceedings to review assessment of inheritance tax in the District of Columbia, involving question of whether decedent was domiciled in Florida or in the District, Court of Appeals, convinced that Board of Tax Appeals was clearly wrong in finding that decedent was domiciled in the District, could not set aside board's determination. *District of Columbia* v. *Pace,* 1944 (64 S. Ct. 406, 320 U. S. 698, 88 L. Ed. 408, affirming 135 F. 2d 249, 77 U. S. App. D. C. 332).

Rule 52, 28 U. S. C. following § 723c, relating to review of findings of fact generally would not supersede special statutory measure of review of decisions of Board of Tax Appeals of District of Columbia. *District of Columbia* v. *Pace,* 1944 (64 S. Ct. 406, 320 U. S. 698, 88 L. Ed. 408, affirming 135 F. 2d 249, 77 U. S. App. D. C. 332).

The Court of Appeals for the District of Columbia has power to review decisions of Board of Tax Appeals for the District as under equity practice in which whole case, both facts and law, are open for consideration, subject to rule that findings of fact are treated as presumptively correct and accepted unless clearly wrong. *District of Columbia* v. *Pace,* 1944 (64 S. Ct. 406, 320 U. S. 698, 88 L. Ed. 408, affirming 135 F. 2d. 249, 77 U. S. App. D. C. 332).

Where taxpayer was organized for purpose of lending money on realty but it acquired realty by foreclosure, finding of Board of Tax Appeals that the realty was held primarily for sale to customers in ordinary course of business, so that profits on sales were taxable as ordinary income and not as profits derived from sale of "capital assets", was not clearly wrong and could not be disturbed. *Real Estate Mortgage & Guaranty Corporation* v. *District of Columbia,* 1944 (141 F. 2d 361, 78 U. S. App. D. C. 390).

A finding of fact by Board of Tax Appeals for District of Columbia will not be disturbed on appeal unless clearly erroneous. *Connecticut Ave. Cafe* v. *District of Columbia* (C. A., D. C. 1948, 169 F. 2d 304).

PAYMENT UNDER PROTEST

When taxpayer who had been previously taxed on basis of his equitable interest in marginal stocks but is then reassessed by tax authorities for full value, a payment under protest raises the question whether such new assessment was without authority of law. *Hunt* v. *District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

QUESTIONS NOT RAISED BELOW

On taxpayer's petition to review decision of Board of Tax Appeals for the District of Columbia redetermining petitioner's income tax for 1939 imposed by District of Columbia, petitioner could not question the amount of its gross receipts found by the District and the Board of Tax Appeals where no such question was raised before the Board, and petitioner had stipulated that the only issue was the correctness of the District's action in using the ratio of District sales to total sales as the sole basis for apportioning petitioner's net income. *Eastman Kodak Co.* v. *District of Columbia* (App. D. C. 1942, 131 F. 2d 347).

REMAND

The United States Court of Appeals for the District of Columbia, upon finding invalid the prevailing administrative practice in assessment of gross earnings tax against banks in District of Columbia, remanded case with instructions to cancel assessment unless tax assessor upon re-examination of entire subject removed discriminations. *Hamilton Nat. Bank* v. *District of Columbia* (App. D. C. 1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied, 70 S. Ct. 241, 338 U. S. 890, 94 L. Ed. 546.

Where taxpayer pleaded that proposed valuations of personal property were in excess of fair cash value of property, an issue of fact was presented which should have been resolved by a finding and the lack of a finding and conclusion on the point required the remandment of the case to Board of Tax Appeals. *District of Columbia* v. *Morris* (App. D. C. 1946, 159 F. 2d 13).

§ 47–2405 [20: 976]. Appeals of real estate assessments.

Any person aggrieved by any assessment, equalization, or valuation made pursuant to sections 47–708, 47–709, may, within ninety days after October 1 of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47–2403, 47–2404: *Provided, however,* That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as therein provided.

Any person aggrieved by any assessment or valuation made in pursuance of section 47–710 may, within ninety days after October 15 of the year in which said valuation or assessment is made, appeal from such assessment or valuation in the same manner and to the same extent as provided in sections 47–2403, 47–2404: *Provided, however,* That such person shall have first made his complaint to the Board of Equalization and Review respecting such asesssment as herein provided.

Any person aggrieved by any assessment made in pursuance of section 47–711 may, within ninety days after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47–2403, 47–2404: *Provided, however,* That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided.

Any person aggrieved by any reassessment made in pursuance of section 47–712, may within ninety days after notice of said reassessment, appeal from said reassessment in the same manner and to the same extent as provided in sections 47–2403, 47–2404.

Any person aggrieved by a reassessment or redistribution made pursuant to section 47–716, may within ninety days after notice of such reassessment or redistribution, appeal from such reassessment or redistribution in the same manner and to the same extent as provided in sections 47–2403, 47–2404. (Aug. 17, 1937, ch. 690, § 5, title IX, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8; July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5 (b).)

AMENDMENT

The 1939 act changed the date in paragraph (a) from "August 1" to "October 1" and added the proviso to that paragraph; changed the date in paragraph (b) from "August 1" to "October 15" and added the proviso to that paragraph; and changed the date in paragraph (c) from "February 1" to "April 15" and added the proviso to that paragraph.

NOTES TO DECISIONS

AUTHORITY TO REDUCE

The Board of Tax Appeals for the District of Columbia has authority to reduce an assessment of real property made by Board of Assistant Assessors and approved by Board of Equalization and Review, notwithstanding the absence of a showing that the assessment is capricious or arbitrary or so at variance with true value as to be actually or constructively fraudulent. *Watrous* v. *District of Columbia,* 1943 (135 F. 2d 654, 77 U. S. App. D. C. 295).

Where each lot was assessed at $4,008 and Board of Tax Appeals found value in money of each lot to be $3,500, the Board had power to reduce the assessment, notwithstanding absence of showing that assessment was capricious or arbitrary, under § 47–2403 providing that the Board may affirm, cancel, reduce or increase assessment. *Watrous* v. *District of Columbia,* 1943 (135 F. 2d 654, 77 U. S. App. D. C. 295).

§ 47–2406 [20: 977]. Appeal from imposition of tax involuntarily paid—Suit.

Any taxpayer who shall have paid within three years immediately preceding the approval of the District of Columbia Revenue Act of 1937 any tax to the District involuntarily, and under circumstances which according to law would entitle such taxpayer to the right to sue at law for the recovery of such tax, may within ninety days from May 16, 1938, appeal from the imposition of such tax in the same manner and to the same extent as set forth in sections 47–2403, 47–2404. (Aug. 17, 1937, ch. 690, § 6, title IX, as added May 16, 1938, 52 Stat. 374, ch. 223, § 8.)

COMPILER'S NOTE

The Revenue Act of 1937 was approved Aug. 17, 1937. This provision is doubtless of a temporary nature.

CROSS REFERENCE

See note under § 47–2404. *Hunt* v. *District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

NOTES TO DECISIONS

PAYMENT TO AVOID REVOCATION OF LICENSE

A corporation licensed to do business in the district which is assessed a tax on its earnings and fails to pay the sum until it receives from the assessor a rule to show cause why their license should not be revoked, and then pays the tax and penalty under protest to avoid revocation of their license, pays the tax involuntarily, entitling it to sue for the recovery of the tax under this act. *Panitz* v. *District of Columbia* (72 App. D. C. 131, 112 Fed. (2d) 39).

A claim for refund of taxes filed on the ninety-first day was on time, where the ninetieth day fell on Sunday. *Sherwood Bros., Inc.* v. *District of Columbia* (72 App. D. C. 155, 113 Fed. (2d) 162).

DISMISSAL OF APPEAL

Dismissal of appeal by Board of Tax Appeals where the tax was voluntarily paid. *General Elec. Co.* v. *District of Columbia* (71 App. D. C. 321, 110 Fed. (2d) 261).

§ 47–2407 [20: 978]. Refund of erroneous collections.

Any sum finally determined by the board to have been erroneously paid by or collected from the taxpayer shall be refunded by the District to the taxpayer from its annual appropriation for refunding erroneously paid taxes in said District. (Aug. 17, 1937, ch. 690, § 7, title IX, as added May 16, 1938, 52 Stat. 374, ch. 223, § 8.)

CROSS REFERENCE

Refunding tax, § 47–1016 et seq.

§ 47–2408 [20: 979]. Rules of procedure.

The board shall adopt and promulgate rules of procedure in matters for determination by the board under the provisions of this chapter. (Aug. 17, 1937, ch. 690, § 8, title IX, as added May 16, 1938, 52 Stat. 374, ch. 223, § 8.)

CROSS REFERENCE

Rules and regulations, § 47–2502 and notes.

§ 47–2409 [20: 979a]. Summons—Authority to take testimony.

The board is hereby authorized and empowered to summon any person before it to give testimony on oath or affirmation or to produce all books, records, papers, documents, or other legal evidence as to any matter relating to sections 47–2401 to 47–2412; and the board is authorized to administer oaths and to take testimony for the purposes of the administration of sections of this chapter. Such summons may be served by any member of the Metropolitan police department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event the board may report that fact to the District Court of the United States for the District of Columbia or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpenas of that court. (Aug. 17, 1937, ch. 690, § 9, title IX, as added May 16, 1938, 52 Stat. 375, ch. 223, § 8.)

§ 47–2410 [20: 979b]. Certain suits forbidden.

No suit shall be filed to enjoin the assessment or collection by the District of Columbia or any of its officers, agents, or employees of any tax. (Aug. 17, 1937, ch. 690, § 10, title IX, as added May 16, 1938, 52 Stat. 375, ch. 223, § 8.)

§ 47–2411 [20: 979c]. Manner of serving notices.

Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended, addressed to such person at the address given in any return filed by him, or, if no return has been filed, then to his last-known address. The proof of mailing of any notice mentioned in this chapter shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which must be determined under the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice. (Aug. 17, 1937, ch. 690, § 11, title IX, as added May 16, 1938, 52 Stat. 375, ch. 223, § 8.)

§ 47–2412 [20: 979e]. Reference by Commissioners to the Board.

In any matter affecting taxation, the determination of which is by law left to the discretion of the commissioners, the commissioners may, if they so elect, refer such matter to the board to make findings of fact and submit recommendations, such findings of fact and recommendations, if any, to be advisory only and not binding on the commissioners, and shall be without prejudice to the commissioners to make such further and other inquiry and investigation concerning such matter as they in their discretion shall consider necessary or advisable. (Aug. 17, 1937, ch. 690, § 13, title IX, as added July 26, 1939, 53 Stat. 1110, ch. 367, title IV, § 5 (c).)

CROSS REFERENCE

This section is part of the Revenue Act of 1939, see Compiler's Notes to § 47–1401.

Chapter 25.—MISCELLANEOUS PROVISIONS

Sec.

47–2501. Authorization for advance of funds by Secretary of Treasury.
47–2501a. Annual payment by the United States.
47–2502. Regulations.
47–2503. Separability provisions.
47–2504. Divulging of information obtained from Bureau of Internal Revenue unlawful—Penalties.

§ 47–2501 [20: 971a]. Authorization for advance of funds by Secretary of Treasury.

Until and including June 30, 1942, the Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act, approved June 29, 1922, is authorized and directed to advance, on the requisition of the commissioners of the District of Columbia, made in the manner now prescribed by law, out of any money in the treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the general expenses of said District, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said commissioners to the treasury out of taxes and revenue collected for the support of the government of the said District of Columbia. (Aug. 17, 1937, 50 Stat. 692, ch. 690, § 2, title VII; May 16, 1938, 52 Stat. 369, ch. 223, § 7; July 26, 1939, 53 Stat. 1118, ch. 367, title VI; March 2, 1940, 54 Stat. 39, ch. 37, § 3.)

AMENDMENTS

The date in the first phrase of the first sentence, appeared in the 1937 act as June 30, 1938, in the 1938 act as June 30, 1939, in the 1939 act as June 30, 1940, and in the 1940 act as June 30, 1942.

The 1938 act deleted the word "the" from the phrase "of the taxes" in the last clause.

The 1939 act deleted the words "during said fiscal year" following the words "from time to time."

Except as shown by this amendment note, this section has been re-enacted in each act cited to the text.

CROSS REFERENCE

The sections of this chapter are part of the Revenue Act of 1937, see Compiler's Notes to § 47–1401.

§ 47–2501a. Annual payment by the United States.

For the fiscal year ending June 30, 1948, and for each fiscal year thereafter, there is hereby authorized to be appropriated, as the annual payment by the United States toward defraying the expenses of the government of the District of Columbia, the sum of $12,000,000, of which $11,000,000 shall be credited to the general fund of the District of Columbia and $1,000,000 shall be credited to the water fund of the District of Columbia, established by title 43, chapter 15. (July 16, 1947, 61 Stat. 361, ch. 258, Art. V.)

§ 47–2502 [20: 971b]. Regulations.

The Commissioners of the District of Columbia are authorized to make such rules and regulations as may be necessary to carry out the provisions of the District of Columbia Revenue Act of 1937, as amended and shall prescribe and publish all needful rules and regulations for the enforcement of the Revenue Act of 1939. (Aug. 17, 1937, 50 Stat. 693, ch. 690, § 4, title VII; May 16, 1938, 52 Stat. 370, ch. 223, § 7; July 26, 1939, 53 Stat. 1119, ch. 367, title VIII, § 2.)

COMPILER'S NOTE

The Revenue Act of 1937 is set out herein as §§ 40–101 to 40–105, 47–1401 to 47–1412, 47–1601 to 47–1629, 47–1801 to 47–1808, 47–1901 to 47–1903, 47–1905, 47–1907, 47–1908, 47–1911, 47–2501 to 47–2504.

The Revenue Act of 1939 is set out herein as §§ 11–332, 47–134, 47–1204, 47–1211, 47–1501 to 47–1543, 47–1601 to 47–1629, 47–1701, 47–2402, 47–2403, 47–2405, 47–2412, and 47–2501 to 47–2503.

AMENDMENT

The 1939 amendment added the last clause pertaining to the Revenue Act of 1939.

CROSS REFERENCES

Regulations for assessment of federal property, § 47–723.

Regulations for determining value of limited estate for inheritance tax purposes, § 47–1607.

Regulations for review of tax assessment, §§ 47–2504, 47–2408.

Regulations governing form and requisites of corporate income tax returns, § 47–1516.

Rules and regulations concerning records, accounts, and returns for income tax purposes, § 47–1529.

Rules and regulations for administration of inheritance and estate taxes, § 47–1618.

Rules and regulations for apportionment of income received from without the District for income tax purposes, § 47–1504.

Rules and regulations for taxation of motor vehicles, § 47–1210.

Rules and regulations generally, § 1–226 and notes.

Rules and regulations governing income tax returns of fiduciaries, § 47–1523.

§ 47–2503 [20: 971c]. Separability provisions.

If any provision of the District of Columbia Revenue Act of 1937 and the Revenue Act of 1939 or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Aug. 17, 1937, 50 Stat. 693, ch. 690, title VII, § 5; May 16, 1938, 52 Stat. 370, ch. 223, § 7; July 26, 1939, 53 Stat. 1119, ch. 367, title VIII, § 1.)

COMPILER'S NOTE

For these acts as they are set out herein, see Compiler's Note to preceding section (§ 47–2502).

AMENDMENT

The words "and the Revenue Act of 1939" were inserted by authority of the 1939 amendment.

§ 47–2504 [20: 971d]. Divulging of information obtained from Bureau of Internal Revenue unlawful—Penalties.

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioners or any person having an administrative duty under this chapter to divulge or make known in any manner any information obtained from the Bureau of Internal Revenue in accordance with any provisions of the District of Columbia Revenue Act of 1937, as amended. Any violation of the provisions of this section shall subject the offender to a fine of $300 or imprisonment for ninety days. (Aug. 17, 1937, 50 Stat. 692, ch. 690, title VII, § 5, as added May 16, 1938, 52 Stat. 370, ch. 223, § 7.)

COMPILER'S NOTE

For the provisions of the Revenue Act of 1937, see Compiler's Note to § 47–2502.

CROSS REFERENCES

Secrecy of income tax returns, § 47–1521.

Secrecy of tax returns made under laws of District, § 47–1412.

Chapter 26.—GROSS SALES TAX

Sec.
47–2601. Definitions.
47–2602. Imposition of tax.
47–2603. Reimbursement of vendor for tax.
47–2604. Rate of tax.
47–2605. Exemptions.
47–2606. Tax to be separately stated.
47–2607. Presumption of taxability.
47–2608. Tax a personal debt—Period of limitation.
47–2609. Tax a preferred claim—Priority over property taxes.
47–2610. Collection of tax—Liens—Jeopardy assessments—Distraint.
47–2611. Assumption or refund of tax by vendor unlawful—Penalties.
47–2612. Monthly returns to be filed.
47–2613. Payment of tax.
47–2614. Annual returns to be filed.
47–2615. Secrecy of returns—Reciprocity.
47–2616. Determination of deficiencies.
47–2617. Refunds.
47–2618. Appeals.
47–2619. Sales in bulk.
47–2620. Rules and regulations.
47–2621. Additional powers of Assessor.
47–2622. Examination of records and witnesses.
47–2623. Certificate of registration.
47–2624. Penalties and interest.
47–2625. Failure to file return.
47–2626. Assessment of deficiencies—Limitations thereupon.
47–2627. Prosecutions.
47–2628. Notices—How given.
47–2629. Extensions of time.

§ 47–2601. Definitions.

1. "Assessor" means the Assessor of the District or his duly authorized representatives.

2. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

3. "Collector" means the Collector of Taxes of the District or his duly authorized representatives.

4. "Commissioners" means the Commissioners of the District or their duly authorized representatives.

5. "District" means the District of Columbia.

6. "Engaging in business" means commencing, conducting, or continuing in business, as well as liquidating a business when the liquidator thereof holds himself out to the public as conducting such a business.

7. "Food" means cereals and cereal products; milk and milk products, including ice cream; meat and meat products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit, fruit products, and fruit juices; bottled soft drinks; spices and salt; flavoring extracts and condiments; sugar and sugar products; coffee and coffee substitutes; tea; cocoa and cocoa products; and ice when used for household consumption: *Provided, however,* That the word "food" shall not include spiritous or malt liquors, beer, and any other beverages such as are ordinarily dispensed at bars and soda fountains or in connection therewith.

8. "Gross receipts" means the total amount of the sales prices of the retail sales of vendors, valued in money, whether received in money or otherwise.

9. "Person" includes an individual, partnership, society, club, association, joint-stock company, corporation, estate, receiver, trustee, assignee, or referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals acting as a unit.

10. "Purchaser" includes a person who purchases property or to whom are rendered services, receipts from which are taxable under this title.

11. "Purchaser's certificate" means a certificate signed by a purchaser and in such form as the Assessor shall prescribe, stating the purpose to which the purchaser intends to put the subject of the sale, or the status or character of the purchaser.

12. "Retailer" includes—

(a) every person engaged in the business of making sales at retail;

(b) every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others;

(c) every person engaged in the business of making sales for storage, use, or other consumption, or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

13. "Retail establishment" means any premises in which the business of selling tangible personal property is conducted or in or from which any retail sales are made.

14. (a) "Retail sale" and "sale at retail" mean the sale in any quantity or quantities of any tangible personal property or service taxable under the terms of this chapter. Said term shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include but shall not be limited to the following:

(1) The sale for consumption of any meals, food or drink, or other tangible personal property for a consideration, at any restaurant, hotel, drug store, club, resort, or other place at which meals, food, drink, or other tangible personal property are sold.

(2) Any production, fabrication, or printing of tangible personal property on special order for a consideration.

(3) The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration.

(4) The sale of natural or artificial gas, oil, electricity, solid fuel, or steam, when made to any purchaser for purposes other than resale or for use in manufacturing, assembling, processing, or refining.

(5) The sale of material used in the construction, and of materials used in the repair or alteration, of real property, which materials, upon completion of such construction, alterations, or repairs, become real property, regardless of whether or not such real property is to be sold or resold.

(6) The grant of the right to continuous possession or use of any article of tangible personal property granted under a lease or contract if such grant of possession would be taxable if outright sale were made; in such event such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rentals paid.

(b) The term "retail sale" and "sale at retail" shall not include the following:

(1) Sales of tickets for admission to places of amusement and sports.

(2) Sales of transportation and communication services.

(3) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.

(4) Any sale in which the only transaction in the District is the mere execution of the contract of sale and in which the tangible personal property sold is not in the District at the time of such execution: *Provided, however,* That nothing contained in this subsection shall be construed to be an exemption from the tax imposed under chapter 27 of this title.

15. "Return" includes any return filed or required to be filed as herein provided.

16. (a) "Sales price" means the total amount paid by a purchaser to a vendor as consideration for a retail sale, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold.

(2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

(3) The cost of transportation of the property prior to its sale at retail. The total amount of the sales price includes all of the following: a. Any services that are a part of the sale. b. Any amount for which credit is given to the purchaser by the vendor.

(b) The term "sales price" does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) The amount charged for property returned by purchasers to vendors upon rescission of contracts of sale when the entire amounts charged therefor are refunded either in cash or credit, and when the property is returned within ninety days from the date of sale.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) The amount of reimbursement of tax paid by the purchaser to the vendor under this chapter.

(5) Transportation charges separately stated, if the transportation occurs after the sale of the property is made.

17. "Sale" and "selling" mean any transaction whereby title or possession, or both, of tangible personal property is or is to be transferred by any means whatsoever for a consideration by a vendor to a purchaser, or any transaction whereby services subject to tax under this chapter are rendered for consideration or are sold to any purchaser by any vendor, and shall include, but not be limited to, any "sale at retail" as defined in this chapter. Such consideration may be either in the form of a price in money, rights, or property, or by exchange or barter, and may be payable immediately, in the future, or by installments.

18. "Semipublic institution" means any corporation, and any community chest, fund, or foundation, organized exclusively for religious, scientific, charitable, or educational purposes, including hospitals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. For the purpose of this chapter an organization or institution which does not embrace the generally recognized relationship of teacher and student shall be deemed not to be operated for educational purposes.

19. "Tangible personal property" means corporeal personal property of any nature.

20. "Tax" means the tax imposed by this chapter.

21. "Taxpayer" means any person required by this chapter to make returns or to pay the tax imposed by this chapter.

22. "Tax year" means the calendar year, or the taxpayer's fiscal year if it be other than the calendar year when such fiscal year is regularly used by the taxpayer for the purpose of reporting District income taxes as the tax period in lieu of the calendar year.

23. "Vendor" includes a person or retailer selling property or rendering services upon the receipts from which a tax is imposed under this chapter.

24. The foregoing definitions shall be applicable whenever the words defined are used in this chapter unless otherwise required by the context. (May 27, 1949, 63 Stat. 112, ch. 146, Title I, §§ 101 to 124.)

SHORT TITLE

Sec. 1 of the act of May 27, 1949, 63 Stat. 115, ch. 146, provided that this chapter 26 of title 47 may be cited as the "District of Columbia Sales Tax Act".

SEPARABILITY CLAUSE

Sec. 801 of the act of May 27, 1947, 63 Stat. 115, ch. 146, provided: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to the other persons or circumstances, shall not be affected thereby."

§ 47–2602. Imposition of tax.

Beginning on and after August 1, 1949, for the privilege of selling certain tangible personal property at retail sale and for the privilege of selling certain selected services defined as sales at retail in this chapter, a tax is hereby imposed upon all vendors at the rate of 2 per centum of the gross receipts of any vendor from the sale of such tangible personal property and services. (May 27, 1949, 63 Stat. 115, ch. 146, Title I, § 125.)

§ 47–2603. Reimbursement of vendor for tax.

Reimbursement for the tax imposed upon the vendor shall be collected by the vendor from the purchaser on all sales the gross receipts from which are subject to the tax imposed by this chapter so far as it can be done. It shall be the duty of each purchaser in the District to reimburse the vendor, as provided in section 47–2604, for the tax imposed by this chapter. Such reimbursement of tax shall be a debt from the purchaser to the vendor and shall be recoverable at law in the same manner as other debts. (May 27, 1949, 63 Stat. 115, ch. 146, Title I, § 126.)

§ 47–2604. Rate of tax.

For the purpose of collecting his reimbursement as provided in section 47–2603 insofar as it can be done and yet eliminate the fractions of a cent, the vendor shall add to the sales price and collect from the purchaser the following amounts:

(a) On each sale where the sales price is from 14 cents to 63 cents, both inclusive, 1 cent;

(b) On each sale where the sales price is from 64 cents to $1.13, both inclusive, 2 cents;

(c) On each 50 cents of sales price or fraction thereof in excess of $1.13, 1 cent.

(May 27, 1949, 63 Stat. 115, ch. 146, Title I, § 127.)

§ 47–2605. Exemptions.

Gross receipts from the following sales shall be exempt from the tax imposed by this chapter:

(a) Sales to the United States or the District or any instrumentality thereof.

(b) Sales to a State or any of its political subdivisions if such State grants a similar exemption to the District. As used in this subsection, the term "State" means the several States, Territories, and possessions of the United States.

(c) Sales to a semipublic institution: *Provided, however,* That such sales shall not be exempt unless (1) such institution shall have first obtained a certificate from the Assessor stating that it is entitled to such exemption, and (2) the vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the date of each such separate sale, and the number of such certificate.

(d) (1) Sales of food for human consumption off the premises where such food is sold.

(2) Sales of any food sold for human consumption in hotels, restaurants, cafes, bars, and other establishments where the sales price of the food furnished each individual patron, including any cover, minimum, entertainment, or other charge, is $1.25 or less: *Provided, however,* That the gross proceeds from all such sales where the sales price to the individual patron is more than $1.25 shall be subject to the tax imposed by this title without any deductions from such gross proceeds by virtue of the provisions of this subsection: *And provided further,* That the provisions of this chapter with respect to reimbursement for the tax imposed shall be applicable to every such sale where the sales price to the individual patron is more than $1.25 without regard to the provisions of this subsection.

(e) Sales of motor-vehicle fuels upon the sale of which a tax is imposed by chapter 19 of this title.

(f) Sales of property purchased by a utility or public-service company for use or consumption in furnishing a commodity or service: *Provided,* That the receipts from furnishing such commodity or service are subject to a gross-receipts or mileage tax in force in the District during or for the period of time covered by any return required to be filed by the provisions of this chapter.

(g) Sales of newspapers and publications of semipublic institutions as defined in section 47–2601 (18).

(h) Casual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail.

(i) Sales of livestock, poultry, seeds, feeds for livestock and poultry, fertilizers, lime, and land plaster used for agricultural purposes.

(j) Sales of food or beverages of any nature if made in any car composing a part of any train or in any aircraft or boat operating within the District in the course of commerce between the District and a State.

(k) Sales of goods made pursuant to bona fide contracts entered into before the date of approval of this Act: *Provided,* That there is a contract in writing signed by the purchaser and vendor which imposes an unconditional liability on the part of

the purchaser to buy the goods covered thereby at a fixed price and without escalator clause, and an unconditional liability on the part of the vendor to deliver a definite quantity of such goods at the contract price.

(*l*) Sales of natural or artificial gas, oil, electricity, solid fuel, or steam, directly used in manufacturing, assembling, processing, or refining.

(m) Sales which a State would be without power to tax under the limitations of the Constitution of the United States.

(n) Sales of motor vehicles and trailers.

(*o*) Sales of medicines, pharmaceuticals, and drugs whether or not made on prescriptions of duly licensed physicians and surgeons and general and special practitioners of the healing art.

(p) Sales of crutches, wheel chairs for the use of cripples and invalids, and, when designed to be worn on the person of the purchaser or user, artificial limbs, artificial eyes, and artificial hearing devices; sales of false teeth by a dentist and the materials used by a dentist in dental treatment; sales of eyeglasses, when especially designed or prescribed by an ophthalmologist, oculist, or optometrist for the personal use of the owner or purchaser; and sales of artificial braces and supports designed solely for the use of crippled persons.

(q) Sales of cigarettes. (May 27, 1949, 63 Stat. 115, ch. 146, Title I, § 128.)

§ 47–2606. Tax to be separately stated.

Upon each sale of tangible personal property or services, the gross receipts from which are taxable under this chapter, the reimbursement of tax to be collected by the vendor from the purchaser under the provisions of this chapter shall be stated and charged separately from the sales price and shown separately on any record thereof at the time the sale is made or evidence of sale issued or employed by the vendor. (May 27, 1949, 63 Stat. 117, ch. 146, Title I, § 129.)

§ 47–2607. Presumption of taxability.

It shall be presumed that all receipts from the sale of tangible personal property and services mentioned in this chapter are subject to tax until the contrary is established, and the burden of proving that a receipt is not taxable hereunder shall be upon the vendor or the purchaser as the case may be. Except as provided in section 47–2605 (c) of this chapter, unless the vendor shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser and the number of his registration certificate to the effect that the property or service was purchased for resale, the receipts from all sales shall be deemed taxable. The certificate herein required shall be in such form as the Assessor shall prescribe and, in case no certificate is furnished or obtained prior to the time the sale is consummated, the tax shall apply to the gross receipts therefrom as if the sale were made at retail. (May 27, 1949, 63 Stat. 117, ch. 146, Title I, § 130.)

§ 47–2608. Tax a personal debt—Period of limitation.

The tax imposed by this chapter and interest and penalties thereon shall become, from the time due and payable, a personal debt of the person liable to pay the same to the District. An action may be brought at any time within three years from the time the tax shall be due and payable in the name of the District to recover the amount of any taxes, penalties, and interest due under the provisions of this chapter, but such actions shall be utterly barred after the expiration of the aforesaid three years. (May 27, 1949, 63 Stat. 117, ch. 146, Title I, § 131.)

§ 47–2609. Tax a preferred claim—Priority over property taxes.

Whenever the business or property of any person subject to tax under the terms of this chapter, shall be placed in receivership or bankruptcy, or assignment is made for the benefit of creditors, or if said property is seized under distraint for property taxes, all taxes, penalties, and interest imposed by this chapter for which said person is in any way liable shall be a prior and preferred claim. Neither the United States marshal, nor a receiver, assignee, or any other officer shall sell the property of any person subject to tax under the terms of this chapter under process or order of any court without first determining from the Collector the amount of any such taxes due and payable by said person, and if there be any such taxes due, owing, or unpaid under this chapter, it shall be the duty of such officer to first pay to the Collector the amount of said taxes out of the proceeds of said sale before making any payment of any moneys to any judgment creditor or other claimants of whatsoever kind or nature. Any person charged with the administration or distribution of any such property as aforesaid who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid which are chargeable against the person otherwise liable for tax under the terms of this section. (May 27, 1949, 63 Stat. 117, ch. 146, Title I, § 132.)

§ 47–2610. Collection of tax—Liens—Jeopardy assessments—Distraint.

The taxes imposed by this chapter and penalties and interest thereon may be collected by the Collector in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection; and liens for the taxes imposed by this chapter and penalties thereon may be acquired in the same manner that liens for personal property taxes are acquired. If the Assessor believes that the collection of any tax imposed by this chapter will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties, the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Collector for the payment thereof. Upon failure or refusal to pay

such tax, penalty, and interest, collection thereof by distraint shall be lawful. (May 27, 1949, 63 Stat. 118, ch. 146, Title I, § 133.)

§ 47–2611. Assumption or refund of tax by vendor unlawful—Penalties.

It shall be unlawful for any vendor to advertise or hold out or state to the public or to any customer directly or indirectly that the reimbursement of tax or any part thereof to be collected by the vendor under this chapter will be assumed or absorbed by the vendor or that it will not be added to the selling price of the property sold or the taxable services rendered, or if added to said price that it, or any part thereof, will be refunded. Any person violating any provision of this section shall upon conviction be fined not more than $500 or imprisoned for not more than six months, or both, for each offense. (May 27, 1949, 63 Stat. 118, ch. 146, Title I, § 134.)

§ 47–2612. Monthly returns to be filed.

(a) On or before the twentieth day of each calendar month, every vendor who has made any sale at retail, taxable under the provisions of this chapter, during the preceding calendar month, shall file a return with the Assessor. Such returns shall show the total gross proceeds of the vendor's business for the month for which the return is filed; the gross receipts of the business of the vendor upon which the tax is computed; the amount of tax for which the vendor is liable and such other information as the Assessor deems necessary for the computation and collection of the tax.

(b) The Assessor may permit or require the returns to be made for other periods and upon such other dates as he may specify: *Provided,* That the gross receipts during any tax year shall be included in returns covering such year and no other.

(c) The form of returns shall be prescribed by the Assessor and shall contain such information as he may deem necessary for the proper administration of this chapter. The Assessor may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice. (May 27, 1949, 63 Stat. 118, ch. 146, Title I, § 135.)

§ 47–2613. Payment of tax.

(a) At the time of filing his return as provided by this chapter, the taxpayer shall pay to the Collector the taxes imposed by this chapter.

(b) The taxes for the period for which a return is required to be filed by a vendor under this chapter shall be due by the vendor and payable to the Collector on the date limited for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of gross receipts and taxes due thereon. (May 27, 1949, 63 Stat. 118, ch. 146, Title I, § 136.)

§ 47–2614. Annual returns to be filed.

On or before thirty days after the end of the tax year of each vendor required to pay to the Collector the tax imposed by the provisions of this chapter, such vendor shall make an annual return for such tax year in such form as may be required by the Assessor. The Assessor for good cause shown may on the written application of a vendor extend the time for making any return required by this section. (May 27, 1949, 63 Stat. 119, ch. 146, Title I, § 137.)

§ 47–2615. Secrecy of returns—Reciprocity.

(a) Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the amount of gross proceeds or any particulars relating thereto or the computation thereof set forth or disclosed in any return required to be filed under this chapter, and neither the original nor a copy of any such return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of such litigation, whether or not the request is contained in an order of the court: *Provided, however,* That nothing herein contained shall be construed to prevent the furnishing to a taxpayer a copy of his return upon the payment of a fee of $2.

(b) Nothing contained in subsection (a) of this section shall be construed to prohibit the publication of notices authorized in this chapter or the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof, or the publication of delinquent lists showing the names of persons, vendors, or purchasers who have failed to pay the taxes imposed by this chapter within the time prescribed herein, together with any relevant information which in the opinion of the Assessor may assist in the collection of such delinquent taxes.

(c) Nothing contained in subsection (a) of this section shall be construed to prohibit the Assessor, in his discretion, from divulging or making known any information contained in any report, application, or return required under the provisions of this chapter other than such information as may be contained therein relating to the amount of gross proceeds or tax thereon or any particulars relating thereto or the computation thereof.

(d) Any violation of the provisions of subsection (a) of this section shall be punishable by a fine not exceeding $1,000 or imprisonment for six months or both, in the discretion of the court.

(e) Notwithstanding the provisions of this section, the Assessor may permit the proper officer of the United States or of any State or Territory of the United States or his authorized representative to inspect the returns filed under this title, or may furnish to such officer or representative a copy of any such return, provided the United States, State, or Territory grants substantially similar privileges to the Assessor or his representative or to the proper officer of the District charged with the administration of this chapter.

(f) All reports, applications, and returns received by the Assessor under the provisions of this chapter shall be preserved for three years and thereafter

until the Assessor orders them to be destroyed. May 27, 1949, 63 Stat. 119, ch. 146, Title I, § 138.)

§ 47–2616. Determination of deficiencies.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the Assessor from such information as may be obtainable. Notice of such determination shall be given to the taxpayer. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within thirty days after the giving of notice of such determination, shall apply in writing to the Assessor for a hearing, or unless the Assessor of his own motion shall redetermine the same. After such hearing or redetermination the Assessor shall give notice of his final determination to the person against whom the tax is assessed. (May 27, 1949, 63 Stat. 119, ch. 146, Title I, § 139.)

§ 47–2617. Refunds.

(a) Except as to any tax finally determined as provided in section 47–2616, where any tax has been erroneously or illegally collected, the tax shall be refunded if application under oath is filed with the Assessor for such refund within one year from the payment thereof. For like cause and within the same period a refund may be made upon the certificates of the Assessor and the Collector. Whenever a refund is made upon the certificates of the Assessor and the Collector, the Assessor and Collector shall state their reasons therefor in writing. Such application may be made by the person upon whom such tax was imposed and who has actually paid the tax. When an application is made by a vendor who has collected reimbursement of such tax, no actual refund of moneys shall be made to such vendor, until he shall first establish to the satisfaction of the Assessor, under such regulations as the Commissioners may prescribe, that the vendor has repaid to the purchaser the amount for which the application for refund is made. In lieu of any refund required to be made, a credit may be allowed therefor on payment due from the applicant.

(b) Application for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty, or interest complained of and the Assessor may receive evidence with respect thereto. After making his determination of whether any refund shall be made, the Assessor shall give notice thereof to the applicant. (May 27, 1949, 63 Stat. 120, ch. 146, Title I, § 140.)

§ 47–2618. Appeals.

(a) Any vendor or purchaser aggrieved by a final determination of tax or denial of an application for refund of any tax may, within ninety days from the date of the final determination of the tax or from the date of the denial of an application for refund, as the case may be, appeal to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as set forth in sections 47–2403, 47–2404 and 47–2407 to 47–2411. The remedy provided in this section shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law, but no suit by the taxpayer for the recovery of any part of any tax shall be instituted in any court if the taxpayer has elected to file an appeal with respect to such tax with the Board of Tax Appeals for the District of Columbia.

(b) If it shall be determined by the Assessor, the Board of Tax Appeals for the District of Columbia, or any court having jurisdiction over the subject matter, that any part of any tax which was assessed as a deficiency, and any interest thereon paid by the taxpayer, was an overpayment, interest shall be allowed and paid upon such overpayment of tax at the rate of 4 per centum per annum from the date such overpayment was paid until the date of refund. (May 27, 1949, 63 Stat. 120, ch. 146, Title I, § 141.)

§ 47–2619. Sales in bulk.

Whenever there is made a sale, transfer, or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or of merchandise and of fixtures, pertaining to the conducting of the business of the seller, transferor, or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee, or assignee shall at least five days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the Assessor by registered mail of the proposed sale and of the price, terms, and conditions thereof, irrespective of whether or not the seller, transferor, or assignor has represented to or informed the purchaser, transferee, or assignee that he owes any tax pursuant to this chapter or whether he has complied with section 28–1701, or whether or not he has knowledge that such taxes are owing, or whether any such taxes are in fact owing.

(b) Whenever the purchaser, transferee, or assignee shall fail to give the notice to the Assessor as required by the preceding section, or whenever the Assessor shall inform the purchaser, transferee, or assignee that a possible claim for such tax or taxes exists, any sums of money, property, or choses in action, or other consideration, which the purchaser, transferee, or assignee is required to transfer over to the seller, transferor, or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor, or assignor to the District, and the purchaser, transferee, or assignee is forbidden to transfer to the seller, transferor, or assignor any such sums of money, property, or choses in action to the extent of the amount of the District's claim. For failure to comply with the provisions of this section, the purchaser, transferee, or assignee shall be personally liable for the payment to the District of any such taxes theretofore or thereafter determined to be due to the District from the seller, transferor, or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter. (May 27, 1949, 63 Stat. 121, ch. 146, Title I, § 142.)

§ 47–2620. Rules and regulations.

In addition to the powers granted to the Commissioners in this chapter, they are hereby author-

ized and empowered to make, adopt, and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof. (May 27, 1949, 63 Stat. 121, ch. 146, Title I, § 143.)

§ 47–2621. Additional powers of Assessor.

In addition to the powers granted to the Assessor in this chapter, he is hereby authorized and empowered—

(a) to extend for cause shown the time of filing any return for a period not exceeding thirty days; and for cause shown, to remit penalties and interest in whole or in part except as otherwise provided in this chapter; and to compromise disputed claims in connection with the taxes hereby imposed;

(b) to request information from the Bureau of Internal Revenue of the Treasury Department of the United States relative to any person for the purpose of assessing taxes imposed by this chapter; and said Bureau of Internal Revenue is authorized and required to supply such information as may be requested by the Assessor relative to any person for the purpose herein provided;

(c) to prescribe methods for determining the gross proceeds from sales made or services rendered and for the allocation of such sales into taxable and nontaxable sales;

(d) to require any vendor selling to persons within the District to keep detailed records of the nature and value of personal property sold for use within the District, and to furnish such information upon request to the Assessor;

(e) to assess, determine, revise, and readjust the taxes imposed under this chapter. (May 27, 1949, 63 Stat. 121, ch. 146, Title I, § 144.)

§ 47–2622. Examination of records and witnesses.

The Assessor, for the purpose of ascertaining the correctness of any return filed as required by this chapter, or for the purpose of making a return where none has been made, is authorized to examine any books, papers, records, or memoranda, or any person bearing upon the matters required to be included in the return and may summon any person to appear before him and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return and to give testimony or answer interrogatories under oath respecting the same, and the Assessor, or his duly authorized representative, shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person, having been personally summoned, shall neglect or refuse to obey the summons issued as herein provided, then in that event the Assessor, or the Deputy Assessor, may report that fact to the United States District Court for the District of Columbia, or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the Assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the Assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than $500 or imprisoned for not more than six months, or both, for each offense. (May 27, 1949, 63 Stat. 122, ch. 146, Title I, § 145.)

§ 47–2623. Certificate of registration.

(a) No person shall engage or continue to engage in the business of making any retail sales subject to tax under the provisions of this chapter without having obtained a certificate of registration therefor. If two or more persons constitute a single vendor as defined in this chapter, such persons may operate a single retail establishment under one certificate of registration and in such case neither the death or retirement of one or more of such persons from business in such establishment nor the entrance of one or more persons thereinto shall affect the certificate of registration for a period of sixty days or require the issuance of a new certificate until the expiration of such period.

(b) Each applicant for a certificate required by this section shall make out and deliver to the Assessor, upon a blank to be furnished by him for that purpose, a statement showing the name of the applicant, each retail establishment where the applicant's business is to be conducted, the kind or nature of such business and such other information as the Assessor may prescribe. Upon receipt of such application the Assessor shall issue the applicant, without charge, a certificate of registration for each retail establishment designated in the application, authorizing the applicant to engage in business at such retail establishment. The certificate of registration shall be nontransferable except as otherwise provided in this chapter, and shall be displayed in the applicant's place of business. The form of such certificate of registration shall be prescribed by the Assessor.

(c) In the case of a vendor who has no fixed place of business and sells from one or more vehicles, each such vehicle shall constitute a retail establishment for the purpose of this chapter. In the case of a vendor who has no fixed place of business and does not sell from a vehicle, the application for a certificate of registration shall set forth the address to which any notice or other communication authorized by this chapter may be sent to the applicant, and the place so designated shall constitute a retail establishment for the purposes of this chapter.

(d) Whoever engages in the business of selling tangible personal property at retail, or makes any sale which is subject to tax under the provisions of this chapter without having a certificate of registration therefor, as required by this section, shall, upon conviction thereof, be fined not more than $100. (May 27, 1949, 63 Stat. 122, ch. 146, Title I, § 146.)

§ 47–2624. Penalties and interest.

(a) Any person failing to file a return or who files a false or incorrect return or who fails to pay

any tax to the Collector within the time required by this chapter shall be subject to a penalty of 5 per centum of the amount of tax due, plus interest at the rate of 1 per centum of such tax for each month of delay excepting the first month after such return was required to be filed or such tax became due; but the Assessor, if satisfied that the delay was excusable, may waive all or any part of such penalty in excess of interest at the rate of 6 per centum per year. Unpaid penalties and interest may be collected in the same manner as the tax imposed by this chapter. The interest provided for in this section shall be applicable to any tax determined by the Assessor as a deficiency.

(b) The certificate of the Collector or Assessor, as the case may be, to the effect that a tax has not been paid, that a return has not been filed, or a registration certificate has not been obtained, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof: *Provided,* That the presumptions created by this subsection shall not be applicable in criminal prosecutions. (May 27, 1949, 63 Stat. 123, ch. 146, Title I, § 147.)

§ 47–2625. Failure to file return.

(a) Any person required to file a return or report or perform any act under the provisions of this chapter who shall fail or neglect to file such return or report or perform such act within the time required shall, upon conviction thereof, be fined not more than $300 for each and every failure or neglect. The penalty provided herein shall be in addition to the other penalties provided in this chapter.

(b) Any person required to file a return or report or perform any act under the provisions of this chapter who willfully fails or refuses to file such return or report or perform such act within the time required shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year or both. The penalty provided herein shall be in addition to the other penalties provided in this chapter. (May 27, 1949, 63 Stat. 123, ch. 146, Title I, § 148.)

§ 47–2626. Assessment of deficiencies — Limitations thereupon.

ASSESSMENT, REASSESSMENT, FALSE AND INCORRECT RETURNS

The Assessor shall determine, redetermine, assess, or reassess, any tax imposed by this chapter, except in cases where the tax is correct as computed in any return filed with the Assessor, within three years after the filing of any return, except as follows:

(a) In the case of a false return, or a failure to file a return, whether in good faith or otherwise, the tax may be assessed at any time.

(b) In the case of an incorrect return which has not been prepared as required by this chapter and by the return and instructions, rules, or regulations applicable thereto, the tax shall be assessed or reassessed within five years after the filing of such return. (May 27, 1949, 63 Stat. 123, ch. 146, Title I, § 149.)

§ 47–2627. Prosecutions.

All prosecutions under this chapter shall be brought in the municipal court for the District of Columbia on information by the Corporation Counsel of the District in the name of the District of Columbia. (May 27, 1949, 63 Stat. 124, ch. 146, Title I, § 150.)

§ 47–2628. Notices—How given.

Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in an envelope, postage prepaid, addressed to such person at the address given in the last return filed by him pursuant to the provisions of this chapter or, if no return has been filed, then to the last address of such person. If the address of any person is unknown, such notice may be published in one or more of the daily newspapers in the District of Columbia for three successive days. The cost of any such advertisement in newspapers shall be added to the tax. The proof of mailing of any notice required or authorized in this title shall be presumptive evidence of the receipt of such notice by the person to whom addressed. The proof of publishing any notice required in this chapter in one or more of the daily newspapers in the District shall be conclusive notice to the person for whom such notice is intended. (May 27, 1949, 63 Stat. 124, ch. 146, Title I, § 151.)

§ 47–2629. Extensions of time.

Where, before the expiration of the period prescribed herein for the assessment or redetermination of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period. (May 27, 1949, 63 Stat. 124, ch. 146, Title I, § 152.)

SEPARABILITY CLAUSE

Sec. 801 of the act of May 27, 1947, 63 Stat. 115, ch. 146, provided: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to the other persons or circumstances, shall not be affected thereby."

Chapter 27.—COMPENSATING-USE TAX

Sec.

47–2701. Definitions.
47–2702. Imposition of tax.
47–2703. Collection of tax by vendor.
47–2704. Non-resident vendors.
47–2705. Payment of tax by purchaser.
47–2706. Exemptions.
47–2707. Collection of tax.
47–2708. Surety bonds may be required.
47–2709. Assumption or refund of tax unlawful—Penalty.
47–2710. Returns and payment of tax.
47–2711. Monthly returns to be filed—Content and form—Payment of tax.

Sec.
47–2712. Certificate of registration.
47–2713. Application of sections 47–2616 to 47–2622 and 47–2624 to 47–2629.

§ 47–2701. Definitions.

1. (a) "Retail sale", "sale at retail", and "sold at retail" means all sales in any quantity or quantities of tangible personal property, whether made within or without the District, and services, to any person for the purpose of use, storage, or consumption, within the District, taxable under the terms of this chapter. These terms shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but shall not be limited to, the following:

(1) Any production, fabrication, or printing of tangible personal property on special order for a consideration.

(2) The sale of natural or artificial gas, oil, electricity, solid fuel or steam, when made to any purchaser for purposes other than resale or for use in manufacturing, assembling, processing or refining.

(3) The sale of material used in the construction, and of materials used in the repair or alteration, of real property, which materials, upon completion of such construction, alterations, or repairs, become real property, regardless of whether or not such real property is to be sold or resold.

(4) The grant of the right to continuous possession or use of any article of tangible personal property granted under a lease or contract if such grant of possession would be taxable if outright sale were made; in such event such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rentals paid.

(b) The terms "retail sale", "sale at retail", and "sold at retail" shall not include the following:

(1) Sales of tickets for admission to places of amusement and sports.

(2) Sales of transportation and communication services.

(3) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.

(4) Sales of tangible personal property which property was purchased or acquired by a nonresident prior to coming into the District and establishing or maintaining a temporary or permanent residence in the District. As used in this subsection, the word "residence" means a place in which to reside and does not mean "domicile".

(5) Sales of tangible personal property which property was purchased or acquired by a nonresident person prior to coming into the District and establishing or maintaining a business in the District.

(6) The use or storage within the District of tangible personal property owned and held by a common carrier or sleeping-car company for use principally without the District in the course of interstate commerce, or commerce between the District and a State, in or upon, or as part of, any train, aircraft, or boat.

2. "Purchase" and "purchased" shall mean and include—

(a) any transfer, either conditionally or absolutely, of title or possession or both of the tangible personal property sold at retail;

(b) any acquisition of a license or other authority to use, store, or consume, the tangible personal property sold at retail;

(c) any sale of services sold at retail.

3. "Purchaser" means any person who shall have purchased tangible personal property or services sold at retail.

4. "In the District" and "within the District" mean within the exterior limits of the District of Columbia and include all territory within such limits owned by the United States of America.

5. "Store" and "storage" mean any keeping or the retention of possession in the District for any purpose of tangible personal property purchased at retail sale.

6. "Use" means the exercise by any person within the District of any right or power over tangible personal property and services sold at retail, whether purchased within or without the District by a purchaser from a vendor.

7. "Vendor" includes every person or retailer engaging in business in the District and making sales at retail as defined herein, whether for immediate or future delivery of the tangible personal property or performance of the services. When in the opinion of the Assessor it is necessary for the efficient administration of this title to regard any salesman, representative, peddler, or canvasser, as the agent of the dealer, distributor, supervisor, or employer, under whom he operates or from whom he obtains the tangible personal property sold or furnishes services, the Assessor may, in his discretion, treat and regard such agent as the vendor jointly responsible with his principal, employer, or supervisor, for the assessment and payment or collection of the tax imposed by this chapter.

8. "Engaging in business in the District" includes the selling, delivering, or furnishing in the District, or any activity in the District in connection with the selling, delivering, or furnishing in the District, of tangible personal property or services sold at retail as defined herein. This term shall include but shall not be limited to the following acts or methods of transacting business:

(a) The maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, of any office, place of distribution, sales or sample room or place, warehouse or storage place. or other place of business.

(b) The having of any representative, agent, salesman, canvasser, or solicitor operating in the

District for the purpose of making sales at retail as defined herein, or the taking of orders for such sales.

9. "Retailer" includes every person engaged in the business of making sales at retail.

10. The definitions of "business", "food", "gross receipts", "person", "purchaser's certificate", "retail establishment", "return", "sale" and "selling", "sales price", "semipublic institution", "tangible personal property", "tax", "tax year", "taxpayer", "Assessor", "Collector", "Commissioners", and "District", as defined in chapter 26 of this title, are hereby incorporated in and made applicable to this chapter.

11. The foregoing definitions shall be applicable whenever the words defined are used in this chapter unless otherwise required by the context. (May 27, 1949, 63 Stat. 124, ch. 146, Title II, §§ 201 to 211.)

SHORT TITLE

Sec. 1 of the act of May 27, 1949, 63 Stat. 112, ch. 146, provided that this chapter 27 of title 47 may be cited as the "District of Columbia Use Tax Act".

§ 47–2702. Imposition of tax.

Beginning on and after August 1, 1949, there is hereby imposed and there shall be paid by every vendor engaging in business in the District and by every purchaser a tax on the use, storage, or consumption of any tangible personal property and services sold or purchased at retail sale. The tax hereby imposed shall be at the rate of 2 per centum of the sale price of the tangible personal property or services rendered or sold. (May 27, 1949, 63 Stat. 126, ch. 146, Title II, § 212.)

§ 47–2703. Collection of tax by vendor.

Every vendor engaging in business in the District and making sales at retail shall, for the privilege of making such sales, pay to the Collector the tax imposed by this chapter. At the time of making such sales the vendor shall collect the tax from the purchaser and give to the purchaser a receipt therefor in such form as prescribed by the Assessor. For the purpose of uniformity of tax collection by the vendor engaging in business in the District and for other purposes the provisions of sections 47–2603, 47–2604, 47–2606 and 47–2607 are hereby incorporated in and made applicable to this chapter. (May 27, 1949, 63 Stat. 126, ch. 146, Title II, § 213.)

§ 47–2704. Non-resident vendors.

Every vendor or retailer not engaging in business in the District who makes sales at retail as defined in this chapter, and who upon application to the Collector has been expressly authorized to pay the tax imposed by this chapter, shall, at the time of making such sales, collect the reimbursement of the tax from the purchaser and give to the purchaser a receipt therefor in such form as prescribed by the Assessor. For the purpose of uniformity of tax collection by the vendor or retailer who has been expressly authorized to pay the tax under the provisions of this section and for other purposes, the provisions of sections 47–2603, 47–2604, 47–2606 and 47–2607 are hereby incorporated in and made applicable to this chapter. A permit shall be issued to such vendor or retailer, without charge, to pay the tax and collect reimbursement thereof as provided herein. Such permit may be revoked at any time by the Collector who shall thereupon give notice thereof to the vendor or retailer. (May 27, 1949, 63 Stat. 126, ch. 146, Title II, § 214.)

§ 47–2705. Payment of tax by purchaser.

If a purchaser has not reimbursed for the tax such vendors or retailers as are required or authorized to pay the tax, as the case may be, such purchaser shall file a return as hereinafter provided and pay to the Collector 2 per centum of the total sales prices of property and services purchased at retail sale. (May 27, 1949, 63 Stat. 127, ch. 146, Title II, § 215.)

§ 47–2706. Exemptions.

The tax imposed by this chapter shall not apply to the following:

(a) Sales upon which taxes are imposed under chapter 26 of this title.

(b) Sales exempt from the taxes imposed under chapter 26 of this title.

(c) Sales upon which the purchaser has paid a retail sales tax or made reimbursement therefor to a vendor or retailer under the laws of any State or territory of the United States. (May 27, 1949, 63 Stat. 127, ch. 146, Title II, § 216.)

§ 47–2707. Collection of tax.

The provisions of sections 47–2608, 47–2609, and 47–2610 are hereby incorporated in and made applicable to this title. (May 27, 1949, 63 Stat. 127, ch. 146, Title II, § 217.)

§ 47–2708. Surety bonds may be required.

Every vendor or retailer not engaging in business in the District who has been expressly authorized to pay the tax imposed by this chapter and collect reimbursement therefor, and every vendor engaging in business in the District, may, in the discretion of the Collector, be required to file with the Collector a bond not exceeding the amount of $10,000 with such sureties as the Collector deems necessary, and for such duration not exceeding five years as the Collector deems necessary, conditioned upon the payment of the tax due from any vendor or retailer for any period covered by any return required to be filed under this chapter. (May 27, 1949, 63 Stat. 127, ch. 146, Title II, § 218.)

§ 47–2709. Assumption or refund of tax unlawful—Penalty.

The provisions of section 47–2611 are hereby incorporated in and made applicable to this title. (May 27, 1949, 63 Stat. 127, ch. 146, Title II, § 219.)

§ 47–2710. Returns and payment of tax.

The provisions of sections 47–2612, 47–2613, 47–2614, and 47–2615 are hereby incorporated in and made applicable to this chapter. Every vendor, and every vendor or retailer not engaging in business in the District who is expressly authorized to pay the tax, shall file returns and pay the tax in accordance with the provisions of such sections applicable

to the filing of returns and the payment of the tax and as shall be prescribed by regulation. (May 27, 1949, 63 Stat. 127, ch. 146, Title II, § 220.)

§ 47–2711. Monthly returns to be filed—Content and form—Payment of tax.

(a) Every purchaser who is required to pay a tax under this chapter shall file a return with the Assessor within twenty days after the end of each calendar month. Such returns shall show the total sales prices of all tangible personal property and services purchased at retail sale upon which the tax imposed has not been paid by the purchaser to vendors or retailers, the amount of tax for which the purchaser is liable, and such other information as the Assessor deems necessary for the computation and collection of the tax.

(b) The Assessor may permit or require the returns of purchasers to be made for other periods and upon such other dates as he may specify.

(c) The return filed by a purchaser shall include the sales prices of all tangible personal property and services purchased at taxable retail sale during the calendar month or other period for which the return is filed and upon which the tax imposed has not been reimbursed by the purchaser to vendors or retailers.

(d) The form of returns shall be prescribed by the Assessor and shall contain such information as he may deem necessary for the proper administration of this chapter. The Assessor may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

(e) At the time of filing his return as provided in this section the purchaser shall pay to the Collector the amount of tax for which he is liable as shown by such return.

(f) The taxes for the period for which a return is required to be filed under this section shall be due by the taxpaper and payable to the Collector on the date limited for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of the total sales prices and taxes due thereon. (May 27, 1949, 63 Stat. 127, ch. 146, Title II, § 221.)

§ 47–2712. Certificate of registration.

The provisions of section 47–2623 are hereby incorporated in and made applicable to this chapter: *Provided,* That vendors and persons who have been issued certificates of registration under chapter 26 of this title shall not be required to have such certificates under this chapter. (May 27, 1949, 63 Stat. 128, ch. 146, Title II, § 222.)

§ 47–2713. Application of sections 47–2616 to 47–2622 and 47–2624 to 47–2629.

The provisions of sections 47–2616 to 47–2622 and 47–2624 to 47–2629 are hereby incorporated in and made applicable to this chapter. (May 27, 1949, 63 Stat. 128, ch. 146, Title II, § 223.)

SEPARABILITY CLAUSE

See note for § 47–2629.

Chapter 28.—CIGARETTE TAX

Sec.
47–2801. Definitions.
47–2802. Imposition of tax.
47–2803. Vendor to be licensed.
47–2804. Issuance of vendor's license.
47–2805. Types of licenses.
47–2806. Period of licenses—Suspensions and revocations.
47–2807. Tax to be in addition to other taxes.
47–2808. Administration—Rules and regulations.
47–2809. Personnel and expenses authorized.
47–2810. Violations—Penalties—Prosecutions.

§ 47–2801. Definitions.

As used in and for the purposes of this chapter, unless the context indicates otherwise:

(a) The word "cigarette" shall mean any roll of tobacco, or any substitute therefor, wrapped in paper or in any substance other than tobacco.

(b) The word "person" shall mean any individual, partnership, corporation, association, receiver, executor, administrator, trustee, conservator, or other representative appointed by order of any court.

(c) The word "District" shall mean the District of Columbia.

(d) The word "Commissioners" shall mean the Commissioners of the District of Columbia.

(e) The words "designated District agency" shall mean any officer, employee, department, office, or agency in or under the municipal government of the District of Columbia who or which is designated by the Commissioners to perform a function or duty under the terms and provisions of this title.

(f) The word "sell" or "sale" shall include offering for sale, keeping for sale, bartering, trafficking in, peddling, and any transfer or exchange in any manner or by any means for a consideration.

(g) The term "original package" shall mean the individual package, parcel, or other container in which cigarettes are put up by the manufacturer to which is affixed the required United States Government Internal Revenue stamp, and the Commissioners may, by regulation, include within this definition any wrapper immediately enclosing such package, parcel, or other container.

(h) The word "stamp" shall include impressions made by metering machines authorized to be used under the provisions of this chapter. (May 27, 1949, 63 Stat. 136, ch. 146, Title VI, § 602.)

SHORT TITLE

Sec. 601 of the act of May 27, 1949, 63 Stat. 136, ch. 146, provided that this chapter 28 of title 47 may be cited as the "District of Columbia Cigarette Tax Act".

§ 47–2802. Imposition of tax.

(a) There shall be levied, collected, and paid on all cigarettes sold in the District by licensed wholesalers, licensed retailers, or by licensed vending-machine operators, to consumers, a tax at the rate of 1 cent on each twenty cigarettes or fractional part thereof, such tax to be levied, collected, and paid once only on cigarettes sold as aforesaid.

(b) Said tax shall be collected by and paid to the Collector of Taxes of the District and shall be deposited in the Treasury of the United States to the credit of the District.

(c) Said tax shall be collected and paid by the affixture of a stamp or stamps secured from the Collector of Taxes, denoting the payment of the amount of the tax imposed by this chapter upon such cigarettes, each such affixture to be on the original package, unless the Commissioners shall by regulation permit otherwise. Cancellation of such stamps shall be in the manner prescribed by regulation approved by the Commissioners.

(d) The Collector of Taxes shall furnish suitable stamps, to be prescribed by the Commissioners, denoting the payment of the tax imposed by this chapter and shall by the sale of such stamps at the amounts indicated on the faces thereof cause the said taxes to be collected.

(e) If at the time of acquisition of original packages by licensed retailers or by licensed vending-machine operators such original packages do not have affixed thereto the stamp or stamps denoting payment of the tax imposed by this chapter it shall be the duty of each such retailer and vending-machine operator to affix to each such original package such stamp or stamps before selling or delivering cigarettes to consumers and before removing or permitting the removal of cigarettes from the licensed premises or licensed vending machines of such retailers or operators for delivery to consumers.

(f) No person shall use or cause to be used for the payment of the tax imposed by this chapter a stamp already theretofore used for the payment of any such tax.

(g) Any person who shall counterfeit or forge any stamp required or authorized by this chapter shall, upon conviction, be subject to a fine not exceeding $5,000 or to imprisonment of not more than two years, or to both such fine and imprisonment.

(h) The Commissioners are authorized by regulation to permit licensees to pay the tax imposed by this chapter by the method of imprinting impressions upon original packages by the use of metering devices in lieu of the method of paying such tax by the affixture of stamps: *Provided*, That the Collector of Taxes shall control the use of such metering devices. In addition to their usual meanings the terms "affix stamp", "affixture of stamp or stamps", and like terms shall mean and include the imprinting of impressions denoting payment of the tax imposed by this chapter as authorized by this section.

(i) Stamps may be purchased only by licensed wholesalers, by licensed retailers, and by licensed vending-machine operators. Discount from face value of such stamps at a rate not to exceed 10 per centum may be allowed under such terms and conditions as the Commissioners may by regulation prescribe. (May 27, 1949, 63 Stat. 137, ch. 146, Title VI, § 603.)

§ 47–2803. Vendor to be licensed.

No person shall within the District of Columbia, manufacture for sale, keep for sale, sell, or offer to sell cigarettes, or display cigarettes for sale in vending machines, without having first obtained a license or licenses under this chapter for such purpose or purposes. (May 27, 1949, 63 Stat. 138, ch. 146, Title VI, § 604.)

§ 47–2804. Issuance of vendor's license.

The designated District agency is authorized to issue licenses to individuals, partnerships, or corporations, but not to unincorporated associations, on application duly made therefor for the manufacture or sale of cigarettes within the District of Columbia. The designated District agency shall keep a full and complete record of all applications for licenses and of action taken thereon. (May 27, 1949, 63 Stat. 138, ch. 146, Title VI, § 605.)

§ 47–2805. Types of licenses.

Licenses shall be of three kinds, namely:

A. RETAILER'S LICENSE.—Such a license shall authorize the holder thereof to keep for sale and to sell cigarettes to consumers, from the place therein designated and to deliver such cigarettes to consumers in original packages: *Provided*, That cigarettes may be sold in number less than the number contained in the original package if such sales be permitted by regulations approved by the Commissioners. A separate license shall be required for each such place or establishment. Such a license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be fixed by the Commissioners at a rate not to exceed $5 for each retail establishment.

B. VENDING MACHINE OPERATOR'S LICENSE.—Such a license shall authorize the holder thereof to sell or offer to sell cigarettes from or by means of vending machines located in the place or places described therein. The Commissioners may by regulation require that a separate license be obtained for each machine or may permit a blanket license for one or more machines and may also prescribe that evidence of licensing of such machines be attached to each such machine by means of markers, stickers, or otherwise. The annual fee for such a license shall be fixed by the Commissioners at a rate not to exceed $5 for each and every such machine.

C. WHOLESALER'S LICENSE.—(1) Such a license shall authorize the holder thereof to manufacture or to purchase or otherwise to acquire and to sell cigarettes in original packages to any person holding a license under this chapter as wholesaler, retailer, or vending-machine operator, or to consumers.

(2) Such a licensee may at his election purchase from the Collector of Taxes and affix to original packages stamps denoting payment of the tax imposed by this chapter and, upon delivery to a vendee licensed under this chapter, of such original packages with such stamps properly affixed may add to the selling price of such cigarettes an amount equal to the face value of such stamps and collect such amount from such vendee. If a wholesaler licensed hereunder shall sell cigarettes to consumers, it shall be the duty of such wholesaler prior to the sale and delivery of such cigarettes to affix to the original packages the stamp or stamps denoting the payment of the tax imposed by this chapter.

(3) A license as wholesaler shall authorize the holder thereof to manufacture at and to sell ciga-

rettes from the place or places in the District therein designated. The Commissioners are empowered in their discretion to authorize, by regulation and upon such terms and conditions as they may require, the issuance of such a license for a place outside the District. A separate license shall be required for each such place within or without the District.

The annual fee for each such license shall be fixed by the Commissioners at a rate not to exceed $50. (May 27, 1949, 63 Stat. 138, ch. 146, Title VI, § 606.)

§ 47–2806. Period of licenses—Suspensions and revocations.

Licenses issued under authority of this chapter shall remain in effect for periods as may be fixed by regulation approved by the Commissioners, not exceeding one year from the effective date of such licenses or unless revoked prior to their expiration.

Licenses issued under this chapter may be suspended or revoked for any violation of this chapter or the regulations issued thereunder, by the Commissioners or by a designated District agency, after hearing held by a designated District agency. (May 27, 1949, 63 Stat. 139, ch. 146, Title VI, § 607.)

§ 47–2807. Tax to be in addition to other taxes.

The taxes imposed and the licenses required by this chapter shall be in addition to the taxes imposed and the licenses required by any other Act. (May 27, 1949, 63 Stat. 139, ch. 146, Title VI, § 608.)

§ 47–2808. Administration—Rules and regulations.

This chapter shall be administered by designated District agencies except where specific duties are imposed upon specific officers by the terms hereof. The Commissioners are authorized to make rules and regulations to carry out the provisions of this chapter. (May 27, 1949, 63 Stat. 139, ch. 146, Title VI, § 609.)

§ 47–2809. Personnel and expenses authorized.

The Commissioners are authorized to employ personal services in accordance with the Classification Act of 1923, as amended, and to incur such other expenses as may be necessary to carry out the provisions of this chapter and to include such amounts in their annual estimates. (May 27, 1949, 63 Stat. 139, ch. 146, Title VI, § 610.)

§ 47–2810. Violations—Penalties—Prosecutions.

Whoever violates any provision of this chapter for which no specific penalty is provided, or any of the rules and regulations promulgated under the authority of this chapter, shall be punished by a fine of not more than $1,000 or by imprisonment for not longer than one year, or by both such fine and imprisonment, in the discretion of the court. Prosecutions for violations of this chapter shall be on information filed in the municipal court for the District of Columbia by the Corporation Counsel or any of his Assistants, except for such violations as are felonies, and prosecutions for such violations as are felonies shall be by the United States Attorney in and for the District of Columbia, or any of his Assistants. (May 27, 1949, 63 Stat. 139, ch. 146, Title VI, § 611.)

SEPARABILITY CLAUSE

See note to § 47–2629.

EFFECTIVE DATE

Sec. 613 of the act of May 27, 1949, 63 Stat. 139, ch. 146, provided that the provisions of this chapter 28 of title 47 "shall take effect on the first day of the first month succeeding the sixtieth day after the approval of this Act."

CONSTRUCTION OF CHAPTER

Sec. 612 of the act of May 27, 1949, 63 Stat. 139, ch. 146, provided that nothing in this chapter 28 of title 47 "shall be construed as repealing any portion of section 7 of the District of Columbia Appropriation Act for the fiscal year ending June 30, 1903, approved July 1, 1902, as amended".

TITLE 48.—TRADE-MARKS AND TRADE NAMES

Chap. Sec.
1. Registration of beverage bottles 48–101
2. Registration of milk containers 48–201
3. Registration of containers for beverages composed principally of milk 48–301
4. Registration of labor union labels 48–401

Chapter 1.—REGISTRATION OF BEVERAGE BOTTLES

Sec.
48–101. Bottles of dealers in mineral waters may be registered.
48–102. Use or sale without owner's permission.

§ 48–101 [19: 151]. Bottles of dealers in mineral waters may be registered.

All manufacturers and vendors of mineral waters and other beverages allowed by law to be sold in bottles, upon which their names or marks shall be respectively impressed, may file with the clerk of the District Court of the United States for the District of Columbia a description of such bottles and of the names or marks thereon, and shall cause the same to be published for not less than two weeks successively in a daily or weekly newspaper published in the District. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 877.)

§ 48–102 [19: 152]. Use or sale without owner's permission.

It shall be unlawful for any person, without the permission of the owner thereof, to fill with mineral waters or other beverages any such bottles so marked, for sale, or to traffic in any such bottles so marked and not bought by him of such owner; and every person so offending shall be liable to a penalty of fifty cents for every bottle so filled, or sold, or used, or disposed of, or bought, or trafficked in, for the first offense, and of five dollars for every subsequent offense, to be recovered as other fines are recovered in the District. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 878.)

CROSS REFERENCE

Criminal penalty for altering or imitating trade-mark or other label, § 22–1402.

STATUTORY REFERENCE

Federal trade-mark law, U. S. C., title 15, §§ 81–134.

Chapter 2.—REGISTRATION OF MILK CONTAINERS

Sec.
48–201. Containers—Description may be filed in District Court.
48–202. Using registered container of another.
48–203. Wilfully defacing name registered by another.
48–204. Refusal to surrender to registrant a registered container prima facie evidence of unlawful use.
48–205. Proceeding in police court to ascertain violations—Search warrant.
48–206. Title to registered mark to be acquired only by written consent of registrant.
48–207. Rights of former registrants preserved.
48–208. "Person" defined.
48–209. Type of containers to which law is applicable.
48–210. Prosecutions—Penalties.
48–211. Injunctive relief.

§ 48–201 [19: 161]. Containers—Description may be filed in District Court.

All persons, firms, partnerships, or corporations engaged in the bottling, selling, or distributing of milk or cream in bottles, cans, crates, or other containers within the District of Columbia, on which the name, trade-mark, or other device designating the owner is branded, blown, cut, carved, embossed, or impressed, may file with the clerk of the District Court of the United States for the District of Columbia a description of the name or names, marks or devices so used by them, the said description to be a statement under oath by the owner of said name, mark, or device. The said owner of said name, mark, or device shall, after filing the description as above required, cause the same to be published at least once a week for two consecutive weeks in a newspaper of general circulation in the District of Columbia. The said owner of said name, mark, or device shall thereafter file with the clerk of the District Court of the United States for the District of Columbia an affidavit made by himself or any other competent person stating that said description has been published as herein provided, and shall file in the office of the health department of the District of Columbia a copy of said registration and said affidavit of publication, both duly certified as true copies by the clerk of the District Court of the United States for the District of Columbia. The registration of any such name, mark, or device shall be complete on the filing of said certified copies in the health office of the District of Columbia, and thereafter the name, mark, or device shall be considered as registered in accordance with sections 48–201 to 48–211, inclusive, and any bottle, can, crate, or other container on which said name, mark, or device shall be or shall be placed shall be considered as registered in accordance with sections 48–201 to 48–211, inclusive. (July 3, 1926, 44 Stat. 809, ch. 737, § 1.)

CROSS REFERENCE

Other provisions concerning milk containers, §§ 10–114, 33–314.

§ 48–202 [19: 162]. Using registered container of another.

Whoever shall by himself or his agent fill, use, sell, offer for sale, give, buy, traffic in, or shall have in his possession with intent to fill, use, sell, offer for sale, give, buy, or traffic in any registered milk bottle or bottles, can or cans, crate or crates, or other containers on which appears the name, mark, or device, registered by another person, shall be guilty

of a misdemeanor, and upon conviction shall be subject to the penalties in section 48–210. (July 3, 1926, 44 Stat. 810, ch. 737, § 2.)

§ 48–203 [19: 163]. Wilfully defacing name registered by another.

Whoever shall by himself or his agent willfully deface, erase, alter, obliterate, cover up, or otherwise remove or conceal any registered name, mark, or device registered by another and being on any milk bottle, can, crate, or other container, or shall willfully break, destroy, or otherwise injure any registered milk bottle, can, crate, or other container which has been registered by another shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties prescribed in section 48–210. (July 3, 1926, 44 Stat. 810, ch. 737, § 3.)

§ 48–204 [19: 164]. Refusal to surrender to registrant a registered container prima facie evidence of unlawful use.

In any prosecution under sections 48–201 to 48–211, inclusive, the refusal of any person having possession of any registered milk bottle, can, crate, or other container to surrender possession of the same to the registrant of the name, mark, or device appearing thereon, after notice and demand by said registrant or his agent, shall be prima facie evidence of the unlawful use or traffic in the same contrary to the provisions of sections 48–201 to 48–211, inclusive. (July 3, 1926, 44 Stat. 810, ch. 737, § 4.)

§ 48–205 [19: 165]. Proceeding in police court to ascertain violations—Search warrant.

Whenever any person who has registered milk bottles, cans, crates, or other containers in accordance with the provisions of section 48–201 shall by himself or his agent make oath before the clerk of the police court of the District of Columbia that he has reason to believe, and does believe, that any of his registered milk bottles, cans, crates, or other containers, are being filled, used, bought, trafficked in, held, sold, offered for sale, broken, injured, or destroyed within the District of Columbia contrary to the provisions of sections 48–201 to 48–211, inclusive, by any person without the written consent of the registrant the judge of the police court to whom said complaint under oath is made may forthwith issue a search warrant directed to any police officer or other proper officer to search the premises whereon or wherein said registered milk bottles, cans, crates, or other containers are unlawfully held and may issue a warrant for the arrest of the person complained against; and if any one or more of such registered milk bottles, cans, crates, or other containers, or any parts of the same, shall be found upon the premises by the officer executing the said search warrant, he shall seize and take possession of all such registered milk bottles, cans, crates, or other containers, or parts thereof, and shall cause the same to be brought before the judge of the police court, who shall award the said registered milk bottles, cans, crates, and other containers to the person entitled to the same. (July 3, 1926, 44 Stat. 810, ch. 737, § 5.)

Cross Reference

Search warrants, § 23–301 et seq.

§ 48–206 [19: 166]. Title to registered mark to be acquired only by written consent of registrant.

No title may be acquired to any mark, name, or device, or any milk bottle, can, crate, or other container registered in accordance with sections 48–201 to 48–211 inclusive except by the consent in writing of the person who registered the same. (July 3, 1926, 44 Stat. 811, ch. 737, § 6.)

§ 48–207 [19: 167]. Rights of former registrants preserved.

All persons who prior to July 3, 1926, registered any milk bottles, cans, crates, or other containers in accordance with the laws existing at the time of said registration shall be exempted from filing a new description in accordance with the terms of sections 48–201 to 48–211 inclusive, and shall be entitled to the rights and benefits accruing under sections 48–201 to 48–211 inclusive in the same manner as if said registration was made in accordance with sections 48–201 to 48–211 inclusive: *Provided*, That a copy of said registration duly certified by the clerk of the District Court of the United States for the District of Columbia was within thirty days from and after July 3, 1926, filed in the health office of the District of Columbia. (July 3, 1926, 44 Stat. 811, ch. 737, § 7.)

§ 48–208 [19: 168]. "Person" defined.

Whenever the word "person" is used in sections 48–201 to 48–211 inclusive, it shall apply equally as well to one or more persons, copartnerships, and corporations. (July 3, 1926, 44 Stat. 811, ch. 737, § 8.)

§ 48–209 [19: 169]. Type of containers to which law is applicable.

The provisions of sections 48–201 to 48–211 inclusive, shall apply to all bottles, cans, crates, and other containers in which milk or cream of any grade, quality, or character is sold or offered for sale and shall include bottles, cans, crates, and other containers in which skimmed milk, buttermilk, double cream, and sour milk are sold. (July 3, 1926, 44 Stat. 811, ch. 737, § 9.)

§ 48–210 [19: 170]. Prosecutions—Penalties.

The violation of any of the provisions of sections 48–201 to 48–211 inclusive, shall be a misdemeanor, and prosecutions for violations of sections 48–201 to 48–211 inclusive, shall be in the police court of the District of Columbia. Upon conviction of a violation of the provisions of sections 48–201 to 48–211 inclusive, the penalty shall be a fine of not more than $50 for the first offense and a fine of not more than $100 for the second and each subsequent offense. (July 3, 1926, 44 Stat. 811, ch. 737, § 10.)

Cross Reference

Criminal penalty for altering or imitating trade marks, § 22–1402.

§ 48–211 [19: 171]. Injunctive relief.

Whenever any person who has registered milk bottles, cans, crates, or other containers as herein

provided shall have, upon complaint under oath, prosecuted any other person for violation of the provisions of sections 48–201 to 48–211 inclusive in the use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of such registered milk bottles, cans, crates, or other containers and said other persons shall have been convicted on three occasions at least for the said unlawful use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of said registered milk bottles, cans, crates, or other containers, then the said registrant of said milk bottles, cans, crates, or other containers shall be entitled, upon making complaint to a justice of the District Court of the United States for the District of Columbia, holding an equity court, to have issued an injunction directed to said violator enjoining him from further illegal use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of said registered milk bottles, cans, crates, or other containers. (July 3, 1926, 44 Stat. 811, ch. 737, § 11.)

Chapter 3.—REGISTRATION OF CONTAINERS FOR BEVERAGES COMPOSED PRINCIPALLY OF MILK

Sec.
48–301. Definitions.
48–302. Registration authorized—Publication.
48–303. Refilling and sale by others prohibited—Penalty.
48–304. Prima facie evidence of unlawful use.
48–305. Police court to issue warrant on complaint of violation.
48–306. Regulations to be made by clerk of District Court.
48–307. Actions in tort permissible.

§ 48–301 [19: 181]. Definitions.

The following words shall, in addition to their ordinary meaning, have the meaning herein given: The word "person" or "persons," in sections 48–302 to 48–305, 48–307 shall include "firms" or "corporations"; the word "vessel" or "vessels," in sections 48–302 to 48–305 shall include "cans," "bottles," "siphons," and "boxes"; the word "mark" or "marks" shall includes "labels," "trade-marks," and all other methods of distinguishing ownership in vessels, whether printed upon labels or blown into bottles or engraved and impressed upon cans or boxes. (Mar. 3, 1901, ch. 854, § 878a, as added Feb. 27, 1907, 34 Stat. 1006, ch. 2086.)

§ 48–302 [19: 182]. Registration authorized — Publication.

Persons engaged in producing, manufacturing, bottling, or selling any lawful beverages composed principally of milk, in vessels, with their name, trade-mark, or other distinctive mark, and the word "registered" branded, engraved, blown, or otherwise produced thereon, or on which a paster trade-mark label is put upon which the word "registered" is also distinctly printed, may file with the clerk of the District Court of the United States for the District of Columbia a description by facsimile, or a sample of an original package so marked or branded or blown, showing plainly such names and marks thereon, together with their name in full, or their corporate name, and also their place of business in the District of Columbia, and if so filed shall cause the same to be published for not less than two weeks successively in a daily or weekly newspaper published in the District of Columbia. (Mar. 3, 1901, ch. 854, § 878b, as added Feb. 27, 1907, 34 Stat. 1006, ch. 2086.)

Cross Reference

Other provisions concerning milk containers, §§ 10–114, 33–314, 48–201 et seq.

§ 48–303 [19: 183]. Refilling and sale by others prohibited—Penalty.

Whoever, except the person who shall have filed and published a description of the same as aforesaid, fills with milk or cream, or other beverage, as aforesaid, with intent to sell the same, any vessel so marked and distinguished as aforesaid, the description of which shall have been filed and published as provided in section 48–302, or defaces, erases, covers up, or otherwise removes or conceals any such name or mark as aforesaid, or the word "registered," thereon, or sells, buys, gives, takes, or otherwise disposes of, or traffics in the same without having purchased the contents thereof from the person whose name is in or upon such vessel, or without the written consent of such person, shall, for the first offense, be punished by a fine of not less than fifty cents for each such vessel, or by imprisonment for not less than ten days nor more than one year, or by both such fine and imprisonment; and for each subsequent offense by a fine of not less than one nor more than five dollars for each such vessel, or by imprisonment for not less than twenty days nor more than one year, or by both such fine and imprisonment. (Mar. 3, 1901, ch. 854, § 878c, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

Cross Reference

Criminal penalties for altering or imitating trademarks, § 22–1402.

§ 48–304 [19: 184]. Prima facie evidence of unlawful use.

The use or possession by any person not engaged in the production or sale of beverage as aforesaid, except the person who shall so have filed and published a description of the same as aforesaid, of any vessel marked or distinguished as aforesaid, the description of which shall have been filed and published as aforesaid, without purchase of the contents thereof from, or the written consent of, the person who shall so have filed and published the said description, shall be prima facie evidence of the unlawful use, possession of, or traffic in, such vessel, and the person so using or in possession of the same, except the person who shall so have filed and published the said description as aforesaid, shall be punished as provided in section 48–303. (Mar. 3, 1901, ch. 854, § 878d, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

§ 48–305 [19: 185]. Police court to issue warrant on complaint of violation.

Upon complaint of any person who has complied with section 48–302, or of his agent, to the police court of the District of Columbia, or one of the judges

thereof, that any person within the District of Columbia is guilty of the violation of any provision of this chapter, the said court or judge may issue a search warrant to discover and obtain such vessels as aforesaid and their contents, and may also cause to be brought before the said court or judge the person so believed to be guilty, or his agent or employee, in whose possession or upon whose wagon or premises any such vessel or vessels may be found; and any such person, agent, or employee found guilty of a violation of any of the provisions of this chapter shall be punished as aforesaid, and the said court or judge shall also order the property taken upon any such search warrant to be delivered to its owner. (Mar. 3, 1901, ch. 854, § 878e, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

CROSS REFERENCE

Search warrants, § 23–301 et seq.

§ 48–306 [19: 186]. Regulations to be made by clerk of District Court.

The clerk of the District Court of the United States for the District of Columbia is authorized to make regulations and prescribe forms for the filing of labels, trade-marks, or other distinctive marks under the provisions of this chapter. (Mar. 3, 1901, ch. 854, § 878f, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

CROSS REFERENCE

Rules and regulations generally, § 1–226 and notes.

§ 48–307 [19: 187]. Actions in tort permissible.

Nothing in this chapter shall prevent or restrain any person who is the legal owner of a trade-mark or label from proceeding in an action of tort against any person found guilty of violating this chapter. (Mar. 3, 1901, ch. 854, § 878g, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

Chapter 4.—REGISTRATION OF LABOR UNION LABELS

Sec.

48–401. Adoption of label authorized—Registration—Assignment prohibited.
48–402. Use of registered label restricted.
48–403. Penalties.

§ 48–401 [19: 191]. Adoption of label authorized—Registration—Assignment prohibited.

A union or association of employees in the District of Columbia may adopt a device in the form of a label, brand, mark, name, or other character for the purpose of designating the products of the labor of the members thereof. A drawing of such device may be filed in the office of the clerk of the District Court of the United States for the District of Columbia and the clerk shall register same in a book to be provided for such purpose and be entitled to collect $1 for each registration. A certified copy of the drawing so registered may be obtained from the clerk upon the payment of $1 for each certification. Such certificate shall not be assignable by the union or association to whom it is issued. (Feb. 18, 1932, 47 Stat. 50, ch. 47, § 1.)

STATUTORY REFERENCE

Registration of prints and labels, U. S. C., title 17, §§ 63, 64.

§ 48–402 [19: 192]. Use of registered label restricted.

No person shall in any way use or display the label, brand, mark, name, or other character adopted by any such union or association as provided in section 48–401 without the consent or authority of such union or association; or counterfeit or imitate any such label, brand, mark, name, or other character, or knowingly sell, dispose of, keep, or have in his possession with intent to sell or dispose of any goods, wares, merchandise, or other products of labor, upon which any such counterfeit or imitation is attached, affixed, printed, stamped, or impressed, or knowingly sell, dispose of, keep, or have in his possession with intent to sell or dispose of any goods, wares, merchandise, or other products of labor contained in any box, case, can, or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, or impressed. If copies of such device have been filed, the union or association may maintain an action in the District Court of the United States for the District of Columbia to enjoin the manufacture, use, display, or sale of counterfeit or colorable imitations of such device, or of goods bearing the same, or the unauthorized use or display of such device or of goods bearing the same, and the court may restrain such wrongful manufacture, use, display, or sale, and every unauthorized use or display by others of the genuine devices so registered and filed, if such use or display is not authorized by the owner thereof, and may award to the plaintiff such damages resulting from such wrongful manufacture, use, display, or sale as may be proved, together with the profits derived therefrom. (Feb. 18, 1932, 47 Stat. 50, ch. 47, § 2.)

§ 48–403 [19: 193]. Penalties.

A person violating any of the provisions of section 48–402 shall be guilty of a misdemeanor punishable by a fine of not less than $100 nor more than $500, or by imprisonment for not less than three months nor more than one year, or by both such fine and imprisonment. (Feb. 18, 1932, 47 Stat. 51, ch. 47, § 3.)

CROSS REFERENCE

Criminal penalties for altering or imitating trademark, § 22–1402.

TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

Chap. Sec.
1. General provisions 49–101
2. Rules of construction 49–201
3. Laws remaining in force 49–301

Chapter 1.—GENERAL PROVISIONS

Sec.
49–101. The Code of the District of Columbia—Preparation and publication—Supplements.
49–102. Laws set forth as establishing prima facie the laws of the District of Columbia.
49–103. Copies of code and supplements conclusive evidence of original.
49–104. Distribution of code—Slip and pamphlet copies.
49–105. Additional quotas to Congress.
49–106. Further quotas to Congress for personal use—Distribution of code to new members.
49–107. Committee on Revision of the Laws to prescribe form and style of code and ancillaries.
49–108. Curtailment of number of copies of code to be printed—Printing and distribution of supplements may be dispensed with.
49–109. Functions of Committee on Revision of Laws may be vested in other agency.
49–110. Exchange and sale of building, police, plumbing, and municipal regulations.
49–111. Disposition of compilation of laws affecting District of Columbia.

§ 49–101 [1: 1]. The Code of the District of Columbia—Preparation and publication—Supplements.

There shall be prepared and published under the supervision of the Committee on Revision of the Laws of the House of Representatives—

A consolidation and codification of the laws, general and permanent in their nature, relating to or in force in the District of Columbia, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in their nature. Such Code shall be designated "The Code of the District of Columbia";

A supplement for each session of the Congress to the then current edition of the Code of the District of Columbia, cumulatively embracing the legislation of the then current supplement, and correcting errors in such edition and supplement;

New editions of the Code of the District of Columbia, correcting errors and incorporating the then current supplement. New editions shall not be published oftener than once in each five years. Copies of each such edition shall be distributed in the same manner as provided in the case of supplements to the code of which it is a new edition. Supplements published after any new edition shall not contain the legislation of supplements published before such new edition. (May 29, 1928, 45 Stat. 1007, ch. 910, § 2; Mar. 2, 1929, 45 Stat. 1541, ch. 586, § 2.)

STATUTORY REFERENCE

This section is in U. S. C., title 1, § 52.

§ 49–102 [1: 2]. Laws set forth as establishing prima facie the laws of the District of Columbia.

In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each state, territory, or insular possession of the United States—

The matter set forth in the edition of the Code of the District of Columbia current at any time shall, together with the then current supplement, if any, establish prima facie the laws, general and permanent in their nature, relating to or in force in the District of Columbia on the day preceding the commencement of the session following the last session the legislation of which is included, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in their nature.

The Code of the District of Columbia may be cited as "D. C. Code."

Supplements to the Code of the District of Columbia may be cited as "D. C. Code, Sup. ," the blank in each case being filled with Roman figures denoting the number of the supplement.

New editions of such code may be cited as "D. C. Code, ed.," the blank in each case being filled with figures denoting the last year the legislation of which is included in whole or in part. (May 29, 1928, 48 Stat. 1007, ch. 910, § 4; Mar. 2, 1929, 45 Stat. 1541, ch. 586, § 3.)

STATUTORY REFERENCE

This section is in U. S. C., title 1, § 54.

§ 49–103 [1: 3]. Copies of code and supplements conclusive evidence of original.

Copies of the Code of Laws relating to the District of Columbia, when and if completed, and copies of the supplements provided for by section 49–101, printed at the Government Printing Office and bearing its imprint, shall be conclusive evidence of the original of such code and supplements in the custody of the Secretary of State. (May 29, 1928, 45 Stat. 1007, ch. 910, § 5.)

STATUTORY REFERENCE

This section is in U. S. C., title 1, § 55.

§ 49–104 [1: 4]. Distribution of code—Slip and pamphlet copies.

Copies of the Code of Laws relating to the District of Columbia, when and if completed, and of the supplements provided for by section 49–101 shall be distributed by the Superintendent of Documents in the same manner as bound volumes of the Statutes at Large: *Provided,* That no slip or pamphlet copies of the Code of Laws relating to the District of Columbia, when and if completed, and of the supplements provided for by section 49–101 need be printed or distributed: *And provided further,* That the Code of Laws relating to the District of Columbia, when and if completed, and the supplements provided for by section 49–101 shall, upon enactment, be published as separate parts of the Statutes at Large. (May 29, 1928, 45 Stat. 1007, ch. 910, § 6.)

STATUTORY REFERENCE

This section is in U. S. C., title 1, § 56.

§ 49–105 [1: 5]. Additional quotas to Congress.

In addition to quotas provided for by section 49–104 there shall be printed, published, and distributed of the Code of Laws relating to the District of Columbia, when and if completed, with tables, index, and other ancillaries, suitably bound and with thumb inserts and other convenient devices to distinguish the parts, and of the supplements thereto as provided for by section 49–101, ten copies of each for each member of the Senate and House of Representatives of the Congress in which the original authorized publication is made, for his use and distribution, and in addition for the Committee on Revision of the Laws of the House of Representatives and the Committee on the Judiciary of the Senate a number of bound copies of each equal to ten times the number of members of such committees, and one bound copy of each for the use of each committee of the Senate and House of Representatives. (May 29, 1928, 45 Stat. 1008, ch. 910, § 7.)

STATUTORY REFERENCE

This section is in U. S. C., title 1, § 57.

§ 49–106 [1: 6]. Further quotas to Congress for personal use—Distribution of code to new Members.

In addition the Superintendent of Documents shall, at the beginning of the first session of each Congress, supply to each senator and representative in such Congress, who may in writing apply for the same, one copy each of the Code of Laws relating to the District of Columbia, when and if completed, and the latest supplement thereto: *Provided,* That such applicant shall certify in his written application for the same that the volume or volumes for which he applies is intended for his personal use exclusively: *And provided further,* That no senator or representative during his term of service shall receive under this section more than one copy each of the volumes enumerated herein. (May 29, 1928, 45 Stat. 1008, ch. 910, § 8.)

STATUTORY REFERENCE

This section is in U. S. C., title 1, § 58.

§ 49–107 [1: 7]. Committee on Revision of the Laws to prescribe form and style of code and ancillaries.

The publications provided for in section 49–101, shall be printed at the Government Printing Office, and shall be in such form and style and with such ancillaries as may be prescribed by the Committee on Revision of the Laws of the House of Representatives. The Librarian of Congress is directed to cooperate with such committee in the preparation of such ancillaries. Such publications shall be furnished with such thumb insets and other devices to distinguish parts, with such facilities for the insertion of additional matter, and with such explanatory and advertising slips, and shall be printed on such paper and bound in such material, as may be prescribed by such committee. (Mar. 2, 1929, 45 Stat. 1542, ch. 586, § 4; June 13, 1934, 48 Stat. 948, ch. 483, §§ 1, 2.)

STATUTORY REFERENCE

This section is in U. S. C., title 1, § 54a.

§ 49–108 [1: 8]. Curtailment of number of copies of code to be printed—Printing and distribution of supplements may be dispensed with.

In order to avoid duplication and waste—

Curtailment of the number provided by law to be printed and distributed of the volumes or publications enumerated in section 49–101 may be directed by such committee, except that the Public Printer shall print such numbers as are necessary for depository library distribution and for sale; and

Such committee may direct that the printing and distribution of any supplement to the Code of the District of Columbia be dispensed with entirely, except that there shall be printed and distributed for each Congress at least one supplement to such code, containing the legislation of such Congress. (Mar. 2, 1929, 45 Stat. 1540, ch. 586, § 1.)

COMPILER'S NOTE

The words "such committee" should probably read "the Committee on Revision of the Laws of the House of Representatives."

STATUTORY REFERENCE

This section is in U. S. C., title 1, § 51a.

§ 49–109 [1: 9]. Functions of Committee on Revision of Laws may be vested in other agency.

The functions vested by sections 49–101 to 49–108, inclusive, in the Committee on Revision of the Laws of the House of Representatives may from time to time be vested in such other agency as the Congress may by concurrent resolution provide: *Provided,* That the printing, binding, and distribution of the volumes and publications enumerated in section 49–101 shall be done under the direction of the Joint Committee on Printing. (Mar. 2, 1929, 45 Stat. 1542, ch. 586, § 7.)

STATUTORY REFERENCE

This section is in U. S. C., title 1, § 54d.

§ 49–110 [20: 42]. Exchange and sale of building, police, plumbing, and municipal regulations.

The commissioners of the District of Columbia are authorized to issue in their discretion, without charge, to officers and the judiciary of the government of the District of Columbia, and to other officers of the government, and to institutions of learning, and to state and city officials, by way of documentary exchange, copies of building, police, plumbing, and other municipal regulations made and published by them in their official capacity, not exceeding in all one hundred copies, and the remainder of such publications shall only be disposed of by sale at not less than the cost price and ten per centum thereof; and all moneys received from the sale of said regulations shall be paid for each fiscal year into the treasury of the United States to the credit of the District of Columbia unless otherwise provided by law. (Feb. 25, 1910, 36 Stat. 208, ch. 62; Mar. 4, 1911, 36 Stat. 1299, ch. 240; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; acts 1922, 42 Stat. 668, ch. 249, § 1.)

COMPILER'S NOTE

Acts 1922, 42 Stat. 668, ch. 249, § 1, provided as follows: "Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress

may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States excepting such items of expense as Congress may direct shall be paid on another basis, * * *; and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

The appropriation act of June 7, 1924, 43 Stat. 539, ch. 302, § 1, made a lump-sum appropriation as follows: "Any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and in addition, $9,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923, namely:"

Subsequent appropriation acts contained similar provisions, changing only the amount of the appropriation and the fiscal year (see act of June 12, 1940, 54 Stat. 307, ch. 333, § 1). These appropriation acts did not, however, provide for the repeal of the provisions of the 1922 act above quoted. This was done by the act of May 16, 1938, 52 Stat. 375, § 8, which added Title 10 to the District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690.

From the foregoing it would seem that there is no longer any apportionment of expenses or segregation of revenues unless specific provision is made therefor by Congress subsequent to the repeal provision.

§ 49–111 [20: 43]. Disposition of compilation of laws affecting District of Columbia.

The commissioners of the District of Columbia, after supplying each of the heads of the several departments and offices of the government and the judiciary of said District with the necessary copies of the bound editions of the laws affecting said District, which are prepared in the office of the secretary of the board at the close of each session of Congress, may sell the surplus volumes at a rate per volume to be fixed by them, approximating but not less than the pro rata cost of compilation, and deposit all money so received to the credit of the appropriation out of which such cost is paid. (Mar. 1, 1901, 31 Stat. 826, ch. 670.)

Chapter 2.—RULES OF CONSTRUCTION

Sec.
49–201. Rules stated.
49–202. Words importing singular number to include plural.
49–203. Masculine gender to include all genders.
49–204. Person to include partnerships and corporations.
49–205. Executor to include administrator.
49–206. Oath to include affirmation.
49–207. Insane person and lunatic.

§ 49–201 [1: 11]. Rules stated.

In the interpretation and construction of the Act of Congress approved March 3, 1901 (31 Stat. 1189) the following rules shall be observed, namely: (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble).

Compiler's Note

The rules of construction contained in sections 49–202 to 49–207 are applicable only to that portion of this code that was included in the District of Columbia Code of 1901 (act of Mar. 3, 1901, 31 Stat. 1189, ch. 854).

NOTES TO DECISIONS

Effect of Amendment

The amendment of an act without changing the particular provision that had previously been construed by the court does not amend away or modify the judicial interpretation previously given the act, as it will be presumed that such construction was in accordance with the legislative intent. *Bardwell* v. *Petty* (52 App. D. C. 310, 286 Fed. 772).

Particular and General Provisions

Upon appeal to decide conflict between two sections, held that, "where there is in the same statute, a particular enactment, and also a general one, which in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment." *Tri-State Motor Corp.* v. *Standard Steel Car Co.* (51 App. D. C. 109, 276 Fed. 631).

§ 49–202 [1: 12]. Words importing singular number to include plural.

Words importing the singular number shall be held to include the plural, and vice versa, except where such construction would be unreasonable. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

§ 49–203 [1: 13]. Masculine gender to include all genders.

Words importing the masculine gender shall be held to include all genders, except where such construction would be absurd or unreasonable. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

§ 49–204 [1: 14]. Person to include partnerships and corporations.

The word "person" shall be held to apply to partnerships and corporations, unless such construction would be unreasonable, and the reference to any officer shall include any person authorized by law to perform the duties of his office, unless the context shows that such words were intended to be used in a more limited sense. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

§ 49–205 [1: 15]. Executor to include administrator.

Wherever the word "executor" is used it shall include "administrator," and vice versa, unless such application of the term would be unreasonable. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

§ 49–206 [1: 16]. Oath to include affirmation.

Wherever an oath is required an affirmation in judicial form, if made by a person conscientiously scrupulous about taking an oath, shall be deemed a sufficient compliance. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

§ 49–207 [1: 17]. Insane person and lunatic.

The words "insane person" and "lunatic" shall include every idiot, non compos, lunatic, and insane person. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

Chapter 3.—LAWS REMAINING IN FORCE

Sec.
49–301. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.
49–302. Ordinances of Washington and of levy court to remain in force.
49–303. Vestries.
49–304. Repeal provisions of 1901 Code.

§ 49–301 [1: 21]. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.

The common law, all British statutes in force in Maryland on February 27, 1801, the principles of equity and admiralty, all general Acts of Congress not locally inapplicable in the District of Columbia, and all Acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force in the District of Columbia on March 3, 1901, shall remain in force except in so far as the same are inconsistent with, or are replaced by, subsequent legislation of Congress. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.)

Compiler's Notes

This section is affected by § 1640 of the act of March 3, 1901, 31 Stat. 1436, ch. 854, which saved from repeal any municipal ordinance or regulation in force on January 1, 1902, except in so far as the same were inconsistent with or replaced by some provisions of that act.

In accord with this section, a number of early British statutes have been incorporated in this Code.

NOTES TO DECISIONS

Decisions Under Prior Law

Act of January 15, 1897 (29 Stat. 487) and § 330 of ch. 14 of the Federal Penal Code permitting jury to qualify verdict of guilty in cases of murder and rape are superseded by code. *Johnson* v. *United States* (38 App. D. C. 347, affd. 225 U. S. 405, 56 L. Ed. 1142, 32 Sup. Ct. 748).

In General

This section is a general legislative declaration in affirmance of preexisting decisions upon the subject. *Moss* v. *United States* (23 App. D. C. 475).

Act of Maryland Legislative Assembly of 1723, ch. 16, § 10 (Abert's Comp. Stat. D. C., p. 176), relative to Sunday work does not apply in District of Columbia. *District of Columbia* v. *Robinson* (30 App. D. C. 283).

Section 1 of D. C. 1901 provided as judicial bases for determination of District of Columbia laws, British statutes in force in Maryland on February 27, 1801, the common law, and principles of equity. *Burdick* v. *Burdick* ((D. C.–D. C.), 33 Fed. Supp. 921).

Arrest Without Warrant

In the District, and at common law, an officer may not arrest for misdemeanor without warrant unless it is committed in his presence or within his view. *Maghan* v. *Jerome* (67 App. D. C. 9, 88 Fed. (2d) 1001).

British Statutes

The provision of D. C. 1901, relating to British statutes in force in Maryland on February 27, 1801, was intended by Congress to mean those British statutes to the benefit of which Maryland inhabitants were entitled under the Maryland Declaration of Rights of 1776, and did not incorporate in the District of Columbia law, as amending the common law or otherwise, British statutes enacted between 1776 and 1801. *Burdick* v. *Burdick* ((D. C.–D. C.), 33 Fed. Supp. 921).

The common law and all British statutes in force in Maryland on February 27, 1801, remain in force, in District of Columbia, except insofar as they are inconsistent with or are repealed by subsequent legislation of Congress. *U. S.* v. *Davis* (App. D. C. 1947, 71 F. Supp. 749 reversed 167 F. 2d 228, certiorari denied 68 S. Ct. 1501, 334 U. S. 849, 92 L. Ed. 1772).

Common Law

As to common-law crimes and jurisdiction to try the same, see *Palmer* v. *Lenovitz* (35 App. D. C. 303).

Common law as to surface waters prevails. *Baltimore & O. R. Co.* v. *Thomas* (37 App. D. C. 255).

Common-law method of procuring talesman in capital cases when regular panel is exhausted. *Milano* v. *United States* (40 App. D. C. 379).

"Except as 'repealed by express statutory provision, or modified by inconsistent legislation, or where it has become obsolete or unsuited to our republican form of government, the common law of England in all its branches, both civil and criminal, remains to-day the law of the District of Columbia * * *.'" *Lisner* v. *Hughes* (49 App. D. C. 40, 258 Fed. 512) citing *De Forest* v. *United States* (11 App. D. C. 466).

Common law held to prevail in the District of Columbia as to descent of property. *Cunningham* v. *Rodgers* (50 App. D. C. 51, 267 Fed. 609).

The common law, insofar as it permits accumulation of income from a testamentary trust which is to terminate with the death of the testator's two nieces, involving the accumulation of a huge sum of money for a period probably in excess of sixty years, is obsolete and repugnant to our conditions, and therefore not applicable to the District of Columbia. *Burdick* v. *Burdick* ((D. C.–D. C.), 33 Fed. Supp. 921).

The provision in § 1 of the D. C. 1901, that the common law shall remain in force in the District of Columbia, intended the common law of England as it existed in Maryland on Feb. 27, 1801, and so far as it had not become obsolete or unsuited to our conditions, and it was not identical with the common law of England. *Burdick* v. *Burdick* ((D. C.–D. C.), 33 Fed. Supp. 921); *United States* v. *Griffith* (55 App. D. C. 123, 2 Fed. (2d) 925).

Under the provision of the District of Columbia Code of 1901, now incorporated in this section, stating that the common law and all British statutes in force in Maryland on February 27, 1801, shall remain in force, and under Maryland's Original Declaration of Rights of 1776 providing that the inhabitants of Maryland were entitled to the common law of England and to the benefit of applicable English statutes existing at the time of their first emigration, the "common law" of the District does not embrace an English case of 1799 or 1805 and an English statute passed in 1800. *Gertman* v. *Burdick,* 1942 (123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, reversing 33 F. Supp. 921, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

The common law, both civil and criminal, except as repealed by express statutory provision or modified by inconsistent legislation, remains the law of the District of Columbia. *Elmhurst* v. *Shoreham Hotel* (D. C., D. C. 1945, 58 F. Supp. 484).

All common-law offenses not covered by statute in force in District Court of Columbia are still recognized as crimes in the District and are punishable as such. *U. S.* v. *Davis* (App. D. C. 1947, 71 F. Supp. 749 reversed 167 F. 2d 228, certiorari denied 68 S. Ct. 1501, 334 U. S. 849, 92 L. Ed. 1772).

The common law offense of negligent escape remains a crime in the District of Columbia by virtue of this section. *U. S.* v. *Davis* (App. D. C. 1948, 167 F. 2d 228).

Compact Between Maryland and Virginia

The compact between Maryland and Virginia as to shores of the Potomac River is not in force in District. *United States ex rel. Greathouse* v. *Hurley* (61 App. D. C. 360, 63 Fed. (2d) 137).

Conspiracy Against United States

The Supreme [District] Court of the [United States for the] District of Columbia sitting as a criminal court had jurisdiction to try an indictment for conspiracy to commit an offense against the United States. *Pitts v. Peak* (60 App. D. C. 195, 50 Fed. (2d) 485).

Costs, Laws Relating to

Section 815 of Title 28, U. S. C., disallowing costs to plaintiff recovering less than $500 in action brought in District Court of United States where jurisdictional

amount exceeds such sum is applicable to District Court of the United States for the District of Columbia. *Silverman* v. *Central Amusement Co.* (D. C., D. C. 1943, 49 F. Supp. 364).

DECISIONS OF MARYLAND COURTS

Decisions of Maryland courts, being founded upon general principles, and made since the organization of the District of Columbia, are not binding upon the courts of the District as authorities, though entitled to all the respect due to the opinions of the highest court of the State. *Phillips* v. *Negley* (117 U. S. 665, 29 L. Ed. 1013, 6 Sup. Ct. 901).

Decisions of Maryland, giving to the statutes of that state a construction at variance with that which prevailed at the time of the cession of the District of Columbia, does not control the decision of Supreme [District] Court of the [United States for the] District as to the effect of those statutes on the territory within the District. *Morris* v. *United States* (174 U. S. 196, 43 L. Ed. 946, 19 Sup. Ct. 649).

Maryland statutes and Maryland decisions of date later than 1801 do not constitute the "law" of the District of Columbia but later decisions of the Court of last resort of Maryland may be looked to for assistance, not merely in interpreting the law which was inherited from that state by the District of Columbia, but also in interpreting later statutes of the district which are the same or closely similar to those of Maryland. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

ESPIONAGE ACT

Provisions of the Espionage Act apply in the District of Columbia in a case of a violation of a United States statute applicable only to the District. *Nuckols* v. *United States* (69 App. D. C. 120, 99 Fed. (2d) 353).

FULL FAITH AND CREDIT

When rights have ripened into a judgment of a court in another state, the full faith and credit clause applies and courts of the District are bound, equally with courts of the states, to observe the command of the full faith and credit clause, wherever applicable. *Loughran* v. *Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684).

LAWS OF MARYLAND

Laws of Maryland derive their force, in this district, under 2 Stat. 103, ch. 15, §§ 1, 3, 5. But this section which gives effect to those laws, does not amount to a reenactment of them, so as to sustain them, under the powers of exclusive legislation, given to Congress over this district. This act could only give to those laws that force which they previously had in this tract under the laws of Maryland. *Bank of Columbia* v. *Okely* (4 Wheat. (17 U. S.) 235, 4 L. Ed. 559).

By this act it is provided that the laws of the State of Maryland, as they then existed, should be and continue in force in that part of the district which was ceded by that State to the United States. *Lee* v. *Lee* (8 Pet. (33 U. S.) 44, 8 L. Ed. 860).

Congress by this act provided that the laws of Maryland shall be and continue in force in that part of the District which was ceded by that State to the United States. *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

The law of wills and probate as existing in Maryland on February 27, 1801, is the law of the District of Columbia except as altered by Congress. *In re Lee's Estate* (D. C., (D. C. 1948, 80 F. Supp. 293).

LAWS OF VIRGINIA

Under this act the laws of Virginia, as they then existed, were declared to be and continue in force in that part of the District of Columbia which was ceded by that State to the United States, and by them accepted for the permanent seat of government; and all suits, process, etc., depending in the court of hustings for the town of Alexandria, were transferred to the circuit court of the District. *Turner* v. *Fendall* (1 Cranch. (5 U. S.) 117, 2 L. Ed. 53).

Right of Virginia to legislate for the District did not cease or determine until 27th of February 1801. *Young* v. *Bank of Alexandria* (4 Cranch. (8 U. S.) 384, 2 L. Ed. 655).

PENDING SUITS

In the matter of procedure or practice, pending suits must be governed by the provisions of the code where the procedure does not affect the substantial rights of parties, but where the procedure does affect the substantial rights of parties, the code shall not apply as to the pending suits, but only the old law. Thus, U. S. C., title 28, §§ 512 and 513, relating to District of Columbia, were kept in force by § 1638 of the code of 1901. *Costello* v. *Palmer* (20 App. D. C. 210).

SELECTION OF JURORS

The code supersedes prior law relative to selection of grand and petit jurors. *Clark* v. *United States* (19 App. D. C. 295).

STATUTE OF LIMITATIONS

Statute of limitations, R. S. § 1044, held applicable to contempts in the District of Columbia. *Gompers* v. *United States* (233 U. S. 604, 58 L. Ed. 1119, 34 Sup. Ct. 693, rev'g 40 App. D. C. 293).

TRIAL BY JURY

Common-law offense of reckless driving is a crime within the constitutional provision for a trial by jury. *Colts* v. *District of Columbia* (59 App. D. C. 224, 38 Fed. (2d) 535).

WRIT OF CERTIORARI

No statute has been passed enlarging the scope of the common-law writ of certiorari in the District, and when sought between private persons, the writ will be granted or denied, in the sound discretion of the court. *United States ex rel. Eure* v. *Borden* (65 App. D. C. 84, 80 Fed. (2d) 527).

§ 49–302 [1: 22]. Ordinances of Washington and of levy court to remain in force.

All laws and ordinances of the City of Washington, and of the levy court of the District of Columbia, except as modified or repealed by Congress or the legislative assembly of the District since June 1, 1871, or until so modified or repealed, remain in full force. (R. S., D. C., § 91; Comp. Stat. D. C., p. 338, § 4; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

NOTES TO DECISIONS

LEGISLATIVE ASSEMBLY

Act of legislative assembly, D. C., August 23, 1871, for prevention of cruelty to animals, was not repealed by section 1636 (§ 49–304) as "that section expressly saves from repeal all acts of the legislative assembly of the District of Columbia relating to 'police regulations.'" *Johnson* v. *District Court* (30 App. D. C. 520).

§ 49–303 [1: 23]. Vestries.

All acts and parts of acts relating to the organization and powers of vestries, trustees, or other governing bodies of any religious denomination shall remain in force except in so far as the same are inconsistent with or are replaced by the provisions of this Code. (Mar. 3, 1901, ch. 854, § 1636, par. 9, as added June 30, 1902, 32 Stat. 546, ch. 1329.)

§ 49–304. Repeal provisions of 1901 Code.

"*Sec. 1636.* All acts and parts of the general assembly of the State of Maryland general and permanent in their nature, all like acts and parts of acts of the legislative assembly of the District of Columbia, and all like acts and parts of acts of Congress applying solely to the District of Columbia in force in said District on the day of the passage of this act are hereby repealed, except:

"First. Acts and parts of acts relating to the rights, powers, duties, or obligations of the United States.

"Second. Acts and parts of acts relating to the Court of Claims.

"Third. Acts and parts of acts relating to the organization of the District government, or to its obligations, or the powers or duties of the Commissioners of the District of Columbia, or their subordinates or employees, or to police regulations, and generally all acts and parts of acts relating to municipal affairs only, including those regulating the charges of public-service corporations.

"Fourth. Acts and parts of acts relating to the militia.

"Fifth. All penal statutes authorizing punishment by fine only or by imprisonment not exceeding one year, or both.

"Sixth. Acts and parts of acts of Congress relating solely to the Departments of the General Government in the District of Columbia, or any of them.

"Seventh. Acts or parts of acts authorizing, defining, and prescribing the organization, powers, duties, fees, and emoluments of the register of wills of the District of Columbia and his office.

"Eighth. An act to regulate the practice of pharmacy in the District of Columbia, approved June fifteenth, eighteen hundred and seventy-eight; an act for the regulation of the practice of dentistry in the District of Columbia, and for the protection of the people from empiricism in relation thereto, approved June sixth, eighteen hundred and ninety-two; an act regulating the construction of buildings along alleyways in the District of Columbia, approved July twenty-second, eighteen hundred and ninety-two; an act for the promotion of anatomical science, and to prevent the desecration of graves in the District of Columbia, approved February twenty-sixth, eighteen hundred and ninety-five; an act to provide for the incorporation and regulation of medical and dental colleges in the District of Columbia, approved May fourth, eighteen hundred and ninety-six; an act relating to the testimony of physicians in the courts of the District of Columbia, received by the President May thirteenth, eighteen hundred and ninety-six; an act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia, approved June third, eighteen hundred and ninety-six; and, generally, all acts or parts of acts relating to medicine, dentistry, pharmacy, the commitment of the insane to the Government Hospital for the Insane in the District of Columbia, the abatement of nuisances, and public health.

"Ninth. Acts and parts of acts relating to the organization and powers of vestries, trustees, or other governing bodies of any religious denomination.

"All acts and parts of acts included in the foregoing exceptions, or any of them, shall remain in force except in so far as the same are inconsistent with or are replaced by the provisions of this code."

"Sec. 1637. The incorporation into this code of any general and permanent provision taken from an act making appropriations, or from an act containing other provisions of a private or temporary character, shall not repeal nor in any way affect any appropriation or any provision of a private or temporary character contained in any of said acts, but the same shall remain in force."

"Sec. 1638. The repeal by the preceding section of any statute, in whole or in part, shall not affect any act done or any right accruing or accrued or any suit or proceeding had or commenced in any civil cause before such repeal, but all rights and liabilities under the statutes or parts thereof so repealed shall continue and may be enforced in the same manner as if such repeal had not been made: *Provided,* That the provisions of this code relating to procedure or practice and not affecting the substantial rights of parties shall apply to pending suits or proceedings civil or criminal."

"Sec. 1639. The enactment of this code is not to affect or repeal any act of Congress which may be passed between the date of this act and the date when this act is to go into effect; and all acts of Congress that may be passed hereafter are to have full effect as if passed after the enactment of this code, and, so far as such acts may vary from or conflict with any provision contained in this code, they are to have effect as subsequent statutes and as repealing any portion of this act inconsistent therewith."

"Sec. 1640. Nothing in the repealing clause of this code contained shall be held to affect the operation or enforcement in the District of Columbia of the common law or of any British statute in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, or of the principles of equity or admiralty, or of any general statute of the United States not locally inapplicable in the District of Columbia or by its terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, or of any municipal ordinance or regulation, except in so far as the same may be inconsistent with, or is replaced by, some provision of this code."

"Sec. 1641. All offenses committed and all penalties or forfeitures incurred in the District prior to the date on which this code is to take effect may be prosecuted and punished in the same manner and with the same effect as if this code had not been enacted."

"Sec. 1642. Where any action or proceeding by the provisions of chapter forty-one of this code would be barred at the time it goes into effect, or within one year thereafter, which would not be so barred by prior laws, such action or proceeding may be brought or instituted within such period of one year, anything in said chapter to the contrary notwithstanding."

"Sec. 1643. That nothing herein contained shall be held to affect the term of office of any judicial or other officer holding office when this code goes into effect and operation, except when, as in the case of the present justices of the peace and constables, a contrary intention is manifested."

Parallel Reference Tables

BRITISH STATUTES

Statute	Chap.	Sec.	Kilty	Alex.	D. C. 1950
6 Edward I (1278)	5	1	211	83	45–1301
13 Edward I (1285)	4		212	106	18–207
	7		212	111	18–208
	15	1	212	121	21–117
	31			126	11–321
	34	4	213	138	18–203
14 Edward III (1340)	6	1	216	167	13–304
36 Edward III (1362)	15	1	221	177	13–201
17 Richard II (1393)	6	1	224	199	13–219
4 Henry VI (1425)	3	1	226	224	13–306
4 Henry VII (1487)	20		229	259	13–220
8 Henry VI (1429)	12	2	227	233, 234	13–308, 309
	12	4	227	234	13–310
	15	1	227	242	13–311
9 Henry III (1225)	7	1	205	1	18–201
	8	1	205	12	15–213
	8	2	205	12	16–2003
		3	205	12	16–2004
	8	4	205	12	16–2005
9 Henry V (1421)	4	1	226	221, 222	13–305
11 Henry IV (1409)	3	1	225	211, 212	13–307
11 Henry VI (1433)	5	1	227	243	45–1303
21 Henry III (1236)			208	36	28–2803
21 Henry VIII (1529)	4	1	230	280	18–605
23 Henry VIII (1531)	15	1	231, 236	287, 432	11–1517
27 Henry VIII (1535)	10	2	231	294	45–1202
	10	6	231	296	18–206
	10	7	231	296	18–209
	10	9	231	297	18–205
32 Henry VIII (1540)	30	2	232	327	13–313
52 Henry III (1267)	23	2	209	46, 47	45–1302
18 Elizabeth (1576)	14	1, 2	235	411	13–314
27 Elizabeth (1585)	5	1	235, 245	420, 659	13–206
	5	2	235	421	13–207
43 Elizabeth (1601)	8	2	236	427	20–113
4 James I (1606)	3	2	231, 236	287, 432	11–1517
21 James I (1623)	13	2, 3	237	442, 443	13–315
16 Charles II (1664)	7	2	239	476	16–706
	7	3	239	477	16–707
16 and 17 Charles II (1664)	8	1	239	484, 485	13–316
	8	2, 5	239	485	13–317
29 Charles II (1676)	3	3			12–301, note
	3	14, 15	241	511	15–104
	3	16		511	15–207
	7	6	242	562	13–102
30 Charles II (1677)	7	2	176	567	20–114
4 and 5 W. and M. (1692)	16	4	242	579	45–610
	20	3	243	581	15–106
	24	12		585	20–112
8 and 9 William III (1697)	11	1	243	602	11–1518
	11	8	244	604	15–111
	11	8	244	604	13–205
9 and 10 William III (1698)	17	3	244	634	28–410
3 and 4 Anne (1704)	9	7, 8	245	653	28–920
4 Anne (1705)	16	1	245	420, 659	13–206
	16	2	245	660	13–318
	16	4	246	660	13–212
	16	7		660	13–319
	16	9, 10	246	660, 661	45–933
	16	11	246	661	13–210
	16	12	246	661	13–218
	16	21	246	662	45–309
	16	27	247	664	16–101
6 Anne (1707)	18	1	247	675	16–527
	18	2	247	675	16–528
	18	3	247	676	16–529
	18	4	247	677	16–530
	18	5	247	677	16–531
7 Anne (1708)	19	1	247	679	45–608
	19	2	247	680	45–609
8 Anne (1709)	14	1	248	681	45–918
	14	4	248	682	45–922
9 Anne (1710)	14	1	248	689	16–701
	14	2	248	690	16–702
	14	4	248	691	16–703
	14	5	248	691	16–704
	14	8	248	692	16–705
	20	7	248	695	13–320
4 George II (1731)	10	1, 2	249	700	45–620
	26	1	249	702	13–202
	28	2	249	705	16–532
	28	3	249	707	16–533
	28	4	249	707	16–534
	28	6	249	708	45–931
5 George I (1718)	13	1	248	697	13–312
6 George II (1733)	14	5	250	720	13–203
7 George II (1734)	20	1	251	726	45–605
	20	2	251	727	45–606
	20	3	251	728	45–607
11 George II (1738)	19	3	251	732	45–920
	19	11	251	737	45–934
	19	12	251	737	16–502
	19	14	251	738	45–923
	19	15	251	739	45–921
	19	19, 20	251	741, 742	45–919
11 George III (1771)	20	1	253	791	45–924
	20	2	253	791	45–925
	20	3	253	792	45–926
23 George II (1750)	11	1	252	766	23–204
	11	2	252	766	23–205
24 George II (1751)	23	1	252	768	28–2801
	23	2		770	28–2802
25 George II (1752)	6	1	253	781	19–104
	6	2	253	782	19–106
	6	7	253	783	19–105
29 George II (1756)	31	1	253	788	45–927
	31	2	253	789	45–928
	31	3	253	790	45–929
	31	4	253	790	45–930

MARYLAND STATUTES

Date	Chapter	Section	D. C. 1950
1751	25	1–16	Pages LXV, LXVI.
1777	6	1	13–222; 16–702.
1779	25	7	19–411.
1780	23	3	16–704.
1781	16		13–202; 16–702, 704, 707; 19–410, 411.
1783	27	1–3	Pages LXVI, LXVII.
1784	45	1–5	Page LXVII.
1785	72	25	13–219.
1786	19		19–410.
1788	46		Page XXVIII.
1789	23	I–XIV	Pages LXVII, LXVIII.
1791	45	1–13	Pages XXVIII–XXXI.
1792	49	1–2	Page XXXI.
1793	58	I–IV	Page XXXI.
1797	56	1–9	Page LXIX.
1798	101, subch. 15	12	11–505.
		13	11–506.
		14	11–507.
		15	11–508.
		16	11–509.
		17	11–510.
		19	11–511.
		20	11–512.
1799	85	1–4	Page LXIX.

VIRGINIA STATUTES

Date	Chapter	Section	U. S. Stat. Vol.	U. S. Stat. Page	D. C. 1950
1789					
Dec. 3	----------	I–IV	----------	----------	Page XXVIII.
1824					
Jan. 27	38	9	4	796	47–807.
1846					
Feb. 3	64	1–3	----------	----------	Page XLVI.

ACTS OF LEGISLATIVE ASSEMBLY OF THE DISTRICT OF COLUMBIA

Date	Page	Chapter	Section	D. C. 1950
1871				
Aug. 19	48	51	----------	1–303
Aug. 22	78	65	----------	47–101
Aug. 23	96	69	21	22–3401
	135	106	1	22–801
	135	106	2	22–802
	135	106	3	22–803
	136	106	4	22–804
	136	106	5	22–805
	137	106	6	22–806
	137	106	7	22–807
	137	106	8	22–808
	137	106	9	22–809
	138	106	10	22–811
	138	106	11	22–812
	138	106	12	22–813
	143	108	1	47–305
	145	108	7	47–302
1871				
Aug. 23	146	108	10	47–120
	148	108	13	11–1201
	149	108	16	43–1506
	150	108	18	1–301
	150	108	19	1–302
1872				
Jan. 19	52	31	1	47–1016
	52	31	2	47–1017
	53	31	4	47–1018
1873				
June 23	50	8	3	31–118
June 25	65	25	1	S. 1–703, 707, 710
			2	S 1–707
			3	S 1–714
	65	25	4	1–704
	65	25	5	S 1–709

REVISED STATUTES OF THE UNITED STATES

Revised Statutes	D. C. 1950
193	47–107 note.
441	31–1022.
769	11–1001 note.
1661	R. '33, 47 Stat. 1428, ch. 202, § 1.
1797	11–1104.
1803	43–1538.
1805	43–1537.
1806	22–3118.
1813	7–620.
1818	7–1209.
1820	9–105.
2038	32–317, and note.
3679	47–105 note.
4844	32–405.
4849	21–319.
4852	32–407.
4853, 4854	32–406.
4856	21–332.
4857	21–333.
4859	31–1001.
4860	31–1003.
4861	31–1004.
4862	31–1005.
4863	31–1006.
4865	31–1012.
4866	31–1015.
4867	31–1016.
4868	31–1017.
4869	31–1019.

REVISED STATUTES OF THE DISTRICT OF COLUMBIA

R. S. D. C.	D. C. 1950
1	1–101; 22–3122.
2	1–102; 22–3122.
3	1–218.
4, 5	R. '74, 18 Stat. 116, ch. 337, § 1.
6	1–220.
7–52	R. '74, 18 Stat. 116, ch. 337, § 1.
53	S. '78, 20 Stat. 103, 108, ch. 180, §§ 3, 13.
54–71	R. '74, 18 Stat. 116, ch. 337, § 1.
72, 73	S. 6–101, 102.
74–76	R. '74, 18 Stat. 116, ch. 337, § 1.
77	7–101.
78	S. 47–310.
79	S. 1–228.
80	1–803.
81	S. '78, 20 Stat. 103, ch. 180, § 3.
82	1–802.
83	S. '78, 20 Stat. 103, ch. 180, § 3.
84	R. '74, 18 Stat. 116, ch. 337, § 1.
85	1–308.
86	1–316.
87	47–103.
88	S. '22, 42 Stat. 668, ch. 249, § 1.
89	S. 11–101, 201, 301, 601.
90	S. 11–1001, 1101; S. 45–701; S. 49–304 note.
91	49–302.
92	S. 49–304 note.
93	R. '01, 31 Stat. 1434, ch. 854, § 1636.
94	1–107.
95	Temporary.
96	1–104; 22–3122.
97–110	S. 1–316.
111–114	S. 47–310.
115	S. 1–316; S. 31–102 to 104.
116	47–104.
117	S. 47–310.
118	47–104.
119–123	S. 1–316.
124, 125	S. 47–102.
126–134	Temporary.
135	R. '28, 45 Stat. 988, ch. 901, § 1.[1]
136, 137	Temporary.
138	47–722.
139	47–723.
140	S. 47–713, 1202.
141	S. 1–316.
142	S. 31–301; S. 47–501 to 503, 713, 1207.
143	47–409.
144	S. 47–403.
145, 146	S. 8–112, 113; S. 11–210; S. 31–1010 note; S. 47–201, 204.
147	S. 47–713, 801 to 803.
148	S. 47–801.
149, 150	S. 31–301; S. 47–501 to 503, 713, 1207.
151	Superseded.
152	47–1107.
153, 154	S. 47–1001.
155	S. 47–703.
156–172	S. 47–1002, 1003, 1005 to 1009.
173	47–1015.
174	S. 47–1003.
175	S. 47–1005 to 1009.
176	S. '02, 32 Stat. 621, ch. 1352 § 6.
177–183	S. '95, 28 Stat. 650, ch. 79.
184	S. 47–1001 to 1003.
185–187	S. 47–1002, 1003, 1005 to 1009.
188	S. 1–316.
189	S. 22–1111; S. 47–2003, 2004.
190, 191	S. 8–112, 113; S. 11–210; S. 31–1010 note; S. 47–201, 204.
192	4–412.
193	Obsolete.
194	S. 39–102.
195	43–1503.
196	S. '81, 21 Stat. 466, ch. 134, § 1.
197	43–1521.
198	43–1522.
199–202	S. 43–1510 to 1513.
203	43–1523.
204	43–1501.
205	43–1525.
206	43–1526.
207	43–1527.
208	43–1528.
209–213	S. '95, 28 Stat. 650, ch. 79.
214	43–1507.
215	43–1508.

[1] Repealed in part

REVISED STATUTES OF THE DISTRICT OF COLUMBIA—Continued

R. S. D. C.	D. C. 1950
216	43-1509.
217	43-1524.
218	43-1534.
219	43-1535.
220	43-1536.
221	Federal.
222	S. 7-1205; S. 8-108.
223	7-1202.
224	7-1203.
225	7-1206.
226, 227	7-1207.
228, 229	7-1204.
230	7-1208.
231	S. 9-105 note.
232	S. 7-702 to 705.
233	7-710.
234	S. 31-301; S. 47-501 to 503, 713, 1207.
235	S. '02, 32 Stat. 321, ch. 1036, § 6.
236-245	Federal.
246	7-104.
247	7-102.
248	S. 7-109.
249	7-105.
250	S. 7-108.
251	S. 7-202 to 215.
252-256	S. 7-108, 109.
257-266	S. 7-202 to 215.
267	7-332.
268	22-3120.
269	22-3121.
270	22-3122.
271, 272	S. 31-201, 207.
273	S. 31-211.
274	31-1102.
275-280	S. 31-101, 1110 to 1113.
281	31-1110.
282	31-1111.
283	31-1109.
284, 285	S. 31-102 to 104.
286-293	S. 16-601 to 604.
294-305	S. '06, 34 Stat. 316, 317, ch. 3446, §§ 2, 3.
306	31-1112.
307-309	S. '06, 34 Stat. 316, 317, ch. 3446, §§ 2, 3.
310	31-1113.
311	S. '06, 34 Stat. 316, 317, ch. 3446, §§ 2, 3.
312	S. 1-316.
313-316	S. 1-103, 218, 801; S. 43-1503, 1506, 1521.
317	31-805.
318	31-806.
319	31-807.
320	31-808.
321	4-101.
322-326	S. '78, 20 Stat. 107, ch. 180, § 6.
327	S. 1-316.
328-333	S. '78, 20 Stat. 107, ch. 180, § 6.
334	S. 39-603.
335	4-119.
336	S. '78, 20 Stat. 107, ch. 180, § 6; S. '06, 34 Stat. 221, ch. 3056.
337	S. 4-102, 103, 106, 121.
338	S. 1-316.
339-343	S. 4-102, 103, 106, 121.
344	4-126.
345	S. 4-102, 103, 106, 121.
346	4-127.
347-349	S. 4-102, 103, 106, 121.
350	S. 4-109.
351	4-104.
352	Obsolete.
353	4-128.
354	S. 4-103, 151.
355	S. 4-124.
356	S. 4-125.
357-360	4-129.
361-364	S. '16, 39 Stat. 718, ch. 433, § 12.
365	4-130.
366, 367	S. 4-103, 151.
368	S. 1-216, 219, 221, 234.
369-372	S. 4-102, 103, 106, 121, 123.
373	4-132.
374	S. 4-102, 103, 106, 121, 123.
375, 376	S. 4-115.
377	S. 4-122, 124.
378, 379	4-133.
380	S. 6-104 to 106.
381-385	S. 4-102, 103, 106, 121, 123.
386	4-134.
387, 388	S. '78, 20 Stat. 107, ch. 180, § 6.
389	4-135.
390	4-137.
391	S. 4-601.
392	4-123.
393	S. 4-601.
394	4-136.
395	4-138.
396	4-139.
397	4-140.
398	4-141.
399	4-142.
400	4-143.
401	4-144.
402	4-145.
403	4-146.
404	4-147.
405	4-148.
406	4-149.
407	4-150.
408	4-151.
409	4-152.
410	4-153.
411	4-154.
412	4-155.
413	4-156.
414	4-157.
415	4-158.
416	4-159.
417	4-160.
418	4-161.
419	4-162.
420	4-163.
421	4-164.
422	4-165.
423	4-166.
424	4-167.
425	4-168.
426	4-169.
427	4-170.
428	4-171.
429	4-172.
430	4-174.
431	4-175.
432	22-505.
433	22-1306.
434	4-176.
435	S. '17, 39 Stat. 1123-1130, ch. 165, which was R. '33, 48 Stat. 28, ch. 19, § 12.
436	S. 1-104.
437	4-177.
438	4-178.
439	S. 1-316.
440-452	R. '01, 31 Stat. 1434, ch. 854, § 1636
453	29-513.
454	29-514.
455	29-515.
456	29-516.
457, 458	R. '01, 31 Stat. 1434, ch. 854, § 1636.
459	45-408.
460	45-409.
461-550	R. '01, 31 Stat. 1434, ch. 854, § 1636.
551	R. '84, 23 Stat. 14, ch. 28, § 2.
552-719	R. '01, 31 Stat. 1434, ch. 854, § 1636.
Chap. 20	R. '84, 23 Stat. 66, ch. 143, § 14.[1]
720-722	R. '96, 29 Stat. 120, ch. 177, § 13.
723-726	R. '01, 31 Stat. 1434, ch. 854, § 1636.
727	R. '96, 29 Stat. 194, ch. 303, § 11.
728	R. '01, 31 Stat. 1434, ch. 854, § 1636.
729, 730	R. '96, 29 Stat. 194, ch. 303, § 11.
731-749	R. '01, 31 Stat. 1434, ch. 854, § 1636.
750, 751	S. 11-301.
752	11-303.
753-757	S. 11-310 to 313.
758, 759	R. '89, 25 Stat. 749, ch. 308, § 1.
760	S. 11-305.
761	S. 11-309.
762	S. 11-313.
763	11-306.
764	11-307.
765	R. '78, 20 Stat. 99, ch. 110.
766	S. 11-325; S. 16-416.
767	11-308.
768	S. 13-108.
769	11-1001 note.
770	S. 17-101.
771	11-304.
772	S. 17-101.
773	S. 17-103.
774-778	S. '01, 31 Stat. 1201, ch. 854, §§ 75, 76, 79, 80.
779	S. '01, 31 Stat. 1202, ch. 854, § 81, which was R. '02, 32 Stat. 523, ch. 1329.
780	S. '93, 27 Stat. 436, ch. 74, § 9, which was R. '27, 44 Stat. 1336, ch. 273, § 7.
781	S. 11-315.
782	S. 16-301; S. 18-305, 402, 702 to 705.
783	S. 16-307.
784	S. 16-311; S. 28-2403.
785	S. 16-314.
786	S. 16-311; S. 28-2403.
787-789	S. 13-108 to 110.
790	S. 13-103.
791, 792	R. '01, 31 Stat. 1434, ch. 854, § 1636.
793	15-109.
794-796	R. '01, 31 Stat. 1434, ch. 854, § 1636.
797	S. 15-401.
798	S. 15-402.
799	Temporary.
800	S. 11-312, 313.
801	S. 11-310, 312, 313.
802	S. 11-312.
803	S. 11-320.
804	13-221.
805, 806	S. 17-101.
807	S. 11-1405 to 1407.
808	S. '01, 31 Stat. 1383, 1386, 1388, ch. 854, §§ 1230, 1246, 1263, 1264.
809	S. 16-501.
810-812	S. 16-1901 to 1903.
813	S. 16-1909.
814-820	S. 16-1802 to 1808.
821-824	S. 16-1811 to 1814.
825, 826	R. '01, 31 Stat. 1434, ch. 854, § 1636.
827	S. 13-401; S. 16-901.
828	R. '01, 31 Stat. 1434, ch. 854, § 1636.
829	S. 28-2701, 2708, 2709.
830-832	R. '01, 31 Stat. 1434, ch. 854, § 1636.
833	S. '02, 32 Stat. 543, ch. 1329.
834, 835	S. 16-1102, 1103.
836	R. '01, 31 Stat. 1434, ch. 854, § 1636.
837	13-222; 16-702, 706, 707.
838	S. 22-1602, 1608; S. 23-107.
839	S. 23-109.
840	R. '01, 31 Stat. 1434, ch. 854, § 1636.
841	S. 1-316.
842	S. 22-2303.
843	S. 23-401.
844	R. '01, 31 Stat. 1434, ch. 854, § 1636.
845	S. 23-113.
846-849	S. 17-101.
850-928	R. '01, 31 Stat. 1434, ch. 854, § 1636.
929	19-401.
930	19-402.
931, 932	S. 11-1503; S. 15-212, 214, 215, 303, 306.
933	19-406.
934	19-407.
935	19-408.
936	S. 19-405; S. 45-704, 710.
937-993	R. '01, 31 Stat. 1434, ch. 854, § 1636
994	S. '09, 35 Stat. 623, ch. 134.
995	S. 11-703.
996	S. 11-722.
997	S. '21, 41 Stat. 1310, ch. 125, § 1.
998	32-205.
999	S. 11-705.
1000, 1001	S. 11-713.
1002	S. 11-719.
1003	R. '01, 31 Stat. 1434, ch. 854, § 1636.
1004	S. 11-701.
1005	S. 11-740.
1006, 1007	S. 11-724.
1008	S. 11-718, 724.
1009	S. 11-715.
1010-1013	S. 11-320, 716.
1014	S. 11-715.
1015	S. 11-748; S. 22-805, 807.
1016	S. 11-715.
1017, 1018	S. 11-724.
1019	S. 15-209, 210.
1020	S. '09, 35 Stat. 623, ch. 134.
1021, 1022	S. 11-742, 743.
1023-1025	S. 11-748; S. 22-805, 807.
1026-1029	S. 11-723, 739; S. 17-101, 104.
1030	S. 11-701.
1031-1033	S. 11-701.
1034	S. 11-722.
1035	4-136.
1036-1040	S. 11-748; S. 22-805, 807.
1041-1043	S. 11-601.
1044	S. 11-609.
1045	S. '07, 34 Stat. 886, ch. 912.
1046	S. 11-624.
1047, 1048	S. 11-309, 312, 601, 610.
1049	S. 11-602; S. 32-205.
1050	S. 11-606; S. 32-206.
1051	S. 11-602; S. 32-205.
1052-1055	S. 11-606; S. 32-206.
1056	S. 11-608.
1057	S. 11-620.
1058	S. 11-621.
1059	S. 11-620.
1060	S. 11-622.
1061	S. 11-620.
1062, 1063	S. 11-623.
1064	S. 11-616.
1065	11-611.
1066	11-612.
1067	11-613.
1068	11-614.
1069	S. 1-301 to 303; S. 23-101.
1070	S. 11-1001 note.
1071	S. 1-301 to 303; S. 23-101.
1072	S. 11-615; S. 47-106.

[1] Repealed in part.

REVISED STATUTES OF THE DISTRICT OF COLUMBIA—Continued

R. S. D. C.	D. C. 1950
1073–1078	S. 17–103.
1079, 1080	S. 11–625.
1081, 1082	S. '01, 31 Stat. 1378, ch. 854, §§ 1187, 1188.
1083	S. '02, 32 Stat. 542, ch. 1329.
1084–1092	S. '01, 31 Stat. 1378–1379, ch. 854, §§ 1190–1198.
1093–1096	S. 23–704 to 706.
1097–1099	Temporary.
1100–1143	S. '11, 36 Stat. 1002–1004, ch. 192, § 1.
1144	S. '01, 31 Stat. 1321–1331, 1341, ch. 854, §§ 802–868, 934.
1145, 1146	S. 22–107.
1147	Superseded.
1148	R. '01, 31 Stat. 1434, ch. 854, § 1636.
1149	S. 8–112, 113; S. 11–210; S. 31–1010 note; S. 47–201, 204.
1150–1172	R. '01, 31 Stat. 1434, ch. 854, § 1636.
1173	S. 22–403, 2205.
1174	S. 4–145, 146.
1175	R. '01, 31 Stat. 1434, ch. 854, § 1636.
1176	22–3402.
1177	22–3403.
1178	S. 17–103.
1179	22–3413.
1180	22–2602.
1181	S. '17, 40 Stat. 82, ch. 15, § 12.
1182, 1183	S. '17, 39 Stat. 1123, ch. 165, § 1, which was R. '33, 48 Stat. 28, ch. 19, § 12.
1184	S. '01, 31 Stat. 1323, 1327, 1333, ch. 854, §§ 822, 847–850, 880.
1185	S. '01, 31 Stat. 1324, 1327, ch. 854, §§ 826, 827, 847, 880.
1186	S. 22–103.
1187	S. 22–3108, 3114.
1188, 1189	S. 48–101, 102.
1190	R. '01, 31 Stat. 1434, ch. 854, § 1636.
1191	S. 1–227.
1192	R. '89, 25 Stat. 781, ch. 328, § 63.[1]
1192	S. 39–106, 107.
1193–1222	R. '89, 25 Stat. 781, ch. 328, § 63.
1223	S. 39–501.
1224–1261	R. '89, 25 Stat. 781, ch. 328, § 63.
1262	S. '09, 35 Stat. 634, ch. 146.
1263–1268	R. '89, 25 Stat. 781, ch. 328, § 63.
1269–1271	S. '09, 35 Stat. 634, ch. 146.
1272–1274	R. '89, 25 Stat. 781, ch. 328, § 63.
1275–1280	S. 39–806.
1281–1283	R. '89, 25 Stat. 781, ch. 328, § 63.
1284	S. 39–903.
1285	S. 39–101.
1286	S. 39–501.
1287–1295	R. '89, 25 Stat. 781, ch. 328, § 63

[1] Repealed in part.

COMPILED STATUTES OF THE DISTRICT OF COLUMBIA

Page	Section	D. C. 1950	Page	Section	D. C. 1950	Page	Section	D. C. 1950	Page	Section	D. C. 1950	Page	Section	D. C. 1950
20	85	18–605	223	4	15–213; 16–2003 to 2005	325	42	45–922	357	8	16–529	449	43	13–218
36	164	18–201				326	46	16–532	357	9	16–530	450	45	13–210
36	165	18–203				327	47	16–533	357	10	16–531	451	54	13–102
37	169	18–207	237	26	45–610	328	48	16–534	366	5	13–320	460	88	13–304
38	170	18–208	242	10	16–706	328	50	45–931	395	1	45–605	461	89	13–307
39	173	18–206, 209	243	11	16–707	329	53	45–920	396	2	45–606	461	90	13–305
40	175	18–205	243	12	16–701	332	60	45–934	397	3	45–607	461	91	13–306
41	178	20–113	244	13	16–702	332	61	16–502	417	101	11–1518	462	93	13–308, 309
41	179	20–114	244	15	16–703	333.	63	45–923	418	105, 106	11–1517	462	94	13–310
41	180	20–112	245	16	16–704	333	64	45–921	442	5	11–321	462	95.	13–311
66	3	28–410	245	17	16–705	334	66, 67	45–919	442	6	13–221	462	96	13–206, 207
68	9, 10	28–920	287	3, 4	13–314	335	70	45–927	445	27	13–201	463	99	13–312
69	14	13–205; 15–111	287	5	13–316	335	71	45–928	445	28	13–202	472	145	23–205
			288	6	13–317	335	72	45–929	446	29	13–203	496	31, 32	45–933
75	6	15–109	289	10	13–317	336	73	45–930	446	31	21–117	496	33	45–309
78	11	45–620	290	16, 17	15–104	336	74	45–924	447	34	16–101	497	38	18–111
79	13	45–608	291	19	15–106	336	75	45–925	447	35	13–212	537	2	45–1202
79	14	45–609	318	19	45–1302	336	76	45–926	447	36	13–206	557	5	19–104
104	97	13–219	319	21	45–1301	338	4	49–302	448	37	13–313	558	6	19–106
212	94	28–2803	320	26	45–1303	356	6	16–527	448	38, 39	13–315	558	7	19–105
222	1	15–207	325	41	45–918	356	7	16–528	449	42	13–318			

Page	Section	D. C. 1950	Page	Section	D. C. 1950	Page	Section	D. C. 1950	Page	Section	D. C. 1950	Page	Section	D. C. 1950
1189	pre-amble	49–201 to 207	1203	90	16–1306	1219	176	S. 11–1508	1231	258	16–106	1244	343	18–517
			1203	91	21–202	1219	177	11–1507	1231	259	R., '02, 32	1244	344	18–519
1189	1	45–309	1203	92	21–203	1219	178	11–402			Stat. 528,	1244	345	18–522
		note: 49–301	1203	93	16–1301; 21–213	1219	179 to 182	S. 11–403			ch. 1329	1245	346	18–523
									1231	260	18–501	1245	347	18–524
1190	2	11–101	1204	94	18–611	1220	183	11–1001	1232	261	20–101	1245	348	18–518
1190	3–5	S. 11–701	1204	95	45–616	1220	184	11–1002	1232	262	20–301	1245	349	18–525
1191	6	11–710	1204	96	18–612	1220	185	11–323	1232	263	20–302	1246	350	18–526
1191	7	S. 11–715	1205	97	45–1101	1220	186	11–1101	1232	264	20–303	1246	351	18–527
1191	8	S. 11–722, 723	1205	98	45–1102	1220	187	11–1102	1233	265	20–304	1246	352	18–528
			1205	99	45–1103	1220	188	S. 47–204	1233	266	20–305	1246	353	18–529
1191	9	11–703	1205	100	45–1104	1220	189	11–1103	1233	257	20–306	1246	354	18–513
1191	10	11–704	1205	101	15–110	1221	190	11–1201	1233	268	20–307	1246	355	18–514
1191	11	S. 11–719	1205	102	13–105	1221	191	11–1202	1233	269	20–308	1246	356	18–520
1191	12	11–724	1206	103	13–106	1221	192	11–1203	1233	270	20–309	1247	357	18–502
1192	13	11–725	1206	104	13–107	1221	193	11–1204	1233	271	20–310	1247	358	18–521
1192	14	11–726	1206	105	13–108	1221	194	11–1205	1233	272	20–311	1247	359	18–530
1192	15	11–727	1206	106	13–109	1221	195	11–1206, 1515	1234	273	20–201	1247	360	20–506
1192	16	11–728	1206	107	13–110				1234	274	20–202	1247	361	20–601
1192	17	11–729	1206	108	13–111	1221	196	11–1207	1234	275	20–203	1247	362	20–602
1192	18	11–731	1207	109	13–112	1221	197	11–1208	1234	276	20–204	1247	363	20–603
1193	19	11–732	1207	110	13–113	1222	198	11–1401	1234	277	20–205	1248	364	20–604
1193	20	11–735	1207	111	16–1501	1222	199	11–1402	1234	278	20–206	1248	365	20–605
1193	21	11–736	1207	112	13–104	1222	200	11–1403	1234	279	20–207	1248	366	20–606
1193	22	11–737	1208	113	11–326	1222	201	11–1404	1234	280	20–208	1248	367, 368	R., '02, 32
1193	23	11–738	1208	114	11–327	1222	202	11–1405	1234	281	20–209			Stat. 530,
1193	24	11–739	1208	115	11–328	1222	203	11–1406	1234	282	20–210			ch. 1329
1193	25	11–740	1208	116	4–159; 11–501, 505 to 512; 19–402; 32–101, 104	1222	204	11–1407	1234	283	20–211	1248	369	20–105
1194	26	11–741				1222	205	11–1409	1234	284	20–212	1249	370	20–607
1194	27	S. 11–701				1222	206	11–1410	1235	285	20–213	1249	371	20–608
1194	28	11–742				1222	207	11–1411	1235	286	20–214	1249	372	20–609
1194	29	11–743				1223	208	11–1412	1235	287	20–215	1249	373	18–701
1194	30, 31	S. 11–723; S. 17–104	1208	117	11–503	1223	209	11–1413	1235	288	20–216	1249	374	18–702
			1208	118	11–502	1223	210	11–1414	1235	289	20–217	1249	375	18–703
1194	32	S. 11–722	1208	119	11–504	1223	211	11–1415	1235	290	20–106	1249	376	18–704
1194	33	11–744	1209	120	19–409	1223	212	11–1416	1235	291	20–218	1250	377	18–705
1194	34	11–745	1209	121	19–403	1223	213	S. 22–1414	1235	292	20–119	1250	378	18–706
1195	35	11–746	1209	122	20–503	1223	214	S. 22–1414	1235	293	20–219	1250	379	18–707
1195	36	S. 17–104	1209	123	11–513	1223	215	11–1417	1236	294	20–102	1250	380	18–708
1195	37	11–747	1210	124	20–501	1223	216	11–1419	1236	295	20–104	1250	381	18–719
1195	38	11–713	1210	125	20–107	1224	217	11–1420	1236	296	20–108	1250	382	18–710
1195	39, 40	S. 11–701	1210	126	11–514	1224	218	11–1301	1236	297	20–117	1250	383	18–711
1195	41	11–748; 22–805, 806	1210	127	11–515	1224	219	11–1302	1236	298	20–103	1250	384	18–712
			1211	128	20–109	1224	220	11–1304	1237	299	20–105	1250	385	18–713
1196	42	11–601	1211	129	11–516	1224	221	11–201	1237	300	20–312	1250	386	18–714
1196	43	11–602; 32–205	1211	130	19–301	1224	222	11–202	1237	301	20–110	1250	387	18–716
			1211	131	19–305	1224	223	11–203	1237	302	20–111	1251	388	18–717
1196	44	11–616	1211	132	19–306	1224	224	11–204	1237	303	20–610	1251	389	18–718
1197	45	11–617	1212	133	19–302	1225	225	11–205	1237	304	20–401	1251	390	18–719
1197	46	11–618	1212	134	19–308	1225	226	17–101	1238	305	20–402	1251	391	18–720
1197	47	11–619	1212	135	19–304	1225	227	17–103	1238	306	20–403	1251	392	18–721
1197	48	11–606	1212	136	19–307	1226	228	S., U. S. C. title 28, § 309a	1238	307	20–404	1251	393	18–722
1198	48	32–206	1212	137	19–309				1238	308	20–405	1251	394	18–723
1198	49	11–608	1212	138	19–303				1238	309	18–401	1252	395	16–207 note
1198	50	11–609	1213	139	19–311	1226	229	11–206	1239	310	18–402	1252	396	45–1502
1198	51	11–610	1213	140	19–312	1227	229	R., '02, 32 Stat. 609, ch. 1352, § 1 [1]	1239	311	18–403	1252	397	45–1503
1198	52	11–620	1213	141	19–313				1329	312	18–404	1252	398	45–1504
1198	53	11–621	1214	142	11–517				1239	313	18–405	1252	399	13–301
1198	54	11–622	1214	143	11–518				1239	314	18–406	1253	400	13–302
1198	55	11–623	1214	144	11–519	1227	230	11–208	1239	315	18–407	1253	401	13–303
1199	56	11–624	1214	145	11–520	1227	231	11–209	1239	316	18–408	1253	402	36–101
1199	57	11–607	1214	146	18–607	1227	232	11–210, 331	1240	317	18–301	1253	403	36–104
1199	58	11–625	1214	147	18–608	1227	233, 234	S., U. S. C. title 28, § 347	1240	318	18–302	1253	404	36–105
1199	59	11–627	1214	148	18–609				1240	319	18–303	1253	405	36–106
1199	60	11–301	1215	149	18–610				1240	320	18–304	1253	406	36–107
1199	61	11–305	1215	150	21–109	1227	235	12–101	1240	321	18–305	1253	407	36–108
1199	62	11–309	1215	151	21–118	1227	236	12–102	1240	322	18–601	1253	408	36–109
1200	63	11–310	1215	152	21–106	1228	237	12–103	1240	323	18–602	1254	409	36–110
1200	64	11–311	1215	153	21–121	1228	238	12–104	1241	324	18–603	1254	410	36–111
1200	65	11–312	1215	154	21–122	1228	239	12–105	1241	325	18–604	1254	411	36–102
1200	66	11–313	1215	155	21–113	1229	240	12–106	1241	326	18–606	1254	412	16–1701
1200	67	11–314	1215	156	21–204	1229	241	12–107	1241	327	20–501	1254	413	16–1702
1200	68	11–315	1216	157	21–205	1229	242	S. 11–723; S. 17–104	1242	328	20–502	1254	414	16–1703
1200	69	11–316	1216	158	21–206				1242	329	20–505	1255	415	16–1704
1200	70	11–317	1216	159	21–207	1229	243	12–108	1243	330	18–503	1255	416	16–1705
1201	71	11–318	1216	160	21–208	1229	244	12–109	1243	331	18–504	1255	417	16–1706
1201	72	11–319	1216	161	21–209	1229	245	12–110	1243	332	18–505	1255	418	16–1707
1201	73	11–320	1216	162	21–210	1229	246	12–111	1243	333	18–506	1255	419	16–1708
1201	74–80	S. 17–104	1216	163	21–211	1229	247	12–112	1243	334	18–507	1255	420	16–1709
1202	81, 82	R. '02, 32 Stat. 523, ch. 1329	1216	164	21–212	1229	248	12–113	1243	335	18–508	1255	421	16–1710
			1217	165	21–201	1230	249	12–114	1243	336	18–509	1255	422	16–1711
			1217	166	21–104	1230	250	12–115	1244	337	18–510	1255	423	16–1712
1202	83	11–322	1217	167	R. '02, 32	1230	251	12–116	1244	338	18–511	1255	424	16–1713
1202	84	11–324		to	Stat. 527,	1230	252	14–501	1244	339	18–512	1255	425	16–1714
1202	85	11–325		172	ch. 1329	1230	253	14–502	1244	340	R., '02, 32	1256	426	16–1715
1202	86	16–1302	1218	173	36–103	1230	254	16–102			Stat. 529,	1256	427	16–1716
1202	87	16–1303	1218	174	11–401	1231	255	16–103			ch. 1329	1256	428	16–1717
1202	88	16–1304	1219	175	11–1505, 11–1506	1231	256	16–104	1244	341	18–515	1256	429	16–1718
1202	89	16–1305				1231	257	16–105	1244	342	18–516	1256	430	16–1719

[1] Repealed in part.

CODE OF 1901—Continued

Page	Section	D. C. 1950
1256	431	28–2501
1256	432	28–2502
1256	433	28–2503
1256	434	28–2504
-------	434-A	28–2505
1256	435	28–2601
1257	436	28–2602
1257	437	28–2603
1257	438	28–2604
1257	439	28–2605
1258	440	28–2606
1258	441	28–2607
1258	442	28–2608
1258	443	28–2609
1258	444	28–2610
1258	445	16–301
1259	446	16–302
1259	447	16–303
1259	448	16–304
1260	449	16–305
1260	450	16–306
1260	451	16–307
1260	452	16–308
1260	453	16–309
1261	454	16–310
1261	455	16–311
1262	456	16–312
1262	457	16–313
1262	458	16–314
1262	459	16–315
1262	460	16–316
1262	461	16–317
1262	462	16–318
1263	463	16–319
1263	464	16–320
1263	465	16–321
1263	466	16–322
1263	467	16–323
1263	468	16–324
1263	469	16–325
1264	470	16–326
1264	471	16–327
1264	472	16–328
1264	473	16–329
1264	474	16–330
1264	475	16–331
1264	476	16–332
1264	477	16–334
1264	478	28–2401
1265	479	28–2402
1265	480	28–2405
1265	481	28–2406
1265	482	28–2407
1265	483	16–601
1265	484	16–602
1265	485	16–604
1266	486	16–606
1266	487	16–607
1266	488	16–608
1266	489	16–609
1266	490	16–610
1266	491	16–611
1267	492	45–106
1267	493	45–402
1267	494	30–216
1267	495	45–403
1268	496	45–404
1268	497	45–302
1268	498	45–401
1268	499	45–501
1268	500	45–502
1268	501	45–505
1268	502	45–201
1268	503	45–202
1268	504	45–205
1268	505	45–303
1269	506	45–304
1269	507	45–305
1269	508	45–306
1269	509	45–307
1269	510	45–308
1269	511	R. '02, 32 Stat. 532, ch. 1329
1269	512	45–101
1269	513	45–105
1269	514	45–411
1270	515	45–408
1270	516	45–409
1270	517	R. '02, 32 Stat. 532, ch. 1329
1270	518	45–410
1271	519	45–504
1271	520	45–412
1271	521	45–601
1271	522	45–603
1271	523	45–602
1271	524 to 532	R. '02, 32 Stat. 532, ch. 1329
1272	533	45–604
1272	534	45–611
1273	535	45–612
1273	536	45–613
1273	537	45–619
1274	538	45–614
1274	539	45–615
1274	540 to 543	R. '02, 32 Stat. 533, ch. 1329
1274	544	45–617
1274	545	45–618
1275	546	42–101, 102
1275	547	42–103
1275	548	45–701
1275	549	45–702
1276	550	45–704
1276	551	45–706
1276	552	45–708
1276	553	S. 45–703, 709; S. U. S. C. title 5, § 673
1276	554	R. '02, 32 Stat. 533, ch. 1329
1276	555	45–503
1277	556	45–705
1277	ch. 16, subc. 5	45–301
1279	557	1–401
1279	558	1–501
1279	559	1–402, 502
1279	560	1–503
1279	561	1–504
1279	562	1–505
1279	563	1–506
1279	564	1–507
1279	565	1–508
1279	566	1–510
1279	567	1–509
1280	568	1–511
1280	569	1–512
1280	570	1–513
1280	571	1–514
1280	572	1–515
1280	573	1–516
1280	574	29–401
1281	575	29–402
1281	576	29–403
1281	577	29–404
1281	578	29–405
1281	579	29–406
1281	580	29–407
1281	581	29–408
1281	582	29–409
1281	583	29–410
1282	584	29–411
1282	585	29–412
1282	586	29–413
1282	587	29–501
1282	588	29–502
1282	589	29–503
1282	590	29–504
1282	591	29–505
1282	592	29–506
1283	593	29–507
1283	594	29–508
1283	595	29–509
1283	596	29–510
1283	597	29–511
1283	598	29–512
1283	599	29–601
1284	600	29–602
1284	601	29–603
1284	602	29–604
1284	603	29–605
1284	604	29–606
1284	605	29–201
1285	606	29–202
1285	607	29–203
1285	608	29–204
1285	609	29–205
1285	610	29–206
1285	611	29–207
1285	612	29–208
1286	613	29–209
1286	614	29–210
1286	615	29–211
1286	616	29–212
1286	617	29–213
1286	618	29–214
1286	619	29–215
1286	620	29–216
1286	621	29–217
1287	622	29–218
1287	623	29–219
1287	624	29–220
1287	625	29–221
1287	626	29–222
1287	627	29–223
1287	628	29–224
1287	629	29–225
1287	630	29–226
1288	631	29–227
1288	632	29–228
1288	633	29–229
1288	634	29–230
1288	635	29–231
1288	636	29–232
1288	637	29–233
1288	638	29–234
1288	639	29–235
1288	640	29–236
1289	641	26–302; 29–237
1289	642	44–101
1289	643	44–102
1289	644	44–103
1289	645	35–101
1290	646	35–102
1290	647	35–103
1290	648	35–201
1291	649	35–104
1291	650	35–105
1292	651	35–106
1292	652	35–108
1292	653	35–202
1292	654	35–1201
1293	655	35–1202
1294	656	35–1133
1294	657	35–203
1294	658	27–101
1294	659	27–102
1294	660	27–103
1294	661	27–104
1294	662	27–106
1294	663	27–107
1295	664	27–108
1295	665	27–109
1295	666	27–110
1295	667	27–111
1295	668	27–112
1295	669	27–113
1295	670	27–114
1295	671	27–105
1295	672	27–115
1296	673	27–116
1296	674	27–117
-------	675, 676	27–119a
1297	677	27–120
1297	678	27–121
1297	679	27–122
1297	680	27–123
1297	681	27–115
1298	682	27–124
1298	683	27–125
1298	684	27–126
1298	685	27–127
1298	686	27–128
1298	687	26–401
1299	688	26–401
1299	689	26–402
1299	690	26–403
1299	691	26–404
1299	692	26–406
1299	693	26–407
1299	694	26–408
1300	695	26–409
1300	696	26–410
1300	697	26–411
1300	698	26–412
1300	699	26–413
1300	700	26–414
1301	701	29–301
1301	702	29–301
1301	703	29–302
1301	704	29–303
1301	705	29–304
1301	706	29–305
1301	707	29–306
1301	708	29–307
1301	709	29–308
1302	710	44–211
1302	711	44–210
1302	712	44–212
1302	713	26–101
1303	714	26–102
1303	715	26–301
1303	716	26–304
1303	717	26–305
1303	718	26–306
1304	719	26–307
1304	720	26–308
1304	721	26–309
1305	722	26–310
1305	723	26–311
1305	724	26–312
1306	725	26–313
1306	726	26–314
1306	727	26–315
1306	728	26–316
1306	729	26–317
1307	730	26–318
1307	731	26–319
1307	732	26–320
1307	733	26–321
1307	734	26–322
1308	735	26–323
1308	736	26–324
1308	737	26–325
1308	738	26–326
1308	739	26–327
1308	740	26–328
1308	741	26–329
1308	742	26–330
1309	743	26–331
1309	744	26–332
1309	745	26–333
1309	746	26–334
1309	747	26–335
1309	748	26–336
1310	749	35–901
1310	750	35–902
1310	751	35–903
1311	752	35–904
1312	753	35–905
1312	754	35–906
1313	755	35–907
1313	756	35–908
1314	757	35–909
1314	758	35–910
1314	759	35–911
1314	760	35–912
1315	761	35–913
1315	762	35–914
1315	763	35–915
1316	764	35–916
1316	765	35–917
1316	766	29–101
1316	767	29–102
1316	768	29–701
1317	769	29–702
1317	770	29–703
1317	771	29–704
1317	772	29–705
1317	773	29–706
1317	774	29–707
1317	775	29–708
1318	776	29–709
1318	777	29–710
1318	778	29–711
1318	779	29–712
1318	780	29–713
1318	781	29–714
1318	782	29–715
1319	783	29–716
1319	784	29–717
1319	785	29–718
1319	786	29–719
1319	787	29–720
1319	788	29–721
1319	789	29–722
1320	790	29–723
1320	791	29–724
1320	792	R. '02, 32 Stat. 534, ch. 1329
1320	793	29–725
1320	794	29–726
1320	795	29–727
1321	796	29–728
1321	797	29–729
1321	798	22–2401
1321	799	22–2402
1321	800	22–2403
1321	801	22–2404
1321	802	22–2405
1321	803	22–501
1321	804	22–502
1322	805	22–503
1322	806	22–504
1322	807	22–506
1322	808	22–2801
1322	809	22–201
1322	810	22–2901
1322	811	22–2902
1322	812	22–2101
1322	813	22–2704
1322	814	22–901
1323	815	22–2301
1323	816	22–2302
1323	817	22–2303
1323	818	22–2304
1323	819	22–2305
1323	820	22–401
1323	821	22–402
1323	822	22–404
1323	823	22–1801
1324	824	22–3102
1324	825	22–3104
1324	826	22–2201
1324	827	22–2202
1324	828	22–2208
1324	829	22–2205
1324	830	22–1403
1324	831	22–2206
1325	832	22–2207
1325	833	22–1201
1325	834	22–1202
1325	835	22–1203
1325	836	22–1204
1325	837	22–1205
1325	838	22–1206
1326	839	22–1209
1326	840	22–1405
1326	841	22–1210
1326	842	22–1301
1326	843	22–1401
1327	844	22–3107
1327	845	22–1308
1327	846	22–3119
1327	847	22–3108
1327	848	22–403
1327	849	22–3106
1327	850	22–3114
1327	851	22–3101
1328	852	22–1102
1328	853	22–1103
1328	854	22–1104
1328	855 to 857	R. '32, 47 Stat. 654, § 17
1329	858	22–2501
1330	859	22–1303
1330	860	22–1304
1330	861	22–701
1330	862	22–703
1330	863	22–1501
1330	864	22–1503
1331	865	22–1504
1331	866	22–1505
1331	867	22–1506
1331	868	22–1507
1331	869	22–1508
-------	869e	22–1513
1331	870	22–601
1331	871	22–3002
1332	872	22–2001
1332	873	22–3001
1332	874	22–301
1332	875	22–1901
1332	876	S. 22–1105, 1106
1333	877	48–101
1333	878	48–102
1333	879	22–1402
1333	880	22–3109
1333	881	9–106
1333	882	9–107
1333	883	9–108
1333	884	9–109
1333	885	9–110
1333	886	9–111
1333	887	9–112
1334	888	9–113
1334	889	9–114
1334	890	9–115, 116
1334	891	22–3103
1334	892	22–3407
1334	893	22–3408
1335	894	Temporary
1335	895	22–1701
1335	896	22–1601
1336	897	22–1602
1336	898	22–1604
1336	899	22–1605
1336	900	22–1606
1336	901	22–1703
1336	902	22–1607, 1703
1336	903	22–1608
1336	904	22–101
1336	905	22–102
1337	906	22–103
1337	907	22–104
1337	908	22–105
1337	909	22–106
1337	910	22–107
1337	911	23–301
1338	912	23–302
1338	913	23–303
1338	914	23–304
1338	915	23–201
1338	916	23–202
1338	917	23–203
1338	918	23–107
1338	919	23–108
1339	920	23–109
1339	921	23–110
1339	922	23–111
1339	923	23–112
1339	924	23–113
1339	925	S. 24–402
1340	926	23–114
1340	927	24–301
1340	928	24–302
1340	929	24–303
1340	930	23–401
1340	931	23–402

CODE OF 1901—Continued

Page	Section	D. C. 1950
1340	932	3–101 to 303; 23–101
1341	933	23–102
1341	934	23–103; 24–401
1341	935	23–105
1341	936	24–404
1341	937	24–405
1341	938	23–106
1342	939	23–104
1342	940	18–101
1342	941 to 951	R. '35, 49 Stat. 39 ch. 28, § 3 (B)
1343	952	18–102
1343	953	18–103
1343	954	18–104
1343	955	18–105
1343	956	45–817
1344	957	18–106
1344	958	18–107
1344	959	18–108
1344	960	18–110
1344	961	18–109
1344	962	18–111
1345	963	16–416
1345	964	16–419
1345	965	16–402
1345	966	16–403
1345	967	16–420
1345	968	16–403 note
1345	969	16–404
1345	970	16–405
1345	971	16–401
1346	972	16–406
1346	973	16–407
1346	974	16–408
1346	975	16–410
1346	976	16–411
1346	977	16–412
1346	978	16–413
1346	979	16–414
1346	980	16–415
1346	981	16–422
1347	982	16–418
1347	983	16–417
1347	984	16–501
1347	985	16–503
1347	986	16–504
1347	987	R. '02, 32 Stat. 537, ch. 1329
1347	988	16–505
1347	989	16–506
1348	990	16–507
1348	991	R. '02, 32 Stat. 537, ch. 1329
1348	992	16–508
1348	993	16–509
1348	994	16–510
1348	995	16–511
1348	996	16–512
1348	997	16–513
1349	998	16–514
1349	999	16–515, 1501 note
1349	1000	16–516
1349	1001	16–517
1349	1002	16–518
1349	1003	16–519
1350	1004	16–520
1350	1005	16–521
1350	1006	16–522
1350	1007	16–523
1350	1008	16–524
1350	1009	16–525
1350	1010	16–526
1350	1011	45–801
1350	1012	45–802
1351	1013	45–803
1351	1014	45–804
1351	1015	45–805
1351	1016	45–806
1351	1017	45–807
1351	1018	45–808
1351	1019	45–809
1351	1020	45–810
1351	1021	45–811
1351	1022	45–812
1351	1023	45–102
1351	1024	45–103
1351	1025	45–104
1352	1026	45–813
1352	1027	45–203
1352	1028	45–204
1352	1029	45–814
1352	1030	45–815
1352	1031	45–816
1352	1032	45–818
1352	1033	45–819
1352	1034	45–820
1352	1035	45–821
1352	1036	45–822, 823
1353	1037	45–1001
1353	1038	45–1002
1353	1039	45–1003
1353	1040	45–1004
1353	1041	45–1005
1353	1042	45–1006
1353	1043	45–1007
1353	1044	45–1008
1353	1045	45–1009
1353	1046	45–1010
1353	1047	45–1011
1353	1048	45–1012
1354	1049	45–1013
1354	1050	45–1014
1354	1051	45–1015
1354	1052	45–1016
1354	1053	45–1017
1354	1054	45–1018
1354	1055	45–1019
1354	1056	14–101
1354	1057	14–102
1354	1058	14–201
1356	1059	14–202
1356	1060	14–203
1356	1061	14–103
1357	1062	14–204
1357	1063	14–301
1357	1064	14–302
1357	1065	14–303
1357	1066	14–304
1357	1067	14–305
1358	1068	14–306
1358	1069	14–307
1358	1070	14–401
1358	1071	14–402
1358	1072	14–405
1358	1073	14–308
1358	1074	15–201
1358	1075	15–202
1358	1076	15–203
1359	1077	15–204
1359	1078	15–205
1359	1079	15–206
1359	1080	15–208
1359	1081	15–209
1359	1082	15–210
1359	1083	15–211
1359	1084	15–212
1359	1085	15–214
1359	1086	15–301
1359	1087	15–302
1360	1088	15–303
1360	1089	15–304
1360	1090	15–305
1360	1091	15–306
1360	1092	R. '02, 32 Stat. 541, ch. 1329
1360	1093	15–307
1360	1094	15–308
1360	1095	15–309
1360	1096	15–310
1361	1097	15–311
1361	1098	15–312
1361	1099	R. '02, 32 Stat. 541, ch. 1329
1361	1100	15–313
1361	1101	15–215
1361	1102	15–216
1362	1103	15–217
1362	1104	15–218
1362	1105	15–401
1362	1106	15–402
1363	1107	15–403
1363	1108	11–1501
1363	1109	11–1502
1363	1110	11–1509
1364	1111	11–1503
1365	1112	11–1510
1366	1113	11–1511
1367	1114	11–1520
1367	1115	S. 11–1513
1367	1116	12–301
1367	1117	12–302
1367	1118	12–303
1368	1119	12–304
1368	1120	12–401
1368	1121	12–402
1368	1122	12–403
1369	1123	21–101, 108
1369	1124	21–102
1369	1125	21–103
1369	1126	21–129
1369	1127	21–110
1369	1128	21–112
1369	1129	21–107
1369	1130	21–111
1370	1131	21–119
1370	1132	21–120
1370	1133	21–124
1370	1134	21–125
1370	1135	21–126
1371	1136	21–128
1371	1137	21–127
1371	1138	21–123
1371	1139	21–130
1371	1140	21–114
1371	1141	21–115
1371	1142	21–116
1372	1143	16–801
1372	1144	16–802
1372	1145	16–803
1372	1146	16–804
1372	1147	16–805
1373	1148	16–806
1373	1149	16–807
1373	1150	16–808
1373	1151	30–207
1373	1152	30–205
1374	1153	30–204
1374	1154	30–201
1374	1155	30–208
1374	1156	30–209
1375	1157	30–203
1375	1158	18–202
1375	1159	18–215
1375	1160	R. '20, 41 Stat. 567, ch. 153, § 1
1375	1161	30–212
1375	1162	30–213
1375	1163	30–214
1375	1164	30–215
1375	1165	18–204
1376	1166	30–210
1376	1167, 1168	R. '02, 32 Stat. 542, ch. 1329
1376	1169	45–913
1376	1170	30–202
1376	1171	30–206
1376	1172	18–210
1376	1173	18–211
1377	1174	18–212
1377	1175	18–213
1377	1176	18–214
1377	1177	30–211
1377	1178	28–2701
1377	1179	28–2702
1377	1180	28–2703
1377	1181	28–2704
1378	1182	28–2705
1378	1183	28–2706
1378	1184	28–2707
1378	1185	28–2708
1378	1186	28–2709
1378	1187 to 1190	S. 24–407, 411 note
1379	1191	24–415
1379	1192	24–412
1379	1193	24–413
1379	1194	24–414
1379	1195	S. 3–107; S. 24–411
1379	1196	S. 3–108
1379	1197	24–416
1379	1198	S. 24–417
1379	1199	S. 23–701
1379	1200	23–706
1379	1201	S. 23–704
1379	1202	S. 23–704
1379	1203	23–705
1380	1204	24–421
1380	1205	16–901
1380	1206	16–902
1380	1207	16–903
1380	1208	16–904
1380	1209	16–905
1380	1210	16–906
1380	1211	13–401
1381	1212	15–101
1381	1213	15–102
1381	1214	15–103
1381	1215	15–107
1381	1216	15–108
1381	1217	15–105
1382	1218	45–901
1382	1219	45–902
1382	1220	45–903
1382	1221	45–904
1382	1222	45–905
1382	1223	45–906
1382	1224	45–907
1382	1225	45–910
1382	1226	45–911
1383	1227	45–912
1383	1228	45–914
1383	1229	45–915
1383	1230	45–916
1383	1231	45–917
1383	1232	S. 17–104
1383	1233	S. 17–104
1384	1234	45–932
1384	1235	45–909
1384	1236	45–908
1384	1237	38–101
1384	1238	38–102
1384	1239	38–103
1384	1240	38–104
1385	1241	38–105
1385	1242	38–106
1385	1243	38–107
1385	1244	38–108
1385	1245	38–109
1386	1246	38–110
1386	1247	38–111
1386	1248	38–112
1386	1249	38–113
1386	1250	38–114
1387	1251	38–115
1387	1252	38–116
1387	1253	38–117
1387	1254	38–118
1387	1255	38–119
1387	1256	38–120
1387	1257	38–121
1388	1258	38–122
1388	1259	38–123
1388	1260	38–124
1388	1261	34–103
1388	1262	38–201
1388	1263	34–104; 38–125, 202
1388	1264	34–105; 38–126, 203
1389	1265	12–201
1389	1266	12–202
1389	1267	12–203
1389	1268	12–204
1389	1269	12–205
1389	1270	12–206
1390	1271	12–305, 306
1390	1272	12–207
1390	1273	16–1001
1390	1274	16–1002
1390	1275	16–1003
1390	1276	16–1004
1390	1277	16–1005
1390	1278	16–1006
1391	1279	16–1007
1391	1280	16–1008
1391	1281	16–1009
1391	1282	16–1010
1391	1283	30–101
1391	1284	30–102
1391	1285	30–103
1392	1286	30–104
1392	1287	30–105
1392	1288	30–106
1392	1289	30–107
1392	1290	30–108
1392	1291	30–110
1392	1292	30–111
1392	1293	30–112
1393	1294	30–113
1393	1295	30–114
1393	1296	30–116
1394	1297	30–117
1394	1298	16–1101
1394	1299	16–1102
1394	1300	16–1103
1394	1301	16–1201
1394	1302	16–1202
1395	1303	16–1203
1395	1304	28–101
1395	1305	28–102
1395	1306	28–103
1396	1307	28–104
1396	1308	28–105
1396	1309	28–106
1396	1310	28–107
1396	1311	28–108
1397	1312	28–109
1397	1313	28–110
1397	1314	28–111
1397	1315	28–112
1397	1316	28–113
1397	1317	28–114
1397	1318	28–115
1398	1319	28–116
1398	1320	28–117
1398	1321	28–118
1398	1322	28–119
1398	1323	28–120
1398	1324	28–121
1399	1325	28–122
1399	1326	28–123
1399	1327	28–124
1399	1328	28–201
1399	1329	28–202
1399	1330	28–203
1399	1331	28–204
1399	1332	28–205
1399	1333	28–206
1399	1334	28–301
1399	1335	28–302
1399	1336	28–303
1399	1337	28–304
1399	1338	28–305
1400	1339	28–306
1400	1340	28–307
1400	1341	28–308
1400	1342	28–309
1400	1343	28–310
1400	1344	28–311
1400	1345	28–312
1400	1346	28–313
1400	1347	28–314
1400	1348	28–315
1400	1349	28–316
1401	1350	28–317
1401	1351	28–318
1401	1352	28–319
1401	1353	28–320
1401	1354	28–321
1401	1355	28–401
1401	1356	28–402
1401	1357	28–403
1401	1358	28–404
1401	1359	28–405
1401	1360	28–406
1401	1361	28–407
1402	1362	28–408
1402	1363	28–409
1402	1364	28–501
1402	1365	28–502
1402	1366	28–503
1402	1367	28–504
1402	1368	28–505
1402	1369	28–506
1403	1370	28–507
1403	1371	28–508
1403	1372	28–509
1403	1373	28–510
1403	1374	28–601
1403	1375	28–602
1403	1376	28–603
1403	1377	28–604
1404	1378	28–605
1404	1379	28–606
1404	1380	28–607
1404	1381	28–608
1404	1382	28–609
1404	1383	28–610
1404	1384	28–611
1404	1385	28–612
1404	1386	28–613
1404	1387	28–614
1404	1388	28–615
1404	1389	28–616
1405	1390	28–617
1405	1391	28–618
1405	1392	28–619
1405	1393	28–701
1405	1394	28–702
1405	1395	28–703
1405	1396	28–704
1405	1397	28–705
1405	1398	28–706
1405	1399	28–707
1405	1400	28–708
1406	1401	28–709
1406	1402	28–710
1406	1403	28–711
1406	1404	28–712
1406	1405	28–713
1406	1406	28–714
1406	1407	28–715
1406	1408	28–716
1406	1409	28–717
1406	1410	28–718
1406	1411	28–719
1406	1412	28–720
1407	1413	28–721
1407	1414	28–722
1407	1415	28–723
1407	1416	28–724
1407	1417	28–725
1407	1418	28–726
1407	1419	28–727
1407	1420	28–728
1407	1421	28–729
1407	1422	28–730
1408	1423	28–801
1408	1424	28–802
1408	1425	28–803
1408	1426	28–804
1408	1427	28–805
1408	1428	28–806
1409	1429	28–807
1409	1430	28–901
1409	1431	28–902
1409	1432	28–903

CODE OF 1901—Continued

Page	Section	D. C. 1950	Page	Section	D. C. 1950	Page	Section	D. C. 1950	Page	Section	D. C. 1950	Page	Section	D. C. 1950
1409	1433	28–904	1413	1477	28–949	1417	1521	41–124	1423	1565	16–1903	1428	1605	7–306
1409	1434	28–905	1413	1478	28–950	1417	1522	41–125	1423	1566	16–1904	1428	1606	7–307
1409	1435	28–906	1413	1479	28–951	1417	1523	41–126	1423	1567	16–1905	1429	1607	7–308
1409	1436	28–907	1413	1480	28–952	1417	1524	41–127	1423	1568	16–1906	1429	1608	7–301
1409	1437	28–908	1413	1481	28–953	1417	1525	41–128	1423	1569	16–1907	1430	1609	7–322
1409	1438	28–909	1413	1482	28–954	1417	1526	41–129	1423	1570	16–1908	1430	1610	7–323
1409	1439	28–910	1413	1483	28–955	1417	1527	41–130	1424	1571	16–1909	1430	1611	7–325
1409	1440	28–911	1413	1484	28–956	1418	1528	41–131	1424	1572	16–2001	1431	1612	7–326
1409	1441	28–912	1413	1485	28–957	1418	1529	16–1401	1424	1573	16–2002	1431	1613	7–327
1410	1442	28–913	1414	1486	28–958	1418	1530	16–1402	1424	1574	1–605	1431	1614	7–328
1410	1443	28–914	1414	1487	28–959	1418	1531	13–217	1424	1575	1–611	1431	1615	7–329
1410	1444	28–915	1414	1488	28–1001	1418	1532	13–208	1424	1576	R. '02, 32	1431	1616	7–330
1410	1445	28–916	1414	1489	28–1002	1418	1533	13–209			Stat. 544,	1432	1617	45–1201
1410	1446	28–917	1414	1490	28–1003	1419	1534	13–211			ch. 1329	1432	1618	45–1203
1410	1447	28–918	1414	1491	28–1005	1419	1535	13–213	1424	1577	1–601	1432	1619,	S. 28–1921
1410	1448	28–919	1414	1492	28–1006	1419	1536	13–101	1424	1578	1–602		1620	to 1930
1410	1449	28–921	1414	1493	28–1007	1419	1537	13–103	1425	1579	1–603	1432	1621	28–1918
1411	1450	28–922	1414	1494	41–201	1419	1538	16–1601	1425	1580	1–610	1433	1622	45–1304
1411	1451	28–923	1414	1495	41–202	1420	1539	16–1602	1425	1581	1–620	1433	1623	19–201
1411	1452	28–924	1414	1496	41–203	1420	1540	16–1603	1425	1582	1–621	1433	1624	R. '02, 32
1411	1453	28–925	1415	1497	41–204	1420	1541	16–1604	1425	1583	1–622			Stat. 545,
1411	1454	28–926	1415	1498	41–101	1420	1542	16–1605	1425	1584	1–623			ch. 1329
1411	1455	28–927	1415	1499	41–102	1420	1543	16–1606	1425	1585	1–624	1433	1625	19–101
1411	1456	28–928	1415	1500	41–103	1420	1544	16–1607	1425	1586	1–625	1433	1626	19–103
1411	1457	28–929	1415	1501	41–104	1420	1545	16–1608	1426	1587	1–626	1433	1627	19–108
1412	1458	28–930	1415	1502	41–105	1420	1546	16–1609	1426	1588	1–627	1433	1628	19–205
1412	1459	28–931	1415	1503	41–106	1420	1547	16–1610	1426	1589	1–628	1434	1629	19–107
1412	1460	28–932	1415	1504	41–107	1421	1548	16–1611	1426	1590	1–617	1434	1630	19–109
1412	1461	28–933	1415	1505	41–108	1421	1549	16–1801	1426	1591	1–616	1434	1631	19–110
1412	1462	28–934	1416	1506	41–109	1421	1550	16–1802	1426	1592	1–604	1434	1632	19–204
1412	1463	28–935	1416	1507	41–110	1421	1551	16–1803	1426	1593	1–629	1434	1633	19–203
1412	1464	28–936	1416	1508	41–111	1421	1552	16–1804	1426	1594	1–612	1434	1634	19–102
1412	1465	28–937	1416	1509	41–112	1421	1553	16–1805	1427	1595	1–618	1434	1635	19–202
1412	1466	28–938	1416	1510	41–113	1421	1554	16–1806	1427	1596	1–607	1434	1636	14–308;
1412	1467	28–939	1416	1511	41–114	1421	1555	16–1807	1427	1597	R. '35, 49			49–304 note
1412	1468	28–940	1416	1512	41–115	1421	1556	16–1808			Stat. 431,	1435	1637	49–304 note
1412	1469	28–941	1416	1513	41–116	1422	1557	16–1809			ch. 332, § 4	1435	1638	49–304 note
1412	1470	28–942	1416	1514	41–117	1422	1558	16–1810	1427	1598	1–619	1436	1639	49–304 note
1412	1471	28–943	1416	1515	41–118	1422	1559	16–1811	1427	1599	1–606	1436	1640	49–304 note
1413	1472	28–944	1416	1516	41–119	1422	1560	16–1812	1427	1600	1–608	1436	1641	49–304 note
1413	1473	28–945	1416	1517	41–120	1422	1561	16–1813	1427	1601	1–613	1436	1642	49–304 note
1413	1474	28–946	1416	1518	41–121	1422	1562	16–1814	1428	1602	1–614	1436	1643	49–304 note
1413	1475	28–947	1417	1519	41–122	1422	1563	16–1901	1428	1603	1–615			
1413	1476	28–948	1417	1520	41–123	1423	1564	16–1902	1428	1604	7–125			

Section	D. C. 1950
Title 1:	
1	49–101
2	49–102
3	49–103
4	49–104
5	49–105
6	49–106
7	49–107
8	49–108
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11	49–201
12	49–202
13	49–203
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15	49–205
16	49–206
17	49–207
21	49–301
22	49–302
23	49–303
Title 2:	
1	28–2501
2	28–2502
3	28–2503
4	28–2504
21	28–2601
22	28–2602
23	28–2603
24	28–2604
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26	28–2606
27	28–2607
28	28–2608
29	28–2609
30	28–2610
Title 3:	
1	28–2401
2	28–2402
3	28–2403
4	28–2404
5	28–2405
6	28–2406
7	28–2407
Title 4:	
1	1–401
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13	1–503
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16	1–506
17	1–507
18	1–508
19	1–509
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22	1–512
23	1–513
24	1–516
Title 5:	
1	29–101
2	29–102
3	29–103
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22	29–302
23	29–303
24	29–304
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26	29–306
27	29–307
28	29–308
41	26–401
42	26–402
43	26–403
44	26–404
45	26–405
46	26–406
47	26–407
48	26–408
49	26–409
50	26–410
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71	27–101
72	27–102
73	27–103
Title 5:	
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77	27–107
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87	27–117
88	27–118
89	27–119
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98	27–128
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124	29–604
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147	35–907
148	35–908
149	35–909
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151	35–911
152	35–912
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154	35–914
155	35–915
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165	35–922
166	35–923
167	35–924
168	35–925
169	35–926
170	35–927
170a	35–928
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172	35–102
173	35–103
174	35–201
175	35–104
176	35–105
177	35–106
177a	35–107
178	35–108
179	35–202
180	35–1201
181	35–1202
181a	35–1001
181b	35–1002
181c	35–1003
181d	35–1004
181e	35–1005
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183a	35–204
183b	35–205
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194	35–1111
195	35–1112
Title 5:	
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204	35–1121
205	35–1122
206	35–1123
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216a	35–302
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217d	35–405
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217g	35–408
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217m	35–414
217n	35–415
217*o*	35–416
217p	35–417
217q	35–418
217r	35–419
217s	35–420
217t	35–421
217u	35–422
217v	35–423
217w	35–423
217x	35–424
217y	35–426
217z	35–427
217aa	35–428
217bb	35–429
217cc	35–430
217dd	35–431
217ee	35–432
218	35–501
218a	35–502
218b	35–503
218c	35–504
218d	35–505
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218g	35–508
218h	35–509
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218j	35–511
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218m	35–514
218n	35–515
218*o*	35–516
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218s	35–520
218t	35–521
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218y	35–526
218z	35–527
218aa	35–528
218bb	35–529
218cc	35–530
218dd	35–531
218ee	35–532
218ff	35–533
218gg	35–534
218hh	35–535
218ii	35–536
218jj	35–537
218kk	35–538
Title 5:	
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219a	35–602
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220a	35–702
220b	35–703
220c	35–704
220d	35–705
220e	35–706
220f	35–707
220g	35–708
220h	35–709
220i	35–710
220j	35–711
220k	35–712
220*l*	35–713
220m	35–714
220n	35–715
220*o*	35–716
220p	35–717
220q	35–718
220r	35–719
220s	35–720
220t	35–721
221	35–801
221a	35–802
221b	35–803
221c	35-801 note
231	29–401
232	29–402
233	29–403
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295	29–235
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299	26–102
300	26–103
300a	26–104; R. 26–104 note.[1]
300b	26–107
300c	26–108
Title 5:	
300d	26–109
301	29–238
302	29–239
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341	26–301
342	26–302
342a	26–303
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390a	26–511
390b	26–512
390c	26–513
390d	26–514
390e	26–515
390f	26–516
390g	26–517
390h	26–518
391	29–701
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397	29–707
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401	29–711
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403	29–713
404	29–714

[1] Repealed in part.

CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1950
Title 5:	
405	29–715
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414	29–724
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416	29–726
417	29–727
418	29–728
419	29–729
Title 6:	
1	22–101
2	22–102
3	22–103
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35	22–2902
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42	22–2305
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53	22–403
54	22–404
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57	22–3102
58	22–3104
59	22–3105
60	22–2201
61	22–2202
62	22–2204
63	22–3106
64	22–2205
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66	22–2207
67	22–2208
68	22–1403
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70	22–1405
71	22–1406
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73	22–3116
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74a	22–3118
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77	22–1203
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92	22–3109
93	22–3110
94	22–3111
95	22–3112
96	22–3113
97	22–3114
98	22–2203
99	22–1207
111	22–1102
112	22–1103
113	22–1104

Section	D. C. 1950
Title 6:	
114	R. '32, 47 Stat. 654, ch. 465, § 17
116	22–3201
116a	22–3202
116b	22–3203
116c	22–3204
116d	22–3205
116e	22–3206
116f	22–3207
116g	22–3208
116h	22–3209
116i	22–3210
116j	22–3211
116k	22–3212
116*l*	22–3213
116m	22–3214
116n	22–3215
116*o*	22–3216
116p	22–1107
117	22–1110
118	22–1114
119	22–1115
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131	22–1303
132	22–1304
133	22–701
134	22–702
135	22–703
136	22–2601
137	22–704
138	22–1501
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151a	22–1503
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153	22–1505
154	22–1506
155	22–1507
156	22–1508
157	22–1509
158	22–1510
159	22–1511
160	22–1512
161	22–3409
162	22–3410
162a	22–3411
162b	22–3412
162c	22–1407
163	22–1408
163a	22–1409
163b	22–601
171	22–3001
172	22–3002
173	22–2001
174	22–301
175	22–1901
176	22–1001
176a	R. '35, 49 Stat. 651, ch. 546, § 4
177	22–2701
177a	22–2702
177b	22–2703
177c	22–2704
178	22–2705
179	22–2706
180	22–2707
181	22–2708
182	22–2709
183	22–2710, 2713
184	22–2711, 2714
185	22–2712, 2715
186	22–2716
187	22–2717
188	22–2718
189	22–2719
190	22–2720
191	22–2721
192	22–2722
193	22–1601
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206	22–1607
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215	22–1616
216	22–1617
217	22–1618
218	22–1619
219	22–1620
220	22–1621
221	22–1622
222	22–1623

Section	D. C. 1950
Title 6:	
223	22–1624
224	R. '32, 47 Stat. 661, ch. 478, § 2
225	22–1625
226	22–1626
227	22–1627
228	40–601
241	40–602
242	40–603
243	40–604
243a	40–301
244	40–303
245	40–302(c)
245a	40–605
246	40–606
246a	40–607
246b	40–608
246c	40–609
247	40–610
248	40–611
249	40–302
250	40–612
250a	R. '31, 46 Stat. 1426, ch. 317, § 4
251	40–613
252	40–615
253	40–617
254	40–401
255	40–402
255a	40–403
255b	40–404
255c	40–405
255d	40–406
255e	40–407
255f	40–408
255g	40–409
255h	40–410
255i	40–411
255j	40–412
255k	40–413
255*l*	40–414
255m	40–415
255n	40–416
255*o*	40–201
256	40–202
256a	40–203
256b	40–204
256c	40–205
256d	40–206
256e	40–207
256f	22–3404
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264	22–1411
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280	22–807
281	22–808
282	22–809
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299	22–1307
300	22–1120
301	22–1305
302	22–1306
303	22–1701
304	22–1702
305	22–1703
306	22–3407
307	22–3408
308	Obsolete
309	

Section	D. C. 1950
Title 6:	
310	22–3120
311	22–3121
312	22–3122
313	22–3401
314	22–3402
315	22–3403
316	22–3413
317	22–2602
318	22–1111
319 to 330	R. '33, 48 Stat. 28, ch. 19, § 12
331	S. 25–128
332 to 339	R. '33, 48 Stat. 28, ch. 19, § 12
340	S. 25–127
341 to 344	R. '33, 48 Stat. 28, ch. 19, § 12
345	33–401
345a	33–402
345b	33–403
345c	33–404
345d	33–405
345e	33–406
345f	33–407
345g	33–408
345h	33–409
345i	33–410
345j	33–411
345k	33–412
345*l*	33–413
345m	33–414
345n	33–415
345*o*	33–416
345p	33–417
345q	33–418
345r	33–419
345s	33–420
345t	33–421
345u	33–422
345v	33–423
345w	33–424
345x	33–425
345y	Repealing Title of act
345z	23–101
351	23–102
352	23–103
353	23–104
354	23–105
355	23–106
356	23–301
357	23–302
358	23–303
359	23–304
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360a	23–201
361	23–202
362	23–203
363	23–204
364	23–205
365	23–107
366	23–108
367	23–109
368	23–110
369	23–111
370	23–112
371	23–113
372	23–114
373	24–301
374	24–302
375	24–303
376	23–401
377	23–402
378	23–403
379	23–404
380	23–405
381	23–406
382	23–407
383	23–408
384	23–409
385	23–410
386	23–601
387	23–602
388	23–603
389	23–604
390	23–605
391	23–606
392	23–607
393	23–608
394	23–609
395	23–610
396	23–611
397	23–612
398	24–401
401	24–402
402	24–403
403	24–404
404	24–405
405	24–406
406	24–407
407	24–408
408	24–409
409	24–410

Section	D. C. 1950
Title 6:	
410	24–411
411	24–412
412	24–413
413	24–414
414	24–415
415	24–416
416	24–417
417	24–418
418	23–701
419	23–702
420	23–703
421	23–704
422	23–705
423	23–706
424	24–101
425	24–102
426	24–103
427	24–104
428	24–105
429	24–418
430	24–419
431	24–420
432	24–421
433	24–422
434	24–423
435	24–424
451	24–201
452	24–202
453	24–203
454	24–204
455	24–205
456	24–206
457	24–207
458	24–208
459	24–209
481	23–501
482	23–502
483	23–503
484	23–504
Title 7:	
1	31–101
2	31–102
3	31–103
4	31–104
5	31–105
5a	31–106
5b	31–107
6	31–108
7, 8	31–109 note
9	31–110
10	31–111
11	31–112
12	31–113
13	31–114
14	31–115
15	31–116
16	31–117
17	31–118
31	31–610
31a	31–611
31b	31–612
31c	31–613
31d	31–614
31e	31–615
31f	31–616
32	31–617
33	31–618
34	31–619
34a	31–620
35	31–621
35a	31–622
35b	31–623
35c	31–624
36	31–626
37	31–627
38	31–628
39	31–629
40	31–119
41	31–109
42	31–601
43	31–602
44	31–603
45	31–604
46	31–605
47	31–606
48	31–607
49	31–608
50	31–609
51	31–630
52	31–631
53	31–625
61	31–701
62	31–702
63	31–703
64	31–704
65	31–705
66	31–706
67	31–707
68	31–708
69	31–709
70	31–710
70a	31–711

CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950
Title 7:		**Title 7:**		**Title 8:**		**Title 8:**		**Title 11:**	
71	31-712	244	31-1104	141	32-301	318	46-307	44	28-2314
72	31-713	245	31-1105	142	32-302	319	46-308	60	28-1101 note
73	31-714	246	31-1106	143	32-303	320	46-309	61	28-1101
74	31-715	246a	31-1107	144	32-304	321	46-310	62	28-1102
75	31-716	247	31-1108	145	32-305	322	46-311	63	28-1103
76	31-717	248	31-1109	146	32-306	323	46-312	64	28-1104
77	31-718	249	31-1110	147	32-307	324	46-313	65	28-1105
78	31-719	250	31-1111	148	32-308	325	46-314	66	28-1106
79	31-720	251	31-1112	148a	32-309	326	46-315	67	28-1107
91	31-201	252	31-1113	149	32-310	327	46-316	68	28-1108
92	31-202	253	31-401	150	32-311	328	46-317	69	28-1109
93	31-203	254	31-402	151	32-312	329	46-318	70	28-1110
94	31-204	255	31-403	152	32-312 note	330	46-319	71	28-1111
95	31-205	256	31-404	153	32-314	331	46-320	72	28-1112
96	31-206	257	31-405	154	32-315	332	46-321	73	28-1113
97	31-207	258	31-406	155	32-316	333	46-322	74	28-1114
98	31-208	259	31-1114	156	32-317	334	46-323	75	28-1115
99	31-209	260	31-1115	157	32-318	335	46-324	76	28-1116
100	31-210	**Title 8:**		158	32-319	**Title 9:**		77	28-1201
111	36-201	1	3-101	159	32-320	1	14-101	78	28-1202
112	36-202	2	3-102	171	32-801	2	14-102	79	28-1203
113	36-203	3	3-103	172	32-802	3	14-201	80	28-1204
114	36-204	4	3-104	173	32-803	4	14-202	81	28-1205
115	36-205	5	3-105	174	32-804	5	14-203	82	28-1206
116	36-206	6	3-106	175	32-805	6	14-103	83	28-1207
117	36-207	7	3-107	176	32-806	7	14-204	84	28-1208
118	36-208	8	3-108	177	32-807	8	14-301	85	28-1209
119	36-209	9	3 109	178	32-808	9	14-302	86	28-1210
120	36-210	10	3-110	179	32-809	10	14-303	87	28-1211
121	36-211	11	3-111	180	32-810	11	14-304	88	28-1212
122	36-212	12	3-112	181	32-811	12	14-305	89	28-1213
123	36-213	13	3-113	182	32-812	13	14-306	90	28-1214
124	36-214	14	3-114	183	32-813	14	14-307	91	28-1215
125	36-215	15	3-115	184	32-814	15	14-401	92	28-1216
126	36-216	16	3-116	185	32-815	16	14-402	93	28-1217
127	36-217	17	3-117	186	32-816	17	14-403	94	28-1218
128	36-218	18	3-118	187	32-817	18	14-404	95	28-1219
129	36-219	19	3-119	188	32-818	19	14-405	96	28-1220
130	36-220	20	3-120	189	32-819	20	14-308	97	28-1221
131	36-221	21	3-121	190	32-820	21	14-104	98	28-1222
132	36-222	22	3-122	191	32-821	22	14-406	99	28-1223
133	36-223	23	3-123	192	32-822	23	14-309	100	28-1224
134	36-224	24	3-124	211	32-901	31	14-501	101	28-1301
135	36-225	25	3-125	212	32-902	32	14-502	102	28-1302
136	36-226	41	32-501	213	32-903	**Title 10:**		103	28-1303
137	36-227	42	32-502	214	32-904	1	11-1501	104	28-1304
141	31-211	43	32-503	215	32-905	2	11-1502	105	28-1305
142	31-212	44	32-504	216	32-906	3	11-1503	106	28-1306
143	31-213	51	32-601	217	32-907	4	11-1504	107	28-1307
161	31-301	52	32-602	218	32-908	5	11-1505	108	28-1308
162	31-302	53	32-603	219	32-909	6	11-1506	109	28-1309
163	31-303	54	32-604	220	32-910	7	11-1507	110	28-1310
164	31-304	55	32-605	221	32-911	8	11-1508	111	28-1311
165	31-305	56	32-606	222	32-912	9	11-1509	112	28-1401
171	31-801	57	32-607	223	32-913	10	11-1510	113	28-1402
172	31-802	58	32-608	231	32-1001	11	11-1511	114	28-1403
173	31-803	59	32-609	232	32-1002	12	1-514	115	28-1404
174	31-804	60	32-610	233	32-1003	13	1-515	116	28-1405
175	31-805	61	32-611	234	32-1004	14	45-708	117	28-1406
176	31-806	62	32-612	235	32-1005	15	45-709	118	28-1407
177	31-807	63	32-613	236	32-1006	16	11-1512	119	28-1408
178	31-808	64	32-614	237	32-1007	17	11-1513	120	28-1409
179	31-809	65	32-615	238	32-1008	18	11-1514	121	28-1410
191	31-901	66	32-616	239	32-1009	19	Effective	122	28-1411
192	31-902	67	32-617	251	46-101		date	123	28-1501
193	31-903	68	32-618	252	46-102	20	11-1515	124	28-1502
194	31-904	69	32-619	253	46-103	21	5-316	125	28-1503
195	31-905	70	32-620	254	46-104	22	1-629	126	28-1504
201	31-501	71	32-621	255	46-105	23	5-429	127	28-1505
202	31-502	72	32-622	256	46-106	24	6-103	128	28-1506
203	31-503	73	32-623	257	46-107	25	11-1516	129	28-1507
204	31-504	74	32-624	258	46-108	26	11-1517	130	28-1508
205	31-505	75	32-625	259	46-109	27	11-1518	131	28-1601
206	31-506	76	32-626	260	46-110	28	11-1519	132	28-1602
207	31-507	77	32-627	261	46-111	**Title 11:**		133	28-1603
211	31-1001	78	32-628	262	46-112	1	12-301	134	28-1604
212	31-1002	79	32-629	263	46-113	2	12-302	135	28-1605
213	31-1003	91	32-701	264	46-114	3	12-303	136	28-1606
214	31-1004	92	32-702	265	46-115	4	12-304	136a	28-1607
215	31-1005	93	32-703	266	46-116	5	12-305	137	28-1608 note
216	31-1006	94	32-704	281	46-201	6	12-306	138	28-1608
217	31-1007	95	32-705	282	46-202	11	12-401	**Title 12:**	
218	31-1008	96	32-706	283	46-203	12	12-402	1	7-101
219	31-1009	97	32-707	284	46-204	13	12-403	2	7-102
220	31-1010	98	32-708	285	46-205	14	28-1701	2a	7-103
221	31-1011	99	32-709	286	46-206	15	28-1702	3	7-104
222	31-1012	100	32-710	287	46-207	16	28-1703	4	7-105
223	31-1013	111	32-101	288	46-208	17	28-1704	5	7-106
224	31-1014	112	32-102	289	46-209	18	28-1705	6	7-107
225	31-1015	113	32-103	290	46-210	31	28-2301	7	7-108
226	31-1016	114	32-104	291	46-211	32	28-2302	8	7-109
227	31-1017	121	32-201	292	46-212	33	28-2303	9	7-110
228	31-1018	122	32-202	293	46-213	34	28-2304	10	7-111
229	31-1019	123	32-203	294	46-214	35	28-2305	11	7-112
230	31-1020	124	32-204	295	46-215	36	28-2306	12	7-113
231	31-1021	125	32-205	311	46-301	37	28-2307	13	7-114
232	31-1022	126	32-206	312	46-302	38	28-2308	14	7-115
233	31-1023	127	32-207	313	46-303	39	28-2309	15	7-116
234	31-1024	128	32-208	314	46-304	40	28-2310	16	7-117
241	31-1101	129	32-209	315	Temporary	41	28-2311	17	7-118
242	31-1102	130	32-210	316	46-305	42	28-2312	18	7-119
243	31-1103	131	32-211	317	46-306	43	28-2313	19	7-120

CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1950
Title 12:	
20	7-121
21	7-123 note
22	7-123 note
23	7-123 note
24	7-122 note
25	7-122 note
26	7-123 note
27	7-122 note
28	7-122 note
29	7-122 note
30	7-122 note
31	7-123 note
32	7-122 note
33	7-122 note
34	7-123 note
35	7-122 note
36	7-122 note
37	7-122
38	7-122 note
39	7-123
40	7-124
41	7-125
42	7-126
43	7-127
44	7-128
45	7-129
46	7-130
47	7-131
48	7-107 note
49	7-107 note
50	7-107 note
50a	7-107 note
51	7-501
52	7-502
53	7-503
54	7-504
55	7-505
55a	7-506
56	7-507
57	7-508
58	7-509
59	7-510
60	7-511
61	7-512
61a	7-513
61b	7-514
62	7-515
63	7-516
64	7-517
65	7-518
66	7-519
67	7-520
68	7-521
69	Temporary
70	7-522
70a	7-523
70b	7-524
71	7-601
72	7-602
73	7-603
74	7-604
75	7-605
76	7-606
77	7-607
78	7-608
78a	7-609
79	7-610
80	7-611
81	7-612
82	7-613
83	7-614
84	7-615
85	7-616
86	7-617
87	7-618
88	7-619
89	7-620
90	7-621
90a	7-622
90b	7-623
90c	7-624
90d	7-625
90e	7-626
90f	7-627
90g	7-628
90h	7-629
90i	7-630
90j	7-631
90k	7-632
90l	7-633
90m	7-633 note
90n	7-634
91	7-701
92	7-702
93	7-703
94	7-704
95	7-705
96	7-706
97, 98	S. 7-707
98a	7-707
99	7-708
100	7-709

Section	D. C. 1950
Title 12:	
101	7-710
111	7-1201
112	7-1202
113	7-1203
114	7-1204
115	7-1205
116	7-1206
117	7-1207
118	7-1208
118a	7-1209
119	7-1210
120	7-1211
121	7-1212
122	7-1213
123	7-1214
124	7-1215
125	7-1216
126	7-1217
127	7-1218
128	7-1219
129	7-1220
130	7-1221
131	7-1221
132	7-1223
133	7-1224
134	7-1225
135	7-1226
136	7-1227
137	7-1228
138	7-1229
139	7-1230
140	7-1231
141	7-1232
142	7-1233
143	7-1234
Title 13:	
1	34-101
2	34-102
3	34-103
4	38-201
5	34-104; 38-202
6	34-105; 38-203
Title 14:	
1	30-101
2	30-102
3	30-103
4	30-104
5	30-105
6	30-106
7	30-107
8	30-108
8a	30-109
9	30-110
10	30-111
11	30-112
12	30-113
13	30-114
14	30-115
15	30-116
16	30-117
21	30-201
22	30-202
23	30-203
24	30-204
25	30-205
26	30-206
27	30-207
28	18-201
29	18-202
30	18-203
31	18-204
32	18-205
33	18-206
34	18-207
35	18-208
36	18-209
37	18-210
38	18-211
39	18-212
40	18-213
41	18-214
42	18-215
43	30-208
44	30-209
45	30-210
46	30-211
47	30-212
48	30-213
49	30-214
50	30-215
51	30-216
61	16-401
62	16-402
63	16-403
64	16-403 note
65	16-404
66	16-405
67	16-406
68	16-407
69	16-408
69a	16-409
70	16-410

Section	D. C. 1950
Title 14:	
71	16-411
72	16-412
73	16-413
74	16-414
75	16-415
76	16-416
77	16-417
78	16-418
79	16-419
80	16-420
81	16-421
82	16-422
Title 15:	
1	16-207 note
1a	16-201
1b	16-202
1c	16-203
1d	16-204
1e	16-205
1f	16-206
1g	16-207
11	36-101
12	36-102
13	36-103
14	36-104
15	36-105
16	36-106
17	36-107
18	36-108
19	36-109
20	36-110
21	36-111
31	21-101
32	21-102
33	21-103
34	21-104
34a	21-105
35	21-106
36	21-107
37	21-108
38	21-109
39	21-110
40	21-111
41	21-112
42	21-113
43	21-114
44	21-115
45	21-116
46	21-117
47	21-118
48	21-119
49	21-120
50	21-121
51	21-122
52	21-123
53	21-124
54	21-125
55	21-126
56	21-127
57	21-128
58	21-129
59	21-130
61	21-201
62	21-202
63	21-203
64	21-204
65	21-205
66	21-206
67	21-207
68	21-208
69	21-209
70	21-210
71	21-211
72	21-212
73	21-213
Title 16:	
1	21-310 note
2	21-301
3	21-302
4	21-303
5	21-304
6	21-305
11	32-401
12	32-402
12a	32-403
13	32-404
13a	32-405
14	32-406
15	21-319
16, 17	S. 21-317
18	21-306
19	21-307
20	21-320
21	32-407
31	21-326
32	21-327
33	21-328
34	21-329
35	21-330
36	21-331
37	21-332
38	21-333

Section	D. C. 1950
Title 16:	
41	S. 21-310
42	21-308
42a	21-309
43-57	S. 21-310 to 325
58	21-310
59	21-311
60	21-312
61	21-313
62	21-314
63	21-315
64	21-316
65	21-317
66	21-318
67	21-320
68	21-321
69	21-322
70	21-323
71	21-324
72	21-325
Title 17:	
1	28-2701
2	28-2702
3	28-2703
4	28-2704
5	28-2705
6	28-2706
7	28-2707
8	28-2708
9	28-2709
21	26-601
22	26-602
23	26-603
24	26-604
25	26-605
26	26-606
27	26-607
28	26-608
29	26-609
30	26-610
31	26-611
Title 18:	
1	11-101
2	11-102
21	11-201
21a	11-202
21b	11-203
22	11-202
23	11-203
24	11-204
25	11-205
26	17-101
27	17-102
28	17-103
29	17-104
30	S. 11-934
31	11-206
32	11-207
33	11-208
34	11-209
35	11-210
36	11-211
41	11-301
42	11-302
43	11-305
44	11-306
45	11-307
46	11-308
47	11-309
48	11-303
49	11-304
50	11-310
51	11-312
52	11-1301
53	11-1302
54	11-1303
55	11-1304
56	11-311
57	11-315
58	11-313
59	11-314
60	11-329
61	16-201 to 207
62	11-330
71	11-316
72	11-317
73	11-318
74	11-319
75	11-320
76	11-321
81	11-322
82	11-323
91	11-324
101	11-325
102	11-326
103	11-327
104	11-328
111	11-401
112	11-402
113	11-403
121	11-501
122	11-502

Section	D. C. 1950
Title 18:	
123	11-503
124	11-504
125	11-505
126	11-506
127	11-507
128	11-508
129	11-509
130	11-510
131	11-511
132	11-512
133	11-513
134	11-514
135	11-515
136	11-516
137	11-517
138	11-518
139	11-519
140	11-520
151	11-601
152	11-602
152a	11-603
153	11-604
154	11-605
155	11-606
156	11-607
157	11-608
158	11-609
159	11-610
160	11-611
161	11-612
162	11-613
163	11-614
164	11-615
165	11-616
166	11-617
167	11-618
168	11-619
169	11-620
170	11-621
171	11-622
172	11-623
173	11-624
174	11-625
175	11-626
176	11-627
191	11-701
192	11-702
193	11-703
194	11-704
195	11-705
196	11-706
197	11-707
198	11-708
199	11-709
200	11-710
201	11-711
202	11-712
203	11-713
204	11-714
205	11-715
206	11-716
207	11-717
208	11-718
209	11-719
210	11-720
211	11-721
212	11-722
213	11-723
214	11-724
215	11-725
216	11-726
217	11-727
218	11-728
219	11-729
220	11-730
221	11-731
222	11-732
223	11-733
224	11-734
225	11-735
226	11-736
227	11-737
228	11-738
229	11-739
230	11-740
231	11-741
232	11-742
233	11-743
234	11-744
235	11-745
236	11-746
237	11-747
238	11-748
239	11-749
241	11-801
241a	11-802
241b	11-803
241c	11-804
241d	11-805
241e	11-806
241f	11-807
241g	11-808

CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950
Title 18:		Title 19:		Title 19:		Title 20:		Title 20:	
241h	11-809	24	36-304	169	48-209	55	1-812	176	2-806
241i	11-810	25	36-305	170	48-210	56	1-813	177	2-807
241j	11-811	26	36-306	171	48-211	56a	1-814	178	2-808
241k	11-812	27	36-307	181	48-301	56b	1-815	179	2-809
241*l*	11-813	28	36-308	182	48-302	57	1-816	180	2-810
241m	11-814	29	36-309	183	48-303	58	1-817	181	2-811
241n	11-815	30	36-310	184	48-304	59	1-237	182	2-812
241*o*	11-816	31	36-311	185	48-305	60	1-724	191	2-601
241p	11-817	41	6-601	186	48-306	61	1-725	192	2-602 note
241q	11-818	42	6-602	187	48-307	62	1-726	193	2-602
241r	11-819	43	6-603	191	48-401	63	1-727	194	2-603
241s	Repealing	44	6-604	192	48-402	64	S. 1-703, 707,	195	2-604
241t	11-820	45	6-605	193	48-403		710	196	2-605
241u	Effective date	46	6-606	201	R. '38, 52	65	S. 1-707	197	2-606
251	11-901	47	6-607		Stat. 624,	66	S. 1-714	198	2-607
251a	11-902	48	6-608		ch. 322, § 18	67	1-704	199	2-608
252	11-903	61-65	R. '35, 49	211	36-401	68	S. 1-709	200	2-609
253	11-904		Stat. 653,	212	36-402	69	1-719	201	2-610
254	11-905		ch. 549, § 5	213	36-403	70	1-720	202	2-611
255	11-906	65	6-802 note	214	36-404	71	1-721	203	2-612
256	11-907	66	6-801	215	36-405	72	1-722	204	2-613
257	11-908	67	6-802	216	36-406	73	1-723	205	2-614
258	11-909	68	6-803	217	Temporary	74	1-316	206	2-615
259	11-910	69	6-804	218	36-407	75	1-317	207	2-616
260	11-911	70	Repealing	219	36-408	76	1-310	208	2-617
261	11-912	71	7-801	220	36-409	77	1-308	211-238	S. 2-301 to 331
262	11-913	72	7. 802	221	36-410	78	1-309	241	2-401
263	11-914	73	7-803	222	36-411	79	1-304	242	2-402
264	11-915	74	7-804	223	36-412	80	1-305	243	2-403
265	11-916	75	7-805	224	36-413	81	1-306	244	2-404
266	11-917	76	7-806	225	36-414	82	1-301	245	Obsolete
267	11-918	81	44-401	226	36-415	83	1-302	246	2-405
268	11-919	82	44-402	227	36-416	84	1-303	247	2-406
269	11-920	83	44-403	228	36-417	85	1-312	248	2-407
270	11-921	84	44-404	229	36-418	86	1-728	249	2-408
271	11-922	85	44-405	230	36-419	87	1-729	250	2-409
272	11-923	86	44-101	231	36-420	88	1-313	251	2-410
273	11-924	87	44-102	232	36-421	89	1-314	252	2-411
274	11-925	38	44-103	233	36-422	90	1-315	261	2-501
275	11-926	91	7-1001	Title 20:		91	1-307	262	2-502
276	11-927	101	16-701	1	1-101	92-95	Temporary	263	2-503
277	11-928	102	16-702	2	1-102	95a	1-311	264	2-504
278	11-929	103	16-703	3	1-103	96	40-503 note	265	2-505
279	11-930	104	16-704	4	1-104	97	40-502, 503	266	2-506
280	11-931	105	16-705	5	1-105	98	40-501	267	2-507
281	11-932	106	16-706	6	1-106	99	1-818	268	2-508
282	11-933	107	16-707	7	1-107	100	1-819	269	2-509
283	11-934	111	28-2801	8	1-108	101	1-239	270	2-510
284	11-935	112	28-2802	9	1-218	102	1-240	271	2-511
285	11-936	113	28-2803	9a	1-214	103	1-902	272	2-512
286	11-937	121	43-1301	10	1-238	104	1-903	273	2-513
287	11-938	122	43-1302	11	1-220	105	1-904	274	2-514
288	11-939	123	43-1303	12	1-201	106	1-905	275	2-515
289	11-940	124	43-1304 note	13	1-202	107	43-1304 note	276	2-516
290	11-941	125	43-1304 note	14	1-203	107a	43-1304 note	277	2-517
291	11-942	126	43-1304 note	15	1-204	107b	43-1304 note	278	2-518
292	11-901 note	127	43-1304 note	16	1-205	107c	43-1304 note	279	2-519
293	Repealing	128	43-1304 note	17	1-206	121	2-101	280	2-520
301	11-1001	129	43-1304 note	18	1-207	122	2-102	281	2-521
302	11 1002	130	43-1304 note	19	1-208	123	2-103	282	2-522
311	11-1101	130a	43-1304 note	20	R. '35, 49	124	2-104	291	2-901
312	11-1102	130b	43-1304 note		Stat. 430,	125	2-105	292	2-902
313	11-1103	130c	43-1304 note		ch. 332, § 1	126	2-106	293	2-903
314	11-1104	130d	43-1304 note	20a	1-213	127	2-107	294	2-904
321	11-1201	130e	43-1304 note	21	1-209	128	2-108	295	2-905
322	11-1202	130f	43-1304	22	1-210	129	2-109	296	2-906
323	11-1203	130g	43-1304 note	23	1-211	130	2-110	297	2-907
324	11-1204	130h	43-1304 note	24	1-212	131	2-111	298	2-908
325	11-1205	130i	43-1304 note	25	1-901	132	2-112	299	2-909
326	11-1206	130j	43-1304 note	26	1-219	133	2-113	301	2-1001
327	11-1207	130k	43-1304 note	27	1-215	134	2-114	302	2-1002
328	11-1208	130*l*	43-1304 note	28	1-216	135	2-115	303	2-1003
341	11-1401	130m	43-1304 note	28a	1-217	136	2-116	304	2-1004
342	11-1402	130n	43-1304 note	29	1-221	137	2-117	305	2-1005
343	11-1403	130*o*	43-1304 note;	30	1-222	138	2-118	306	2-1006
344	11-1404		44-104	31	1-223	139	2-119	307	2-1007
345	11-1405	130p	43-1304 note;	32	1-224	140	2-120	308	2-1008
346	11-1406		44-105	33	1-225	141	2-121	309	2-1009
347	11-1407	130q	43-1304 note;	34	1-226	142	2-122	310	2-1010
348	11-1408		44-106	35	1-227	143	2-123	311	2-1011
349	11-1409	130r	43-1304 note	36	1-228	144	2-124	312	2-1012
350	11-1410		44-107	37	1-229	145	2-125	313	2-1013
351	11-1411	130s	43-1304 note	38	1-230	146	2-126	314	2-1014
352	11-1412	130t	43-1304 note	38a	1-231	147	2-127	315	2-1015
353	11-1413	130u	43-1304 note	38b	1-232	148	2-128	316	2-1016
354	11-1414	130v	43-1304 note	38c	1-233	149	2-129	317	2-1017
355	11-1415	131	7-1101	39	1-234	150	2-130	318	2-1018
356	11-1416	132	7-1102	40	1-235	151	2-131	319	2-1019
357	11-1417	133	7-1103	41	1-236	152	2-132	320	2-1020
358	11-1418	134	7-1104	42	49-110	153	2-133	321	2-1021
359	11-1419	135	7-1105	43	49-111	154	2-134	322	2-1022
360	11-1420	141	21-401	44	1-801	155	2-135	323	2-1023
Title 19:		151	48-101	45	1-802	156	2-136	324	2-1024
1	26-201	152	48-102	46	1-803	157	2-137	325	2-1025
2	26-202	161	48-201	47	1-804	158	2-138	326	2-1026
3	26-203	162	48-202	48	1-805	159	2-139	327	2-1027
4	26-204	163	48-203	49	1-806	160	2-140	328	2-1028
11	36-501	164	48-204	50	1-807	171	2-801	329	2-1029
12	36-502	165	48-205	51	1-808	172	2-802	330	2-1030
21	36-301	166	48-206	52	1-809	173	2-803	331	2-1031
22	36-302	167	48-207	53	1-810	174	2-804	341	2-1401
23	36-303	168	48-208	54	1-811	175	2-805	342	2-1402

CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950
Title 20:		Title 20:		Title 20:		Title 20:		Title 20:	
343	2–1403	447i	2–1110	540a	4–208	667	47–209	760	47–1701
344	2–1404	447j	2–1111	540b–540k	Temporary	668	47–210	761	47–1702
345	2–1405	447k	2–1112	540*l*	4–301	669	47–211	762	47–1703
346	2–1406	447*l*	2–1113	540m	4–302	670	47–212	763	R. '39, 53 Stat. 1108, ch. 367, tit. IV. § 2
347	2–1407	447m	2–1114	540n	4–303	670a	R. '38, 52 Stat. 375, ch. 223, § 8		
348	2–1408	447n	2–1114 note	540*o*	4–304				
361	2–1501	447*o*	2–1115	540p	4–305				
362	2–1502	447p	2–1116	540q	4–306	670b	47–134	764	47–1704
363	2–1503	447q	2–1117	541	4–123	671	47–401	764a	47–1705
364	2–1504	447r	2–1118	551	4–401	672	47–402	765	47–1706
365	2–1505	451	4–101	552	4–402	673	47–403	766	47–1707
366	2–1506	452	4–102	553	4–403	674	47–404	767	47–1708
367	2–1507	453	4–103	554	4–404	675	47–405	768	47–1709
368	1–701	453a	4–104	555	S. 4–405	676	47–406	769	47–1213
368a	1–702	454	4–105	555a	4–405	677	47–407	770	47–1214
368b	1–703	455	4–106	556	4–406	678	47–408	771	47–1301
368c	1–705	456	4–107	557	4–407	681	47–501	772	47–1302
368d	1–706	457	S. 4–108	558	4–408	682	47–502	773	47–1303
368e	1–707	457a	4–108	559	4–409	683	47–503	774	47–1304
368f	1–708	458	4–109	560	4–410	691	47–601	775	47–1305
368g	1–709	459	4–110	561	S. 39–102	692	47–602	791	47–1001
368h	1–710	460	4–111	562	4–411	693	47–604	792	47–1002
368i	1–711	461	4–112	563	4–412	694	47–605	793	47–1003
368j	1–712	462	S. 4–113	581	4–501	695	47–606	793a	47–1004
368k	1–713	463	4–113	581a	4–502	696	47–701	794	47–1005
368*l*	1–714	464	Temporary	582	4–503	697	47–702	795	47–1006
368m	1–715	465	4–114	582a	4–504	697a	47–703	796	47–1007
368n	1–716	466	4–115	582b	4–505	698	47–704	797	47–1008
368*o*	1–717	467	4–116	583	4–506	699	47–705	798	47–1009
368p	1–718	468	4–117	584	4–507	700	47–706	799	47–1010
381	2–201	469	4–118	585	4–509	701	47–707	800	R. '36, 49 Stat. 1153, ch. 111, § 5
382	2–202	470	4–119	586	4–510	702	47–708		
383	2–203	471	4–120	587	4–511	703	47–709	800a	47–1011
384	2–204	472	4–121	588	4–512	704	47–710	800b	47–1012
385	2–205	473	4–122	589	4–513	705	47–711	800c	47–1013
386	2–206	474	Temporary	590	4–514	706	47–712	800d	47–1014
387	2–207	475	4–124	591	4–515	707	47–713	800e	Repealing
388	2–208	476	4–125	592	4–516	708	47–714	801	47–1015
389	2–209	477	4–126	593	4–517	709	47–715	821	47–1016
401	5–601	478	4–127	601	4–601	710	47–716	822	47–1017
402	5–602	479	4–128	602	4–602	711	47–717	823	47–1018
403	5–603	480	4–129	603	4–603	712	47–801	831	47–1901
404	5–604	481	4–130	604	4–604	713	47–802	832	47–1902
405	5–605	482	4–131	611	4–701	714	47–803	833	47–1903
406	5–606	483	4–132	612	4–702	715	47–804	834	47–1904
407	5–607	484	4–133	613	4–703	716	47–805	835	47–1905
408	5–608	485	4–134	614	4–704	717	47–806	836	47–1906
409	5–609	486	4–135	615	4–108	718	47–807	837	47–1907
410	5–610	487	4–136	616	4–405	719	47–808	838	47–1908
411	5–611	488	4–137	617	4–801	720	47–809	839	47–1909
412	5–612	489	4–138	618	4–802	721	47–810	840	47–1910
413	5–613	490	4–139	621	47–101	722	47–811	841	47–1911
414	5–614	491	4–140	622	47–102	723	47–812	842, 843	R. '37, 50 Stat. 683, ch. 690, tit. IV, § 6
415	5–615	492	4–141	623	47–103	724	47–813		
421–433	Obsolete	493	4–142	624	47–104	725	47–814		
434	2–1201	494	4–143	625	47–105	725a	47–815	844	47–1912
435	2–1202	495	4–144	626	47–106	725b	47–816	845	47–1913
436	2–1203	496	4–145	627	47–107	726	47–817	846	47–1914
437	2–1204	497	4–146	628	47–301	727	47–818	847	47–1915
438	2–1205	498	4–147	629	47–302	728	47–819	848	47–1916
439	2–1206	499	4–148	630	47–303	729	47–820	849	47–1918
440	2–1207	500	4–149	631	47–304	730	47–821	850	47–1919
441	2–1208	501	4–150	632	47–305	731	47–822	861	47–2301
442	2–1209	502	4–151	633	47–306	732	47–823	862	S. 47–2304
445	2–1301	503	4–152	634	47–309	733	47–824	863	S. 47–2305
445a	2–1302	504	4–153	635	47–310	734	47–825	864	S. 47–2304
445b	2–1303	505	4–154	636	47–311	734a	47–826	865	S. 47–2306
445c	2–1304	506	4–155	636a	47–108	734b	47–827	866	S. 47–2343
445d	2–1305	507	4–156	636b	47–109	734c	47–828	867	S. 47–2308
445e	2–1306	508	4–157	636c	47–110	735	47–829	868	S. 47–2309
445f	2–1307	509	4–158	637	47–111	735a	47–830	869	47–2201
445g	2–1308	510	4–159	638	47–112	736	47–718	870	47–2202
445h	2–1309	511	4–160	639	47–113	737	47–719	871	47–2203
445i	2–1310	512	4–161	640	47–114	738	47–720	872	47–2204
445j	2–1311	513	4–162	641	47–115	739	47–721	873	47–2205
445k	2–1312	514	4–163	642	47–116	740	47–901	874	47–2206
445*l*	2–1313	515	4–164	643	47–117	741	47–902	875	47–2207
445m	2–1314	516	4–165	643a	37–110; 47–118	742	47–903	876	47–2208
445n	2–1315	517	4–166			743	47–904	877	S. 47–2327
445*o*	2–1316	518	4–167	644	47–119	744	Temporary	878	S. 47–2301 et seq.
445p	2–1317	519	4–168	645	47–120	745	47–905		
445q	2–1318	520	4–169	646	47–121	746	47–1101	879	S. 47–2331
445r	2–1319	521	4–170	647	47–122	746a	47–1102	880	S. 47–2335
445s	2–1320	522	4–171	648	47–123	746b	47–1103	881	S. 47–2334
445t	2–1321	523	4–172	649	47–124	746c	47–1104	882	S. 47–2331
445u	2–1322	524	4–173	650	47–125	746d	47–1105	883	S. 45–1407
445v	2–1323	525	4–174	651	47–126	746e	47–1106	884	S. 47–2301 et seq.
445w	2–1324	526	4–175	652	47–127	746f	47–307		
445x	2–1325	527	4–176	653	47–128	747	47–308	885	S. 47–2301 et seq.
445y	2–1326	528	4–177	654	47–129	748	47–603		
445z	2–1327	529	4–178	655	47–130	751	47–1201	886	S. 47–2328
445aa	2–1328	530	4–179	656	47–131	752	47–1202	887	S. 47–2327
445bb	Repealing	531	4–180	657	47–132	753	47–1203	888	S. 47–2320
447	2–1101	532	4–181	658	47–133	754	47–1207	889	S. 47–2301 et seq.
447a	2–1102	533	4–201	659	47–201	755	47–1208		
447b	2–1103	534	4–202	660	47–202	755a	47–1204	890	S. 47–2301 et seq.
447c	2–1104	535	4–203	661	47–203	756	47–1205		
447d	2–1105	536	4–204	662	47–204	757	47–1206	891	S. 47–2325
447e	2–1106	537	4–205	663	47–205	758	47–1209	892	S. 47–2323
447f	2–1107	538	4–208	664	47–206	758a	47–1210	893	S. 47–2301 et seq.
447g	2–1108	539	4–206	665	47–207	758b	47–1211		
447h	2–1109	540	4–207	666	47–208	759	47–1212	894	S.47–2320

CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1950
Title 20:	
895	S. 47-2322
896	S. 47-2301 et seq.
897	S. 47-2319
898	S. 47-2311
899	S. 47-2342
900	S. 47-2336
901	S. 47-2336
902	S. 47-2314
903	S. 47-2336
904	S. 1-231 to 233
905	S. 47-2317
906	S. 47-2339
907 to 910	47-2321 note
911 to 913	S. 47-2301 et seq.
914	40-102 note
915	47-2001
916	47-2002
917	47-2003
918	47-2004
919	47-2005
920	47-2006
921	47-2007
921a	47-2008
922	S. 47-2345
923	5-430
941 to 949	S. 47-2101 to 2110, 2301 to 2350
950	47-2111
951	S. 47-2101 to 2109, 2301 to 2350
961	47-1107
962	47-409
963	47-722
964	47-723
965	47-1401
965a	47-1402
965b	47-1403
965c	47-1404
965d	47-1405
965e	47-1406
965f	47-1407
965g	47-1408
965h	47-1409
965i	47-1410
965j	47-1411
965k	47-1412
966	47-1801
966a	47-1802
966b	47-1803
966c	47-1804
966d	47-1805
966e	47-1806
966f	47-1807
966g	47-1808
966h	Repealing
967	47-1901 to 1903, 1905, 1907, 1908
968	40-101
968a	40-102
968b	40-103
968c	40-104
968d	40-105
968e	40-105 note
969	47-1601
969a	47-1602
969b	47-1603
969c	47-1604
969d	47-1605
969e	47-1606
969f	47-1607
969g	47-1608
969h	47-1609
969i	47-1610
969j	47-1611
969k	47-1612
969*l*	47-1613
969m	47-1614
969n	47-1615
969*o*	47-1616
969p	47-1617
969q	47-1618
969r	47-1619
969s	47-1620
969t	47-1621
969u	47-1622
969v	47-1623
969w	47-1624
969x	47-1625
969y	47-1626
969z	47-1627
969aa	47-1628
970 to 970n	Obsolete
970*o*	Effective date
970p	Obsolete
970q	Obsolete

Section	D. C. 1950
Title 20:	
971	Temporary
971a	47-2501
971b	47-2502
971c	47-2503
971d	47-2504
971e	Temporary
972	47-2401
973	47-2402
974	47-2403
975	47-2404
976	47-2405
977	47-2406
978	47-2407
979	47-2408
979a	47-2409
979b	47-2410
979c	47-2411
979d	Repealing
979e	47-2412
980	47-1501
980a	47-1502
980b	47-1503
980c	47-1504
980d	47-1505
980e	47-1506
980f	47-1507
980g	47-1508
980h	47-1509
980i	47-1510
980j	47-1511
980k	47-1512
980*l*	47-1513
980m	47-1514
980n	47-1515
980*o*	47-1516
980p	47-1517
980q	47-1518
980r	47-1519
980s	47-1520
980t	47-1521
980u	47-1522
980v	47-1523
980w	47-1524
980x	47-1525
980y	47-1526
980z	47-1527
980aa	47-1528
980bb	47-1529
980cc	47-1530
980dd	47-1531
980ee	47-1532
980ff	47-1533
980gg	47-1534
980hh	47-1535
980ii	47-1536
980jj	47-1537
980kk	47-1538
980*ll*	47-1539
980mm	47-1540
980nn	47-1541
980*oo*	47-1542
980pp	47-1543
981	6-101
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983	6-104
984	6-105
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986	6-107
987	6-108
988	6-109
989	6-110
990	6-111
991	6-112
992	6-113
993	6-114
994	6-115
995	S. 2-701
996	6-116
997	6-117
998	6-118
999	6-119
1001	6-301
1002	6-302
1003	6-303
1004	6-304
1111 to 1141	R. '39, 53 Stat. 1408, ch. 691, § 3
1151 to 1154	R. '39, 53 Stat. 1408, ch. 691, § 3
1161 to 1169	R. '39, 53 Stat. 1408, ch. 691, § 3
1181 to 1201	R. '39, 53 Stat. 1408, ch. 691, § 3
1202	6-201
1203	6-202
1204	6-203
1205	6-204
1211	27-129

Section	D. C. 1950
Title 20:	
1212	27-130
1213	27-131
1221	33-101
1222	33-102
1223	33-103
1224	33-104
1225	33-105
1226	33-106
1227	33-107
1228	33-108
1229	33-109
1230	33-110
1241	33-201
1242	33-202
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1260	33-310
1261	33-311
1262	33-312
1263	33-313
1264	33-314
1265	33-315
1266	33-316
1267	33-317
1268	33-318
1269	33-319
1270	S. 33-302, 303
1271	S. 33-307
1272	S. 33-312
1273	S. 33-313
1274	S. 33-313, 314
1275	S. 33-305
1276	S. 33-319
1277	33-320
1278	33-321
1291	6-501
1292	6-502
1293	6-503
1294	6-504
1295-1297	Temporary
1298	6-505
1299	6-506
1300	6-507
1301	6-508
1302	6-509
1303	6-510
1304	6-511
1311	6-401
1312	6-402
1313	6-403
1314	6-404
1321-1338	R. '40, 54 Stat. 154, ch. 131, § 1
1351	6-901
1352	6-902
1353	6-903
1371	43-1501
1372	43-1502
1373	43-1503
1374	43-1504
1375	43-1505
1376	43-1506
1377	43-1507
1378	43-1508
1379	43-1509
1380	43-1510
1381	43-1511
1382	43-1512
1383	43-1513
1384	43-1514
1385	43-1515
1386	43-1516
1387	43-1517
1388	43-1518
1389	43-1519
1390	43-1520
1391	43-1521
1392	43-1522
1393	43-1523
1394	43-1524
1395	43-1525
1396	43-1526
1397	43-1527
1398	43-1528
1399	43-1529
1400	43-1530
1401	43-1531
1402	43-1532
1403	43-1533
1404	43-1534
1405	43-1535
1406	43-1536
1407	43-1537

Section	D. C. 1950
Title 20:	
1408	43-1538
1421	37-101
1422	37-102
1423	37-103
1424	37-104
1425	37-105
1426	37-106
1427	37-107
1428	37-108
1429	37-109
1441	39-101
1442	39-102
1443	39-103
1444	39-104
1445	39-105
1446	39-112
1447	39-201
1448	39-202
1449	39-203
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1451	39-205
1452	39-106
1453	39-107
1454	39-111
1455	39-206
1456	39-207
1457	39-208
1458	39-209
1459	39-210
1460	39-211
1461	39-212
1462	39-213
1463	39-214
1464	39-301
1465	39-401
1466	39-402
1467	39-403
1468	39-404
1469	39-405
1470	39-501
1471	39-502
1472	39-503
1473	39-504
1474	39-505
1475	39-506
1476	39-507
1477	39-508
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1489	39-603
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1491	39-605
1492	39-606
1493	39-608
1494	39-801
1495	39-701
1496	39-702
1497	39-703
1498	39-704
1499	39-705
1500	39-706
1501	39-707
1502	39-708
1503	39-709
1504	39-802
1505	39-803
1506	39-804
1507	39-805
1508	39-903
1509	39-901
1510	39-904
1511	39-905
1512	39-108
1513	S. 11-1420
1514	39-906
1515	39-902
1516	39-806
1517	39-517
1531	8-101
1532	8-102
1533	8-103
1533a	8-104
1534	8-105
1535	8-106
1536	8-107
1537	8-108
1538	8-109
1539	8-110
1540	8-111
1540a	8-112
1540b	8-113
1540c	Executed
1540d	8-114

Section	D. C. 1950
Title 20:	
1540e	8-115
1540f	8-116
1540g	8-117
1540h	8-118
1540i	8-119
1540j	8-120
1540k	8-121
1540*l*	8-122
1540m	8-123
1541	8-124
1542	8-125
1543	8-126
1544	8-127
1545	8-128
1546	8-129
1547	8-130
1548	8-131
1549	8-132
1550	8-133
1551	8-134
1552	8-135
1553	8-136
1554	8-137
1555	8-138
1556	8-139
1557	8-140
1558	8-141
1558a	8-142
1559	8-143
1560	8-144
1561	8-145
1562	8-146
1563	8-148
1564	8-149
1565	8-150
1566	8-151
1567	8-152
1568	8-153
1569	8-154
1570	8-155
1571	8-156
1572	8-157
1573	8-158
1574	8-159
1575	8-160
1576	8-161
1577	8-162
1578	8-163
1578a	8-164
1578b	8-165
1578c	8-166
1578d	8-167
1579	9-101
1580	9-102
1581	8-168
1582	8-169
1583	8-170
1583a	8-171
1584	9-201
1584a	9-202
1585	Temporary
1586	Temporary
1587	9-204
1588	9-205
1589	9-206
1590	9-207
1591	Temporary
1592	9-103
1592a	9-104
1601	9-105
1602	9-106
1603	9-107
1604	9-108
1605	9-109
1606	9-110
1607	9-111
1608	9-112
1609	9-113
1610	9-114
1611	9-115
1612	9-116
1613	9-117
1621	9-301
1622	9-302
1623	9-303
1624	9-304
1625	9-305
1626	9-306
1701	47-2301
1702	47-2302
1703	47-2303
1704	47-2304
1705	47-2305
1706	47-2306
1707	47-2307
1708	47-2308
1709	47-2309
1710	47-2310
1711	47-2311
1712	47-2312
1713	47-2313
1714	47-2341

CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1950
Title 20:	
1715	47-2315
1716	47-2316
1717	47-2317
1718	47-2318
1719	47-2319
1720	47-2320
1721	47-2321
1722	47-2322
1723	47-2323
1724	47-2324
1725	47-2325
1726	47-2326
1727	47-2327
1728	47-2328
1729	47-2329
1730	47-2330
1731	47-2331
1731a	44- 301
1732	47-2332
1733	47-2333
1734	47-2334
1735	47-2335
1736	47-2336
1737	47-2337
1738	47-2338
1739	47-2339
1740	47-2340
1741	47-2341
1742	47-2101
1743	47-2102
1744	47-2103
1745	47-2104
1746	47-2105
1747	47-2106
1748	47-2107
1749	47-2108
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1751	47-2342
1752	47-2343
1753	47-2344
1754	47-2345
1755	47-2346
1756	47-2347
1757	47-2348
1758	47-2349
1759	47-2350
1801-1816	R. '34, 48 Stat. 319, ch. 4, § 31
1901	25-101
1902	25-102
1903	25-103
1904	25-104
1905	25-105
1906	25-106
1907	25-107
1908	25-108
1909	25-109
1910	25-110
1911	25-111
1911a	25-112
1912	25-113
1913	25-114
1914	25-115
1915	25-116
1916	25-117
1917	25-118
1918	25-119
1919	25-120
1920	25-121
1921	25-122
1922	25-123
1923	25-124
1924	Obsolete
1925	25-125
1926	25-126
1927	25-127
1928	25-128
1929	25-129
1930	25-130
1931	25-131
1932	Obsolete
1933	25-132
1934	Repealing
1935	25-133
1936	25-134
1937	25-135
1938	25-136
1939	25-137
1940	25-138
1970	45-1401
1971	45-1402
1972	45-1403
1973	45-1404
1974	45-1405
1975	45-1406
1976	45-1407
1977	45-1408
1978	45-1409
1979	45-1410
1980	45-1411
1981	45-1412
Title 20:	
1982	45-1413
1983	45-1414
1984	45-1415
1985	45-1416
1985a	45-1417
1986	45-1418
1987	Repealing
1988	Effective date
Title 21:	
1	16-1201
2	16-1202
3	16-1203
Title 22:	
1	28-101
2	28-102
3	28-103
4	28-104
5	28-105
6	28-106
7	28-107
8	28-108
9	28-109
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36	28-206
41	28-301
42	28-302
43	28-303
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47	28-307
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121	28-611
122	28-612
123	28-613
124	28-614
125	28-615
126	28-616
127	28-617
128	28-618
Title 22:	
129	28-619
141	28-701
142	28-702
143	28-703
144	28-704
145	28-705
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147	28-707
148	28-708
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150	28-710
151	28-711
152	28-712
153	28-713
154	28-714
155	28-715
156	28-716
157	28-717
158	28-718
159	28-719
160	28-720
161	28-721
162	28-722
163	28-723
164	28-724
165	28-725
166	28-726
167	28-727
168	28-728
169	28-729
170	28-730
181	28-801
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183	28-803
184	28-804
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207	28-913
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229	28-926
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241	28-928
242	28-929
243	28-930
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245	28-932
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264	28-940
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293	28-956
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295	28-958
296	28-959
301	28-1001
302	28-1002
303	28-1003
303a	28-1004
304	28-1005
Title 22:	
305	28-1006
306	28-1007
307	28-1008
308	28-1009
309	28-1010
Title 23:	
1	41-201
2	41-202
3	41-203
4	41-204
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13	41-109
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31	41-127
32	41-128
33	41-129
34	41-130
35	41-131
Title 24:	
1	13-201
2	13-202
3	13-203
4	13-204
5	13-205
6	13-206
7	13-207
8	13-209
9	13-210
10	13-211
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22	38-301
23	38-302
24	38-303
25	38-304
26	38-305
31	12-101
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33	12-103
34	12-104
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36	12-106
37	12-107
38	12-108
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70	13-310
71	13-311
72	13-312
Title 24:	
73	13-313
74	13-314
75	13-315
76	13-316
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79	13-319
80	13-320
91	16-1701
92	16-1702
93	16-1703
94	16-1704
95	16-1705
96	16-1706
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102	16-1712
103	16-1713
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122	16-302
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127	16-307
128	16-308
129	16-309
130	16-310
131	16-311
132	16-312
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168	16-508
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175	16-515, 1501 note
176	16-516
177	16-517
178	16-518
179	16-519
180	16-520
181	16-521
182	16-522
183	16-523
184	16-524
185	16-525
186	16-526
187	16-527
188	16-528
189	16-529
190	16-530
191	16-531
192	16-532
193	16-533
194	16-534
201	16-801
202	16-802
203	16-803
204	16-804
205	16-805

CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950
Title 24:		**Title 24:**		**Title 25:**		**Title 25:**		**Title 25:**	
206	16-806	382	13-112	77	7-306	177	42-101	325	45-915
207	16-807	383	13-113	78	7-307	178	42-102	326	45-916
208	16-808	391	16-1801	79	7-308	179	42-103	327	45-917
211	16-1001	392	16-1802	79a	7-309	191	45-601	328	45-918
212	16-1002	393	16-1803	79b	7-310	192	45-602	329	45-919
213	16-1003	394	16-1804	79c	7-311	193	45-603	330	45-920
214	16-1004	395	16-1805	79d	7-312	194	45-604	331	45-921
215	16-1005	396	16-1806	80	7-313	195	45-605	332	45-922
216	16-1006	397	16-1807	81	7-314	196	45-606	333	45-923
217	16-1007	398	16-1808	82	7-315	197	45-607	334	45-924
218	16-1008	399	16-1809	83	7-316	198	45-608	335	45-925
219	16-1009	400	16-1810	84	7-317	199	45-609	336	45-926
220	16-1010	401	16-1811	85	7-318	200	45-610	337	45-927
231	16-1601	402	16-1812	86	7-319	201	45-611	338	45-928
232	16-1602	403	16-1813	87	7-320	202	45-612	339	45-929
233	16-1603	404	16-1814	88	7-321	203	45-613	340	45-930
234	16-1604	411	16-1901	89	7-322	204	45-614	341	45-931
235	16-1605	412	16-1902	90	7-323	205	45-615	342	45-932
236	16-1606	413	16-1903	90a	7-324	206	45-616	343	45-933
237	16-1607	414	16-1904	91	7-325	207	45-617	344	45-934
238	16-1608	415	16-1905	92	7-326	208	45-618	351	38-101
239	16-1609	416	16-1906	93	7-327	209	45-619	352	38-102
240	16-1610	417	16-1907	94	7-328	210	45-620	353	38-103
241	16-1611	418	16-1908	95	7-329	221	45-701	354	38-104
251	13-401	419	16-1909	96	7-330	222	45-702	355	38-105
252	13-208	431	16-2001	97	7-331	223	45-703	356	38-106
261	16-901	432	16-2002	98	7-332	224	45-704	357	38-107
262	16-902	433	16-2003	99	7-333	225	45-705	358	38-108
263	16-903	434	16-2004	99a	7-401	226	45-706	359	38-109
264	16-904	435	16-2005	99b	7-402	227	45-707	360	38-110
265	16-905	**Title 25:**		99c	7-403	228	45-709	361	38-111
266	16-906	1	16-1501	99d	7-404	229	45-710	362	38-112
271	15-201	2	16-515; 1501	99e	7-405	231	18-101	363	38-113
272	15-202		note	99f	7-406	232-242	R. '35, 49	364	38-114
273	15-203	11	18-110	99g	7-407		Stat. 39, ch.	365	38-115
274	15-204	21	5-101	99h	7-408		28, § 3 (B)	366	38-116
275	15-205	22	5-102	99i	7-409	243	18-102	367	38-117
276	15-206	23	5-103	99j	7-410	244	18-103	368	38-118
276a	15-207	24	5-104	100	16-619	245	18-104	369	38-119
277	15-208	25	5-105	101	16-620	246	18-105	370	38-120
278	15-209	26	5-106	102	16-621	247	18-106	371	38-121
279	15-210	27	5-107	103	16-622	248	18-107	372	38-122
280	15-211	27a	5-108	104	16-623	249	18-108	373	38-123
281	15-212	28	5-109	105	16-624	250	18-109	374	38-124
282	15-213	29	5-110	106	16-625	251	18-111	375	38-125
283	15-214	29a	Repealing	107	16-626	261	45-801	376	38-126
284	15-301	30	5-111	108	16-627	262	45-802	381	16-1301
285	15-302	30a	5-112	109	16-628	263	45-803	382	16-1302
286	15-303	30b	5-113	110	16-629	264	45-804	383	16-1303
287	15-304	30c	5-114	110a	16-630	265	45-805	384	16-1304
288	15-305	30d	5-115	110b	16-631	266	45-806	385	16-1305
289	15-306	30e	5-116	110c	16-632	267	45-807	386	16-1306
290	15-307	31	5-201	110d	16-633	268	45-808	391	45-1001
291	15-308	32	5-202	110e	16-634	269	45-809	392	45-1002
292	15-309	33	5-203	110f	16-635	270	45-810	393	45-1003
293	15-310	34	5-204	110g	16-636	271	45-811	394	45-1004
294	15-311	35	5-205	110h	16-637	272	45-812	395	45-1005
295	15-312	36	5-206	110i	16-638	273	45-813	396	45-1006
296	15-313	41	16-601	110j	16-639	274	45-814	397	45-1007
297	15-215	42	16-602	110k	16-640	275	45-815	398	45-1008
298	15-216	43	16-603	110*l*	16-641	276	45-816	399	45-1009
299	15-217	44	16-604	110m	16-642	277	45-817	400	45-1010
300	15-218	44a	16-605	110n	16-643	278	45-818	401	45-1011
311	15-401	45	16-606	110*o*	16-644	279	45-819	402	45-1012
312	15-402	46	16-607	111	45-101	280	45-820	403	45-1013
313	15-403	47	16-608	112	45-102	281	45-821	404	45-1014
321	15-101	48	16-609	113	45-103	282	45-822	405	45-1015
322	15-102	49	16-610	114	45-104	283	45-823	406	45-1016
323	15-103	50	16-611	115	45-105	291	S. 5-301	407	45-1017
324	15-104	50a	16-612	116	45-106	292	S. 5-302, 305	408	45-1018
325	15-105	50b	16-613	131	45-201	293	S. 5-308	409	45-1019
326	15-106	50c	16-614	132	45-202	294	5-301	411	7-901
327	15-107	50d	16-615	133	45-203	295	5-302	421	45-1101
328	15-108	50e	16-616	134	45-204	296	5-303	422	45-1102
329	15-109	50f	16-617	135	45-205	297	5-304	423	45-1103
330	15-110	50g	16-618	141	45-301	298	5-305	424	45-1104
331	15-111	51	7-201	142	45-302	299	5-306	431	1-601
341	12-201	52	7-202	143	45-303	300	5-307	432	1-602
342	12-202	53	7-203	144	45-304	301	S. 47-2302	433	1-605
343	12-203	54	7-204	145	45-305	302	5-308	434	1-606
344	12-204	55	7-205	146	45-306	303	5-309	435	1-607
345	12-205	56	7-206	147	45-307	304, 305	5-310	436	1-608
346	12-206	57	7-207	148	45-308	306	5-311	437	1-603
347	12-207	58	7-208	149	45-309	306a	5-312	438	1-604
348	12-208	59	7-209	150	45-401	306b	Repealing	439	1-610
351	16-1101	60	7-210	151	45-402	307	5-313	440	1-611
352	16-1102	61	7-211	152	45-403	308	5-314	441	1-612
353	16-1103	62	7-212	153	45-404	309	5-315	442	1-613
361	16-1401	63	7-213	154	45-405	311	45-901	443	1-616
362	16-1402	64	7-214	155	45-406	312	45-902	444	1-617
363	16-1402 note	65	7-215	156	45-407	313	45-903	445	1-618
371	13-101	66	7-216	157	45-408	314	45-904	446	1-619
372	13-102	67	7-217	158	45-409	315	45-905	447	1-620
373	13-103	68	7-218	159	45-410	316	45-906	448	1-621
374	13-104	69	7-219	160	45-411	317	45-907	449	1-622
375	13-105	70	7-220	161	45-412	318	45-908	450	1-623
376	13-106	71	7-221	171	45-501	319	45-909	451	1-624
377	13-107	72	7-301	172	45-502	320	45-910	452	1-614
378	13-108	73	7-302	173	45-503	321	45-911	453	1-615
379	13-109	74	7-303	174	45-504	322	45-912	454	1-625
380	13-110	75	7-304	175	45-505	323	45-913	455	1-626
381	13-111	76	7-305	176	45-506	324	45-914	456	1-627

CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1950
Title 25:	
457	1–628
458	1–609
459	R. '35, 49 Stat. 431, ch. 332, § 4
471	5–501
472	5–502
473	5–503
474	5–504
475	5–505
476	Repealing
481	45–1201
482	45–1202
483	45–1203
491	45–1301
492	45–1302
493	45–1303
494	45–1304
501	5–401
502	5–402
503	5–403
504	5–404
505	5–405
506	5–406
507	5–407
508	5–408
509	5–409
510	5–410
511	5–411
521	5–412
522–526	R. '38, 52 Stat. 802, ch. 534, § 15
527	5–415 note
528–530	R. '38, 52 Stat. 802, ch. 534, § 15
531	5–413
532	5–414
533	5–415
534	5–416
535	5–417
536	5–418
537	5–419
538	5–420
539	5–421
540	5–422
541	5–423
542	5–424
543	5–425
544	5–426
545	5–427
546	5–428
547	5–428 note
Title 26:	
1	43–101
2	43–102
3	43–103
4	43–104
5	43–105
6	43–106
7	43–107
8	43–108
9	43–109
10	43–110
11	43–111
12	43–112
13	43–113
14	43–114
15	43–115
16	43–116
17	43–117
18	43–118
19	43–119
20	43–120
21	43–121
22	43–122
23	43–123
24	43–301
25	43–302
26	43–303
27	43–304
28	43–305
29	43–306
30	43–307
31	43–308
32	43–309
33	43–310
34	43–311
35	43–312
36	43–313
37	43–314
38	43–315
39	43–316
40	43–317
41	43–318
42	43–319
43	43–320
44	43–321
45	43–322
46	43–323
47	43–324
48	43–325
49	43–326
50	43–327
51	43–328
52	43–329
53	43–330
54	43–402
55	43–403
56	43–404
57	43–405
58	43–406
59	43–407
60	43–408
61	43–409
62	43–410
63	43–411
64	R. '35, 49 Stat. 884, ch. 742, § 3
65	43–412
66	43–413
67	43–414
68	43–415
69	43–416
70	43–417
71	43–418
72	43–419
73	43–420
74	43–421
75	R. '35, 49 Stat. 882, ch. 742, § 1
76	43–422
77	43–501
78	43–502
79	43–503
80	43–601
81	43–602
82	43–603
83	43–604
84	43–605
85	43–606
86	43–701
87	43–702
88	43–703
89	43–704
89a	43–705
89b	43–706
89c	43–707
89d	43–708
89e	43–709
89f	43–710
89g	43–711
89h	43–711 note
90–94	R. '35, 49 Stat. 885, ch. 742, § 2
95	43–712
96	43–713
97	43–801
98	43–802
99	43–803
100	43–804
101	43–805
102	43–806
103	43–807
104	43–808
105	43–901
106	43–902
107	43–903
108	43–904
109	43–905
110	43–906
110a	43–907
110b	43–908
111	43–909
112	43–910
113	43–911
114	43–1001
115	43–1002
116	43–204
117	43–205
118	43–1003
119	43–913
120	43–401
121	43–206
122	44–202
123	44–203
124	43–207
125	43–208
126	43–201
127	43–202
128	43–203
129	43–912
130	43–209
131	43–1004
Title 26:	
132	43–1005
133	43–1006
134	43–1007
151	43–1201
152	43–1202
153	43–1203
154	43–1204
155	43–1205
156	43–1206
157	43–1207
161	Obsolete
162	44–204
163	44–205
164	44–206
165	44–207
166	44–213
166a	44–214
167	44–208
168	44–209
169	44–215
171	43–1401
172	43–1101
173	43–1102
174	43–1103
175	43–1104
176	43–1105
177	43–1106
178	43–1402
179	43–1403
180	43–1404
181	43–1405
182	43–1406
183	43–1407
184	43–1408
185	43–1409
186	43–1410
187	43–1411
188	43–1412
189	43–1413
190	43–1414
191	43–1415
192	43–1416
193	43–1417
194	43–1107
195	43–1108
196	43–1109
Title 27:	
1	28–2203
2	28–2204
3	28–2201
4	28–2202
11	28–1801
12	28–1802
13	28–1803
14	28–1804
15	28–1805
16	28–1806
17	28–1807
21	28–1901
22	28–1902
23	28–1903
24	28–1904
25	28–1905
26	28–1906
27	28–1907
28	28–1908
29	28–1909
30	28–1910
31	28–1911
32	28–1912
33	28–1913
34	28–1914
35	28–1915
36	28–1916
37	28–1917
38	28–1918
39	28–1919
40	28–1920
41	28–1921
42	28–1922
43	28–1923
44	28–1924
45	28–1925
46	28–1926
47	28–1927
48	28–1928
49	28–1929
50	28–1930
61	28–2001
62	28–2002
63	28–2003
64	28–2004
65	28–2005
66	28–2006
67	28–2007
68	28–2008
69	28–2009
70	28–2010
71	28–2011
Title 27:	
72	28–2012
73	28–2013
81	28–2101
82	28–2102
83	28–2103
84	28–2104
85	28–2105
86	28–2106
87	28–2205
Title 28:	
1	10–101
2	10–102
3	10–103
4	10–104
5	10–105
6	10–106
7	10–107
8	10–108
9	10–109
10	10–110
11	10–111
12	10–112
13	10–113
14	10–114
15	10–115
16	10–116
17	10–117
18	10–118
19	10–119
20	10–120
21	10–121
22	10–122
23	10–123
24	10–124
25	10–125
26	10–126
27	10–127
28	10–128
29	10–129
30	10–130
31	10–131
32	10–132
33	10–133
34	10–134
35	10–135
36	10–136
37	10–137
38	10–138 note
Title 29:	
1	19–401
2	19–402
3	19–403
4	19–404
5	19–405
6	19–406
7	19–407
8	19–408
9	19–409
10	19–410
11	19–411
21	19–101
22	19–102
23	19–103
24	19–104
25	19–105
26	19–106
27	19–107
28	19–108
29	19–109
30	19–110
31	19–111
41	19–201
42	19–202
43	19–203
44	19–204
45	19–205
51	19–301
52	19–302
53	19–303
54	19–304
55	19–305
56	19–306
57	19–307
58	19–308
59	19–309
60	19–310
61	19–311
62	19–312
63	19–313
71	20–101
72	20–102
73	20–103
74	20–104
75	20–105
76	20–106
77	20–107
78	20–108
79	20–109
80	20–110
81	20–111
82	20–112
83	20–113
84	20–114
85	20–115
86	20–116
87	20–117
88	20–118
89	20–119
101	20–201
102	20–202
103	20–203
104	20–204
105	20–205
106	20–206
107	20–207
108	20–208
109	20–209
110	20–210
111	20–211
112	20–212
113	20–213
114	20–214
115	20–215
116	20–216
117	20–217
118	20–218
119	20–219
131	20–301
132	20–302
133	20–303
134	20–304
135	20–305
136	20–306
137	20–307
138	20–308
139	20–309
140	20–310
141	20–311
142	20–312
151	20–401
152	20–402
153	20–403
154	20–404
155	20–405
161	18–301
162	18–302
163	18–303
164	18–304
165	18–305
171	18–401
172	18–402
173	18–403
174	18–404
175	18–405
176	18–406
177	18–407
178	18–408
191	18–501
192	18–502
193	18–503
194	18–504
195	18–505
196	18–506
197	18–507
198	18–508
199	18–509
200	18–510
201	18–511
202	18–512
203	18–513
204	18–514
205	18–515
206	18–516
207	18–517
208	18–518
209	18–519
210	18–520
211	18–521
212	18–522
213	18–523
214	18–524
215	18–525
216	18–526
217	18–527
218	18–528
219	18–529
220	18–530
231	18–601
232	18–602
233	18–603
234	18–604
235	18–605
236	18–606
237	18–607
238	18–608
239	18–609
240	18–610
241	18–611

CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950	Section	D. C. 1950
Title 29:		**Title 29:**		**Title 29:**		**Title 29:**		**Title 29:**	
242	18–612	265	20–605	286	18–706	297	18–717	308	20–705
251	20–501	266	20–606	287	18–707	298	18–718	309	20–706
252	20–502	267	20–607	288	18–708	299	18–719	310	20–707
253	20–503	268	20–608	289	18–709	300	18–720	311	20–708
254	20–504	269	20–609	290	18–710	301	18–721	312	20–709
255	20–505	270	20–610	291	18–711	302	18–722	313	20–710
256	20–506	281	18–701	292	18–712	303	18–723	314	20–711
261	20–601	282	18–702	293	18–713	304	20–701	315	20–712
262	20–602	283	18–703	294	18–714	305	20–702	316	20–713
263	20–603	284	18–704	295	18–715	306	20–703	317	20–714
264	20–604	285	18–705	296	18–716	307	20–704	318	20–715

VOLUME 1

Date	Page	Chapter	Section	D. C. 1950
1790				
July 16	139	28	1–6	Pages XXXI, XXXII.
1791				
Mar. 3	214	17		Page XXXII.
1792				
Apr. 2	248	16	9	13–202; 19–410, 411.

VOLUME 2

Date	Page	Chapter	Section	D. C. 1950
1801				
Feb. 27	103	15	1–11	Pages XXXIII, XXXIV.
	107	15	12	11–501; pages XXXIII, XXXIV.
	107		13–16	Pages XXXIII, XXXIV.
Mar. 3	115	24	1–9	Obsolete.
1802				
Apr. 29	166	31	24	S. 11–301, 305.
May 3	193	52	1, 2	S. 13–108 to 111.
	194	52	3	S. 11–312.
	194	52	4	S. 15–201 et seq.
	194	52	5	S. 16–301 et seq.
	194	52	6	S. 3–110; S. 47–701, 1201.
	194	52	7	Obsolete.
	194	52	8	Repealing.
	195	52	9	S. 47–2301 et seq.
	195	52	10	Obsolete.
	195	52	11	S. 47–1101 et seq.
	195	52	12	Obsolete.
	195	52	13	S. 39–101 et seq.
	195	53	1–11	Pages XXXIV, XXXV.
1803				
Mar. 3	237	31	1–17	S. 28–2601 to 2610.
1805				
Mar. 3	332	32	1–14	Pages LXIX to LXXI.
1809				
Mar. 3	537	30	1–5	Page LXXI.
1812				
May 4	721	75	1–11	Pages XXXV to XXXVII.
July 1	771	117	1–13	Pages XXXVII to XXXIX.

VOLUME 3

Date	Page	Chapter	Section	D. C. 1950
1820				
May 15	583	104	1–17	Pages XXXIX to XLIII.
1823				
Mar. 1	743	24	1–17	S. 11–701 et seq.

VOLUME 4

Date	Page	Chapter	Section	D. C. 1950
1825				
Mar. 3	94	18		S., U. S. C., title 32, § 31 et seq.
	94	25		S. 11–301 et seq.
	101	52		47–807.
1826				
Mar. 3	140	10		Page LXXII.
May 20	183	111	1–3	Page LXXII.
	186	131		S. 11–312.

VOLUME 4—Continued

Date	Page	Chapter	Section	D. C. 1950
1830				
May 31	426	229	1–5	Page LXXII.
1832				
May 25	517	105	1, 2	Page LXXII.
May 31	520	112	1–3	S. 45–401 et seq.
	521	113	1–16	Obsolete.
	525	114		S. 11–312.

VOLUME 5

Date	Page	Chapter	Section	D. C. 1950
1838				
July 7	306	192	1–8	S. 11–322; S. 23–101 et seq.
	309	212	1, 2	Obsolete.
1839				
Feb. 20	318	30	1–7	S. 22–1102 to 1104.
1842				
July 27	497	82	1, 2	Page LXXIII.

VOLUME 9

Date	Page	Chapter	Section	D. C. 1950
1846				
July 9	35	35	1–6	Page XLVI.
1848				
May 17	223	42	1–17	Pages XLIII to XLVI.
1849				
Mar. 3	775	128	10	47–808.

VOLUME 10

Date	Page	Chapter	Section	D. C. 1950
1855				
Mar. 2	633	145	1, 2	Page LXXIII.

VOLUME 11

Date	Page	Chapter	Section	D. C. 1950
1856				
Aug. 11	32	84	1–6	Page LXXIII.
1857				
Feb. 16	161	46	1	31–1001.

VOLUME 12

Date	Page	Chapter	Section	D. C. 1950
1861				
Mar. 2	220	84	10	1–808.
1862				
May 3	383	63	1–8	Pages XLVII, XLVIII.
May 21	405	82	1–8	Page LXXIV.

STATUTES AT LARGE—Continued

VOLUME 12—Continued

Date	Page	Chapter	Section	D. C. 1950
1863				
Mar. 3	762	91	1	11-301.
	763	91	2	S. 11-301, 401 to 403.
	763	91	3	S. 11-305, 322.
	763	91	4-6	11-312.
	763	91	7	S. 11-313, 316.
	764	91	8	S. 11-320; S. 13-221.
	764	91	9	S. 13-221.
	764	91	10	S. 11-315.
	764	91	11	S. 17-101.
	764	91	12	S. 17-104.
	764	91	13	Saving Clause.
	764	91	14, 15	Obsolete.
	764	91	16	Repealing.
	765	91	17, 18	Temporary.
	799	106	1-13	Pages XLVII to L.

VOLUME 13

Date	Page	Chapter	Section	D. C. 1950
1864				
Apr. 8	45	52	----------	31-1002.
1865				
Feb. 23	436	50	1	31-1001.

VOLUME 14

Date	Page	Chapter	Section	D. C. 1950
1867				
Jan. 8	375	6	1-10	Page L.

VOLUME 15

Date	Page	Chapter	Section	D. C. 1950
1867				
Mar. 29	27	No. 26	1, 2	Page LI.

VOLUME 16

Date	Page	Chapter	Section	D. C. 1950
1870				
May 24	139	111	4	47-809.
June 17	153	133	1	11-601, 602.
	154	133	2	11-601, 620 to 622.
	154	133	3	11-616.
	154	133	4	11-606; S. 11-610 to 614.
	154	133	5	11-606.
	154	133	6	11-623, 624.
	155	133	7	S. 11-615, 620.
	155	133	8	S. 17-103.
	155	133	9	11-623.
	154	133	10	11-601.
	155	133	11	S. 17-103.
	155	133	12	S. 45-402.
	155	133	13	11-601,602.
	155	133	14	11-624.
	155	133	15	11-606.
	155	133	16	S. 23-101,102.
	156	133	17	S. 11-1001.
	156	133	18	S. 11-1002.
	156	133	19	Obsolete.
	157	133	20	11-602.
	157	133	21	S. 11-614.
	157	133	22	Effective date.
June 21	158	135	1	32-201.
	158	135	2	32-202.
	158	135	3	32-203.
	158	135	4	32-204.
	158	135	5	32-205.
	158	135	6	32-206.
	159	135	7	32-207.
	159	135	8	32-211.
	160	141	4	11-501.
1871				
Feb. 21	419	62	1-41	Pages LI to LVI.

VOLUME 18

Date	Page	Chapter	Section	D. C. 1950
1874				
Mar. 28	25	72	----------	Special.
June 20	116	337	1-10	Pages LVI to LVIII.
	116	337	2	1-218, 220, 301, 302, 308, 802, 803, 901; 43-1503, 1506, 1521; 47-305, 722, 1016
	117	337	3	1-205.
June 23	204	454	----------	S. 11-312.
	223	455	1	32-317.
	277	480	1	S. 43-601.
	278	480	2	43-605.
	278	480	3	43-1201.
	278	480	4	43-1203.
	278	480	5	43-1204.
	278	480	6	S. 43-601, 1207.
	278	480	7-9	S. 43-603.
	279	480	10	43-605.
	279, 280	480	11, 12	S. 43-1207.
	280	480	13, 14	43-1205.
	280	480	15	22-3116.
	280	480	16	S. 43-408.
	283	490	----------	6-102.
Dec. 26	293	8	----------	Temporary.
1875				
Feb. 20	332	94	----------	Temporary.
Mar. 1	337	117	----------	1-235.
Mar. 3	374	130	----------	11-329.
	419	131	13	Temporary.
	501	162	1-18	Temporary.
	508	168	2	47-805.
	508	169	----------	Special.
	511	175	----------	Special.

VOLUME 19

Date	Page	Chapter	Section	D. C. 1950
1876				
Mar. 30	9	40	1-16	Special.
Apr. 27	38	85	1-16	Special.
May 3	49	90	1	32-802.
	49	90	2	32-805.
	49	90	3	32-808.
	49	90	4	32-809.
	50	90	5	32-810.
	50	90	6	32-811.
	50	90	7	32-812.
	50	90	8	32-815, 908.
	51	90	9	32-816, 909.
	51	90	10	32-817.
	51	90	11	32-818.
	51	90	12	32-819.
	51	90	13	32-822
	51	90	14	32-807.
	52	90	15	32-806, 904.
	52	90	16	32-804.
	52	90	17	Repealing.
May 25	56	114	1, 2	Special.
June 30	64	156	6	S. 26-101.
July 12	83	180	1-17	Temporary.
	87	180	18	43-1522.
	88	180	19	Repealing.
Aug. 15	202	296	----------	Temporary.
	202	297	1-3	S. 16-1301.
1877				
Jan. 16	222	22	----------	Obsolete.
	222	23	----------	S. 45-702, 704.
Jan. 20	224	31	1-3	Temporary.
Feb. 5	230	50	1-5	Temporary.
Feb. 27	253	69	2	4-412; 11-306.
Mar. 3	347	105	----------	32-401, 405.
	396	117	1	S. 47-501.
	396	117	2	R. '79, 20 Stat. 410, ch. 182.
	396	117	3, 4	S. 47-1209
	397, 398	117	5	S. 47-1001 to 1005.
	398	117	6	S. 47-1006.
	398	117	7	S. 47-1301, 1302.
	399	117	8	47-801.
	399	117	9	S. 47-1207 note.
	399	117	10	S. 47-1203.
	400	117	11	S. '02, 32 Stat. 619, ch. 1352, § 6, par. 8.
	400	117	12	Temporary.
	401	117	13	S. 47-301, 309, 310.
	401	117	14	Repealing.
	402	117	15	1-105.
	402	117	16	S. 47-405.
	402	117	17	Temporary.
	402	117	18	47-801.

STATUTES AT LARGE—Continued

VOLUME 20

Date	Page	Chapter	Section	D. C. 1950
1877				
Dec. 14	7	1		S. '19, 41 Stat. 209, ch. 24, § 1.
1878				
Feb. 4	23	12	1, 2	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	23	12	3	1–106.
	23	12	4	R. '01, 31 Stat. 1434, ch. 854, § 1636.
Apr. 3	34	48	1, 2	Temporary.
	34	48	3	S. 47–1209.
Apr. 17	36	60		S. 22–3104.
Apr. 29	39	68	1	S. 22–1501.
	39	68	2	S. 22–1503.
	39	69		45–501.
Apr. 30	40	72		Temporary.
May 28	87	145		Temporary.
May 31	88	147		Special.
June 4	91	154		S. '98, 30 Stat. 766, ch. 30, § 6.
June 7	100	162	1	S. 11–701, 703, 704.
	100	162	2	Temporary.
	100	162	3	S. '01, 31 Stat. 1195, ch. 854, § 41.
	100	162	4	S. '01, 31 Stat. 1190, 1195, ch. 854, §§ 3, 41.
	100	162	5	S. 1–401, 402, 501, 502.
	100	162	6	Repealing.
June 11	102	180	1	1–101 note, 102, 103; pages LVIII to LXI.
	102	180	2	1–102 note; pages LVIII to LXI.
	103	180	2	1–201, 203, 206 to 210, 220, 802, 803; R. 35; 49 Stat. 430, ch. 332, § 1[1]
	103	180	3	1–103 note, 218, 801; pages LVIII to LXI, 43–1503, 1506, 1521
	104	180	3	1–216, 219, 221, 234.
	105	180	4	47–309; pages LVIII to LXI.
	105	180	5	7–601; pages LVIII to LXI.
	106	180	5	7–602 to 604.
	107	180	5	1–212; 7–605.
	107	180	6, 7	Pages LVIII to LXI.
	107	180	8	6–101; pages LVIII to LXI.
	107	180	9	6–104 to 106; pages LVIII to LXI.
	107	180	10	6–107; pages LVIII to LXI.
	107	180	11	Pages LVIII to LXI.
	108	180	12	1–238; pages LVIII to LXI.
	108	180	13	47–102; pages LVIII to LXI.
	108	180	14, 15	Pages LVIII to LXI.
June 14	131	194	1, 2	1–228.
	132	195		Special.
June 15	134	213	1–18	S. 22–1612 to 1620.
	137	215	1–14	S. 2–601 to 617.
June 19	173	323	1	47–2001.
	173	323	2	47–2002.
	173	323	3	47–2003.
	174	323	4	47–2004.
	174	323	5	47–2005.
	174	323	6	47–2006.
	174	323	7	1–230.
	174	323	8	47–2007.
	174	323	9	22–1111.
	173	323	10	Repealing.
	166	309		Special.
	173	321	1	S. 15–403.
	173	321	2	Repealing.
Dec. 23	259	11	1–3	Temporary.
1879				
Jan. 25	264	22	1–3	S., U. S. C., title 26, §§ 2300 to 2314.
Jan. 31	277	38		S. 28–616.
Feb. 6	282	49	1, 2	S. 30–117.
	283	50		47–306, 1010.
Feb. 25	320	99	1	S. 11–301.
	320	99	2	S. 11–310, 313.
Feb. 27	323	110		Temporary.
Mar. 3	353	172		Special.
	353	174		45–407.
	395	182	1	32–402.
	408	182	3	31–803.

VOLUME 21

Date	Page	Chapter	Section	D. C. 1950
1879				
June 10	9	16	1	43–1503, 1505.
	9	16	2	Temporary.
	9	17	1, 2	Temporary.

[1] Repealed in part.

VOLUME 21—Continued

Date	Page	Chapter	Section	D. C. 1950
1879				
June 21	23	33	1, 2	Special.
June 27	35	38		1–230.
	36	41	1–3	Temporary
	36	41	4	S. 47–1001.
1880				
Apr. 6	71	47	1, 2	S. 22–1601.
	71	47	3	S. 22–1602.
	71	47	4	S. 22–1604.
	71	47	5	S. 22–1601, 1607, 1608.
June 4	156	121	1	32–803.
	157	121	1	32–1002.
	162	121	2	S., U. S. C., title 31, § 23.
June 8	165	134		Temporary.
	166	137	1	S. 11–314.
	167	137	2	R. '01, 21 Stat. 1434, ch. 854, § 1636.
	167	137	3	Repealing.
June 16	270	235		24–420.
	275	235		31–1009.
	284	243	1–10	Temporary.
Apr. 24	304	No. 25	1	6–111.
	305	No. 25	2	6–112.
1881				
Jan. 25	318	27		1–724.
Jan. 28	321	29		R. '01, 31 Stat. 1434, ch. 854, § 1636.
Feb. 23	331	72		Appropriation.
Mar. 1	374	94		Temporary.
Mar. 2	378	109		Special.
Mar. 3	414	131	1–5	Special.
	459	134	1	32–813.
	460	134	1	1–204; 47–301.
	462	134	1	7–1206.
	466	134	1	47–210.
	466	134	2–6	Special.
	513	159		Special.
	513	160	1	Special.
	513	160	2	47–804.

VOLUME 22

Date	Page	Chapter	Section	D. C. 1950
1881				
Dec. 20	1	2		S. 28–616.
1882				
Mar. 11	29	32		Special.
Apr. 1	40	61		Special.
May 17	67	157	1	S. 26–301.
	67	157	2	S. 26–302.
June 15	104	220	1–3	Special.
June 16	105	222	3	47–811.
June 27	114	243		Special.
July 1	126	258	1	9–106.
	126	258	2	9–107.
	126	258	3	9–108.
	126	258	4	9–109.
	127	258	5	9–110.
	127	258	6	9–111.
	127	258	7	9–112.
	127	258	8	9–113.
	127	258	9	9–114.
	127	258	10	9–115.
	127	258	11	9–116.
	127	259		S. 11–312.
	138	263	1	43–1203.
	139	263	1	1–304.
	143	263	2	43–1502.
	144	263	2	43–1504.
	144	263	3	47–310.
July 6	151	272	1, 2	S. 7–306, 307.
July 12	162	289	1, 2	S. 22–1801.
July 15	168	294	1–3	Special.
Aug. 4	218	385		Special.
Aug. 5	243	389	1	4–201.
Aug. 7	343	435	1, 2	Special.
1883				
Jan. 19	408	34	1, 2	Special.
Jan. 31	411	40	1–5	S. 22–1504 to 1507.
	412	41	1	S. 4–106.
	412	41	2	Repealing.
	412	41	3	S. 4–172.
	412	41	4	S. 4–103.
Feb. 17	420	48	1, 2	Special.
Mar. 1	432	60	1, 2	Special.
Mar. 3	470	95	1	1–818.
	470	95	2	47–310.

STATUTES AT LARGE—Continued

VOLUME 22—Continued

Date	Page	Chapter	Section	D. C. 1950
1883				
Mar. 3	529	124		R. '01, 31 Stat. 1434, ch. 854, § 1636.
	530	125		R. '01, 31 Stat. 1434, ch. 854, § 1636.
	530	126		S. 23-402.
	568	137	1	S. 47-701.
	568	137	2	S. 47-702.
	568	137	3	S. 47-604.
	569	137	4	S. 47-704.
	569	137	5	47-703.
	569	137	6	S. 47-705.
	569	137	7	S. 47-706.
	569	137	8	S. 47-707.
	569	137	9	S. 47-708.
	570	137	10	S., U. S. C., title 5, § 673.
	570	137	11	S. 47-709.
	570	137	12	S. 47-710.
	570	137	13	S. 47-712.
	570	137	14	S. 47-606.
	571	137	15	Repealing.
	625	143		31-1018.

VOLUME 23

Date	Page	Chapter	Section	D. C. 1950
1884				
Mar. 13	4	12	1, 2	S., U. S. C., title 15, § 261.
Apr. 23	13	28	1	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	13	28	2	Repealing.
	13	28	3	Obsolete.
July 2	64	143	1	S. 38-101, 103.
	64	143	2	S. 38-102.
	64	143	3, 4	S. 38-109.
	64	143	5	S. 38-110.
	65	143	6	S. 38-114.
	65	143	7	S. 38-115.
	65	143	8	S. 38-110.
	65	143	9	S. 38-116.
	65	143	10	S. 38-117.
	65	143	11	S. 38-118.
	66	143	12	S. 38-123.
	66	143	13	S. 38-124.
	66	143	14	Repealing and effective date.
July 4	72	178		Special.
July 5	125	227	1	1-810.
	127	227	1	32-1001.
1885				
Feb. 13	302	58	1	22-805, 806, 808; 32-201, 208.
	302	58	2	32-209.
	303	58	3	22-901.
	302	58	4	S. 22-2704.
Feb. 17	307	126	1-3	S. 16-1201 to 1203.
Feb. 25	313	145	1	1-816.
	314	145	1	32-1005.
	318	145	1	31-1105.
	319	145	1	43-1503, 1508, 1522, 1536; 47-107.
	319	145	2	Temporary.
Feb. 26	335	166		Special.
Mar. 2	340	316	1, 2	S. 22-1601, 1602.
	340	316	3	S. 22-1703.
Mar. 3	350	334	4	47-812.
	443	355	1, 2	R. '11, 36 Stat. 1168, ch. 231, § 297.

VOLUME 24

Date	Page	Chapter	Section	D. C. 1950
1886				
Apr. 22	14	58		1-108.
June 21	23	328		Special.
	84	463	1-4	S. '16, 39 Stat. 163, ch. 127.
July 9	130	757		Appropriation.
Aug. 4	218	894		Special.
	252	902	1	47-208.
Aug. 5	335	930	1-6	Special.
1887				
Jan. 17	361	25	1	S. 20-302.
	361	25	2	S. 19-205.
Jan. 26	364	41		S. 47-1003.
	364	43		47-810.
	364	44		Special.
	365	45	1-3	S. 5-301 to 315.
	366	45	4	Repealing.

VOLUME 24—Continued

Date	Page	Chapter	Section	D. C. 1950
1887				
Jan. 26	366	46	1-7	R. '01, 31 Stat. 1434, ch. 854, § 1654.
	368	48		S. 45-1407.
	368	49	1	1-224.
	369	49	2	1-225.
Feb. 23	411	214		47-813.
	413	217	1	Special.
	413	217	2	47-814.
	414	219		Special.
Feb. 28	424	270		Special.
	427	272	1	2-1501.
	427	272	2	2-1502.
	427	272	3	2-1503.
	427	272	4	2-1504.
	427	272	5	2-1505.
	427	272	6	2-1506.
	427	272	7	2-1507.
	427	272	8	Effective date.
	431	281	1, 2	S. 20-505.
Mar. 3	476	340	1	S. 45-1502.
	477	340	2	S. 45-1503.
	477	340	4	S. 45-1504.
	494	350		Special.
	501	355		1-807.
	560	379		Temporary.
	571	389	1, 2	Appropriation.
	580	390	1, 2	1-229.
	633	394		Special.
	636	397	5	22-1001.

VOLUME 25

Date	Page	Chapter	Section	D. C. 1950
1888				
Mar. 9	45	30		45-1505.
Apr. 26	94	204	1, 2	S. 22-1508.
June 18	185	391		S. 28-616.
June 19	190	419	1-20	Special.
July 9	201	478	2-6	Special.
	245	595	1	S. '26, 44 Stat. 208, ch. 58, § 1.
	245	595	2	32-902.
	246	595	3	32-903.
	246	595	4	32-905.
	246	595	5	32-904.
	246	595	6	32-907, 908.
	246	595	7	S. '26, 44 Stat. 208, ch. 58, § 1.
	246	595	8	32-913.
	246	597		14-403.
	247	598		R. '01, 31 Stat. 1434, ch. 854, § 1636.
July 18	314	676	1	47-107.
	316	676	1	47-127.
	319	676	1	7-621.
	323	676	1	43-1401.
July 23	340	694	1	4-116.
	340	694	2	4-117.
	340	694	3	4-118.
Aug. 1	353	723		S. 28-616.
	353	724	1-9	Special.
	355	725	1, 2	Special.
	355	726		Special.
Aug. 9	399	824	1-3	Special.
Aug. 11	439	872	1, 2	Special.
Aug. 22	446	912	1-5	Special.
Aug. 27	451	916	1-3	S. 1-613 to 615.
	451	916	4	Repealing.
	451	916	5	S. 7-125.
	451	917	1-3	Special.
Oct. 12	549	1090	1-16	S. 33-101 to 110.
	554	1095	1	32-101.
	554	1095	2	32-102.
	554	1095	3	32-103.
	554	1095	4	32-104.
	556	1097	1, 2	S. 47-1001 to 1009.
Oct. 18	560	1196	1-19	Special.
1889				
Feb. 12	659	133	1, 2	Special.
Feb. 15	672	169		R. '01, 31 Stat. 1434, ch. 854, § 1636.
Mar. 1	749	308	1	Repealing.
	749	308	2	S. 11-312.
	749	308	3	S. 11-1417.
	750	308	4	S. 11-1405 to 1407.
	750	308	5	S. 11-1414.
	750	308	6	S. 11-1411 note.
	750	308	7	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	750	308	8	S. 11-1412.
	750	308	9	S. 11-1413.
	750	308	10	Effective date.
	772	328	1	39-101.

STATUTES AT LARGE—Continued

VOLUME 25—Continued

Date	Page	Chapter	Section	D. C. 1950
1889				
Mar. 1	772	328	2	39–102.
	773	328	3	39–103.
	773	328	4	39–104.
	773	328	5	39–105.
	773	328	6	39–112.
	773	328	7	39–201.
	773	328	8	39–202.
	773	328	9	39–204.
	774	328	10	39–106.
	774	328	11	S. 39–107.
	774	328	12–17	R. '09, 35 Stat. 630, ch. 146.
	774	328	18	39–111.
	775	328	19	39–206.
	775	328	20, 21	39–207.
	775	328	22	39–208.
	775	328	23	39–210.
	775	328	24	39–214.
	775	328	25	39–301.
	775	328	26	S. 39–401.
	776	328	27	S. 39–402.
	776	328	28	39–403.
	776	328	29	39–405.
	776	328	30	S. 39–403.
	776	328	31	39–501.
	776	328	32	39–502.
	776	328	33	39–504.
	777	328	34	39–505.
	777	328	35	S. 39–506 to 510.
	777	328	36	S., U. S. C., title 32, § 46.
	777	328	37	39–512.
	777	328	38	39–513.
	777	328	39	39–514.
	778	328	40	39–601.
	778	328	41	39–602.
	778	328	42	39–515.
	778	328	43	39–607.
	778	328	44	39–516.
	778	328	45	39–603.
	778	328	46	39–604.
	779	328	47	39–605.
	779	328	48	39–606.
	779	328	49	39–608.
	779	328	50	39–701, 702.
	779	328	51	39–703.
	779	328	52	R. '09, 35 Stat. 635, ch. 146.
	779	328	53	R. '09, 35 Stat. 635, ch. 146.
	780	328	54	R. '09, 35 Stat. 635, ch. 146.
	780	328	55	39–802.
	780	328	56	39–803.
	780	328	57	39–804.
	780	328	58	S. 39–805.
	780	328	59	39–903.
	781	328	60	39–901.
	781	328	61	39–904.
	781	328	62	39–905.
	781	328	63	Repealing.
Mar. 2	794	370	1	S. 47–1301.[2]
	797	370	1	44–209.
	802	370	1	1–812; S. 16–601.[2]
	807	370	1	S. 3–123.
	808	370	2	Temporary.
	808	370	3	47–132.
	808	370	4	Special.
	872	392	1–3	Special.
	962	411	1	31–1010; S. '90, 26 Stat. 392, ch. 837, §1.[2]
	1006	413	1–14	S. 26–601 to 611.

VOLUME 26

Date	Page	Chapter	Section	D. C. 1950
1890				
Mar. 15	20	33	1, 2	S. 24–405.
Mar. 19	24	40	1	S. 47–1001 to 1009.
	25	40	2	Repealing.
Mar. 24	28	47	1, 2	Special.
	29	48		Special.
May 6	102	197		Temporary.
June 2	124	389		Special.
June 17	159	428		43–1501, 1525.
June 25	174	613	1–6	Special.
Aug. 6	294	724	1	47–304.
	295	724	1	47–122.
	296	724	1	S. 7–608.[2]
	302	724	1	S. 16–601.[2]
	306	724	1	8–141.
	307	724	1	S. 32–814.[2]
	308	724	1	S. '00, 31 Stat. 664, ch. 807.[2]
Aug. 8	313	729		S., U. S. C., title 28, §§ 484, 580.
Aug. 30	392	837	1	31–1013, 1014.
	393	837	1	31–1009.
	413	837	3	S. 16–601 to 610.

VOLUME 26—Continued

Date	Page	Chapter	Section	D. C. 1950
1890				
Sept. 26	490	949	1	8–168.
	490	949	2	Appropriation.
	490	950		Special.
Sept. 27	492	1001	1	8–146.
	492	1001	2–6	Special.
	495	1001	7	8–148.
Oct. 1	625	1245		Special.
	625	1246	1–33	S. 26–301, 304 to 336.
	632	1246	34	21–310 note.
Dec. 24	1113	No. 7		1–201, 202, 211.
1891				
Jan. 19	718	76	1	Special.
	719	76	2	7–1210.
	719	76	3, 4	Special.
Feb. 7	736	117		22–1120.
Feb. 28	789	382	1–16	Special.
	797	385		S. 25–107.
Mar. 2	824	497	1, 2	S. 22–1508.
	824	499		Special.
	824	500		Special.
Mar. 3	841	531	1	S. 47–2339.
	841	531	2	S. 26–605.
	841	531	3	S. 26–607.
	848	536	1	11–601, 602, 606.
	848	536	2	11–616.
	848	536	3	S. 11–617, 618.
	849	536	4	11–619; S. 17–103.[2]
	849	536	5	11–607.
	850	536	6	11–601.
	850	536	7	11–621, 623, 624.
	850	536	8	Saving Clause.
	868	540		5–204.
	1064	546		47–112.
	1103	563		Temporary.

VOLUME 27

Date	Page	Chapter	Section	D. C. 1950
1892				
Feb. 9	2	5	1	S. 29–201.
	2	5	2	S. 29–237.
	3	5	3	Right of Congress to alter, amend, or repeal.
Feb. 18	4	9		Special.
Mar. 21	10	19		22–1208.
Mar. 31	13	30		47–601.
Apr. 5	14	34		22–3117.
Apr. 23	21	53	1	1–725.
	21	53	2	2–1404.
	21	53	3	1–726.
	21	53	4	1–727.
	21	53	5	Repealing.
Apr. 28	22	54	1–3	Temporary.
	22	54	4	Repealing.
	22	55		1–220.
Apr. 30	22	56	1–4	Special.
	23	57	1–5	Special.
May 11	29	65	1	4–601.
	29	65	2	4–602.
	29	65	3	4–603.
	29	67		Special.
May 13	37	74		47–306, 1010.
May 25	39	78		Special.
	40	79		Temporary.
May 31	40	83	1, 2	S. 38–201 to 203.
June 3	41	87	1, 2	Repealing.
June 6	42	89	1–9	S. 2–301 to 331.
June 15	51	119		Special.
June 25	60	135	1	11–603.
	60	135	2	32–210.
	60	135	3	22–813.
	60	135	4	22–811, 812.
	61	135	5	22–814.
	61	135	6	22–810.
July 5	65	143	1–4	Special.
	66	144	1–24	Special.
July 6	86	152		Special.
July 13	116	159	1, 2	S. 22–3204, 3205.
	116	159	3	S. 22–104.
	116	159	4, 5	S. 22–3207 to 3211.
	117	159	6	Repealing.
July 14	151	171	1	47–112.
	154	171	1	21–105.
	160	171	1	4–119.
	162	171	1	6–108.
	167	171	2, 3	Appropriation.
July 18	235	201	1, 2	Special.
July 22	254	228	1, 2	R. '14, 38 Stat. 717, ch. 310, § 3.
	255	230	1–10	S. 7–301 to 330.
July 23	261	236	1	S. 11–616.

[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 27—Continued

Date	Page	Chapter	Section	D. C. 1950
1892				
July 23	262	236	2	S. 11–622.
July 26	268	250	1, 2	S. 3–101.
	269	250	3	3–115.
	269	250	4	3–116.
	269	250	5	3–117.
	269	250	6	3–118.
	270	250	7	3–114 note.
	273	257	----------	Appropriation.
July 28	319	312	1–6	Special.
July 29	322	320	1	22–3112.
	322	320	2	22–3113.
	322	320	3	22–1109.
	322	320	4	22–1117.
	323	320	5	S. 22–1107.
	323	320	6	22–1107.
	323	320	7	R. '35, 49 Stat. 651, ch. 546, § 4.
	323	320	8	22–3301.
	324	320	9	22–1112.
	324	320	10	22–1110.
	324	320	11	22–1114.
	324	320	12	S. '06, 34 Stat. 621, ch. 3615, § 1, which was R. '25, 43 Stat. 1125, ch. 443, § 16.
	324	320	13	22–3110.
	325	320	14	22–1113.
	325	320	15	4–120; 22–3111.
	325	320	16	22–1118.
	325	320	17	22–1108.
	325	320	18	22–109.
	325	320	19	Repealing.
	325	321	1, 2	29–105.
	326	322	1–8	Special.
	334	323	----------	Obsolete.
Aug. 1	341	353	1–24	Special.
Aug. 5	373	380	1	S. 32–317.[2]
Feb. 26	394	No. 4	1	Temporary.
	394	No. 4	2	1–226.
Dec. 22	405	6	1	S. 28–616.
	405	6	2	Effective date.
1893				
Jan. 6	414	20	1, 2	Special.
Jan. 7	415	23	----------	Special.
Jan. 14	420	38	1, 2	Special.
Feb. 9	434	74	1	11–201.
	435	74	2	S. 11–202.
	435	74	3	11–203.
	435	74	4	11–204.
	435	74	5	11–204.
	435	74	6	11–205.
	435	74	7	17–101.
	436	74	8	S., U. S. C., title 28, §§ 346, 347.
	436	74	9	R. '27, 44 Stat. 1336, ch. 273, § 7.
	436	74	10	11–206.
	436	74	11	11–208.
	436	74	12	S. '08, 35 Stat. 544, ch. 228, § 29.
	436	74	13	11–209.
	436	74	14	S. 11–302.
	436	74	15	11–210, 331.
	436	74	16	Effective date.
	436	74	17	Repealing.
Feb. 13	444	104	----------	Special.
Feb. 18	461	137	1–5	Special.
	462	139	----------	Special.
Feb. 20	464	143	----------	Special.
Feb. 24	474	157	1	S. 28–2601, 2602.
	474	157	2	S. 28–2606.
	474	157	3	S. 28–2608.
	474	157	4	S. 16–301.
	475	158	----------	Special.
	476	160	1, 2	Special.
Feb. 25	477	164	1, 2	Temporary.
Feb. 27	490	170	1–7	Special.
Mar. 2	532	197	1	7–108.
	532	197	2	7–109.
	533	197	3	7–110.
	534	197	4	7–111.
	534	197	5	7–112.
	534–537	197	6–19	R. '98, 30 Stat. 519, ch. 519, § 1.
Mar. 3	541	199	1	S. 7–606.
	543	199	1	1–725, 727; 2–1404; 43–1201, 1202, 1204; S. 43–601 to 43–603.[2]
	544	199	1	7–501, 706; 43–1529; R. '28, 45 Stat. 996, ch. 901, § 1.[1]
	546	199	1	S. 31–801.
	551	199	1	32–315.
	552	199	1	32–1003; S. 3–116.
	553	199	1	32–1004.
	554	199	2	Temporary.
	563	204	1–21	S. 25–101 et seq.
	591	208	1	1–317; S. 11–310 to 312, 1401 to 1419.[2]

VOLUME 28

Date	Page	Chapter	Section	D. C. 1950
1893				
Dec. 21	21	7	----------	Special.
1894				
Jan. 27	33	22	----------	1–808.
Mar. 12	40	35	1–3	S. 22–1601, 1602, 1604 to 1608, 1703.
Mar. 14	44	40	----------	7–610.
May 11	75	73	----------	S. 25–101 et seq.
May 25	78	77	1, 2	S. 43–101 to 422.
July 30	160	172	1	11–204.
	161	172	2	11–205.
	162	172	3	11–206.
July 31	202	174	1	47–201.
Aug. 2	217	189	1–4	Special.
	218	189	5	44–208.
	218	189	6, 7	Special.
Aug. 3	220	193	1, 2	Special.
Aug. 6	999	230	----------	47–817.
Aug. 7	244	232	1	1–729.
	246	232	1	1–212; 7–601 note.
	247	232	1	7–608.
	250	232	1	7–606; 44–204.
	252	232	1	7–503; 8–149.
	254	232	1	31–1104.
	256	232	1	S. 43–1402 to 1408.[2]
	257	232	1	6–113.
	262	232	2	Temporary.
Aug. 11	275	253	----------	S. 43–1511.
	276	254	----------	Special.
Aug. 13	277	279	1, 2	Special.
Aug. 14	282	287	1	47–701.
	282	287	2	47–604.
	283	287	3	47–702.
	283	287	4	47–704.
	283	287	5	S. 47–401 to 403.
	283	287	6	47–705.
	283	287	7	47–706.
	283	287	8	47–707.
	284	287	9	S. 47–708.
	284	287	10	S. 47–709.
	284	287	11	S. 47–710.
	284	287	12	S. 47–712.
	285	287	13	47–606.
	285	287	14	47–209.
	285	287	15	S. '13, 37 Stat. 997, ch. 150, § 9.
	285	287	16	Effective date.
Aug. 18	417	301	----------	24–422.
Aug. 23	488	308	----------	S. 11–1207.
Aug. 24	501	328	1–3	S. 7–301 to 330.
	501	329	----------	45–506.
Jan. 27	577	No. 9	----------	11–102.
Aug. 1	588	No. 40	1	7–120.
	588	No. 40	2	7–121.
1895				
Jan. 7	599	19	----------	Special.
Jan. 12	614	23	73	6–106 note.
Feb. 9	650	78	----------	Appropriation.
Feb. 11	650	79	----------	1–107, 235; 43–1503, 1537; 44–209; 47–703 note; 49–302; page LXXV.
Feb. 13	664	87	----------	R. '97, 29 Stat. 669, ch. 387.
Feb. 19	668	100	1, 2	S. 11–703.
	668	100	3	S. 17–104.
	669	100	4–11	S. 16–301, 302.
	670	100	12–14	S. 11–725.
	670	100	15	S. 11–726.
	670	100	16, 17	S. 11–727.
	670	100	18	S. 11–728.
	670	100	19	S. 11–731.
	670	100	20	S. 11–732.
	670, 671	100	21, 22	S. 11–731.
	671	100	23, 24	S. 11–744.
	671	100	25	S. 11–745.
	671	100	26	S. 11–746.
	671	100	27, 28	S. 11–748; S. 17–104.
	671	100	29	S. 11–722.
	671	100	30	Repealing.
Feb. 26	682	130	1–6	Special.
	686	132	1–3	S. 2–201 to 209.
	687	134	----------	16–207 note.
Feb. 28	689	138	----------	S. 1–601.
	689	138	2	S. 1–602.
	689	138	3	S. 1–604.
	689	138	4	S. 1–617.
	690	138	5	S. 1–616.
	690	138	6	S. 1–604.
	690	138	7	S. 1–629.
	690	138	8	Repealing.
Mar. 1	693	144	----------	S. 31–101.
	700	148	----------	Special.
Mar. 2	709	164	1	S. 33–302, 303.
	709	164	2	S. 33–302, 304.
	710	164	3	S. 33–312.

[1] Repealed in part.
[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 28—Continued

Date	Page	Chapter	Section	D. C. 1950
1895				
Mar. 2	710	164	4	S. 33-308.
	710	164	5	S. 33-309.
	710	164	6-8	S. 33-301, 313, 314.
	710	164	9	S. 33-310.
	711	164	10	S. 33-311, 313, 314.
	711	164	11	S. 33-307.
	711	164	12	S. 33-305, 307.
	711	164	13	S. 33-104, 106 to 108.
	711	164	14	S. 33-319.
	711	164	15	Repealing.
	713	166	1-5	Special.
	717	167	1-25	Special.
	721	168	1-30	Special.
	740	172	1-3	S. 22-1701.
	747	176	1	S. 1-312;[2] S. 47-1209.[2]
	758	176	1	6-501; 32-311; S. 32-301 to 305.[2]
	764	176	2	Temporary.
	809	178	1-5	S. 7-801 to 806.
	810	178	6	S. 5-308; S. 47-2302.
	811	179	1-16	R. '21, 41 Stat. 1225, ch. 118, §33.
	964	192	1	36-310.
	964	192	2	36-311.

VOLUME 29

Date	Page	Chapter	Section	D. C. 1950
1896				
Jan. 21	2	5	----------	R. '98, 30 Stat. 519, ch. 519, § 1.
Feb. 7	4	10	----------	Special.
	5	12	1	22-1105.
	5	12	2	22-1106.
Feb. 20	10	25	1	4-601.
	10	25	2	4-602.
	10	25	3	4-603.
	11	27	----------	Special.
Mar. 28	75	74	----------	R. '21, 41 Stat. 1225, ch. 118, § 33.
Apr. 24	98	123	----------	47-721.
May 4	112	154	1	31-901.
	113	154	2	31-902.
	113	154	3	31-902 note.
	113	154	4	31-903.
	113	154	5	31-904.
	113	154	6	31-905.
May 13	118	177	1	S. 30-111.
	118	177	2	S. 30-106.
	118	177	3	S. 30-107.
	118	177	4	Temporary.
	118	177	5, 6	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	118	177	7	S. 30-113.
	119	177	8	S. 30-110; S. 33-112.
	119	177	9	S. 30-108, 114.
	120	177	10	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	120	177	11	S. 30-114.
	120	177	12	Effective date.
	120	177	13	Repealing.
May 18	122	194	1	S. 28-1921 to 1930.
	122	194	2	S. 28-1918.
May 19	123	201	----------	S. 28-616.
	124	205	1	S. 44-101.
	124	205	2	S. 44-102.
	124	205	3	S. 44-103.
	125	206	1	6-401.
	125	206	2	6-402.
	126	206	3	6-403.
	126	206	4	6-404.
	126	208	1-5	S. 22-1702.
May 21	128	214	----------	S. 42-101.
May 25	138	245	----------	14-308.
May 28	187	254	1-5	Special.
May 29	191	270	----------	4-159.
May 30	192	274	1, 2	R. '21, 41 Stat. 1225, ch. 118, § 33.
June 1	193	303	1	S. 30-207.
	193	303	2	S. 30-201.
	193	303	3, 4	S. 30-208.
	193	303	5	S. 30-208, 209.
	193	303	6	Temporary.
	194	303	7	S. 30-210.
	194	303	8	S. 21-101.
	194	303	9	S. 21-102.
	194	303	10	S. 18-202.
	194	303	11	Repealing.
June 3	198	313	1-16	S. 2-102 to 140.
	244	315	1	37-101.
	244	315	2	37-103.
	244	315	3	37-104.
	244	315	4	37-105.
	244	315	5	Temporary.
	246	317	1-3	Special.

VOLUME 29—Continued

Date	Page	Chapter	Section	D. C. 1950
1896				
June 6	251	335	1, 2	S. 43-1207.
	252	335	3	S. 43-601.
	252	335	4	S. 43-603.
	252	335	5	R. '09, 35 Stat. 703, ch. 250, § 1.
	252	335	6	Right of Congress to alter, amend, or repeal.
June 8	264	372	1-15	Special.
	281	373	1	32-306.
June 10	318	395	1-9	Special.
	320	395	10	44-215.
	320	395	11	S. 43-401.
	320	395	12	Right of Congress to alter, amend, or repeal.
June 11	394	419	1	47-128, 303.
	396	419	1	S. 43-1201.[2]
	399	419	1	S. 43-301 to 303.[2]
	401	419	1	43-1101.
	404	419	1	S. 4-503;[2] S. 11-625.[2]
	405	419	1	S. 4-502 to 504, 507.[2]
	410	419	1	32-501, 1007.
	411	419	1	32-1008.
	413	419	2	Temporary.
1897				
Jan. 26	499	94	1-3	Special.
	499	94	4	31-1024.
	500	96	1-3	Temporary.
Feb. 19	536	264	1-7	S. 21-301 to 305.
Feb. 20	578	267	1, 2	Special.
Feb. 25	594	315	1-4	47-2321 note.
	595	315	5	Repealing.
Feb. 27	600	341	----------	S. 11-1103.
	600	342	----------	Special.
Mar. 2	607	360	----------	17-103.
	608	361	1-4	R. '04, 33 Stat. 14, ch. 156, § 9.
	619	364	----------	22-1305.
	620	365	----------	Special.
Mar. 3	624	375	----------	8-153.
	630	382	1-18	S. 35-901 to 917.
	635	383	1-32	R. '39, 53 Stat. 1408, ch. 691, § 3.
	668	387	1	S. '01, 31 Stat. 1276, ch. 854, § 554.[2]
	673	387	1	43-1102; S. 10 128[2]
	677	387	1	4-179, 408.
	678	387	1	43-1405, 1406.
	679	387	1	S. 11-617, 1513.[2]
	683	387	1	32-1008.
	684	387	2	Temporary.
	692	390	----------	S., U. S. C., title 28, § 347.
	695	393	1	6-103.
	695	393	2	Effective date.
Feb. 20	702	No. 16	----------	10-137 note.

VOLUME 30

Date	Page	Chapter	Section	D. C. 1950
1897				
June 4	41	2	1	43-1102.
1898				
Jan. 25	228	6	1-19	S. 27-105, 114 to 128.
	231	7	----------	Special.
	231	8	1-16	R. '40, 54 Stat. 154, ch. 131, §1.
	231	8	17	Effective date.
	231	8	18	Repealing.
Feb. 17	246	25	1	33-101.
	246	25	2	33-102.
	246	25	3	33-103.
	247	25	4	33-104.
	247	25	5	33-105.
	247	25	6	33-106.
	248	25	7	33-107.
	248	25	8	33-108.
	248	25	9	33-109.
	248	25	10	33-110.
Feb. 28	250	32	1	47-1001.
	250	32	2	47-1002.
	250	32	3	47-1003.
	251	32	4	47-1005.
	252	32	4	R. '00, 31 Stat. 138, ch. 252.[1]
	252	32	5	47-1006.
	252	32	6	47-1007.
	252	32	7	47-1008.
	252	32	8	47-1009.
Mar. 17	327	70	1, 2	Special.
Mar. 18	328	72	1-6	Special.
Mar. 23	344	89	----------	S. 11-607.
Apr. 9	352	116	1, 2	Special.
Apr. 15	357	166	1-8	Special.
May 2	369	231	----------	Special.
May 5	398	241	1	33-201.

[1] Repealed in part.
[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 30—Continued

Date	Page	Chapter	Section	D. C. 1950
1898				
May 5	398	241	2	33–202.
	398	241	3	33–203.
	398	241	4	33–203 note.
May 7	399	245	1, 2	Special.
May 11	404	293	1–5	S., U. S. C., title 34, § 856.
	405	295	----------	S. 22–3207 to 3211
May 17	415	338	1–8	S. 22–1601 to 1608, 1703.
	416	338	9	Repealing.
June 7	747	No. 46	----------	1–222.
June 8	434	394	1	11–501.
	434	394	1	S. 11–501.
	435	394	2	S. 11–503.
	435	394	3	S. 11–313; S. 19–312.
	435	394	4	S. 19–301 to 304.
	435	394	5	S. 19–309.
	436	394	6	S. 19–312.
	436	394	7	S. 18–607.
	437	394	8	Effective date.
	437	394	9	S. 20–403.
	437	394	10	14–404.
	437	394	11	S. 11–312.
	437	394	12	Repealing.
June 15	470	450	1–3	Special.
June 18	477	467	1	2–1401.
	477	467	2	2–1402.
	477	467	3	2–1403.
	477	467	4	2–1405.
	477	467	5	2–1406.
	477	467	6	2–1407.
	477	467	7	7–615.
	477	467	8	2–1408; 7–616.
	477	467	9	Effective date and repealing.
	478	468	1–28	Special.
June 24	487	495	1	11–1001 note.
	487	495	2	U. S. C., title 28, § 511.
	488	496	1, 2	Special.
	489	496	3	4–112.
	489	496	4–6	Special.
June 25	489	497	1	S. 44–211.
	489	497	2	S. 44–210.
	490	497	3	S. 44–212.
	490	497	4	Repealing.
June 27	490	499	1–10	Special.
June 28	519	519	1	Repealing.
	519	519	2	Special.
	520	519	3	7–113.
	520	519	4	Special.
	520	519	5	7–114.
	520	519	6	7–115.
June 30	526	540	1	47–112, 123
	532	540	1	7–106.
	533	540	1	S. 10–128.[2]
	538	540	1	S. 43–301, 401.[2]
July 1	570	543	1	8–110.
	570	543	2	8–108.
	570	543	3	5–204.
	570	543	4	8–127.
	570	543	5	8–135.
	571	543	6	8–143.
	571	543	7	Repealing.
	624	546	1	31–1007.
	635	546	1	32–316.
July 7	664	571	1	43–1103.
	666	571	1	1–215; 47–602; S. 11–1507;[2] S. 21–307.[2]
	719	579	1–3	Special.
July 8	721	635	1–3	S. 43–1510 to 1517.
	723	638	----------	22–1107, 3112, 3301.
	724	638	----------	22–1112.
	724	639	1	S. 11–606.
	724	639	2	S. 24–404
	724	640	1	7–1101.
	724	640	2	7–1102.
	724	640	3	7–1103.
	725	640	4	7–1104.
	725	640	5	7–1105.
	725	641	1–23	Special.
	753	No. 59	----------	43–1104.
Dec. 21	765	30	1–14	Obsolete.
	769	33	1	S. 45–706.
	770	33	2	Repealing.
	770	34	----------	Special.
1899				
Jan. 12	785	47	1–19	S. 28–101 to 1007
	802	48	1–5	R. '06, 34 Stat. 385, ch. 3505, § 6.
Jan. 31	811	78	1–6	R. '03, 32 Stat. 1043, ch. 1006, § 1.
	811	78	7	S. 21–317.
	811	78	8	Repealing.
Feb. 2	812	79	4	R. '35, 49 Stat. 653, ch. 549, § 5.
	812	79	5	6–802 note.
	812	79	6	R. '35, 49 Stat. 653, ch. 549, § 5.
Feb. 10	834	150	1–6	Special.
	835	151	----------	Temporary.
	835	152	----------	Appropriation.
Feb. 18	838	164	----------	Appropriation.
Feb. 21	845	179	----------	Special.

VOLUME 30—Continued

Date	Page	Chapter	Section	D. C. 1950
1899				
Feb. 25	891	194	1–6	Special.
Feb. 28	906	218	----------	1–804.
	908	220	1–3	Special.
	1390	No. 21	6–114	
Mar. 1	921	320	1–4	Special.
	922	322	1	S. 5–401.
	922	322	2	S. 5–402.
	922	322	3	S. 5–403.
	922	322	4	S. 5–405.
	922	322	5	S. 5–406.
	922	322	6	S. 5–407.
	922	322	7	S. 5–401 to 409.
	922	322	8	S. 5–409.
	923	323	1	5–501.
	923	323	2	5–502.
	923	323	3	5–503.
	923	323	4	5–504.
	959	326	1	6–901.
	959	326	2	6–902.
	959	326	3	6–903.
Mar. 3	1010	415	1, 2	S. 22–3001.
	1012	417	1	22–1609 to 1612.
	1012	417	2	22–1613.
	1012	417	3	22–1614, 1615.
	1012	417	4	S., U. S. C., title 16, § 704.
	1013	417	5	22–1616.
	1013	417	6	22–1617.
	1013	417	7	22–1618.
	1013	417	8	22–1619.
	1013	417	9	22–1620.
	1013	417	10	Repealing.
	1013	418	1, 2	S. 25–107, 132.
	1046	422	1	1–728.
	1053	422	1	43–1107.
	1056	422	1	31–301.
	1057	422	1	4–115.
	1064	422	2	Temporary.
	1101	424	1	31–1020.
	1114	424	1	S. 19–312.[1]
	1222	427	1	S. 45–710.[2]
	1343	430	----------	Special.
	1344	431	1–9	Special.
	1346	432	1	S. 22–1304.
	1346	432	2	10–121.
	1346	432	3	S. 22–1304.
	1346	433	1, 2	Special.
	1353	440	----------	Special.
	1372	455	1–3	Special.
	1373	456	1–23	Special.
	1376	457	1	47–401.
	1377	457	2	47–402.
	1377	457	3	47–403.
	1377	457	4	Repealing.
	1377	457	5	S. 47–2320.
	1377	458	1	9–101.
	1378	458	2	8–156; 9–102.
	1378	458	3	S., U. S. C., title 33, 305.
	1379	459	----------	S. 16–1501.
	1380	461	1–14	Special.
	1383	462	1, 2	Temporary.

VOLUME 31

Date	Page	Chapter	Section	D. C. 1950
1900				
Jan. 30	2	4	1–3	Special.
Feb. 7	6	11	----------	Special.
Feb. 8	6	12	----------	Special.
Mar. 8	42	35	----------	Special.
Apr. 23	138	252	----------	Repealing.
Apr. 30	165	342	1–3	Special.
May 26	217	587	1	43–1301.
	218	587	2	43–1302.
	218	587	3	43–1303.
	218	588	----------	Obsolete.
May 31	248	599	1	Special.
	248	599	2	7–117.
June 2	251	611	1–3	Special.
	251	612	1	S. 43–1512, 1513.
	252	612	2	43–1518.
	252	612	3	Temporary.
	252	612	4	Repealing.
June 4	264	621	1–7	Special.
June 5	266	715	----------	32–815.
	267	715	----------	32–806, 816.
	270	718	1–6	Special.
June 6	555	789	1	47–113.
	559	789	1	7–619.
	563	789	1	43–1106.
	568	789	1	1–812.
	578	789	2	Temporary.
	611	791	1	S., U. S. C., title 5, § 673.[2]

[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 31—Continued

Date	Page	Chapter	Section	D. C. 1950
1900				
June 6	613	791	1	9–117.
	620	791	1	S. 31–1012.[2]
	663	806	7, 8	47–818.
	664	807		3–111, 112.
	665	807		3–113.
	665	808		S. 47–1209.[2]
	665	809	1–13	Special.
	668	810	1–14	Special.
	671	811		39–205.
	671	812		Special.
1901				
Jan. 25	740	166		Special.
	740	167		Special.
Jan. 28	744	183		S. 11–606.
Feb. 5	759	199		Special.
Feb. 6	761	218	1–4	Special.
	762	219		Special.
Feb. 11	766	352		Temporary.
Feb. 12	767–771	353	1–9	Special.
	772	353	10	7–1211.
	772	353	11	7–508.
	773	353	12	7–507.
	773	353	13	Temporary.
	773	353	14	47–720.
	774	353	15	Special.
	774	353	16	Repealing.
	774	353	17	Right of Congress to alter, amend, or repeal.
	774	354	1–4	Special.
	777	354	5	7–1212.
	777	354	6–8	Special.
	779	354	9	47–719.
	779	354	10–12	Special.
	781	354	13	Repealing.
	781	354	14	Right of Congress to alter, amend, or repeal.
Feb. 21	799	461	1	S. 43–1512, 1513.
	800	461	2	Repealing.
Feb. 25	809	478		32–904, 908, 909.
Feb. 28	816	619		Temporary.
	819	623	1	4–102, 103, 106, 121, 122, 124, 125; S. 4–405.[2]
	820	623	2	4–109.
	820	623	3	4–110.
	820	623	4	S. 4–503, 507; S. 11–625.
	820	623	5	4–173.
	820	623	6	S. 4–113.
	820	623	7	Repealing.
Mar. 1	821	668	1, 2	Special.
	826	670	1	49–111.
	831	670	1	S. 43–310 to 314.[2]
	844	670	1	31–1008.
	846	671		Special.
Mar. 2	956	815		Special.
Mar. 3	1091	844	1	22–1609, 1610.
	1092	844	1	22–1611, 1612, 1614, 1615.
	1092	844	2	S. 22–1608.
	1093	844	3	S. 22–1602.
	1095	847	1	3–120.
	1095	847	2	3–121.
	1095	847	3	S. 3–101; S. 11–922, 924.
	1095	847	4	22–902.
	1095	847	5, 6	S. 11–915.
	1096	847	7	S. 3–101; S. 11–925.
	1096	847	8	Repealing.
	1189–1436	854	1–1643	See Code of 1901.
		854	434–A	28–2505.
		854	675a	27–118a.
		854	869e	22–1513.
	1448	870		S. 19–301; S. 20–106.
Mar. 1	1463	No. 13		S. 47–2303.

VOLUME 32

Date	Page	Chapter	Section	D. C. 1950
1902				
Jan. 31	2	5	1	11–1407.
	2	5	2	Repealing.
	2	6		Appropriation.
Feb. 4	3	7		R. '07, 34 Stat. 890, ch. 914, § 5.
Feb. 14	33	19	2	Repealing.
Feb. 15	34	22		Temporary.
Feb. 21	37	27		Appropriation.
Mar. 10	60	146	1–8	Special.
Mar. 11	63	181		43–1201.
Mar. 20	74	229	1–3	R. '40, 54 Stat. 154, ch. 131, § 1.
Mar. 22	88	273		45–406.
Apr. 28	152	594	1	4–206; 11–1104.
Apr. 29	173	638	1	2–201.
	173	638	2	2–202.
	174	638	3	2–203.
	174	638	4	2–204.

VOLUME 32—Continued

Date	Page	Chapter	Section	D. C. 1950
1902				
Apr. 29	174	638	5	2–205.
	175	638	6	2–206.
	175	638	7	2–207.
	175	638	8	2–208.
	175	638	9	2–209.
	175	638	10	Repealing.
May 22	202	819		47–2321 note.
June 2	284	980	1, 2	Temporary.
June 20	393	1136	1	43–1402.
	393	1136	2	43–1403.
	394	1136	3	43–1404.
	394	1136	4	43–1405.
	395	1136	5	43–1406.
	395	1136	6	43–1407.
	395	1136	7	43–1408.
June 30	520	1329	1(3), (5)	S. 11–701.
	521	1329	1 (9)	S. 11–703.
	521	1329	1(12)	11–724.
	521	1329	1(13)	11–725.
	521	1329	1(26)	11–741.
	521	1329	1(27)	S. 11–701.
	521	1329	1(29)	11–743.
	521	1329	1(31)	S. 11–723; S. 17–104.
	521	1329	1(33)	11–744.
	521	1329	1(35)	11–746.
	521	1329	1(39)	S. 11–701.
	522	1329	1(42)	11–601.
	522	1329	1(51)	11–610.
	522	1329	1(62)	11–309.
	522	1329	1(65)	11–312.
	523	1329	1(72)	11–319.
	523	1329	1(73)	11–320.
	523	1329	1(75)	S. 17–104.
	523	1329	1(83)	11–322.
	523	1329	1(93)	16–1301.
	523	1329	1 (102)	13–105.
	523	1329	1 (104)	13–107.
	523	1329	1 (108)	13–111.
	524	1329	1 (110)	13–113.
	524	1329	1 (111)	16–1501.
	524	1329	1 (115a)	21–310 note.
	524	1329	1 (115b)	21–301.
	524	1329	1 (115c)	21–303.
	524	1329	1 (115d)	21–304.
	524	1329	1 (115e)	21–305.
	524	1329	1 (115f)	21–401.
	525	1329	1 (119)	11–504.
	525	1329	1 (121)	19–403.
	526	1329	1 (129)	11–516.
	526	1329	1 (130)	19–301.
	526	1329	1 (140)	19–312.
	526	1329	1 (142)	11–517.
	526	1329	1 (143)	11–518.
	526	1329	1 (144)	11–519.
	527	1329	1 (146)	18–607.
	527	1329	1 (162)	21–210.
	527	1329	1 (163)	21–211.
	527	1329	1 (164)	21–212.
	527	1329	1 (174)	11–401.
	527	1329	1 (175)	11–1505.
	527	1329	1 (176)	S. 11–1508.
	527	1329	1 (177)	11–1507.
	527	1329	1 (178)	11–402.
	527	1329	1 (182)	S. 11–403.
	527	1329	1 (183)	11–1001.
	527	1329	1 (185)	11–323.
	527	1329	1 (190)	11–1201.
	528	1329	1 (207)	S. 11–1411.
	528	1329	1 (224)	11–204.
	528	1329	1 (226)	S. 17–101.
	528	1329	1 (237)	12–103.
	528	1329	1 (254)	16–102.
	528	1329	1 (260)	18–501.
	528	1329	1 (263)	20–302.
	528	1329	1 (275)	20–203.
	528	1329	1 (289)	20–217.
	528	1329	1 (290)	20–106.
	529	1329	1 (293)	20–219.
	529	1329	1 (297)	20–117.
	529	1329	1 (312)	18–404.
	529	1329	1 (317)	18–301.
	529	1329	1 (319)	18–303.
	529	1329	1 (321)	18–305.
	529	1329	1 (327)	20–501.
	529	1329	1 (337)	18–510.
	529	1329	1 (351)	18–527.
	529	1329	1 (362)	20–602.
	529	1329	1 (363)	20–603.
	529	1329	1 (365)	20–605.
	530	1329	1 (379)	18–707.
	530	1329	1 (383)	18–711.
	530	1329	1 (386a)	18–715.
	530	1329	1 (397)	45–1503.
	530	1329	1 (399)	13–301.
	530	1329	1 (412)	16–1701.
	530	1329	1 (438)	28–2604.
	530	1329	1 (454)	16–310.
	530	1329	1 (455)	16–311.

[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 32—Continued				
Date	Page	Chapter	Section	D. C. 1950
1902				
June 30	530	1329	1 (457)	16–313.
	530	1329	1 (466)	16–322.
	530	1329	1 (481)	28–2406.
	530	1329	1 (491)	16–611.
	531	1329	1 (492)	45–106.
	531	1329	1 (493)	45–402.
	531	1329	1 (494)	30–216.
	531	1329	1 (495)	45–403.
	531	1329	1 (496)	45–404.
	531	1329	1 (497)	45–302.
	531	1329	1 (499)	45–501.
	531	1329	1 (501)	45–505.
	531	1329	1 (503)	45–202.
	531	1329	1 (505)	45–303.
	532	1329	1 (512)	45–101.
	532	1329	1 (514)	45–411.
	532	1329	1 (515)	45–408.
	532	1329	1 (516)	45–409.
	532	1329	1 (518)	45–410.
	532	1329	1 (519)	45–504.
	532	1329	1 (520)	45–412.
	532	1329	1 (521)	45–601.
	532	1329	1 (522)	45–603.
	532	1329	1 (523)	45–602.
	532	1329	1 (534)	45–611.
	532	1329	1 (537)	45–619.
	532	1329	1 (538)	45–614.
	532	1329	1 (539)	45–615.
	533	1329	1 (547)	42–103.
	533	1329	1 (553)	S. 45–703, 709; U. S. C., tit. 5, § 673.
	533	1329	1 (555)	45–503.
	533	1329	1 (ch. 16, subc. 5)	45–301.
	533	1329	1 (568)	1–511.
	533	1329	1 (571)	1–514.
	533	1329	1 (604)	29–606.
	533	1329	1 (605)	29–201.
	533	1329	1 (618)	29–214.
	533	1329	1 (621)	29–217.
	534	1329	1 (643)	44–102.
	534	1329	1 (645)	35–101.
	534	1329	1 (647)	35–103.
	534	1329	1 (650)	35–105.
	534	1329	1 (657)	35–203.
	534	1329	1 (686)	27–128.
	534	1329	1 (710)	44–211.
	534	1329	1 (713)	26–101.
	534	1329	1 (761)	35–913.
	534	1329	1 (793)	29–725.
	534	1329	1 (826a)	22–3115.
	535	1329	1 (827)	22–2202.
	535	1329	1 (830)	22–1403.
	535	1329	1 (842)	22–1301.
	535	1329	1 (845a)	22–1302.
	535	1329	1 (849)	22–3106.
	535	1329	1 (863)	22–1501.
	535	1329	1 (871)	22–3002.
	535	1329	1 (895)	22–1701.
	536	1329	1 (897)	22–1602.
	536	1329	1 (903)	22–1608.
	536	1329	1 (918)	23–107.
	537	1329	1 (922)	23–111.
	537	1329	1 (932)	23–101.
	537	1329	1 (934)	23–103.
	537	1329	1 (958)	18–107.
	537	1329	1 (959)	18–108.
	537	1329	1 (962)	18–111.
	537	1329	1 (963)	16–416.
	537	1329	1 (975)	16–410.
	537	1329	1 (977)	16–412.
	537	1329	1 (984)	16–501.
	537	1329	1 (989)	16–506.
	537	1329	1 (992)	16–508.
	537	1329	1 (995)	16–511.
	538	1329	1 (1000)	16–516.
	538	1329	1 (1003)	16–519.
	538	1329	1 (1004)	16–520.
	538	1329	1 (1031)	45–816.
	538	1329	1 (1034)	45–820.
	538	1329	1 (1036)	45–823.
	538	1329	1 (1058)	14–201.
	540	1329	1 (1060)	14–203.
	540	1329	1 (1062)	14–204.
	540	1329	1 (1065)	14–303.
	540	1329	1 (1067)	14–305.
	540	1329	1 (1073a)	14–104.
	540	1329	1 (1079)	15–206.
	540	1329	1 (1082)	15–210.
	541	1329	1 (1084)	15–212.
	541	1329	1 (1085)	15–214.
	541	1329	1 (1088)	15–303.
	541	1329	1 (1091)	15–306.
	541	1329	1 (1101)	15–215.
	541	1329	1 (1111)	11–1503.
	542	1329	1 (1141)	21–115.
	542	1329	1 (1180)	28–2703

VOLUME 32—Continued				
Date	Page	Chapter	Section	D. C. 1950
1902				
June 30	542	1329	1 (1182)	28–2705.
	542	1329	1 (1189)	S. 24–407, 411 note.
	542	1329	1 (1212)	15–101.
	542	1329	1 (1214)	15–103.
	542	1329	1 (1222)	45–905.
	542	1329	1 (1226)	45–911.
	542	1329	1 (1265)	12–201.
	542	1329	1 (1266)	12–202.
	542	1329	1 (1267)	12–203.
	542	1329	1 (1268)	12–204.
	542	1329	1 (1271)	12–306.
	543	1329	1 (1276)	16–1004.
	543	1329	1 (1285)	30–103.
	543	1329	1 (1286)	30–104.
	543	1329	1 (1290)	30–108.
	543	1329	1 (1293)	30–112.
	543	1329	1 (1298)	16–1101.
	543	1329	1 (1299)	16–1102.
	543	1329	1 (1302)	16–1202.
	543	1329	1 (1304)	Obsolete.
	543	1329	1 (1389)	28–616.
	543	1329	1 (1406)	28–714.
	543	1329	1 (1412)	28–720.
	543	1329	1 (1450)	28–922.
	543	1329	1 (1453)	28–925.
	543	1329	1 (1532)	13–208.
	544	1329	1 (1535)	13–213.
	544	1329	1 (1537)	13–103.
	544	1329	1 (1542)	16–1605.
	544	1329	1 (1551)	16–1803.
	544	1329	1 (1552)	16–1804.
	544	1329	1 (1554)	16–1806.
	544	1329	1 (1557)	16–1809.
	544	1329	1 (1563)	16–1901.
	544	1329	1 (1574)	1–605.
	544	1329	1 (1582)	1–621.
	544	1329	1 (1584)	1–623.
	544	1329	1 (1585)	1–624.
	545	1329	1 (1589)	1–628.
	545	1329	1 (1600)	1–608.
	545	1329	1 (1606)	7–307.
	545	1329	1 (1607)	7–308.
	545	1329	1 (1609)	7–322.
	545	1329	1 (1628)	19–205.
	545	1329	1 (1633)	19–203.
	545	1329	1 (1635a)	19–111.
	546	1329	1 (1636)	49–303.
	546	1329	1 (1643)	49–304 note.
	547	1332	1 (3)	47–2003.
	547	1332	1 (4)	47–2004.
	547	1332	1 (9)	22–1111.
July 1	561	1351	1	11–615; 47–106.
	591	1352	1	1–237; 22–702.
	592	1352	1	47–119, 121.
	594	1352	1	R. '28, 45 Stat. 995, ch. 901, § 1.[1]
	595	1352	1	R. '28, 45 Stat. 995, ch. 901, § 1.[1]
	598	1352	1	7–507.
	600	1352	1	S. 8–170.[2]
	602	1352	1	43–1105.
	609	1352	1	11–206, 610 note, 701 note; S. 11–403.[2]
	610	1352	1	28–2701.
	615	1352	1	39–608.
	615	1352	2, 3	Temporary.
	616	1352	4	47–211.
	616	1352	5	47–713, 802; S. 7–211.[2]
	617	1352	6 (1)	47–604, 605, 1201, 1203.
	618	1352	6 (2)	47–1207.
	618	1352	6 (3)	47–1212.
	619	1352	6 (4)	S. 47–501.
	619	1352	6 (5)	26–318, 321; 47–1701.
	619	1352	6 (6)	47–1702.
	619	1352	6 (7)	47–1703.
	619	1352	6 (8)	R. '39, 52 Stat. 1108, ch. 367, tit. IV, § 2 (c).
	620	1352	6 (9)	47–1704.
	620	1352	6 (10)	47–1208.
	620	1352	6 (11)	47–1213.
	621	1352	6 (12)	47–1301.
	621	1352	6 (13)	S. 47–1209.
	621	1352	6 (14)	47–1706.
	622	1352	6 (15)	47–1707.
	622	1352	6 (16)	47–1708.
	622	1352	6 (17)	47–1709.
	622	1352	6 (18)	47–1303.
	622	1352	6 (19)	47–1214.
	622	1352	7 (1)	47–2301.
	623	1352	7 (2)	S. 47–2302, 2304.
	623	1352	7 (3)	S. 47–2305.
	623	1352	7 (4)	S. 47–2304.
	623	1352	7 (5)	S. 47–2306.
	623	1352	7 (6)	S. 47–2343.
	623	1352	7 (7)	S. 47–2308.
	623	1352	7 (8)	S. 22–1208; S. 47–2309.
	623	1352	7 (9)	S. 47–2327.
	624	1352	7 (10)	S. 47–2301 et seq.
	624	1352	7 (11)	S. 47–2331.

[1] Repealed in part.
[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 32—Continued

Date	Page	Chapter	Section	D. C. 1950
1902				
July 1	624	1352	7(12)	S. 47–2335.
	624	1352	7(13)	S. 47–2332.
	624	1352	7 (14)	S. 47–2331.
	624	1352	7 (15)	S. 45–1407.
	624	1352	7 (16)	S. 47–2301 et seq.
	625	1352	7 (17)	S. 47–2301 et seq.
	625	1352	7 (18)	S. 47–2328.
	625	1352	7 (19)	S. 47–2327.
	625	1352	7 (20)	S. 47–2320.
	625	1352	7 (21)	S. 47–2326.
	625	1352	7 (22)	S. 47–2301 et seq.
	625	1352	7 (23)	S. 47–2325.
	625	1325	7 (24), (25)	S. 47–2323.
	626	1352	7 (26)	S. 47–2320.
	626	1352	7 (27)	S. 47–2322.
	626	1352	7 (28)	S. 47–2301 et seq.
	626	1352	7 (29)	S. 47–2319.
	626	1352	7 (30), (31)	S. 47–2311.
	626	1352	7 (32)	S. 47–2342.
	626	1352	7 (33), (34)	S. 47–2336.
	627	1352	7 (35)	S. 47–2336, 2337.
	627	1352	7 (36)–(38)	S. 25–110.
	627	1352	7 (39)	S. 1–231 to 233.
	628	1352	7 (40)	S. 47–2314.
	628	1352	7 (41)	S. 47–2317.
	628	1352	7 (42)	S. 47–2101.
	628	1352	7 (43)	S. 47–2339.
	628	1352	7 (44)	S. 26–601 to 611.
	628	1352	7 (45)	S. 47–2321.
	628	1352	7 (46)	S. 47–2301 et seq.
	628	1352	7 (47)	S. 47–2346, 2347.
	628	1352	7 (48)	S. 47–2307.
	629	1352	8	Repealing.
	632	1358	1 (1)	47–1001.
	633	1358	1 (2)	47–1002.
	633	1358	1 (3)	47–1003.
	635	1358	1 (4)	47–1005.
	635	1358	1 (5)	47–1006.
	635	1358	1 (6)	47–1007.
	635	1358	1 (7)	47–1008.
	635	1358	1 (8)	47–1009.
	635	1358	1 (9)	Effective date and Repealing.
	636	1360	1	7–504.
	636	1360	2	Right of Congress to alter, amend, or repeal.
	731	1382	1–6	Temporary.
1903				
Jan. 12	768	91	1–5	Special.
	769	91	6, 7	47–820.
Jan. 29	781	333	1–10	Special.
Jan. 30	784	336	1–3	Special.
Jan. 31	788	342	----------	Appropriation.
	789	343	----------	Special.
Feb. 11	824	545	1, 2	Special.
Feb. 12	825	547	----------	S. 11–202, 210, 302, 331.
Feb. 25	865	755	1	37–109.
Feb. 27	907	852	----------	47–822.
	908	854	1–3	Special.
Feb. 28	909–913	856	1–5	Special.
	914	856	6	47–718.
	915, 916	856	7–9	Special.
	918	856	10	7–1214.
	918	856	11	7–1213.
	918	856	12, 13	Special.
Mar. 2	923	970	1–3	Special.
Mar. 3	961	992	1	47–803.
	962	992	1	7–607.
	981	992	2, 3	Temporary.
	981	992	4	Repealing.
	1022	997	1	S. 5–403.
	1022	997	2	S. 5–405.
	1023	997	3	S. 5–406.
	1023	997	4	S. 5–407.
	1043	1006	1	21–306.
	1122	1007	----------	8–128.
	1186	1010	----------	7–123 note.
	1212	1011	20	Special.
	1224	1017	----------	Special.

VOLUME 33

Date	Page	Chapter	Section	D. C. 1950
1904				
Jan. 15	6	4	----------	Appropriation.
Jan. 23	7	7	1–4	Special.
Jan. 25	8	34	----------	Special.
Feb. 2	10	89	----------	7–1205; 8–108.

VOLUME 33—Continued

Date	Page	Chapter	Section	D. C. 1950
1904				
Feb. 5	10	150	----------	S. 2–308.
Feb. 8	11	152	1, 2	22–1701.
Feb. 10	12	155	----------	8–136.
	12	156	1–8	Unconstitutional, 24 App. D. C. 22.
	12	156	9	Repealing.
Feb. 16	14	158	----------	S. 5–401 to 409.
	14	159	1	7–107.
	14	159	2	7–118.
	14	159	3	Repealing.
Feb. 26	51	164	----------	7–119.
Mar. 19	143	719	----------	Special.
Apr. 12	174	1250	----------	7–123 note.
	174	1251	----------	S. 47–2311.
Apr. 22	244	1417	1	43–1510.
	244	1417	2	43–1511.
	245	1417	3	43–1512.
	245	1417	4	43–1513.
	246	1417	5	43–1514.
	246	1417	6	Obsolete.
	246	1417	7	43–1515.
	246	1417	8	43–1516.
	246	1417	9	43–1517.
	246	1417	10	Repealing.
	247	1418	1–11	Special.
	250	1423	1–8	Special.
	252	1424	1–11	Special.
Apr. 23	297	1490	1	30–106.
	297	1490	2	30–112.
	298	1490	3	30–113.
	301	1494	1–4	Special.
Apr. 26	306	1602	1	1–719.
	307	1602	2	1–720.
	307	1602	3	1–721.
	307	1602	4	1–723.
	308	1602	5	Effective date.
	308	1604	1, 2	Special.
Apr. 27	316	1618	1	21–326.
	317	1618	2	21–327.
	317	1618	3	21–328.
	317	1618	4	21–329.
	318	1618	5	21–330.
	318	1618	6	21–331.
	318	1618	7	Repealing.
	363	1628	1	1–304.
	364	1628	1	47–806.
	368	1628	1	47–311.
	372	1628	1	7–505.
	373	1628	1	1–236.
	375	1628	1	S. 43–318, 319.[2]
	376	1628	1	8–150; 43–1108.
	379	1628	1	31–1116.
	381	1628	1	47–114.
Apr. 28	514	1763	1–11	Special.
	516	1765	1–11	Special.
	520	1769	1–11	Special.
	522	1771	1–11	Special.
	534	1779	1–11	Special.
	544	1795	----------	Special.
	554	1808	833a	22–1406.
	555	1809	1	28–1701.
	555	1809	2	28–1702.
	555	1809	3	28–1703.
	555	1809	4	28–1704.
	556	1809	5	28–1705.
	556	1809	6	Repealing.
	563	1815	1	S. 47–1213.
	563	1815	2	47–1212.
	564	1815	2	47–1208, 1302, 1701 to 1704.
	565	1815	2	47–2321 note.
	565	1815	3	Repealing.
	574	1827	1	47–124.
	574	1827	2	47–125.
	575	1828	1–9	Special.
	577	1829	1–11	Special.
Apr. 12	587	No. 21	----------	7–116.
1905				
Jan. 19	609	49	----------	S. 2–121.
Jan. 27	621	280	----------	S. 6–502, 504.
Jan. 28	622	285	1–16	Special.
Feb. 1	628	290	----------	7–122 note.
Feb. 3	687	297	4	40–502.
Feb. 4	689	299	----------	29–104; 45–708.
Feb. 7	704	549	1, 2	S. 7–603.
Feb. 8	709	557	----------	S. 5–405.
	709	558	----------	Special.
	710	559	----------	Appropriation.
Feb. 9	710	563	----------	Special.
Feb. 17	719	581	1, 2	Special.
Feb. 23	733	733	----------	45–1501.
	733	734	1(1608)	7–301.
	733	734	1(1608a)	7–302.
	733	734	1(1608b)	7–303.
	734	734	1(1608c)	7–304.

[2] Superseded in part

STATUTES AT LARGE—Continued

VOLUME 33—Continued

Date	Page	Chapter	Section	D. C. 1950
1905				
Feb. 23	734	734	1(1608d)	7-305.
	734	734	1(1608e)	7-313.
	734	734	1(1608f)	7-314.
	735	734	1(1608g)	7-315.
	735	734	1(1608h)	7-316.
	735	734	1(1608i)	7-317.
	736	734	1(1608j)	7-318.
	736	734	1(1608k)	7-320.
	736	734	1(1608*l*)	7-321.
	736	734	1(1609)	7-322.
	736	734	1(1610)	7-323.
	737	734	1(1611)	7-325.
	737	734	1(1612)	7-326.
	737	734	1(1613)	7-327.
	737	735	1	47-404.
	737	735	2	47-405.
	738	735	3	47-406.
	738	735	4	47-407.
	738	735	5	47-408.
	738	735	6	Appropriation.
	738	735	7	Repealing.
	739	737	1, 2	Special.
	740	738	1	21-306, 307.
	740	738	2	S. 21-320, 329.
	740	739	1, 2	Special.
	741	740	1-3	Special.
	742	742	1	43-1533.
	742	742	2	Repealing.
	742	743	1, 2	Special.
Mar. 1	823	1303	----------	Special.
Mar. 3	892	1406	1	1-811; S. 7-211.[2]
	893	1406	1	7-505.
	896	1406	1	7-701, 704.
	901	1406	1	31-1011.
	902	1406	1	4-106.
	911	1406	1	S. 39-806.
	912	1406	1	43-1519.
	913	1406	2	1-310.
	977	1409	1-12	Special.
	980	1412	1-25	Special.
	984	1414	1, 2	8-139.
	984	1414	3	8-140.
	984	1414	4	Appropriation.
	984	1415	1	43-1409.
	985	1415	2	43-1410.
	985	1415	3	43-1411.
	985	1415	4	43-1412.
	986	1415	4a	43-1413.
	986	1415	5	43-1414.
	986	1415	6	43-1415.
	986	1415	7	43-1416.
	986	1415	8	43-1417.
	1001	1434	----------	44-205.
	1001	1435	1-11	Special.
	1006	1441	----------	21-115.
	1007	1442	1-11	Special.
	1010	1444	1-11	Special.
	1012	1445	----------	29-604.
	1014	1448	----------	Special.
	1033	1461	----------	22-3105.
	1036	1467	1-3	Special.
	1038	1469	1-12	Special.
	1190	1483	1	32-319.
	1211	1483	1	32-814.
	1257	1484	4	47-105 note.

VOLUME 34

Date	Page	Chapter	Section	D. C. 1950
1906				
Feb. 9	13	156	----------	S. 47-2336.
Feb. 19	15	257	1-11	Special.
Feb. 27	48	510	3	47-105, note.
Mar. 3	50	513	----------	Special.
Mar. 15	62	949	----------	22-1307.
Mar. 19	70	957	1	5-301.
	70	957	2	5-302.
	70	957	3	5-303.
	71	957	4	5-304.
	71	957	5	5-305.
	71	957	6	5-306.
	71	957	7	5-307.
	71	957	8	S. 47-2302.
	71	957	9	5-308.
	71	957	10	5-309.
	71	957	11	5-310.
	72	957	12	5-311.
	72	958	----------	10-135.
	72	959	----------	S. 10-128.
	73	960	1	11-101, 901.
	73	960	2	S. 11-920.
	73	960	3	S. 11-921.

VOLUME 34—Continued

Date	Page	Chapter	Section	D. C. 1950
1906				
Mar. 19	73	960	4	S. 11-922 to 924.
	73	960	5	S. 11-915.
	73	960	6	S. 11-922.
	73	960	7	S. 11-925.
	73	960	8	3-116, 117, 120; 32-209, 815, 817, 908.
	74	960	9	S. 11-906.
	75	960	10	S. 11-933.
	75	960	11	S. 11-935.
	75	960	12	S. 11-908, 915.
	75	960	13	S. 11-907.
	75	960	14	S. 11-936.
	76	960	15	S. 11-937.
	76	960	16	S. 11-938.
	76	960	17	S. 11-915, 939.
	76	960	18	S. 11-904.
	77	960	19	S. 11-905.
	77	960	20	S. 11-939.
	77	960	21	S. 11-940.
	77	960	22	S. 11-934.
	78	960	23	S. 11-922.
	78	960	24	S. 11-919.
	78	960	25	Effective date.
	78	960	26	S. 11-939.
Mar. 23	86	1131	1	22-903.
	87	1131	2	22-904.
	87	1131	3	22-905.
Mar. 30	92	1352	1-3	Special.
Mar. 31	93	1355	1, 2	Special.
	94	1356	1	1-807.
	94	1356	2	Temporary.
	94	1356	3	Repealing.
	94	1357	----------	R. '21, 41 Stat. 1225, ch. 118, § 33.
	94	1358	----------	R. '21, 41 Stat. 1225, ch. 118, § 33.
Apr. 14	112	1622	----------	8-108.
	113	1623	----------	31-301.
	113	1624	----------	24-301.
	114	1626	1	5-313.
	115	1626	2	5-314.
	115	1626	3	5-315.
	115	1626	4	Repealing.
Apr. 20	123	1641	1	27-129.
	123	1641	2	27-130.
	124	1641	3	27-131.
	124	1641	4	Appropriation.
Apr. 21	126	1646	----------	11-705.
	126	1647	----------	22-3112.
	127	1647	----------	22-1112, 1211.
Apr. 30	151	2070	1 (491a)	7-202.
	151	2070	1 (491b)	7-203.
	151	2070	1 (491c)	7-204.
	152	2070	1 (491d)	7-205.
	152	2070	1 (491e)	7-206.
	152	2070	1 (491f)	7-207.
	152	2070	1 (491g)	7-208.
	153	2070	1 (491h)	7-209.
	153	2070	1 (491i)	7-210.
	153	2070	1 (491j)	7-211.
	153	2070	1 (491k)	7-212.
	153	2070	1 (491*l*)	7-213.
	153	2070	1 (491m)	7-214.
	154	2070	1 (491n)	7-215.
May 1	157	2073	1	5-601.
	157	2073	2	5-602.
	157	2073	3	5-603.
	158	2073	4	5-604.
	158	2073	5	5-605.
	158	2073	6	5-606.
	158	2073	7	5-607.
	158	2073	8	5-608.
	159	2073	9	5-609.
	159	2073	10	5-610.
	159	2073	11	5-611.
	159	2073	12	5-612.
	160	2073	13	5-613.
	160	2073	14	5-614.
	161	2073	15	5-615.
	161	2073	16	Repealing.
	161	2074	----------	Special.
	162, 163	2075	2, 6	47-819.
May 7	175	2084	1	2-601.
	176	2084	2	2-602 note.
	176	2084	3	2-602.
	176	2084	4	2-603.
	177	2084	5	2-604.
	177	2084	6	2-605.
	177	2084	7	2-606.
	177	2084	8	2-607.
	178	2084	9	2-608.
	179	2084	10	2-609.
	179	2084	11	2-610.
	180	2084	12	2-611.
	180	2084	13	2-612.
	181	2084	14	2-613.
	181	2084	15	2-614.

[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 34—Continued

Date	Page	Chapter	Section	D. C. 1950
1906				
May 7	181	2084	16	2-615.
	182	2084	17	2-616.
	182	2084	18	R. '07, 34 Stat. 1006, ch. 2085, § 4.
	182	2084	19	2-617.
	182	2084	20	Repealing.
June 6	214	2582	----------	Special.
June 8	219	3054	1-9	R. '25, 43 Stat. 808, ch. 140, § 4.
	220	3055	1, 2	22-1119.
	220	3055	3	Effective date.
	221	3056	1 (1)	4-102.
	221	3056	1 (2)	4-103.
	221	3056	1 (3)	4-106.
	221	3056	1 (4)	4-121.
	222	3056	1 (5)	4-122.
	222	3056	1 (6)	Executed.
	222	3056	1 (7)	4-124.
	223	3056	1 (8)	S. 4-108.
	223	3056	1 (9)	4-125.
	223	3056	1 (10)	Saving clause.
	223	3056	1 (11)	Effective date.
June 11	232	3073	1	44-401.
	232	3073	2	44-402.
	232	3073	3	44-403.
	232	3073	4	44-404.
	233	3073	5	44-405.
	236	3076	1-12	Special.
June 19	304	3438	1-3	S. 47-2101.
	305	3438	4	S. 47-2102.
	306	3438	5	S. 47-2101 et seq.
	306	3438	6	S. 47-2105.
	306	3438	7	S. 47-2103.
	307	3438	8	S. 47-2104.
	308	3438	9	47-2110.
	308	3438	10	47-2111.
	308	3438	11	S. 47-2101 et seq.
	309	3438	12	Repealing.
	309	3438	13	Effective date.
June 20	314	3443	1	4-401.
	314	3443	2	4-402.
	314	3443	3	4-404.
	315	3443	4	S. 4-405.
	315	3443	5	4-407.
	315	3443	6	Repealing.
	315	3443	7	Effective date.
	315	3444	----------	R. '21, 41 Stat. 1225, ch. 118, § 33.
	316	3446	1	31-1101.
	316	3446	2	31-101 to 104, 119, 606, 629, 1109 to 1113.
	317	3446	3	31-105, 108, 109 note, 110, 111.
	318	3446	4	31-610.
	319	3446	5	31-112, 113.
	319	3446	6	31-114, 601 to 604, 617 to 619, 626 to 628.
	320	3446	7	31-115.
	320	3446	8	31-605, 610.
	321	3446	9	31-610.
	321	3446	10	31-116.
	321	3446	11	Temporary.
	321	3446	12	31-117.
	321	3446	13	Effective date.
June 21	384	3505	1	5-201.
	384	3505	2	5-202.
	384	3505	3	5-203.
	385	3505	4	5-205.
	385	3505	5	5-206.
	385	3505	6	Repealing.
	385	3506	----------	5-204.
	385	3507	----------	Special.
June 25	458	3533	----------	26-101.
June 27	483	3553	1	2-1401.
	485	3553	1	10-136, 137 note.
	489	3553	1	45-706.
	491	3553	1	7-333; R. '07, 34 Stat. 1128, ch. 2510, § 1.[1]
	492	3553	1	47-207.
	494	3553	1	47-206.
	503	3553	1	31-1011.
	515	3553	2-8	Temporary.
	521	3560	1-4	Special.
June 28	546	3575	1	1-805.
	546	3575	2	Repealing.
	552	3585	----------	45-405.
June 29	614	3602	1, 2	Special.
	619	3611	----------	Special.
	621	3615	1-3	R. '25, 43 Stat. 1125, ch. 443, § 16.
	622	3616	----------	1-501.
	624	3618	1-9	Special.
	630	3623	----------	Special.
June 30	763	3914	7	47-204.
	768	3915	----------	33-103.
	800	3924	----------	7-122 note.
	805	3929	4, 11	47-829.
	808	3932	1	22-1621.
	808	3932	2	22-1622.
	809	3932	3	22-1623.
	809	3932	4	1-227.
June 30	809	3932	5	22-1624.
	809	3932	6	R. '32, 47 Stat. 661, ch. 478, § 2;[1] Repealing.
	820	3947	----------	Special.
1907				
Jan. 9	843	28	----------	Special.
	844	29	1-3	Special.
	844	30	1-3	Special.
	845	31	1-3	Special.
	846	32	1-3	Special.
	846	33	1-3	Special.
	847	34	1-3	Special.
	847	35	1, 2	Special.
Jan. 12	848	37	----------	S. 47-2101 et seq.
Jan. 21	853	303	1-3	Special.
Jan. 22	854	384	----------	R. '21, 41 Stat. 1225, ch. 118, § 33.
	854	385	1-3	Special.
	855	386	1-3	Special.
	855	387	1-3	Special.
	856	388	1-3	Special.
	856	389	1-3	Special.
	857	390	1-3	Special.
Jan. 31	868	437	1, 2	Special.
Feb. 1	868	440	----------	Special.
	870	441	----------	S. 25-107.
	870	442	1	2-801.
	870	442	2	2-802.
	871	442	3	2-803.
	871	442	4	2-804.
	872	442	5	2-805.
	872	442	6	2-806.
	872	442	7	2-807.
	872	442	8	2-808.
	873	442	9	2-809.
	873	442	10	2-810.
	873	442	11	2-811.
	873	442	12	2-812.
	873	443	1, 2	Special.
	874	445	----------	13-103.
Feb. 8	882	894	1-3	Special.
Feb. 9	885	911	----------	Special.
	887	913	1	2-401.
	887	913	2	2-402.
	888	913	3	2-403.
	888	913	4	2-404.
	888	913	5	Obsolete.
	888	913	6	2-407.
	889	913	7	2-408.
	889	913	8	2-409.
	889	913	9	2-405.
	889	913	10	2-410.
	889	913	11	2-411.
	889	914	1-5	R. '39, 53 Stat. 1408, ch. 691, § 3.
Feb. 18	894	935	1-25	Special.
Feb. 25	929	1193	----------	R. '21, 41 Stat. 1225, ch. 118, § 33.
	930	1195	----------	7-208; 16-617 note.
Feb. 26	994	1636	----------	45-707.
	994	1637	1-3	Special.
Feb. 27	1000	2075	----------	Special.
	1001	2076	1-3	Special.
	1004	2083	1-3	Special.
	1004	2084	1-3	Special.
	1005	2085	1	2-603, 604, 607 to 609.
	1005	2085	2	2-607.
	1005	2085	3	2-605.
	1006	2085	3	2-602.
	1006	2085	4, 5	Repealing.
	1006	2086	1(878a)	48-301.
	1006	2086	1(878b)	48-302.
	1007	2086	1(878c)	48-303.
	1007	2086	1(878d)	48-304.
	1007	2086	1(878e)	48-305.
	1007	2086	1(878f)	48-306.
	1007	2086	1(878g)	48-307.
Feb. 28	1008	2115	1-9	Special.
Mar. 1	1010	2280	1	6-301.
	1010	2280	2	6-302.
	1011	2280	3	6-303.
	1011	2280	4	6-304.
	1011	2280	5	Effective date and repealing.
	1011	2281	----------	Special.
	1012	2283	1-3	Special.
Mar. 2	1127	2510	1	7-609, 613.
	1128	2510	1	7-333.
	1130	2510	1	7-122 note, 510.
	1133	2510	1	43-1206.
	1134	2510	1	43-1109.
	1141	2510	1	31-1103.
	1145	2510	1	33-320.
	1155	2510	2-8	Temporary.
	1222	2524	1-3	Special.
	1225	2531	1-3	Special.
	1244	2560	1-4	Special.
	1247	2566	1	5-301 to 303, 305.
	1248	2566	1	S. 5-310.

[1] Repealed in part.

STATUTES AT LARGE—Continued

VOLUME 34—Continued

Date	Page	Chapter	Section	D. C. 1950
1907				
Mar. 2	1248	2569	1–3	S. 25–101 et seq.
	1252	2574	----------	S. 4–103.
Mar. 4	1371	2918	9	9–203.
	1412	2931	----------	S. 2–106.

VOLUME 35

Date	Page	Chapter	Section	D. C. 1950
1908				
Feb. 15	12	27	1	S. 40–102, 103.[1]
Mar. 9	39	71	----------	Special.
Mar. 27	51	110	----------	Special.
Apr. 2	55	122	1, 2	S. 10–118.
Apr. 20	64	148	1	32–301.
	64	148	2	32–302.
	65	148	3	32–303.
	65	148	4	32–304.
	65	148	5	32–305.
	65	148	6	Repealing.
Apr. 22	65	149	----------	44–401 note.
May 13	126	165	1–10	R. '39, 53 Stat. 1408, ch. 691, §3.
May 16	163	172	1, 2	Temporary.
	164	172	3	22–1508.
May 23	246	190	1–3	Special.
	247	190	4	44–206.
	247	190	5–14	Special.
	250	190	15	44–207.
	250	190	16	44–202.
	250	190	17	44–203.
	250	190	18	Right of Congress to alter, amend, or repeal.
May 26	274	198	1	1–305.
	286	198	1	8–138.
	287, 288	198	1	7–708.
	291	198	1	31–609, 630.
	296	198	1	4–103.
	298	198	1	4–411.
	299	198	1	6–110.
	308	198	1	39–517.
	310	198	2–8	Appropriation.
	312	198	9	Repealing.
May 27	355	200	1	8–129, 157.
	380	200	1	3–116; 32–801, 802, 805, 903.
May 28	420	209	1–17	R. '28, 45 Stat. 1006, ch. 908, §27.
May 29	472	221	1, 2	Special.
	473	222	1–8	Special.
May 30	493	227	1	1–809.
	494	227	1	7–331.
	544	228	29	Appropriation.
	554	232	----------	Special.
Dec. 18	581	2	1–3	S. 7–123 note.
	582	3	----------	Special.
	582	4	----------	7–215.
1909				
Jan. 29	590	52	----------	Special.
Feb. 3	593	61	1–4	Special.
Feb. 6	597	75	1, 2	Temporary.
Feb. 9	617	102	----------	Special.
Feb. 16	620	129	1, 2	Special.
Feb. 17	623	134	----------	11–101, 701; 45–909 to 912, 914.
	624	134	----------	11–610, 706 to 708, 710.
	625	134	----------	11–709, 711 to 714; 44–102.
Feb. 18	629	146	(10)	39–106.
	629	146	(11)	S. 39–107.
	630	146	(12)	39–111.
	630	146	(13)	39–206.
	630	146	(14)	39–207.
	630	146	(15)	39–208.
	630	146	(16)	39–209.
	630	146	(17)	39–210.
	630	146	(18)	39–211.
	631	146	(19)	39–212.
	631	146	(20)	39–213.
	631	146	(21)	39–214.
	631	146	(22)	39–301.
	632	146	(23)	S. 39–401.
	632	146	(24)	S. 39–402.
	632	146	(25)	S. 39–403.
	632	146	(26)	39–404.
	632	146	(27)	39–405.
	632	146	(28)	S. 39–403.
	632	146	(29)	39–501.
	632	146	(30)	39–502.
	632	146	(31)	39–503.
	633	146	(32)	39–504.
	633	146	(33)	39–505.
	633	146	(34)	39–506.
	633	146	(35)	39–507.
	633	146	(36)	39–508.
	633	146	(37)	39–509.

VOLUME 35—Continued

Date	Page	Chapter	Section	D. C. 1950
1909				
Feb. 18	633	146	(38)	39–510, 511.
	633	146	(39)	S., U. S. C., title 32, § 47.
	634	146	(40)	39–512.
	634	146	(41)	39–513.
	634	146	(42)	39–514.
	634	146	(43)	39–601.
	634	146	(44)	39–602.
	634	146	(45)	39–515.
	634	146	(46)	39–607.
	634	146	(47)	39–516.
	634	146	(48)	39–603.
	634	146	(49)	39–604.
	634	146	(50)	39–605.
	634	146	(51)	39–606.
	634	146	(52)	39–608.
	634	146	(53)	39–801.
	634	146	(54)	39–701.
	634	146	(55)	39–702.
	634	146	(56)	39–703.
	634	146	(57)	39–704.
	634	146	(58)	39–705.
	635	146	(59)	39–706.
	635	146	(60)	39–707.
	635	146	(61)	39–708.
	635	146	(62)	39–709.
	635	146	(63)	39–802.
	635	146	(64)	39–803.
	635	146	(65)	39–804.
	636	146	(66)	39–805.
	636	146	(67)	39–903.
	636	146	(68)	39–901.
	636	146	(69)	39–904.
	636	146	(70)	39–905.
	636	146	(71)	Repealing.
	636	146	(72)	39–108.
	636	146	(73)	11–1420.
	636	146	(74)	S. '16, 39 Stat. 166, ch. 134.
	636	146	(75)	39–906.
	636	146	(76)	39–902.
Feb. 20	641	166	1	S. 47–2104.
Feb. 25	649	195	1, 2	Temporary.
	650	196	----------	7–122 note.
	651	198	1, 2	Temporary.
	651	199	1, 2	Temporary.
	652	201	----------	7–122 note.
	653	203	1, 2	Temporary.
Feb. 26	655	213	1, 2	Temporary.
	656	214	1, 2	Temporary.
	657	217	1	32–820.
	657	217	2	32–821.
	657	217	3	Repealing.
Feb. 27	657	223	----------	S. 4–506.
Mar. 1	670	233	1 (869a)	22–1509.
	671	233	1 (869b)	22–1510.
	671	233	1 (869c)	22–1511.
	671	233	1 (869d)	22–1512.
Mar. 3	689	250	1	4–111; 5–429.
	692	250	1	1–306.
	693	250	1	40–102 note.
	703	250	1	43–310; S. 7–704.[1]
	704	250	1	S. 31–628.[1]
	711	250	1	22–3301.
	724	250	1	1–223.
	726	250	2–6	Temporary.
	728	250	7	47–212; S. 47–503.[1]
	728	250	8	Repealing.
	779	257	----------	Special.
	838	268	----------	Special.
Mar. 4	858	297	----------	37–109 note.
	994	299	1	8–144.
	1058	303	1	26–404.
	1059	303	2	26–405.
	1060	306	1–3	Temporary.
	1063	310	----------	S. 11–902 to 942.
	1066	315	----------	7–509.
	1084	320	34	11–307.
	1149	321	1 (318)	22–1001.
	1150	321	1 (320)	22–1105.
	1150	321	1 (321)	22–1106.

VOLUME 36

Date	Page	Chapter	Section	D. C. 1950
1910				
Feb. 19	197	41	----------	7–122 note.
Feb. 21	199	50	----------	Temporary.
	199	51	1, 2	Temporary.
	200	52	1, 2	Temporary.
	200	53	1, 2	Temporary.
	201	54	----------	7–122 note.
Feb. 25	208	62	----------	49–110.
Feb. 26	229	66	----------	Special.

[1] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 36—Continued

Date	Page	Chapter	Section	D. C. 1950
1910				
Mar. 2	231	72	1, 2	Temporary.
	232	73		Temporary.
	232	74	1, 2	Temporary.
Mar. 23	239	102	1, 2	Special.
	239	103		Special.
	240	105		Special.
	240	106	1, 2	Temporary.
	240	107		7–123 note.
	241	108		7–122 note.
	242	110	1, 2	Temporary.
	242	111	1, 2	Temporary
	243	114		Temporary.
Mar. 30	268	136	1	7–216.
	268	136	2	7–217.
Apr. 4	290	141		37–108.
Apr. 8	292	145		7–123 note.
Apr. 15	300	164	1	32–910.
	300	164	2	32–911.
	300	164	3	Repealing.
	301	167	1	28–1801.
	301	167	2	28–1802.
	301	167	3	28–1803.
	301	167	4	28–1804.
	301	167	5	28–1805.
	302	167	6	28–1806.
	302	167	7	28–1807.
	302	167	8	28–1901.
	302	167	9	28–1902.
	302	167	10	28–1903.
	303	167	11	28–1904.
	303	167	12	28–1905.
	303	167	13	28–1906.
	303	167	14	28–1907.
	304	167	15	28–1908.
	304	167	16	28–1909.
	304	167	17	28–1910.
	304	167	18	28–1911.
	304	167	19	28–1912.
	304	167	20	28–1913.
	304	167	21	28–1914.
	304	167	22	28–1915.
	304	167	23	28–1916.
	305	167	24	28–1917.
	305	167	25	28–1919.
	305	167	26	28–1920.
	305	167	27	28–1921.
	305	167	28	28–1922.
	305	167	29	28–1923.
	305	167	30	28–1924.
	306	167	31	28–1925.
	306	167	32	28–1926.
	306	167	33	28–1927.
	307	167	34	28–1928.
	307	167	35	28–1929.
	307	167	36	28–1930.
	307	167	37	28–2001.
	307	167	38	28–2002.
	307	167	39	28–2003.
	308	167	40	28–2004.
	308	167	41	28–2005.
	308	167	42	28–2006.
	308	167	43	28–2007.
	308	167	44	28–2008.
	308	167	45	28–2009.
	309	167	46	28–2010.
	309	167	47	28–2011.
	309	167	48	28–2012.
	309	167	49	28–2013.
	309	167	50	28–2101.
	309	167	51	28–2102.
	309	167	52	28–2103.
	310	167	53	28–2104.
	310	167	54	28–2105.
	310	167	55	28–2106.
	310	167	56	28–2201.
	310	167	57	28–2202.
	310	167	58	28–2203.
	311	167	59	28–2204.
	311	167	60	Repealing.
	311[1]	167	61	Effective date.
	311	167	62	28–2205.
Apr. 20	325	178	1, 2	Temporary.
	325	179		Temporary.
Apr. 29	336	196	1–3	Temporary.
May 10	353	225	1, 2	Temporary.
May 17	371	244	1–5	Special.
May 18	373	247	1, 2	Temporary.
	373	247	3	Repealing.
	379	248	1	35–107; 40–102 note.
	381	248	1	1–239; 40–503.
	382	248	1	1–609.
	383	248	1	8–126.
	388	248	1	7–519.
	389	248	1	6–502.
	393	248	1 provisos 1, 2	S. 31–628.

VOLUME 36—Continued

Date	Page	Chapter	Section	D. C. 1950
1910				
May 18	393	248	1 proviso 3	Temporary.
	393	248	1 provisos 4, 5	S. 31–611 to 615.
	403	248	1	22–906.
	404	248	1	11–626.
	409	248	1	3–119; 32–1006.
	412	248	1	R. '12, 37 Stat. 177, ch. 182, § 1.[1]
	413	248	2–6	Temporary.
	415	248	7	Repealing.
June 1	452	263	1	5–401.
	452	263	2	5–402.
	452	263	3	5–403.
	453	263	4	5–404.
	453	263	5	5–405.
	454	263	6	5–406.
	454	263	7	5–407.
	454	263	8	5–408.
	455	263	9	5–409.
June 9	464	277		11–1507.
June 10	464	282		24–406.
June 22	581	314	1–3	Special.
	584	319	1, 2	Temporary.
June 25	700, 701	383	36	8–112.
	786	385		S. 24–419 note.
	833	404	1	22–2705.
	833	404	2	22–2706.
	833	404	3	22–2707.
	833	404	4	22–2708.
	833	404	5	22–2709.
	864	433	1	24–101.
	864	433	2	24–102.
	864	433	3	24–103.
	865	433	4	24–104.
	865	433	5	24–105.
	866	435		11–1508.
Feb. 19	874	No. 10		S. 10–101.
Dec. 20	887	4		Special.
	887	5	1–3	Temporary.
Dec. 21	888	6	1, 2	Temporary.
Dec. 30	891	8		5–405.
1911				
Feb. 2	894	31		Special.
Feb. 18	920	116		Special.
Feb. 20	924	134		7–122 note.
	925	135	1, 2	Temporary.
Mar. 1	963	187		22–3415.
Mar. 2	966	192	1	1–304.
	967	192	1	1–312; 5–430.
	969	192	1	47–122.
	974	192	1	11–1204.
	975	192	1	1–808; 47–129.
	978	192	1	7–122 note.
	981	192	1	1–722.
	990	192	1	S. 36–225.[2]
	993	192	1	6–116.
	1002	192	1	24–403.
	1003	192	1	24–405, 407, 408, 410, 414 to 416, 420, 421; 47–201.
	1004	192	1	39–806; S. 24–418.[2]
	1006	192	1	8–113.
	1007	192	2–6	Appropriation.
	1008	192	7	7–701.
	1011	192	8	7–702 to 705.
	1011	192	9	Temporary.
	1011	192	10	Repealing.
Mar. 3	1078	212	1, 2	Temporary.
	1159	231	1(250)	R. '25, 43 Stat. 941, ch. 229, § 13.
	1167	231	1(289)	11–305.
	1167	231	1(289, 291)	45–403.
Mar. 4	1299	240		49–110.
	1344	213	1–3	Temporary.
	1346	248	1–3	Temporary.
	1347	249	1, 2	Temporary.
	1347	250		7–107 note.
	1395	285	1	31–607.
	1422	285	1	31–1001 to 1006, 1008 to 1020, 1022.
	1426	285	1	S. 11–1001 note.[2]

VOLUME 37

Date	Page	Chapter	Section	D. C. 1950
1911				
June 30	1	1	1, 2	Temporary.
Aug. 15	16	12	1, 2	35–202.
Aug. 18	22	26		35–103.
Aug. 19	29	34		7–107 note.
Dec. 21	45	2		22–108.

[1] Repealed in part.
[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 37—Continued

Date	Page	Chapter	Section	D. C. 1950
1912				
Jan. 17	53	11		35-102.
Feb. 10	63	35		S. 4-113.
Feb. 15	65	39		7-107 note.
Mar. 1	71	48	1, 2	Temporary.
May 20	114	124	1	5-401.
	114	124	7	5-407.
June 18	134	171	1	11-943.
	134	171	2	11-944.
	134	171	3	11-945.
	135	171	4	11-946.
	135	171	5	11-947.
	135	171	6	11-948.
	136	171	7	11-949.
	136	171	8	11-950.
	136	171	8	22-903.
June 26	139	182	1	16-619 note.
	140	182	1	1-304.
	144	182	1	1-306.
	147	182	1	1-819; 11-1204.
	150	182	1	7-617.
	152	182	1	7-614.
	153	182	1	47-133.
	156	182	1	31-114; S. 31-611 to 615.[2]
	157	182	1	31-113.
	161	182	1	31-301.
	162	182	1	R. '17, 39 Stat. 1027, ch. 160, § 1.[1]
	168	182	1	1-805, 806.
	170	182	1	S. 24-417.[2]
	171	182	1	32-901, 907.
	172	182	1	32-318.
	176	182	1	S. 24-418.[2]
	178	182	1	7-218.
	179	182	1	8-125.
	180	182	2-6	Temporary.
	181	182	7	7-701.
	184	182	8	47-111.
	184	182	9	47-105.
	184	182	10	47-126.
	184	182	11	Temporary.
July 16	192	235	1	11-604; 22-1101, 2722.
	193	235	2	11-605; 22-507.
July 17	194	238	1, 2	Temporary.
Aug. 14	309	288	1	2-201, 207; 21-330.
Aug. 20	318	308	10	6-905.
Aug. 22	326	333	1, 2	Temporary.
Aug. 23	412	350		11-264, 1509.
Aug. 24	417	355	1	27-121 note.
	437	355	1	8-134.
	444	355	1	8-133.
	488	355	10	Temporary.
	490	357	1-10	Special.
	503	375		7-123 note.
	512	387	1	22-3415.
1913				
Jan. 29	653	20		S. 47-2331.
Feb. 3	656	23	1	22-2204.
	656	24		Special.
	656	25		22-1702.
Feb. 4	657	26	1	26-601.
	657	26	2	26-602.
	658	26	3	26-603.
	658	26	4	26-604.
	659	26	5	26-605.
	659	26	6	26-606.
	659	26	7	26-607.
	660	26	8	26-608.
	660	26	9	26-609.
	660	26	10	26-610.
	660	26	11	26-611.
	660	26	12	Repealing.
	660	26	13	Effective date.
Feb. 25	679	69	1-6	Special.
Mar. 2	724	96	1, 2	Temporary.
Mar. 3	727	107	1	22-1202, 1206, 1207.
	727	107	2	Effective date.
	727	108	1	22-2203.
	727	108	2	Effective date.
	729	111	1, 2	Temporary.
	729	111	3	7-123 note.
Mar. 4	885	147	22	8-158.
	917	149		32-404.
	938	150	1	7-107 note.
	940	150	1	10-136, 137 note.
	941	150	1	10-135.
	943	150	1	37-107.
	945	150	1	1-813.
	948	150	1	7-618.
	949	150	1	7-122.
	950	150	1	7-201.
	953	150	1	7-709.
	956	150	1	31-625.
	960	150	1	4-409.
	961	150	1	6-109.
	962	150	1	8-137.
	964	150	1	11-211.
	971	150	1	8-111.
	972	150	2-6	Temporary.
	974	150	7	7-1001.

VOLUME 37—Continued

Date	Page	Chapter	Section	D. C. 1950
1913				
Mar. 4	974	150	8(1)	43-101 to 109, 1201.
	975	150	8(1)	43-110 to 114.
	976	150	8(1)	43-115 to 121.
	977	150	8(1)	43-122, 123.
	977	150	8(2)	43-301.
	977	150	8(3)	43-302.
	977	150	8(4)	43-303.
	978	150	8(5)	43-304.
	978	150	8(6)	43-305.
	978	150	8(7)	43-306.
	978	150	8(8)	43-307.
	978	150	8(9)	43-308.
	978	150	8(10)	43-309.
	979	150	8(11)	43-310.
	979	150	8(12)	43-311.
	979	150	8(13)	43-312.
	979	150	8(14)	43-313.
	979	150	8(15)	43-314.
	979	150	8(16)	43-315.
	980	150	8(17)	43-316.
	980	150	8(18)	43-317.
	980	150	8(19)	43-318.
	980	150	8(20)	43-319.
	980	150	8(21)	43-320.
	980	150	8(22)	43-321.
	981	150	8(23)	43-322.
	981	150	8(24)	43-323.
	981	150	8(25)	43-324.
	981	150	8(26)	43-325.
	981	150	8(27)	43-326.
	981	150	8(28)	43-327.
	981	150	8(29)	43-328.
	981	150	8(30)	43-329.
	982	150	8(31)	43-330.
	982	150	8(32)	43-402.
	982	150	8(33)	43-403.
	982	150	8(34)	43-404.
	982	150	8(35)	43-405.
	982	150	8(36)	43-406.
	983	150	8(37)	43-407.
	983	150	8(38)	43-408.
	983	150	8(39)	43-409.
	983	150	8(40)	43-410.
	983	150	8(41)	43-411.
	984	150	8(42)	S. 43-412.
	984	150	8(43)	43-413.
	984	150	8(44)	43-414.
	984	150	8(45)	43-415.
	984	150	8(46)	43-416.
	984	150	8(47)	43-417.
	984	150	8(48)	43-418.
	985	150	8(49)	43-419.
	985	150	8(50)	43-420.
	985	150	8(51)	43-421.
	985	150	8(52)	R. '35, 49 Stat. 882, ch. 742, § 1.
	985	150	8(53)	43-422.
	985	150	8(54)	43-501.
	986	150	8(55)	43-601.
	987	150	8(56)	43-602.
	987	150	8(57)	43-603.
	987	150	8(58)	43-604.
	987	150	8(59)	43-605.
	988	150	8(60)	43-606.
	988	150	8(61)	43-701.
	988	150	8(62)	43-702.
	988	150	8(63)	43-703.
	988	150	8(64)	43-704.
	989	150	8(65)	43-705.
	989	150	8(66)	43-706.
	989	150	8(67)	43-707.
	989	150	8(68)	43-708.
	989	150	8(69)	43-709.
	989	150	8(70)	43-712.
	990	150	8(71)	43-713.
	990	150	8(72)	43-801.
	990	150	8(73)	43-802.
	990	150	8(74)	43-803.
	990	150	8(75)	43-804.
	990	150	8(76)	43-805.
	990	150	8(77)	43-806.
	990	150	8(78)	43-807.
	990	150	8(79)	43-808.
	991	150	8(80)	43-901.
	991	150	8(81)	43-902.
	991	150	8(82)	43-903.
	991	150	8(83)	43-904.
	992	150	8(84)	43-905.
	992	150	8(85)	43-906.
	992	150	8(86)	43-909.
	992	150	8(87)	43-910.
	992	150	8(88)	43-911.
	992	150	8(89)	43-1001.
	993	150	8(90)	43-1002.
	993	150	8(91)	43-204.
	993	150	8(92)	43-1003.
	994	150	8(93)	43-913.
	994	150	8(94)	43-401.
	994	150	8(95)	43-206.
	995	150	8(96)	43-207, 208; 44-203.

[1] Repealed in part.
[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 37—Continued

Date	Page	Chapter	Section	D. C. 1950
1913				
Mar. 4	995	150	8 (97)	43–202.
	996	150	8 (98)	43–912.
	996	150	8 (99)	43–209.
	996	150	8 (100)	43–1004.
	996	150	8 (101)	43–1005.
	996	150	8 (102)	43–1006.
	996	150	87 (103)	43–1007.
	997	150	9	S. 25–101 et seq.
	1006	150	10	47–1208.
	1006	150	11	43–502.

VOLUME 38

Date	Page	Chapter	Section	D. C. 1950
1913				
June 23	75	3	7	Temporary.
1914				
Feb. 7	280	16	1	22–2713.
	280	16	2	22–2714.
	281	16	3	22–2715.
	281	16	4	22–2716.
	281	16	5	22–2717.
	281	16	6	22–2718.
	281	16	7	22–2719.
	282	16	8	22–2720.
	282	16	9	22–2721.
Feb. 24	291	28	1	36–301.
	291	28	2	36–302.
	291	28	3	36–303.
	291	28	4	36–304.
	291	28	5	36–305.
	291	28	6	36–306.
	291	28	7	36–307.
	292	28	8	36–308.
	292	28	9	36–309.
July 21	524	191	1	7–611.
	532	191	1	S. 31–610.[2]
	535	191	1	S. 47–202.
	536	191	1	31–302; S. 31–804.[2]
	550	191	1	8–111.
	551	191	2–6	Temporary.
	553	191	7	1–309.
	553	191	8	Repealing.
July 29	565	215	1	7–611.
Aug. 1	625	223	1	8–111.
	633	223	1	8–145.
	634	223	1	8–154, 155.
	657	223	1	32–822.
Sept. 25	716	310	1	5–101.
	717	310	2	5–102.
	717	310	3	Repealing.
Sept. 29	724	312	1–7	Special.
1915				
Jan. 28	800	20	----------	22–3415.
Mar. 3	869	75	1	24–424.
	900	80	1	44–213.
	904	80	1	6–502.
	905	80	1	8–131; S. 10–128.
	910	80	1	31–303; 47–202.
	913	80	1	S. 4–402.[2]
	915	80	1	33–321.
	922	80	1	S. 24–418.[2]
	924	80	2–6	Temporary.
	925	80	7	1–309.
	926	80	8	Repealing.
Mar. 4	1053	142	6	7–509.
	1147	147	1	32–314.
	1190	165	1	31–801.
	1190	165	2	31–802.
	1190	165	3	Repealing.
	1190	166	----------	Appropriation.

VOLUME 39

Date	Page	Chapter	Section	D. C. 1950
1916				
Feb. 25	13	34	----------	43–111.
Feb. 28	21	37	1	7–204.
Apr. 17	51	77	1–6	Special.
Apr. 27	56	92	----------	S. 11–915.
May 8	65	115	----------	Special.
May 18	163	127	1–4	Special.
	163	127	5	7–511.
	164	127	5	R. '26, 44 Stat. 697, ch. 480, § 1.[1]

VOLUME 39—Continued

Date	Page	Chapter	Section	D. C. 1950
1916				
May 18	164	127	6, 7	Temporary.
May 29	165	130	1	22–1411.
	165	130	2	22–1412.
	165	130	3	22–1413.
	165	130	4	Repealing.
June 3	197	134	58	39–107 note.
	197	134	60	39–107.
	199	134	66	39–202.
	200	134	68	39–111.
	200	134	69	39–401.
	201	134	70	39–402.
	201	134	72	39–403.
	204	134	87	39–501 note.
	206	134	92, 94	39–607 note.
	208	134	102, 103	39–701 note.
June 28	241	183	----------	Repealing.
July 1	282	209	1	8–160.
	309	209	1	21–319, 328, 329; 32–401, 402, 404, 405, 407.
	310	209	1	31–1021.
	311	209	1	32–320.
July 28	424	261	2	17–101 note.
Aug. 15	514	342	----------	47–801, 824.
Aug. 21	519	362	----------	Special.
	521	367	----------	43–111.
Aug. 26	536	412	----------	43–111.
Sept. 1	678	433	1	11–1516; 47–702.
	679	433	1	1–307.
	683	433	1	44–213.
	688	433	1	7–603.
	695	433	1	31–608.
	711	433	1	24–402.
	714	433	2–5	Temporary.
	716	433	6	43–1207.
	716	433	7	7–901.
	716	433	8	7–612.
	717	433	9	1–817.
	717	433	10	Appropriation.
	717	433	11	47–1207 note.
	718	433	12	4–129, 159, 160, 501, 503, 506, 597; 11–625.
	719	433	12	4–509, 510.
	720	433	12	4–113, 512 to 514.
	721	433	12	4–114, 508.
	721	433	13	Repealing.
Sept. 8	846	473	1	47–2201.
	846	473	2	47–2202.
	847	473	3	47–2203.
	847	473	4	47–2204.
	847	473	5	47–2205.
	847	473	6	47–2206.
	847	473	7	47–2207.
	847	473	8	47–2208.
	847	473	9	Repealing.
Dec. 20	857	2	1, 2	Appropriation.
1917				
Feb. 6	899	32	----------	Temporary.
Feb. 8	900	34	----------	22–3414.
Feb. 26	942	126	1–6	Temporary.
	944	127	----------	Temporary.
Mar. 2	968	145	54	45–406.
Mar. 3	1005	160	1	47–306, 604, 1010.
	1006	150	1	26–601, 602; 47–2301 note.
	1009	160	1	47–825.
	1010	160	1	40–501.
	1012	160	1	R. '24, 43 Stat. 109, ch. 131, § 17; '25, 43 Stat. 1126, ch. 443, § 16.[1]
	1014	160	1	7–122 note.
	1017	160	1	7–319.
	1018	160	1	7–512.
	1019	160	1	8–132.
	1021	160	1	S. 31–610, 617.[2]
	1022			
	1026	160	1	31–804; S. 31–305.[2]
	1043	160	1	43–1530.
	1046	160	2–5	Temporary.
	1046	160	6	S. 47–211.
	1046	160	7	Special.
	1046	160	8	S. 47–2339.
	1046	160	9	47–1207 note.
	1047	160	10	Temporary.
	1123	165	1–24	R. '33, 48 Stat. 28, ch. 19, § 12.

VOLUME 40

Date	Page	Chapter	Section	D. C. 1950
1917				
Apr. 17	10	----------	----------	8–124.
Apr. 30	38	10	----------	Special.
May 12	72	12	----------	39–109, 110.

[1] Repealed in part.
[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 40—Continued

Date	Page	Chapter	Section	D. C. 1950
1917				
May 22	90	21		Special.
June 12	126	27		8–158 note.
	133	27	1	S. '25, 43 Stat. 1323, ch. 556, § 1.[2]
	157	27	1	S., U. S. C., title 28, §§ 483, 484, 580.[2]
Oct. 6	384	79	9	31–631.
1918				
Mar. 28	470	28	1	31–304.
	494	28	1	32–822.
	498	28	2	Temporary.
Apr. 29	538	65		Special.
May 6	539	67	1	S. 6–504.
	540	67	2, 3	Temporary.
	540	67	4, 5	Appropriation.
	541	67	6	6–503.
	541	67	7	Temporary.
	541	67	8	Obsolete.
	541	67	9	R. '20, 41 Stat. 848, ch. 234, § 1.
	541	67	10, 11	S. 6–504.
	541	67	12	Appropriation.
May 23	560	82		2–701.
	560	83		Temporary.
May 31	593	90		Temporary.
July 1	650	113	1	8–148 to 150, 152.
	680	113	1	31–1012.
	683	113	1	S. 11–1001 note.[2]
	724	114		7–123 note.
July 8	823	139	1	31–631.
Aug. 31	938	164	1	4–105.
	950	164	1	8–161.
	951	164	1	8–130, 161.
	952–954	164	2–8	Temporary.
Sept. 19	960	174	1	36–401.
	961	174	2	36–402.
	961	174	3	36–403.
	961	174	4	36–404.
	962	174	5	36–405.
	962	174	6	36–406.
	962	174	7	Temporary.
	962	174	8	36–407.
	962	174	9	36–408.
	962	174	10	36–409.
	963	174	11	36–410.
	963	174	12	36–411.
	963	174	13	36–412.
	963	174	14	36–413.
	964	174	15	36–414.
	964	174	16	36–415.
	964	174	17	36–416.
	964	174	18	36–417.
	964	174	19	36–418.
	964	174	20	36–419.
	964	174	21	36–420.
	964	174	22	36–421.
	964	174	23	36–422.
			Title II:	
		174	1	36–431.
		174	2	36–432.
		174	3	36–433.
		174	4	36–434.
		174	5	36–435.
		174	6	36–436.
		174	7	36–437.
		174	8	36–438.
		174	9	36–439.
		174	10	36–440.
		174	11	36–441.
		174	12	36–442.
		171	13, 14	36–431 notes.
Oct. 1	1008	180		Temporary.
Nov. 4	1019	200		Temporary.
1919				
Feb. 25	1157	29	3	S. 11–202, 302.
Feb. 27	1213	84		Special.
Mar. 4	1324	122		24–101.
	1325	122		24–105.

VOLUME 41

Date	Page	Chapter	Section	D. C. 1950
1919				
July 11	39	6		6–504.
	69	7	1	5–316.
	70	7	1	47–205.
	101–103	7	2–10	Appropriation.
	104	7	11	1–311.
	104	7	12	40–617.
	104	7	13	Temporary.
	127	8	69	39–203.

VOLUME 41—Continued

Date	Page	Chapter	Section	D. C. 1950
1919				
July 19	209	24	1	11–1001 note.
Aug. 6	273	32	1–11	Special.
Aug. 11	278	43		Special.
Sept. 15	283	57		Temporary.
Oct. 22	298	80	101–122	Temporary.
Oct. 28	305	85	Title I, II.	R. '35, 49 Stat. 872, ch. 740.
Dec. 5	363	1	1	4–103, 151; S. 4–405.[2]
	364	1	1	4–125.
	364	1	3	4–201.
Dec. 18	368	10	1	22–1625.
	368	10	2	22–1626.
	368	10	3	22–1627.
	368	10	4	Repealing.
1920				
Jan. 15	387	39	1	31–701.
	387	39	2	31–702.
	388	39	3	31–703.
	388	39	4	31–704.
	388	39	5	31–705.
	388	39	6	31–706.
	388	39	7	31–707.
	388	39	8	31–708.
	388	39	9	31–709.
	389	39	10	31–710.
	389	39	11	31–720.
	389	39	12	31–712.
	389	39	13	31–713.
	389	39	14	31–714.
	389	39	15	31–715.
	389	39	16	31–716.
	390	39	17	31–717.
	390	39	18	31–718.
	390	39	19	31–719.
Jan. 24	396	54	1	4–402.
	397	54	1	4–404; S. 4–405.
	398	54	2	4–407.
	398	54	3	Appropriation.
	398	54	4	4–107, 403,
Mar. 1	500	92	1	5–412.
	500	92	2–6	R. '38, 52 Stat. 802, ch. 534, § 15.
	501	92	7	5–415 note.
	502	92	8–11	R. '38, 52 Stat. 802, ch. 534, § 15.
Apr. 19	555	153	1 (20)	11–735.
	555	153	1 (35)	11–746.
	555	153	1 (65)	11–312.
	556	153	1 (67)	11–314.
	556	153	1 (105)	13–108.
	556	153	1 (115a)	21–310 note.
	556	153	1 (123a)	20–116.
	557	153	1 (126)	11–514.
	557	153	1 (137a)	19–310.
	557	153	1 (140)	19–312.
	558	153	1 (198)	11–1401.
	558	153	1 (199)	11–1402.
	558	153	1 (200)	11–1043.
	558	153	1 (201)	11–1404.
	559	153	1 (202)	11–1405.
	559	153	1 (203)	11–1406.
	559	153	1 (204)	11–1407.
	560	153	1 (205)	11–1409.
	560	153	1 (206)	11–1410.
	560	153	1 (207)	11–1411.
	560	153	1 (208)	11–1412.
	560	153	1 (209)	11–1413.
	561	153	1 (218)	11–1301.
	561	153	1 (219)	11–1302.
	561	153	1 (219a)	11–1303.
	561	153	1 (220)	11–1304.
	561	153	1 (276)	20–204.
	561	153	1 (277)	20–205.
	561	153	1 (278)	20–206.
	561	153	1 (279)	20–207.
	562	153	1 (280)	20–208.
	562	153	1 (306)	20–403.
	562	153	1 (307)	20–404.
	562	153	1 (308)	20–405.
	562	153	1 (308a)	20–118.
	563	153	1 (310)	18–402.
	563	153	1 (321)	18–305.
	563	153	1 (374)	18–702.
	563	153	1 (375)	18–703.
	563	153	1 (376)	18–704.
	563	153	1 (377)	18–705.
	563	153	1 (445)	16–301.
	564	153	1 (455)	16–311.
	564	153	1 (479a)	28–2403.
	565	153	1 (479b)	28–2404.
	565	153	1 (484a)	16–603.
	565	153	1 (485)	16–604.
	566	153	1 (487)	16–607.
	566	153	1 (491d)	7–205.
	566	153	1 (491h)	7–209.
	566	153	1 (726)	26–314.
	567	153	1 (808)	22–2801.
	567	153	1 (830a)	22–1404.
	567	153	1 (983a)	16–421.

[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 41—Continued

Date	Page	Chapter	Section	D. C. 1950
1920				
Apr. 19	567	153	1 (1064)	14–302.
	567	153	1 (1073b)	14–406.
	567	153	1 (1173)	18–211.
	568	153	1 (1179)	28–2702.
	568	153	1 (1180)	28–2703.
	568	153	1 (1233)	S. 17–104.
	568	153	1 (1262)	38–201.
	569	153	1 (1422)	28–730.
	569	153	1 (1535a)	13–216.
	569	153	1 (1535b)	13–215.
	569	153	1 (1535c)	13–214.
	569	153	1 (1535d)	13–204.
	569	153	2	Effective date.
May 31	726	217	----------	6–904.
June 4	781	227	37	39–401.
June 4	781	227	38	39–402.
	781	227	40	39–403.
June 5	846	234	1	7–107 note.
	850	234	1	S. 31–610.[2]
	852	234	1	S. 31–701, 702.[2]
	855	234	1	31–804; S. 31–305.
	865	234	1	32–912, 1009.
	869	234	1	24–418.
	872	234	2–6	Temporary.
	873	234	7	1–314.
	874	234	8	Temporary.
	898	235	1	8–109
	1017	253	1	31–631.
	1062	272	----------	Special.
Dec. 21	1081	2	1	34–101.
	1082	2	2	34–102.
1921				
Feb. 22	1113	70	1	S. 1–240.
	1117	70	1	7–507.
	1142	70	2–6	Temporary.
	1144	70	7	1–236, 726; 5–316; 6–504; 7–502 note, 505, 512, 519; 8–149; 9–102; 10–135; 11–204; 11–946, 11–949, 626, 946, 949, 1509; 27–130; 43–808; 912; 47–126, 127, 129, 130, 132; 49–110.
	1144	70	8	1–313.
Mar. 1	1156	89	1	S. 47–1001.[2]
	1194	94	----------	29–103.
	1195	95	1	47–713.
	1196	95	2	47–714.
	1196	95	3	S. 47–715.
	1196	95	4	47–716.
	1196	95	5	47 717.
	1196	95	6	Repealing.
Mar. 3	1217	118	1	10–101.
	1217	118	2	10–102.
	1217	118	3	10–103.
	1218	118	4	10–104.
	1218	118	5	10–105.
	1219	118	6	10–106.
	1219	118	7	10–107.
	1219	118	8	10–108.
	1219	118	9	10–109.
	1219	118	10	10–110.
	1219	118	11	10–111.
	1220	118	12	10–112.
	1220	118	13	10–113.
	1221	118	14	10–114.
	1221	118	15	10–115.
	1223	118	16	10–116.
	1223	118	16½	10–117.
	1223	118	17	10–118.
	1223	118	18	10–119.
	1223	118	19	10–120.
	1223	118	20	10–122.
	1224	118	21	10–123.
	1224	118	22	10–124.
	1224	118	23	10–125.
	1224	118	24	10–126.
	1224	118	25	10–127.
	1224	118	26	10–128.
	1224	118	27	10–129.
	1224	118	28	10–130.
	1225	118	29	10–131.
	1225	118	30	10–132.
	1225	118	31	10–133.
	1225	118	32	10–134.
	1225	118	33	10–136, 137 note.
	1251	121	----------	7–123 note.
	1310	125	1	11–703, 705 to 707, 725, 726, 729, 731; 16–1903; 44–102.
	1310	125	2	11–702; 22–1303.
	1310	125	3	11–715.
	1311	125	4	11–320, 716.
	1311	125	5	11–717.
	1311	125	6	11–718, 724.

VOLUME 41—Continued

Date	Page	Chapter	Section	D. C. 1950
1921				
Mar. 3	1311	125	7	11–719.
	1311	125	8	11–720.
	1312	125	9	11–730, 733, 734; 13–217; 16–335, 1402 note, 1809.
	1312	125	10	11–721.
	1312	125	11	11–722.
	1312	125	12	11–723, 739; 17–101, 104.
	1312	125	13	11–701.
	1313	125	14	11–718.
	1313	125	15	Repealing.
Mar. 4	1382	161	1	8–147.
	1412	161	1	11–403.
	1441	171	1–9	Special.

VOLUME 42

Date	Page	Chapter	Section	D. C. 1950
1921				
May 27	9	13	----------	22–1406.
June 10	20	18	2	1–311.
	23	18	214	31–1014.
	23	18	301–303	47–202 note.
	24	18	304	32–809; 45–707; 47–107, 119, 123, 202 note, 204, 310, 311, 601.
	24	18	305	31–1007; 47–202 note, 309.
	24	18	306–318	47–202 note.
Aug. 15	170	66	----------	Special.
Aug. 24	200	91	1–5	Temporary.
	201	92	----------	10–113.
Dec. 16	348, 349	7	1–3	27–121 note.
	349	8	----------	Special.
1922				
Mar. 4	401	93	1	35–1101.
	402	93	2	35–1102.
	402	93	3	35–1103.
	404	93	4	35–1104.
	404	93	5	35–1105.
	405	93	6	35–1106.
	405	93	7	35–1107.
	405	93	8	35–1108.
	406	93	9	35–1109.
	407	93	10	35–1110.
	408	93	11	35–1111.
	408	93	12	35–1112.
	408	93	13	35–1113.
	408	93	14	35–1114.
	408	93	15	35–1115.
	409	93	16	35–1116.
	409	93	17	35–1117.
	409	93	18	35–1118.
	410	93	19	35–1119.
	410	93	20	35–1120.
	411	93	21	35–1121.
	411	93	22	35–1122.
	412	93	23	35–1123.
	412	93	24	35–1124.
	412	93	25	35–1125.
	413	93	26	35–1126.
	413	93	27	35–1127.
	414	93	28	35–1128.
	414	93	29	35–1129.
	414	93	30	35–1130.
	414	93	31	35–1131.
	414	93	32	35–1132.
Mar. 8	417	98	1, 2	Special.
Mar. 20	468	111	----------	Special.
Apr. 25	499	142	----------	Special.
Apr. 26	500	147	----------	26–103.
May 11	540	188	----------	Special.
May 19	543	194	----------	11–1408.
May 22	543	197	1–20	Temporary.
June 26	665	241	----------	29–503 to 510.
June 27	666	246	----------	11–1508.
June 29	668	249	1	24–422; 27–130 note; 31–301 note; 32-401 note; 47–201, 204; R. '38, 52 Stat. 375, ch. 223, § 8.[1]
	669	249	1	47–501 to 503, 713, 1207.
	689	249	1	31–1106.
	702	249	1	32–307.
	711, 712	249	2–6	Temporary.
June 30	767	256	----------	Temporary.
July 1	820	273	----------	22–1410.
Sept. 6	836	303	----------	Special.
	837	304	----------	5–101.
Sept. 14	841	308	1	4–301.
	841	308	2	4–302.
	842	308	3	4–303.
	842	308	4	4–304.

[1] Repealed in part.
[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 42—Continued

Date	Page	Chapter	Section	D. C. 1950
1922				
Sept. 14	842	308	5	4-305.
	842	308	6	S., U. S. C., title 5, § 670.
	843	308	7	4-306.
	843	308	8	Effective date.
Sept. 16	845	318	1	7-801.
	845	318	2	7-802.
	845	318	3	7-803.
	845	318	4	7-804.
	846	318	5	7-805.
	846	318	6	7-806.
	846	318	7	Appropriation.
	846	319	----------	47-823.
Sept. 21	1011	371	1, 2	Special.
Sept. 22	1020	408	1-5	Special.
1923				
Jan. 25	1218	44	----------	Temporary.
Feb. 17	1261	94	1	2-901.
	1261	94	2	2-902.
	1261	94	3	2-903.
	1261	94	4	2-904.
	1262	94	5	2-905.
	1262	94	6	2-906.
	1262	94	7	2-907.
	1263	94	8	2-908.
	1263	94	9	2-909.
	1263	95	1	4-507, 517.
	1263	95	2	Repealing.
Feb. 20	1280	100	----------	Special.
Feb. 28	1327	147	----------	Special.
	1333	148	1	S. 1-240.
	1338	148	1	7-511.
	1357	148	1	24-418.
	1358	148	1	32-906.
	1360	148	1	32-601.
	1361	148	1	32-501, 502.
	1366	148	1	8-160 note.
	1369-1371	148	2-6	Temporary.
	1371	149	1-8	Temporary.
Mar. 4	1446	247	1	7-123 note.
	1485	260	----------	Temporary.
	1446	247	2	Special.
	1488	265	1-14	1-301, 302; 10-101; 11-204, 206, 708; 19-403; 24-101, 105; 47-604, 1214.
	1506	278	----------	13-214.
	1533	292	1	24-417.
	1560	295	----------	11-1001 note.

VOLUME 43

Date	Page	Chapter	Section	D. C. 1950
1924				
Apr. 14	95	102	1, 2	Special.
Apr. 23	106	131	1	47-1901.
	106	131	2	47-1902.
	107	131	3	47-1903.
	107	131	4	47-1904.
	107	131	5	47-1905.
	107	131	6	47-1906.
	107	131	7	47-1907.
	108	131	8	47-1908.
	108	131	9	47-1909.
	108	131	10	47-1910.
	108	131	11	47-1911.
	108	131	12, 13	R. '37, 50 Stat. 683, ch. 690, title IV, § 6.
	109	131	14	47-1912.
	109	131	15	47-1913.
	109	131	16	47-1914.
	110	131	17	47-1915.
	110	131	18	47-1916.
May 3	115	148	----------	7-107 note.
May 17	120	156	1-3	Temporary.
May 21	135	163	----------	47-821.
May 24	153	185	----------	Special.
May 27	174	199	1	S. 4-108.
	175	199	2	S. 4-405.
	175	199	3	4-180, 201, 410.
	175	199	4	4-202.
	175	199	5	4-203.
	175	199	6	4-204.
	176	199	7	4-503, 511, 515, 516.
	176	199	8	4-205.
	176	199	9	4-208.
	176	199	10	Effective date.
	177	201	----------	7-107 note.
May 28	177	202	1	2-501.
	177	202	2	2-502.
	178	202	3	2-503.
	178	202	4	2-504.

VOLUME 43—Continued

Date	Page	Chapter	Section	D. C. 1950
1924				
May 28	179	202	5	2-505.
	179	202	6	2-506.
	179	202	7	2-507.
	179	202	8	2-508.
	179	202	9	2-509.
	179	202	10	2-510.
	180	202	11	2-511.
	180	202	12	2-512.
	180	202	13	2-513.
	181	202	14	2-514.
	181	202	15	2-515.
	181	202	16	2-516.
	181	202	17	2-517.
	181	202	18	2-518.
	182	202	19	2-519.
	182	202	20	2-520.
	182	202	21	2-521.
	182	202	22	2-522.
June 3	363	244	2	39-607 note.
June 4	367	250	1	31-610.
	370	250	2	31-115, 617.
	370	250	3	31-115, 618.
	371	250	4	Temporary.
	371	250	5	31-619.
	372	250	6	31-621.
	373	250	7	31-626.
	373	250	8	31-627.
	373	250	9	31-628.
	374	250	10	31-629.
	374	250	11	31-119.
	374	250	12	31-109.
	374	250	13	31-601.
	374	250	14	31-602.
	374	250	15	31-603.
	375	250	16	31-604.
	375	250	17	31-605.
	375	250	18	31-606.
	375	250	19	Repealing.
June 5	392	264	----------	31-1023.
June 6	463	270	1	8-101.
	463	270	2	8-102.
	463	270	3	8-106.
	464	270	4	8-107.
	464	271	1	8-162.
	464	271	2	8-163.
	470	275	4	39-401.
June 7	533	292	2	Temporary.
	539	302	1	1-204 note; 27-130 note; 31-301, note; 32-401 note.
	550	302	1	7-502; 47-1918.
	560	302	1	4-503.
	564	302	1	11-749.
	568	302	1	32-308, 310.
	574	302	1	8-151.
	576	302	2-6	Temporary.
	593	304	----------	7-107 note.
	599	315	1	S. 2-328.
	599	315	2	S. 2-301.
	599	315	3	S. 2-302.
	600	315	4	S. 2-303.
	600	315	5	S. 2-304.
	600	315	6	S. 2-305.
	600	315	7	S. 2-306.
	600	315	8	S. 2-307.
	600	315	9	S. 2-308.
	601	315	10	S. 2-309.
	601	315	11	S. 2-323.
	601	315	12	S. 2-324.
	601	315	13	S. 2-322 to 324.
	601	315	14	S. 2-325.
	602	315	15	S. 2-326.
	602	315	16	S. 2-311, 325.
	602	315	17	S. 2-312.
	602	315	18	S. 2-312.
	603	315	19	S. 2-313.
	603	315	20	S. 2-314.
	603	315	21	S. 2-315.
	603	315	22	S. 2-316.
	604	315	23	S. 2-317.
	604	315	24	S. 2-318.
	604	315	25	S. 2-319.
	604	315	26	S. 2-320, 325.
	604	315	27	S. 2-328.
	604	315	28	S. 2-329.
	604	315	29	Repealing.
	632	323	1-4	Special.
	647	340	----------	5-405.
	666	370	1, 2	Special.
	667	373	----------	Special.
Dec. 2	671	1	----------	Special.
Dec. 13	713	8	----------	11-1207.
	713	9	1	2-1001.
	713	9	2	2-1002.
	713	9	3	2-1003.
	714	9	4	2-1004.
	714	9	5	2-1005.
	714	9	6	2-1006.
	714	9	7	2-1007.

STATUTES AT LARGE—Continued

VOLUME 43—Continued

Date	Page	Chapter	Section	D. C. 1950
1924				
Dec. 13	714	9	8	2-1008.
	714	9	9	2-1009.
	714	9	10	2-1010.
	714	9	11	2-1011.
	714	9	12	2-1012.
	715	9	13	2-1013.
	715	9	14	2-1014.
	715	9	15	2-1015.
	715	9	16	2-1016.
	715	9	17	2-1017.
	715	9	18	2-1018.
	715	9	19	2-1019.
	715	9	20	2-1020.
	716	9	21	2-1021.
	716	9	22	2-1022.
	716	9	23	2-1023.
	716	9	24	2-1024.
	716	9	25	2-1025.
	717	9	26	2-1026.
	717	9	27	2-1027.
	717	9	28	2-1028.
	717	9	29	2-1029.
	718	9	30	2-1030.
	718	9	31	Repealing.
	718	9	32	Effective date.
	718	10	1, 2	Special.
1925				
Jan. 17	752	84	----------	S. 4-405.
Jan. 28	794	103	----------	Special.
Jan. 30	798	115	1	22-2404, 2801; 23-701.
	799	115	2	23-702.
	799	115	3	23-703.
	799	115	4	23-704.
	799	115	5	Repealing.
	799	116	1	7-123.
	800	116	2	7-124.
Feb. 2	804	127	----------	Temporary.
Feb. 4	806	140	Art. I, 1	31-201.
	806	140	Art. I, 2	31-202.
	806	140	Art. I, 3	31-203.
	806	140	Art. I, 4	31-204.
	806	140	Art. I, 5	31-205.
	807	140	Art. I, 6	31-206.
	807	140	Art. I, 7	31-207.
	807	140	Art. II, 1	31-208.
	807	140	Art. II, 2	31-209.
	807	140	Art. II, 3	31-210.
	807	140	Art. III, 1	31-211.
	808	140	Art. III, 2	31-212.
	808	140	Art. III, 3	31-213.
	808	140	4	Repealing.
	808	140	5	Effective date.
Feb. 10	821	198	----------	1-501.
Feb. 12	887	215	----------	Special.
Feb. 19	950	267	----------	Special.
Feb. 21	960	285	----------	7-107 note.
	961	289	----------	5-405.
Feb. 24	974	313	1-7	Special.
	975	314	----------	Temporary.
Feb. 25	979	321	----------	8-102 note.
Feb. 26	983	339	1	4-202, 208; 5-412.
	983	339	3	5-204; 7-1204, 1207; 8-125; 11-1104; 47-409.
	986-993	342	1-4	Temporary.
	993	342	5	31-804.
	993	342	6-8	Temporary.
	994	342	9	47-203.
	1001	355	1-21	R. '39, 53 Stat. 1408, ch. 691, § 3.
Feb. 27	1004	358	1	33-301.
	1004	358	2	33-302.
	1004	358	3	33-303.
	1005	358	4	33-304.
	1005	358	5	33-305.
	1005	358	6	33-306.
	1005	358	7	33-307.
	1005	358	8	33-308.
	1005	358	9	33-309.
	1005	358	10	33-310.
	1006	358	11	33-311.
	1006	358	12	33-312.
	1006	358	13	33-103, 313.
	1007	358	14	33-314.
	1007	358	15	33-315.
	1007	358	16	33-316.
	1007	358	17	33-317.
	1008	358	18	33-318.
	1008	358	19	33-319.
	1008	358	20	Repealing.
Feb. 28	1075	371	1	39-107 note.
	1077	371	4	39-501 note.
Mar. 2	1096	395	1	7-517.
	1097	395	2	Appropriation.
	1097	395	3	7-518.
Mar. 3	1102	416	----------	45-703.
	1103	417	546	42-101, 102.
	1103	417	547	42-103.

VOLUME 43—Continued

Date	Page	Chapter	Section	D. C. 1950
1925				
Mar. 3	1108	423	3	37-101 note.
	1119	443	1	40-601.
	1119	443	2	40-602; R. '31, 46 Stat. 1424, ch. 317, § 1.[1]
	1119	443	3	11-601.
	1120	443	3	11-621, 623.
	1120	443	4	11-616.
	1120	443	5 (a)	11-617.
	1120	443	5 (b)	11-1407.
	1121	443	6	40-603.
	1121	443	7	40-301.
	1123	443	8	40-303.
	1123	443	9	40-605.
	1124	443	10	40-609.
	1124	443	11	40-610.
	1125	443	12	40-611.
	1125	443	13	40-302.
	1125	443	14	R. '31, 46 Stat. 1426, ch. 317, § 4.
	1125	443	15	Temporary.
	1125	443	16 (a)	40-614; Repealing.
	1126	443	16 (b)	40-613.
	1126	443	16 (c)	40-614.
	1126	443	17	Effective date.
	1126	443	18	40-615.
	1135	460	1	32-602.
	1135	460	2	32-603.
	1135	460	3	32-604.
	1135	460	4	32-605.
	1135	460	5	32-606.
	1135	460	6	32-607.
	1135	460	7	32-608.
	1136	460	8	32-609.
	1136	460	9	32-610.
	1136	460	10	32-611.
	1137	460	11	32-612.
	1137	460	12	32-613.
	1137	460	13	32-614.
	1137	460	14	32-615.
	1138	460	15	32-616.
	1138	460	16	32-617.
	1138	460	17	32-618.
	1139	460	18	32-619.
	1139	460	19	32-620.
	1139	460	20	32-621.
	1140	460	21	32-622.
	1140	460	22	32-623.
	1140	460	23	32-624.
	1140	460	24	32-625.
	1140	460	25	32-626.
	1140	460	26	32-627.
	1140	460	27	32-628.
	1141	460	28	32-629.
	1141	460	29	Repealing.
	1143	462	----------	31-1023.
	1197	467	15	Special.
	1216	477	1	32-606.
	1222	477	1	47-306.
	1226	477	1	47-1919.
	1239	477	1	11-749.
	1249-1251	477	2-6	Temporary.
Mar. 4	1264	525	----------	Special.
	1265	527	1	43-503.
	1265	527	2	43-502.
	1265	527	3	43-502, 503.
	1284	545	----------	2-1501 to 1507.
	1320	556	1	31-1108.
	1323	556	1	Temporary.

VOLUME 44

Date	Page	Chapter	Section	D. C. 1950
1925				
Dec. 22	1	3	----------	Temporary.
1926				
Mar. 3	167	44	1	47-1917.
Mar. 11	203	52	1	Special.
	203	52	2	Appropriation.
	203	52	3	Repealing.
Mar. 16	208	58	1	3-101; 11-944; 32-319, 502, 602, 604, 605, 607, 616, 618, 625, 626, 902, 904 to 906, 908, 911.
	208	58	2	3-102; 11-944; 32-502, 602, 604, 605, 607, 616, 618, 625, 626.
	208	58	3	3-103.
	208	58	4	3-104.
	209	58	5	3-105; 32-605.
	209	58	6	3-106; 24-409, 412, 415, 421; 32-501.
	209	58	7	3-107; 24-411, 419, 421.

[1] Repealed in part.

STATUTES AT LARGE—Continued

VOLUME 44—Continued

Date	Page	Chapter	Section	D. C. 1950
1926				
Mar. 16	209	58	8	Temporary.
	209	58	9	3-108, 109.
	210	58	10	3-110 to 113.
	210	58	11	3-114, 116 to 121.
	210	58	12	3-122.
	210	58	13	3-123.
	211	58	14	Effective date.
	211	58	15	Repealing.
Apr. 1	229	98	1	37-101.
	229	98	2	37-102.
	229	98	3	37-103.
	229	98	4	37-104.
	230	98	5	37-105.
	230	98	6	37-106.
Apr. 3	234	103	----------	11-312.
Apr. 13	245	123	1, 2	Temporary.
Apr. 14	251	140	1	43-1531.
	252	140	2	43-1532.
Apr. 15	253	145	1	22-3404.
	253	145	2	22-3405.
	253	145	3	22-3406.
Apr. 16	298	150	----------	5-405.
Apr. 24	322	176	1	11-1504; 19-403, 404; 45-709; 47-126.
	322	176	2	19-405; 45-704, 710.
Apr. 26	323	183	1	11-1512.
	323	183	2	11-1513.
	324	183	3	11-1514.
	324	183	5	Repealing and effective date.
Apr. 29	347	195	Title II	24-423.
Apr. 30	374	198	----------	7-109, 113, 115; 8-101.
	376	198	----------	7-122.
May 1	380	207	----------	Special.
May 4	394	234	----------	8-169.
May 5	396	239	----------	Special.
May 7	405	251	----------	8-161 note.
May 10	417	276	1	32-606.
	427	276	1	7-603.
	430	276	1	7-701 note.
	433	276	1	31-305.
	441	276	1	11-749.
	451	276	2-6	Temporary.
	453	276	7	1-315.
May 22	622	370	----------	Special.
	627	372	----------	7-1201.
May 25	635	381	----------	4-131, 406.
May 26	657	402	1-3	Temporary.
May 28	675	418	1	7-219.
	676	418	2	7-220.
	676	419	----------	30-208.
June 7	697	480	1	47-126.
	697	480	2	7-511.
	697	481	1, 2	Special.
	698	482	1, 2	Special.
June 10	716	528	1	22-903.
	716	528	3	22-905.
June 11	727	556	1	31-701,702.
	728	556	1	31-703 to 707.
	729	556	1	31-708 to 710.
	730	556	1	31-712 to 716.
	731	556	1	31-717 to 720.
	731	556	2	31-720 note.
June 14	741	577	----------	11-1407.
June 22	758	647	1	32-701.
	759	647	2	32-702.
	759	647	3	32-703.
	759	647	4	32-704.
	759	647	5	32-705.
	759	647	6	32-706.
	759	647	7	32-707.
	759	647	8	32-708.
	760	647	9	32-709.
	760	647	10	32-710.
June 23	762	660	----------	Special.
June 25	769	675	----------	Special.
June 26	773	697	----------	Special.
	774	698	----------	Special.
June 29	777	707	----------	Special.
July 3	809	736	----------	7-107 note.
	809	737	1	48-201.
	810	737	2	48-202.
	810	737	3	48-203.
	810	737	4	48-204.
	810	737	5	48-205.
	811	737	6	48-206.
	811	737	7	48-207.
	811	737	8	48-208.
	811	737	9	48-209.
	811	737	10	48-210.
	811	737	11	48-211.
	812	739	1	40-602.
	812	739	2	40-301.
	814	739	3	40-302.
	814	739	4	40-603.
	814	739	5	40-605.
	831	755	----------	17-102.

VOLUME 44—Continued

Date	Page	Chapter	Section	D. C. 1950
1926				
July 3	832	759	1	47-604, 605, 1201.
	833	759	2	47-1205.
	833	759	3	47-711.
	833	759	4	47-713, 1202.
	833	759	5	47-1209.
	833	759	6	47-1206.
	834	759	7	47-1213.
	834	759	8	47-601.
	834	759	9	47-1001.
	834	759	10	47-702, 706; S. 47-708, 709.
	834	759	11	Effective date.
	834	760	1	4-202.
	834	760	2	4-207.
	835	760	3	40-613.
	837	766	1, 2	Special.
	838	768	1	6-601.
	838	768	2	6-602.
	839	768	3	6-603.
	839	768	4	6-604.
	839	768	5	6-605.
	839	768	6	6-606.
	839	768	7	6-607.
	839	768	8	6-608.
	840	768	9	Effective date.
	850	771	1	S. 43-1520.
	892	784	----------	11-1407.
	901	794	1, 2	Special.
Dec. 13	919	6	1	11-202, 302.
	920	6	2	Effective date.
Dec. 15	920	8	1	43-201.
	921	8	1	43-202.
	921	8	2	43-203.
	921	8	3	43-205.
1927				
Jan. 5	931	20	1, 2	Special.
Jan. 12	934	26	1, 2	Special.
	936	27	1	31-1023.
Jan. 13	971	28	1-3	Special.
	972	29	1-8	Special.
Jan. 14	974	32	----------	Special.
Jan. 20	1007	40	----------	Special.
Feb. 5	1056	65	1-3	Special.
Feb. 9	1064	87	----------	7-612.
Feb. 10	1067	100	----------	21-301.
	1067	101	----------	21-126.
Feb. 14	1090	126	1-3	Special.
Feb. 23	1176	171	----------	1-101 note; page LXI.
Feb. 26	1249	220	----------	11-1418.
Mar. 1	1262	245	1, 2	Special.
Mar. 2	1297	271	1	32-606.
	1301	271	1	45-703 note.
	1303	271	1	47-1001.
	1308	271	1	7-603.
	1314	271	1	31-305.
	1317	271	1	4-181.
	1321	271	1	11-749.
	1323	271	1	3-124, 125.
	1332	271	2-6	Temporary.
Mar. 3	1349	301	1, 2	Special.
	1351	304	----------	43-412.
	1351	305	1	7-520.
	1352	305	2	7-521.
	1352	305	3	Appropriation.
	1352	305	4	7-522.
	1352	306	1	7-515.
	1353	306	2	Appropriation.
	1353	306	3	7-1215.
	1354	306	4	7-516.
	1357	312	1-4	Special.
	1369	331	----------	Special.
	1379	343	1-4	22-1603.
	1383	349	----------	21-302.
	1383	350	----------	21-103, 110.
	1386	354	1, 2	32-503.
	1394	364	----------	11-307.
	1397	366	----------	Special.
	1399	373	----------	Special.
Mar. 4	1413	496	----------	S. 2-314.
	1413	497	1	Amendment.
	1413	497	2	2-602.
	1414	497	3	2-606.
	1415	497	4	2-609.
	1415	497	5	Effective date.
	1423	507	1, 2	Special.

VOLUME 45

Date	Page	Chapter	Section	D. C. 1950
1927				
Dec. 22	11	5	----------	43-1511.

STATUTES AT LARGE—Continued

VOLUME 45—Continued

Date	Page	Chapter	Section	D. C. 1950
1928				
Jan. 13	51	9	1, 2, 4	Special.
Feb. 28	156	112	----------	Special.
Mar. 5	193	127	----------	Special.
Mar. 30	398	303	----------	Special.
Apr. 6	410	325	----------	11-1509.
Apr. 11	420	350	1, 2	Special.
Apr. 13	429	369	----------	4-203.
Apr. 21	440	398	1	23-403.
	440	398	2	23-404.
	441	398	3	23-405.
	441	398	4	23-406.
	441	398	5	23-407.
	441	398	6	23-408.
	441	398	7	23-409.
	442	398	8	23-410.
May 2	483	483	----------	Special.
May 14	509	545	1	28-2301.
	510	545	2	28-2302.
	510	545	3	28-2303.
	510	545	4	28-2304.
	510	545	5	28-2305.
May 14	511	545	6	28-2306.
	511	545	7	28-2307.
	511	545	8	28-2308.
	511	545	9	28-2309.
	512	545	10	28-2310.
	512	545	11	28-2311.
	512	545	12	28-2312.
	512	545	13	28-2313.
	512	545	14	28-2314.
	512	545	15	Repealing.
	512	545	16	Effective date.
May 15	533	568	1	26-201.
	534	568	2	26-202.
	534	568	3	16-333.
May 16	565	572	----------	6-904.
	583	580	----------	8-168 note.
	590	584	1-3	Special.
May 17	600	612	1	36-501.
	600	612	2	36-502.
	600	612	3	Effective date.
May 21	622	655	1-6	Special.
	645	659	1	11-204; 31-609; 32-606; Appropriation.
	646	659	1	S. 47-2342.[2]
	649	659	1	1-240; 45-703 note.
	650	659	1	47-1001, 1008.
	657	659	1	7-603.
	662	659	1	31-305.
	669	659	1	6-115.
	670	659	1	11-749.
	671	659	1	11-211.
	681	659	2-6	Temporary.
	689	666	----------	Special.
May 22	713	690	----------	Special.
May 23	720	717	1, 2	Special.
May 24	726	726	----------	8-101.
May 29	945	858	----------	Special.
	950	861	1	2-1014, 1016, 1019.
	951	861	1	2-1022, 1024, 1028.
	952	861	1	2-1029.
	953	861	1	2-1030.
	953	861	2	2-1031.
	953	862	1	35-918 note.
	953	862	2	35-918.
	953	862	3	35-919.
	953	862	4	35-920.
	953	862	5	35-921.
	953	862	6	35-918 note; Repealing.
	953	863	----------	7-221.
	986	901	1	47-107 note.
	992	901	1	32-318.
	996	901	1	7-706.
	997	905	----------	7-107 note.
	998	908	1	36-201.
	999	908	2	36-202.
	999	908	3	36-203.
	999	908	4	36-204.
	999	908	5	36-205.
	1000	908	6	36-206.
	1000	908	7	36-207.
	----	908	7a	36-207a.
	1000	908	8	36-208.
	1000	908	9	36-209.
	1001	908	10	36-210.
	1001	908	11	36-211.
	1002	908	12	36-212.
	1002	908	13	36-213.
	1002	908	14	36-214.
	1003	908	15	36-215.
	1003	908	16	36-216.
	1003	908	17	36-217.
	1003	908	18	36-218.
	1004	908	19	36-219.
	1004	908	20	36-220.

VOLUME 45—Continued

Date	Page	Chapter	Section	D. C. 1950
1928				
May 29	1004	908	21	36-221.
	1004	908	22	36-222.
	1005	908	23	36-223.
	1006	908	24	36-224.
	1006	908	25	36-225.
	1006	908	26	31-213.
	1006	908	27	Repealing.
	1006	908	28	36-226.
	1006	908	29	36-227.
	1006	908	30	Effective date.
	1007	910	1	Temporary.
	1007	910	2	49-101.
	1007	910	3	Temporary.
	1007	910	4	49-102.
	1007	910	5	49-103.
	1007	910	6	49-104.
	1008	910	7	49-105.
	1008	910	8	49-106.
	1008	910	9	Repealing.
	1008	910	10	Appropriation.
Dec. 12	1021	24	----------	35-916.
Dec. 20	1055	40	1	35-901.
	1056	40	2	Repealing.
	1056	41	----------	11-301.
Dec. 22	1070	48	1	8-103.
	1070	48	2	8-105.
1929				
Jan. 26	1139	105	----------	31-101.
Feb. 8	1156	163	----------	22-1106.
Feb. 11	1160	173	1	1-902.
	1160	173	2	1-903.
	1160	173	3	1-904.
	1161	173	4	1-905.
Feb. 14	1173	197	1	R. '36, 49 Stat. 1155, ch. 111, § 5.
	1173	197	2	Repealing.
	1174	198	----------	Special.
Feb. 18	1226	258	----------	40-301.
	1226	259	1	47-1304.
	1226	259	2	47-1305.
	1226	259	3	47-1210.
	1227	259	4	47-1205.
	1227	259	5	47-1209.
	1227	259	6	47-1206.
	1228	259	7	47-1213.
	1228	259	8	Repealing.
Feb. 23	1260	303	1	31-501.
	1260	303	2	31-502.
	1260	303	3	31-503.
	1260	303	4	31-504.
	1260	303	5	31-505.
	1260	303	6	31-506.
	1260	303	7	31-507.
	1261	305	----------	Temporary.
Feb. 25	1262	314	1	S. 4-108;[2] Appropriation.
	1268	314	1	47-1001.
	1276	314	1	31-114, 118.
	1279	314	1	31-305, 609.
	1285	314	1	30-115.
	1286	314	1	47-116, 117.
	1287	314	1	11-207.
	1289	314	1	47-115.
	1290	314	1	47-131.
	1292	314	1	32-504.
	1298	314	2-7	Temporary.
Feb. 27	1326	352	1	2-101, 201, 207.
	1327	352	2, 3	2-102.
	1327	352	4, 5	2-103.
	1327	352	6	2-104.
	1328	352	7	2-105.
	1328	352	8, 9	2-106.
	1328	352	10	2-107.
	1329	352	11	2-108.
	1329	352	12	2-109.
	1330	352	13	2-110.
	1330	352	14	2-111.
	1331	352	15	2-112.
	1331	352	16, 17	2-113.
	1331	352	18	2-114.
	1332	352	19	2-115.
	1332	352	20	2-116.
	1332	352	21	2-117.
	1333	352	22	2-118.
	1333	352	23	2-119.
	1334	352	24	2-120.
	1335	352	25	2-121.
	1336	352	26	2-122.
	1337	352	27	2-123.
	1337	352	28-30	2-124.
	1337	352	31-33	2-125.
	1338	352	34, 35	2-126.
	1338	352	36	2-127.
	1338	352	37	2-128.
	1338	352	38	2-129.
	1338	352	39	2-130.

[2] Superseded in part.

STATUTES AT LARGE—Continued

VOLUME 45—Continued

Date	Page	Chapter	Section	D. C. 1950
1929				
Feb. 27	1338	352	40	2-131.
	1338	352	41	2-132.
	1339	352	42	2-133.
	1339	352	43	2-134.
	1340	352	44	2-135.
	1340	352	45	2-136.
	1340	352	46	2-137.
	1340	352	47	2-138.
	1340	352	48	2-139.
	1340	352	49	2-140.
	1341	353	----------	7-126.
Feb. 28	1343	357	1	31-610.
	1344	357	2	31-620.
	1344	357	3	Temporary.
	1344	357	4	31-621.
	1344	357	5	Effective date.
	1408	379	1	9-201
	1409	379	2	Appropriation.
	1412	384	1	8-169.
	1412	384	2	8-170.
Mar. 1	1415	416	1	16-619.
	1415	416	2	16-620.
	1416	416	3	16-621.
	1416	416	4	16-622.
	1416	416	5	16-623.
	1416	416	6	16-624.
	1416	416	7	16-625.
	1416	416	8	16-626.
	1417	416	9	16-627.
	1417	416	10	16-628.
	1418	416	11	16-629.
	1418	416	12	16-630.
	1418	416	13	16-631.
	1418	416	14	16-632.
	1419	416	15	16-633.
	1419	416	16	16-634.
	1419	416	17	16-635.
	1420	416	18	16-636.
	1420	416	19	16-637.
	1420	416	20	16-638.
	1420	416	21	16-639.
	1421	416	22	16-640.
	1421	416	23	16-641.
	1421	416	24	16-642.
	1421	416	25	16-643.
	1422	416	26	16-644.
	1425	422	1	32-312.
	1425	422	2	32-312 note.
	1437	439	----------	16-601 to 604.
	1438	439	----------	16-606 to 611.
Mar. 2	1475	488	2	Repealing.
	1487	501	----------	10-137.
	1503	523	----------	29-414.
	1504	523	----------	29-415 to 417.
	1505	523	----------	29-418, 419.
	1519	540	1	2-401.
	1519	540	2	2-402.
	1519	540	3	2-403.
	1520	540	4	2-404.
	1520	540	5	Obsolete.
	1520	540	6	2-405.
	1521	540	7	2-406.
	1521	540	8	2-407.
	1521	540	9	2-408.
	1522	540	10	2-409.
	1522	540	11	2-410.
	1522	540	12	2-411.
	1523	542	----------	8-159.
	1540	585	----------	Special.
	1540	586	1	49-108.
	1541	586	2	49-101.
	1541	586	3	49-102.
	1542	586	4	49-107.
	1542	586	5	U. S. C., tit. 1, § 54b.
	1542	586	6	U. S. C., tit. 1, § 54c.
	1542	586	7	49-109.
Mar. 4	1543	682	1	7-127.
	1543	682	2	7-128.
	1543	682	3	7-129.
	1544	682	4	7-130.
	1544	682	5, 6	Special.
	1545	682	7	7-131.
	1545	682	8	Special.
	1549	688	1	6-505.
	1549	688	2	6-506.
	1549	688	3	6-507.
	1549	688	4	6-508.
	1550	688	5	6-509.
	1550	688	6	6-510.
	1556	696	1	4-701.
	1556	696	2	4-702.
	1556	696	3	4-703.
	1557	696	4	4-704.
	1694	708	1-4	9-105 note.
	1696	708	5, 6	Special.
	1699	714	1-6	Special.

VOLUME 46

Date	Page	Chapter	Section	D. C. 1950
1930				
June 15	19	25	----------	Special.
Dec. 23	55	17	----------	Special.
1930				
Jan. 31	62	32	1	31-401.
	62	32	2	31-402.
	62	32	3	31-403.
	62	32	4	31-404.
	62	32	5	31-405.
	62	32	6	31-406.
	62	32	7	Effective date.
Mar. 26	97	92	----------	6-505 note.
Apr. 3	139	102	----------	7-103.
Apr. 12	158	135	1	35-922.
	158	135	2	35-923.
	159	135	3	35-924.
	159	135	4	35-925.
	160	135	5	35-926.
	160	135	6	35-927.
	160	135	7	35-928.
Apr. 17	170	176	----------	3-103.
Apr. 18	218	186	----------	32-312 note.
Apr. 29	258	220	----------	5-405.
May 13	269	250	----------	7-123 note.
May 14	328	277	1	4-301.
	329	277	2	4-302.
	329	277	3	4-303.
	329	277	4	4-306.
May 15	334	286	----------	6-511.
May 16	366	291	1	5-410.
	367	291	2	5-411.
May 29	470	349	3 (e)	1-217.
	482	354	1	8-102 note.
	485	354	4	8-106 note.
	486	358	----------	11-1510.
	487	360	----------	Special.
June 5	500	400	----------	1-902.
June 6	522	411	1	47-2008.
	522	411	2	Repealing.
	523	412	----------	10-137 note.
June 10	538	439	----------	29-603.
June 19	785	537	----------	11-301.
	785	538	----------	11-201.
June 26	816	615	----------	7-123 note.
June 27	821	641	----------	Executed.
June 30	838	764	----------	43-1530.
July 1	839	783	1	4-108.
	840	783	2	4-405.
	840	783	3	4-801.
	840	783	4	4-802.
	840	783	5	4-503, 504.
	841	783	6	4-505.
	841	783	7	Effective date.
July 2	849	805	----------	Temporary.
July 3	952	848	1	10-137 note.
	957	848	1	9-201 note, 202.
	962	848	1	7-513.
	963	848	1	7-510, 523.
	970	848	1	7-123 note.
	975	848	1	6-115.
	988	848	1	43-1520.
	989	848	1	43-1511.
	989	848	2-6	Temporary.
	1007	853	----------	8-171.
	1012	859	----------	Special.
Dec. 11	1026	8	----------	7-107 note.
1931				
Jan. 23	1040	43	----------	Special.
Feb. 12	1087	119	1	7-520.
	1088	119	2	7-521 note.
	1088	119	3	Appropriation.
	1088	119	4	7-522 note.
	1089	120	----------	29-238 to 240.
Feb. 14	1109	181	1-3	Special.
Feb. 20	1197	246	1	7-622.
	1197	246	2	7-623.
	1197	246	3	7-624.
	1197	246	4	7-625.
	1198	246	5	7-626.
	1198	246	6	7-627.
	1198	246	7	7-628.
	1198	246	8	7-629.
	1198	246	9	7-608, 630.
	1199	246	10	7-631.
	1199	246	11	7-632.
	1199	246	12	7-633.
	1199	246	13	7-633 note; Repealing.
Feb. 23	1380	282	1	47-118.
	1381	282	1	8-142.
	1395	282	1	31-809.
	1413	282	2-5	Temporary.
Feb. 25	1419	302	----------	44-214.
	1419	303	----------	Special.
Feb. 27	1424	317	1	40-602.
	1424	317	2	40-301 to 303.

STATUTES AT LARGE—Continued

VOLUME 46—Continued

Date	Page	Chapter	Section	D. C. 1950
1931				
Feb. 27	1424	317	3	40-603.
	1424	317	4	40-603.
	1427	317	4	40-605, 609.
	1428	317	4	40-302.
	1429	317	5	40-612.
	1429	317	6	Effective date.
Feb. 28	1455	332	----------	Special.
	1459	344	1, 2	43-1304 note.
Mar. 3	1486	399	1	1-231.
	1486	399	2	1-232.
	1486	399	3	Repealing.
	1486	399	4	1-233.
	1494	411	1	1-815.
	1494	411	2	Effective date.

VOLUME 47

Date	Page	Chapter	Section	D. C. 1950
1932				
Feb. 2	18	12	----------	6-505 note.
Feb. 11	48	39	----------	14-309.
	48	40	----------	1-214.
Feb. 18	50	47	1	48-401.
	50	47	2	48-402.
	51	47	3	48-403.
	51	48	1-5	Special.
Mar. 17	66	84	----------	Special.
Apr. 14	79	98	----------	32-309.
	79	99	1-4	43-1304 note.
	79	100	----------	43-1530.
	81	101	----------	7-107 note.
Apr. 16	86	118	1	4-601.
	87	118	2	4-603.
	87	118	3	4-602.
	87	118	4	4-604.
Apr. 20	87	121	----------	29-602.
Apr. 22	134	131	1	31-106.
	134	131	2	31-107.
	134	131	3	Repealing.
	135	133	1-5	7-127 note.
May 13	154	180	1	8-114.
	154	180	2	Special.
May 17	154	183	1-3	Special.
	158	189	----------	35-204.
May 20	161	197	1	8-115.
	162	197	2	8-116.
May 21	163	200	1	3-164.
	164	200	2	8-165.
	164	200	3	8-166.
June 3	168	206	1-4	43-1304 note.
June 14	302	247	----------	Special.
	303	248	1	7-309.
	303	248	2	7-310.
	303	248	3	7-311.
	304	248	4	7-312.
	304	249	1, 2	Special.
	304	250	1-4	Special.
June 15	318, 319	265	1-3	43-1304 note.
	319	265	4	43-1304.
June 17	319	267	----------	7-123 note.
June 18	322	269	1	7-1216.
	322	269	2	7-1217.
	322	269	3	7-1218.
	323	269	4	7-1219.
	323	269	5	7-1220.
	323	269	6	7-1221.
	323	269	7	7-1222.
	324	269	8	7-1223.
	324	269	9	7-1224.
June 23	326	272	1	26-501.
	326	272	2	26-502.
	326	272	3	26-503.
	327	272	4	26-504.
	327	272	5	26-505.
	327	272	6	26-506.
	328	272	7	26-507.
	328	272	8	26-508.
	329	272	9	26-509.
	329	272	10	26-510.
	329	272	11	26-511.
	330	272	12	26-512.
	330	272	13	26-513.
	331	272	14	26-514.
	331	272	15	26-515.
	331	272	16	26-516.
	331	272	17	26-517.
	331	272	18	26-518.
June 29	354	308	1	1-814; 7-618 note.
	355	308	1	7-514.
	360	308	1	31-609.
	370	308	1	47-115 note.
	370	308	2-5	Temporary.

VOLUME 47—Continued

Date	Page	Chapter	Section	D. C. 1950
1932				
June 30	413	314	323	11-1512 note.
July 1	550	366	(1)	47-2301.
	550	366	(2)	47-2302.
	551	366	(3)	47-2303.
	551	366	(4)	47-2304.
	551	366	(5)	47-2305.
	551	366	(6)	47-2306.
	551	366	(7)	47-2307.
	551	366	(8)	47-2308.
	552	366	(9)	47-2309.
	552	366	(10)	47-2310.
	552	366	(11)	47-2311.
	552	366	(12)	47-2312.
	552	366	(13)	47-2313.
	552	366	(14)	47-2314.
	552	366	(15)	47-2315.
	553	366	(16)	47-2316.
	553	366	(17)	47-2317.
	553	366	(18)	47-2318.
	553	366	(19)	47-2319.
	553	366	(20)	47-2320.
	553	366	(21)	47-2321.
	554	366	(22)	47-2322.
	554	366	(23)	47-2323.
	554	366	(24)	47-2324.
	554	366	(25)	47-2325.
	554	366	(26)	47-2326.
	554	366	(27)	47-2327.
	555	366	(28)	47-2328.
	555	366	(29)	47-2329.
	555	366	(30)	47-2330.
	555	366	(31)	47-2331.
	557	366	(32)	47-2332.
	557	366	(33)	47-2333.
	557	366	(34)	47-2334.
	557	366	(35)	47-2335.
	557	366	(36)	47-2336.
	557	366	(37)	47-2337.
	558	366	(38)	47-2338.
	558	366	(39)	47-2339.
	558	366	(40)	47-2340.
	559	366	(41)	47-2341.
	559	366	(42a)	47-2101.
	560	366	(42b)	47-2102.
	561	366	(42c)	47-2103.
	561	366	(42d)	47-2104.
	561	366	(42e)	47-2105.
	561	366	(42f)	47-2106.
	562	366	(42g)	47-2107.
	562	366	(42h)	47-2108.
	562	366	(42i)	47-2109.
	562	366	(43)	47-2342.
	562	366	(44)	47-2343.
	562	366	(45)	47-2344.
	563	366	(46)	47-2345.
	563	366	(47)	47-2346.
	563	366	(48)	47-2347.
	563	366	(49)	47-2348.
	563	366	(50)	47-2349.
	563	366	(51)	47-2350.
July 7	608	441	----------	1-804.
	609	442	----------	10-119.
July 8	647	462	----------	16-605.
	650	465	1	22-3201.
	650	465	2	22-3202.
	651	465	3	22-3203.
	651	465	4	22-3204.
	651	465	5	22-3205.
	651	465	6	22-3206.
	652	465	7	22-3207.
	652	465	8	22-3208.
	652	465	9	22-3209.
	652	465	10	22-3210.
	653	465	11	22-3211.
	653	465	12	22-3212.
	653	465	13	22-3213.
	654	465	14	22-3214.
	654	465	15	22-3215.
	654	465	16	22-3216.
	654	465	17	Repealing.
July 14	659	476	3	2-1403.
	659	476	4	2-1405.
	660	478	1	22-1624.
	661	478	2	Repealing
July 15	696	492	1	24-201.
	697	492	2	24-202.
	697	492	3	24-203.
	697	492	4	24-204.
	698	492	5	24-205.
	698	492	6	24-206.
	698	492	7	24-207.
	698	492	8	22-2601.
	698	492	9	24-208.
	699	493	1, 2	Special.
	699	495	1-4	Special.
July 19	707	514	1-6	Special.
Dec. 15	747	4	1	7-401.

STATUTES AT LARGE—Continued

VOLUME 47—Continued

Date	Page	Chapter	Section	D. C. 1950
1932				
Dec. 15	748	4	2	7-402.
	748	4	3	7-403.
	749	4	4	7-404.
	749	4	5	7-405.
	749	4	6	7-406.
	749	4	7	7-407.
	749	4	8	7-408.
	750	4	9	7-409.
	750	4	10	7-410.
Dec. 19	750	5		40-603.
	750	6		R. '38, 52 Stat. 624, ch. 322, § 18.
1933				
Jan. 14	752	10	1	7-131 note, 604 note.
	759	10	1	44-214 note.
	759	10	2	Special.
	759	10	3	4-112; 7-503, 504, 507, 604, 611. 612; 44-201 note.
	760	10	4	44-201.
	760	10	5-13	Special.
Feb. 11	799	48	1	8-164 to 166.
	799	48	2	8-167.
Feb. 16	819	94	1, 2	43-503 note.
Feb. 18	858	103		22-2101.
Feb. 20	858	106		Special.
Feb. 24	904	119	1-3	11-312 note.
Feb. 28	1347	130	1	47-901.
	1348	130	2	47-902.
	1348	130	3	47-903.
	1348	130	4	47-904.
	1348	130	5	Obsolete.
	1348	130	6	47-905.
	1370	138		12-208.
	1370	139		S. 47-1806.
Mar. 1	1419	162		9-105 note.
Mar. 3	1482	206	1	23-601.
	1483	206	2	23-602.
	1483	206	3	23-603.
	1483	206	4	23-604.
	1483	206	5	23-605.
	1483	206	6	23-606.
	1484	206	7	23-607.
	1484	206	8	23-608.
	1485	206	9	23-609.
	1485	206	10	23-610.
	1485	206	11	23-611.
	1485	206	12	23-612.
	1546	220		Emergency.
Mar. 4	1564	274	1	26-103.
	1566	274	2	26-101.
	1566	274	3	26-102.
	1566	274	4	26-104; R. '34, 48 Stat. 352, ch. 14.[1]
	1567	274	5	26-335.
	1567	274	6	26-107.
	1567	274	7	26-108.
	1568	274	8	26-109.
	1568	274	9	26-102 note.

VOLUME 48

Date	Page	Chapter	Section	D. C. 1950
1933				
Apr. 5	25	19	1-16	R. '34, 48 Stat. 336, ch. 4, § 31.
	29	19	17	Saving Clause.
	29	19	18	Effective date.
June 15	155	87	5	39-107 note.
	156	87	6	39-107 note.
	156	87	7	39-401.
	156	87	8	39-402.
	157	87	10	39-403.
June 16	229	93	1	7-524.
	230	93	1	7-603 note.
	232	93	1	6-505 note.
	236	93	1	31-609.
	243	93	1	47-115 note.
	251	93	2-8	Temporary.
1934				
Jan. 24	319	4	1	25-101.
	319	4	2	25-102.
	319	4	3	25-103.
	321	4	4	25-104.
	322	4	5	25-105.
	322	4	6	25-106.
	322	4	7	25-107.
	323	4	8	25-108.
	323	4	9	25-109.
	324	4	10	25-110.
	324	4	11	25-111.
	327	4	12	25-113.

VOLUME 48—Continued

Date	Page	Chapter	Section	D. C. 1950
1934				
Jan. 24	327	4	13	25-114.
	327	4	14	25-115.
	329	4	15	25-116.
	330	4	16	25-117.
	330	4	17	25-118.
	330	4	18	25-119.
	331	4	19	25-120.
	331	4	20	25-121.
	331	4	21	25-122.
	332	4	22	25-123.
	332	4	23	25-124.
	332	4	24	Obsolete.
	333	4	25	25-125.
	333	4	26	25-126.
	333	4	27	25-127.
	333	4	28	25-128.
	334	4	29	25-129.
	335	4	30	25-130.
	336	4	31	25-131.
	336	4	32	Obsolete.
	336	4	33	25-132.
	336	4	34	25-132 note; Repealing.
	336	4	35	25-133.
	336	4	36	25-134.
	337	4	37	25-135.
	337	4	38	25-136.
Feb. 2	349	8		Temporary.
Feb. 16	352	14	1, 2	26-104 and note.
Feb. 20	353	16		Special.
Mar. 2	389	38	1	4-202, 207, 208; 5-204; 8-101 note; 40-613 note; 43-1304 note; 47-409
Mar. 27	506	96		26-415, 416.
	506	97	1	7-1230.
	506	97	2	7-1231.
	507	97	3	7-1232.
	507	97	4	7-1233.
	507	97	5	7-1234.
Apr. 13	574	111		Special.
	574	113		Temporary.
	575	114	1	8-117.
	575	114	2	8-118.
	575	114	3	8-119.
	575	114	4	8-120.
Apr. 16	592	143		29-418.
	592	144		35-205.
	593	145	1, 2	Special.
Apr. 24	608	161		2-1201 to 1205, 2-1207.
	609	161		2-1206, 1208.
Apr. 30	654	181	1	25-111.
	654	181	2	25-123.
	654	181	3	25-124.
	656	181	4	Obsolete.
	656	181	5	Effective Date.
June 4	834	373	1	35-1001.
	834	373	2	35-1002.
	834	373	3	35-1003.
	835	373	4	35-1004.
	835	373	5	35-1005.
	835	374		Special.
	836	375		8-104.
	836	376		47-826.
	836	377		Special.
	837	378	1, 2	Special.
	843	388	1	5-301.
	843	388	2	5-302.
	843	388	3	5-303.
	844	388	4	5-304.
	844	388	5	5-305.
	844	388	6	5-306.
	844	388	7	5-307.
	845	388	8	5-308.
	845	388	9	5-309.
	845	388	10	5-310.
	846	388	11	5-311.
	846	388	12	5-312.
	846	388	13	Repealing.
	846-878	389	1-8	Appropriation.
June 5	880	391		24-209.
June 7	926	426		11-101, 201 note.
June 11	928	444	1-7	Special.
June 12	930	465	1	5-103.
	931	465	2	5-104.
	931	465	3	5-105.
	932	465	4	5-106.
	932	465	5	5-107.
	933	465	6	5-108.
	933	465	7	5-109.
	933	465	8	5-110.
	933	465	9	Repealing.
	933	465	10	5-111.
June 13	948	483	1, 2	49-107.
	953	493		47-828.
June 15	963	536		22-1701.
	967	541		Temporary.
June 16	972	547		47-827.

[1] Repealed in part.

STATUTES AT LARGE—Continued

VOLUME 48—Continued

Date	Page	Chapter	Section	D. C. 1950
1934				
June 19	974	552	----------	25–116.
June 18	997	588	----------	25–111.
	1014, 1015	600	1, 2	25–124.
June 19	1125	671	----------	31–1114.
	1127	672	Ch. I 1	35–301.
	1128	672	2	35–302.
	1129	672	Ch. II 1	35–401.
	1130	672	2	35–402.
	1130	672	3	S. 47–1806.
	1131	672	4	35–403.
	1131	672	5	35–404.
	1131	672	6	35–405.
	1132	672	7	35–406.
	1132	672	8	35–407.
	1132	672	9	35–408.
	1132	672	10	35–409.
	1132	672	11	35–410.
	1133	672	12	35–411.
	1133	672	13	35–412.
	1133	672	14	35–413.
	1133	672	15	35–414.
	1133	672	Ch. II 16	35–415.
	1134	672	17	35–416.
	1134	672	18	35–417.
	1135	672	19	35–418.
	1135	672	20	35–419.
	1137	672	21	35–420.
	1137	672	22	35–421.
	1137	672	23	35–422.
	1137	672	24	35–423.
	1138	672	25	35–424.
	1139	672	26	35–425.
	1140	672	27	35–426.
	1140	672	28	35–427.
	1141	672	29	35–428.
	1142	672	30	35–429.
	1142	672	31	35–430.
	1142	672	32	35–431.
	1142	672	33	35–432.
	1143	672	Ch. III 1	35–501.
	1144	672	2	35–502.
	1144	672	3	35–503.
	1145	672	4	35–504.
	1145	672	5	35–505.
	1145	672	6	35–506.
	1145	672	7	35–507.
	1145	672	8	35–508.
	1145	672	9	35–509.
	1146	672	10	35–510.
	1146	672	11	35–511.
	1146	672	12	35–512.
	1147	672	13	35–513.
	1147	672	14	35–514.
	1147	672	15	35–515.
	1148	672	16	35–516.
	1148	672	17	35–517.
	1148	672	18	35–518.
	1149	672	19	35–519.
	1149	672	20	35–520.
	1149	672	21	35–521.
	1150	672	22	35–522.
	1150	672	23	35–523.
	1150	672	24	35–524.
	1150	672	25	35–525.
	1150	672	26	35–526.
	1151	672	27	35–527.
	1151	672	28	35–528.
	1151	672	29	35–529.
	1151	672	30	35–530.
	1151	672	31	35–531.
	1152	672	32	35–532.
	1152	672	33	35–533.
	1152	672	34	35–534.
	1152	672	35	35–535.
	1152	672	36	35–536.
	1154	672	37	35–537.
	1154	672	38	35–538.
	1154	672	39	35–539.
	1154	672	40	35–540.
	1154	672	Ch. IV 1	35–601.
	1155	672	2	35–602.
	1156	672	Ch. V 1	35–701.
	1157	672	2	35–702.
	1158	672	3	35–703.
	1161	672	4	35–704.
	1161	672	5	35–705.
	1164	672	6	35–706.
	1164	672	7	35–707.
	1164	672	8	35–708.
	1164	672	9	35–709.
	1164	672	10	35–710.
	1165	672	11	35–711.
	1166	672	12	35–712.
	1173	672	13	35–713.
	1174	672	14	35–714.
	1174	672	15	35–715.

VOLUME 48—Continued

Date	Page	Chapter	Section	D. C. 1950
1934				
June 19	1175	672	16	35–716.
	1175	672	16a	35–717.
	1176	672	17	35–718.
	1176	672	18	35–719.
	1176	672	19	35–720.
	1176	672	20	35–721.
	1176	672	Ch. VI 1	35–801.
	1176	672	2	35–802.
	1177	672	3	35–803.
	1177	672	4	Repealing.
	1177	672	5	Effective date.
June 25	1215	743	1	9–204.
	1215	743	2	9–205.
	1215	743	3	9–206.
	1216	743	4	9–207.
June 26	1230	756	13	47–108.
	1230	756	14	47–109.
	1233	756	20	47–110.
	1243	763	1–3	Special.

VOLUME 49

Date	Page	Chapter	Section	D. C. 1950
1935				
Feb. 18	26	10	1–4	43–1304 note.
Mar. 4	34	19	1–11	Temporary.
	37	23	----------	22–3102.
Mar. 6	39	28	1	18–708.
	39	28	2	18–712.
	39	28	3 (A)	18–101.
	39	28	3 (B)	Repealing.
	40	28	4	18–104.
	40	28	5	18–105.
Apr. 5	105	41	1	5–501.
	106	41	2	5–502.
	106	41	3	5–503.
	107	41	4	5–504.
	107	41	5	5–505.
	108	41	6	Repealing.
	108	42	----------	5–607.
	109	42	----------	5–614.
	110	42	----------	5–615.
Apr. 8	110	43	----------	Special.
	111	46	1	20–701.
	111	46	2	20–702.
	111	46	3	20–703.
	112	46	4	20–704.
	112	46	5	20–705.
	112	46	6	20–706.
	112	46	7	20–707.
	112	46	8	20–708.
	112	46	9	20–709.
	113	46	10	20–710.
	113	46	11	20–711.
	113	46	12	20–712.
	113	46	13	20–713.
	113	46	14	20–714.
	113	46	15	20–715.
	113	47	1–8	Special.
Apr. 11	152	57	1	16–612.
	152	57	2	16–613.
	153	57	3	16–614.
	153	57	4	16–615.
	153	57	5	16–616.
	153	57	6	7–208; 16–617 note.
	154	57	7	16–617.
	154	57	8	16–618.
Apr. 24	161	79	----------	Temporary.
Apr. 25	162, 163	84	1–4	43–1304 note.
May 3	166	89	1	40–401.
	166	89	2	40–402.
	167	89	3	40–403.
	169	89	4	40–404.
	170	89	5	40–405.
	170	89	6	40–406.
	171	89	7	40–407.
	171	89	8	40–408.
	171	89	9	40–409.
	171	89	10	40–410.
	172	89	11	40–411.
	172	89	12	40–412.
	173	89	13	40–413.
	174	89	14	40–414.
	174	89	15	40–415.
	174	89	16	40–416.
	174	89	17	Effective date.
May 6	174	91	1	9–204.
	175	91	2	9–206.
May 10	217	103	----------	Temporary.
May 28	304	154	----------	4–302.
June 4	320	167	----------	31–622.

STATUTES AT LARGE—Continued

VOLUME 49—Continued

Date	Page	Chapter	Section	D. C. 1950
1935				
June 5	325	178		Special.
June 14	349	241	1	7–520.
	358	241	1	4–502.
	372	241	2–7	Temporary.
June 17	384	265		45–708.
	385	266		40–606 to 608.
June 19	391	277	2	39–107 note.
	391	277	3	39–402.
June 24	394	286		31–1012.
June 26	424	316		Special.
June 28	430	331	1, 2	7–634.
	430	332	1	1–102 note, 213; Repealing.
	431	332	2	1–602.
	431	332	3	1–604.
	431	332	4, 5	Repealing.
July 2	443	357		Special.
	444	359		25–111.
July 18	482	387	1–7	Special.
July 25	497	415	1	43–1304 note; 44–104.
	498	415	2	43–1304 note; 44–105.
	498	415	3	43–1304 note; 44–106.
	498	415	4	43–1304 note; 44–107.
Aug. 6	537	449	1	7–1225.
	537	449	2	7–1226.
	537	449	3	7–1227.
	537	449	4	7–1228.
	537	449	5	7–1229.
Aug. 7	539	453	1	16–403.
	539	453	2	16–401.
	540	453	3	16–409.
	540	453	4	16–421.
Aug. 9	567	500		4–409.
	568	501		4–132.
	568	502	1–3	7–502 note.
Aug. 13	614	522		Temporary.
Aug. 15	651	546	1	22–2701.
	651	546	2	22–2702.
	651	546	3	22–2703.
	651	546	4	Repealing.
	653	549	1	6–801.
	653	549	2	6–802.
	654	549	3	6–803.
	654	549	4	6–804.
	654	549	5	Repealing.
Aug. 17	656	557	1–13	Special.
Aug. 22	681	604		11–617.
	682	605		11–1420.
Aug. 23	720	614	337	26–105, 106.
Aug. 24	744	639	1	46–101.
	744	639	2	46–102.
	744	639	3	46–103.
	745	639	4	46–104.
	745	639	5	46–105.
	745	639	6	46–106.
	746	639	7	46–107.
	746	639	8	46–108.
	746	639	9	46–109.
	746	639	10	46–110.
	746	639	11	46–111.
	746	639	12	46–112.
	747	639	13	46–113.
	747	639	14	46–114.
	747	639	15	46–115.
	747	639	16	46–116.
	747	640	1	46–201.
	748	640	2	46–202.
	748	640	3	46–203.
	748	640	4	46–204.
	748	640	5	46–205.
	748	640	6	46–206.
	749	640	7	46–207.
	749	640	8	46–208.
	749	640	9	46–209.
	749	640	10	46–210.
	749	640	11	46–211.
	749	640	12	46–212.
	750	640	13	46–213.
	750	640	14	46–214.
	750	640	15	46–215.
	750	640	16	Effective date.
	798	647		Special.
Aug. 27	872	740		Repealing.
	861	741	1	8–121.
	881	741	2	8–122.
	882	741	3	8–123.
	882	742	1	43–704.
	882	742	2	43–705.
	883	742	2	43–706.
	884	742	2	43–707 to 710.
	884	742	3	43–412.
	885	742	4	43–711.
	885	742	5	43–711 note.
	895, 896	753	1–4	43–1304 note.
	897	756	1	25–103.

VOLUME 49—Continued

Date	Page	Chapter	Section	D. C. 1950
1935				
Aug. 27	897	756	2	25–106.
	898, 899	756	3–7	25–111.
	900	756	8	25–114.
	900	756	9	25–118.
	901	756	10	25–121.
	901	756	11	25–124.
	901	756	12	25–125.
	901, 902	756	13, 14	25–128.
	902	756	15	25–119.
	903	756	16	25–120.
	903	756	17	25–124.
	903	756	18	25–112.
Aug. 28	946	794	1	46–301.
	947	794	2	46–302.
	947	794	3	46–303.
	948	794	4	46–304.
	949	794	5	Temporary.
	949	794	6	46–305.
	949	794	7	46–306.
	949	794	8	46–307.
	950	794	9	46–308.
	950	794	10	46–309.
	951	794	11	46–310.
	951	794	12	46–311.
	953	794	13	46–312.
	953	794	14	46–313.
	954	794	15	46–314.
	954	794	16	46–315.
	954	794	17	46–316.
	955	794	18	46–317.
	955	794	19	46–318.
	956	794	20	46–319.
	956	794	21	46–320.
	956	794	22	46–321.
	956	794	23	46–322.
	956	794	24	46–323.
	956	794	25	46–324.
1936				
Jan. 20	1095	12		27–123.
Feb. 12	1137	64		Special.
Feb. 13	1138	68		46–301.
Feb. 26	1143	87		22–704.
Mar. 2	1153	111	1	47–1011.
	1154	111	2	47–1012.
	1154	111	3	47–1013.
	1155	111	4	47–1014.
	1155	111	5	Repealing.
Mar. 3	1158	121	1	4–159.
	1158	121	2	4–160.
Mar. 30	1186	162		Temporary.
Apr. 10	1194	175	1	31–611.
	1194	175	2	31–612.
	1194	175	3	31–613.
	1194	175	4	31–614.
	1194	175	5	31–615.
	1194	175	6	Effective date.
Apr. 21	1236	243	1–3	Temporary.
May 11	1268	377	1–4	Special.
May 15	1273	393		40–302.
June 3	1397	483	1, 2	Special.
June 5	1485	532	1, 2	Special.
June 20	1541	620	1–4	43–1304 note.
	1543	625		Special.
	1566	645		Special.
	1568	648		Special.
June 22	1824	711	1, 2	Special.
June 23	1880	726	1	32–313.
	1886	726	2–8	Temporary.
	1888	726	9	46–301.
	1895	737		Special.
June 24	1898	743		26–303.
	1901	749		40–605.
June 25	1917	802	1	1–701.
	1917	802	2	1–702.
	1917	802	3	1–703.
	1917	802	4	1–705.
	1917	802	5	1–706.
	1917	802	6	1–707.
	1917	802	7	1–708.
	1917	802	8	1–709.
	1917	802	9	1–710.
	1917	802	10	1–711.
	1917	802	11	1–712.
	1917	802	12	1–713.
	1917	802	13	1–714.
	1917	802	14	1–715.
	1917	802	15	1–716.
	1917	802	16	1–717.
	1917	802	17	1–718.
	1921	804		7–405; 11–101, 205 note, 11–950; 20–219 note, 401 note, 701; 37–101 note.

STATUTES AT LARGE—Continued

VOLUME 50

Date	Page	Chapter	Section	D. C. 1950
1937				
Mar. 17	29	43	1	28–1101.
	30	43	2	28–1102.
	30	43	3	28–1103.
	30	43	4	28–1104.
	30	43	5	28–1105.
	30	43	6	28–1106.
	31	43	7	28–1107.
	31	43	8	28–1108.
	31	43	9	28–1109.
	32	43	10	28–1110.
	32	43	11	28–1111.
	32	43	12	28–1112.
	32	43	13	28–1113.
	32	43	14	28–1114.
	32	43	15	28–1115.
	33	43	16	28–1116.
	33	43	17	28–1201.
	33	43	18	28–1202.
	33	43	19	28–1203.
	34	43	20	28–1204.
	35	43	21	28–1205.
	35	43	22	28–1206.
	35	43	23	28–1207.
	36	43	24	28–1208.
	36	43	25	28–1209.
	36	43	26	28–1210.
	36	43	27	28–1211.
	36	43	28	28–1212.
	36	43	29	28–1213.
	37	43	30	28–1214.
	37	43	31	28–1215.
	37	43	32	28–1216.
	37	43	33	28–1217.
	37	43	34	28–1218.
	37	43	35	28–1219.
	38	43	36	28–1220.
	38	43	37	28–1221.
	36	43	38	28–1222.
	38	43	39	28–1223.
	38	43	40	28–1224.
	38	43	41	28–1301.
	38	43	42	28–1302.
	39	43	43	28–1303.
	39	43	44	28–1304.
	39	43	45	28–1305.
	40	43	46	28–1306.
	40	43	47	28–1307.
	40	43	48	28–1308.
	40	43	49	28–1309.
	40	43	50	28–1310.
	41	43	51	28–1311.
	41	43	52	28–1401.
	41	43	53	28–1402.
	41	43	54	28–1403.
	41	43	55	28–1404.
	42	43	56	28–1405.
	42	43	57	28–1406.
	42	43	58	28–1407.
	42	43	59	28–1408.
	43	43	60	28–1409.
	43	43	61	28–1410.
	44	43	62	28–1411.
	44	43	63	28–1501.
	44	43	64	28–1502.
	45	43	65	28–1503.
	45	43	66	28–1504.
	45	43	67	28–1505.
	45	43	68	28–1506.
	45	43	69	28–1507.
	46	43	70	28–1508.
	46	43	71	28–1601.
	46	43	72	28–1602.
	46	43	73	28–1603.
	46	43	74	28–1604.
	46	43	75	28–1605.
	47	43	76	28–1606.
	48	43	76a	28–1607.
	48	43	77	28–1608 note.
	48	43	78	Effective date.
	48	43	79	28–1608.
Mar. 24	53	50	6	Special.
Mar. 29	56	60	----------	Special.
Apr. 14	63	77	----------	47–2321.
Apr. 17	69	110	----------	31–506.
Apr. 27	95	136	----------	9–103.
	120	144	1	6–201.
	120	144	2	6–202.
	120	144	3	6–203.
	120	144	4	6–204.
May 28	211	273	----------	Repealing.
June 15	260	353	1, 2	Special.
June 29	376	403	1	6–117.
	392	403	2–9	Temporary.
Aug. 11	620	579	----------	2–120.
Aug. 12	626	596	1	30–103.
	626	596	2	30–109.
	626	596	3	Effective date.

VOLUME 50—Continued

Date	Page	Chapter	Section	D. C. 1950
1937				
Aug. 12	626	597	1	22–3409.
	626	597	2	22–3410.
	626	597	3	22–3411.
	626	597	4	22–3412.
	628	599	(826)	22–2201.
	628	599	(827)	22–2202.
	628	599	(842)	22–1301.
	629	599	(847)	22–3108.
	629	599	(848)	22–403.
	629	599	(851a)	22–1207.
	629	599	(851b)	22–2203.
Aug. 16	662	660	1	22–1407.
	663	660	2	22–1408.
	663	660	3	22–1409.
	663	661	1, 2	Special.

Date	Page	Chapter	Title	Section	D. C. 1950
1937					
Aug. 17	673	690	I	1	47–1401.
	673	690	I	2	47–1402.
	674	690	I	3	47–1403.
	674	690	I	4	47–1404.
	674	690	I	5	47–1405.
	674	690	I	6	47–1406.
	675	690	I	7	47–1407.
	675	690	I	8	47–1408.
	675	690	I	9	47–1409.
	675	690	II	1	47–1801.
	675	690	II	2	47–1802.
	675	690	II	3	47–1803.
	675	690	II	4	47–1804.
	676	690	II	5	47–1805.
	676	690	II	6	47–1806.
	676	690	II	7	47–1807.
	676	690	II	8	47–1808.
	676	690	II	9	Repealing.
	676	690	III	1	47–1901.
	677	690	III	2	47–1902.
	678	690	III	3	47–1903.
	676	690	III	4	47–1905.
	676	690	III	5	47–1907.
	679	690	III	6	47–1908.
	679	690	III	7	47–1911.
	679	690	III	8	Effective date.
	679	690	IV	1	40–101.
	680	690	IV	2	40–102.
	681	690	IV	3	40–103.
	682	690	IV	4	40–104.
	682	690	IV	5	40–105.
	683	690	IV	6	Repealing.
	683	690	IV	7	40–105 note
	683	690	V	1	47–1601.
	683	690	V	2	47–1602.
	684	690	V	3	47–1603.
	684	690	V	4	47–1604.
	683	690	V	5	47–1605.
	685	690	V	6	47–1616.
	685	690	V	7	47–1606.
	683	690	V	8	47–1617.
	685	690	V	9	47–1618.
	686	690	V	10	47–1607.
	683	690	V	11	47–1619.
	683	690	V	12	47–1620.
	686	690	V	13	47–1621.
	683	690	V	14	47–1622.
	683	690	V	15	47–1623.
	687	690	V	16	47–1624.
	683	690	V	17	47–1628.
	683	690	V	18	47–1608.
	683	690	V	19	47–1609.
	683	690	V	20	47–1610.
	683	690	V	21	47–1611.
	683	690	V	22	47–1613.
	683	690	V	23	47–1614.
	683	690	V	24	47–1615.
	688	690	V	25	Effective date.
	688	690	VI	1–16	Temporary.
	692	690	VII	1	Temporary.
	692	690	VII	2	47–2501.
	693	690	VII	3	Temporary.
	693	690	VII	4	47–2502.
	693	690	VII	5	47–2503.

Date	Page	Chapter	Section	D. C. 1950
1937				
Aug. 19	697	700	1–9	Special.
Aug. 24	751	753	1	40–403, 409.
	751	753	2	40–404.
Aug. 25	787	760	1	45–1401.

STATUTES AT LARGE—Continued

VOLUME 50—Continued

Date	Page	Chapter	Section	D. C. 1950
1937				
Aug. 25	787	760	2	45-1402.
	788	760	3	45-1403.
	789	760	4	45-1404.
	789	760	5	45-1405.
	791	760	6	45-1406.
	791	760	7	45-1407.
	793	760	8	45-1408.
	794	760	9	45-1409.
	795	760	10	45-1410.
	796	760	11	45-1411.
	796	760	12	45-1412.
	796	760	13	45-1413.
	796	760	14	45-1414.
	796	760	15	45-1415.
	797	760	16	45-1416.
	798	760	17	45-1418.
	798	760	18	Repealing.
	798	760	19	Effective date.
	802, 803	766	1, 2	25-115.
	803	766	3	25-118.
	803	766	4	25-137.
	806	774	1	16-201.
	807	774	2	16-202.
	807	774	3	16-203.
	807	774	4	16-204.
	808	774	5	16-205.
	808	774	6	16-206.
	808	774	7	16-207.

VOLUME 52

Date	Page	Chapter	Section	D. C. 1950
1938				
Feb. 3	26	13	12	35-535.
Feb. 15	30	29	1	22-1115.
	30	29	2	22-1116.
Feb. 18	78	31	1	40-201.
	78	31	2	40-202.
	78	31	3	40-203.
	78	31	4	40-204.
	78	31	5	40-205.
	78	31	6	40-206.
	78	31	7	40-207.
Feb. 24	81	35	----------	47-830.
Mar. 5	103	43	1	11-801.
	103	43	2	11-802.
	103	43	3	11-803.
	103	43	4	11-804.
	103	43	5	11-805.
	105	43	6	11-806.
	105	43	7	11-807.
	105	43	8	11-808.
	105	43	9	11-809.
	106	43	10	11-810.
	106	43	11	11-811.
	106	43	12	11-812.
	106	43	13	11-813.
	106	43	14	11-814.
	106	43	15	11-815.
	106	43	16	11-816.
	106	43	17	11-817.
	107	43	18	11-818.
	107	43	19	11-819.
	107	43	20	11-819 note.
	107	43	21	11-820.
	107	43	22	Effective date.
Apr. 2	153	60	----------	6-108.
Apr. 4	170	62	1	31-609.
	190-192	62	2-10	Temporary.
	192	62	11	40-616.
Apr. 5	198	72	1	22-1501.
	198	72	2	22-1502.
	199	72	3	23-301.
	199	72	4	23-304.
	199	72	5	23-305.
Apr. 27	265	180	1	11-210, 331; 47-201 note
May 13	351	212	----------	Special.
May 16	356	223	1(a)	47-1401.
	357	223	1(b)	47-1408.
	357	223	1(c)	47-1410 to 1412.
	358	223	2	47-1806.
	358	223	3	47-1902.
	359	223	4(a)	40-102.
	359	223	4(b)	40-103.
	360	223	5(a)	47-1601.
	361	223	5(b)	47-1603.
	361	223	5(c)	47-1606.
	361	223	5(d)	47-1607.
	362	223	5(e)	47-1621.
	362	223	5(f)	47-1624.
	363	223	5(g)	47-1612, 1625.
	363	223	5(h)	Effective date.

VOLUME 52—Continued

Date	Page	Chapter	Section	D. C. 1950
1938				
May 16	369	223	6(a)	47-1701 note.
	369	223	6(b)	Temporary.
	369	223	7(1)	Temporary.
	369	223	7(2)	47-2501.
	370	223	7(3)	47-2502.
	370	223	7(4)	47-2503.
	370	223	7(5)	47-2504.
	370	223	7(6)	Temporary.
	370	223	8(1)	47-2401.
	370	223	8(2)	47-2402.
	371	223	8(3)	47-2403.
	371	223	8(4)	47-2404.
	372	223	8(5a)	47-708, 709.
	373	223	8(5a)	47-2405.
	373	223	8(5b)	47-710.
	373	223	8(5c)	47-711.
	373	223	8(5d)	47-712.
	374	223	8(5e)	47-716.
	374	223	8(6)	47-2406.
	374	223	8(7)	47-2407.
	374	223	8(8)	47-2408.
	375	223	8(9)	47-2409.
	375	223	8(10)	47-2410.
	375	223	8(11)	47-2411.
	375	223	8(12)	Repealing.
	375	223	8(tit. X)	47-201, 204, 502.
	376	223	8 (tit. XI)	25-138.
May 31	584	290	2	11-201.
	584	290	5	11-301.
June 1	596	309	(1)	11-902.
	596	309	(2)	11-903.
	596	309	(3)	11-904.
	596	309	(4)	11-905.
	596	309	(5)	11-906.
	596	309	(6)	11-907.
	597	309	(7)	11-908.
	598	309	(8)	11-909.
	598	309	(9)	11-910.
	598	309	(10)	11-911.
	598	309	(11)	11-912.
	599	309	(12)	11-913.
	599	309	(13)	11-914.
	599	309	(14)	11-915.
	600	309	(15)	11-916.
	601	309	(16)	11-917.
	601	309	(17)	11-918.
	601	309	(18)	11-919.
	601	309	(19)	11-920.
	601	309	(20)	11-921.
	602	309	(21)	11-922.
	602	309	(22)	11-923.
	602	309	(23)	11-924.
	602	309	(24)	11-925.
	602	309	(25)	11-926.
	602	309	(26)	11-927.
	603	309	(27)	11-928.
	603	309	(28)	11-929.
	603	309	(29)	11-930.
	603	309	(30)	11-931.
	603	309	(31)	11-932.
	603	309	(32)	11-933.
	603	309	(33)	11-934.
	604	309	(34)	11-935.
	604	309	(35)	11-936.
	604	309	(36)	11-937.
	604	309	(37)	11-938.
	604	309	(39)	11-939.
	605	309	(40)	11-940.
	605	309	(41)	11-941.
	605	309	(42)	11-942.
	605	309	(43)	11-901 note.
	605	309	(44)	Repealing.
June 7	611	321	1	2-1301.
	612	321	2	2-1302.
	613	321	3	2-1303.
	613	321	4	2-1304.
	613	321	5	2-1305.
	613	321	6	2-1306.
	614	321	7	2-1307.
	614	321	8	2-1308.
	614	321	9	2-1309.
	614	321	10	2-1310.
	615	321	11	2-1311.
	615	321	12	2-1312.
	615	321	13	2-1313.
	616	321	14	2-1314.
	616	321	15	2-1315.
	616	321	16	2-1316.
	617	321	17	2-1317.
	617	321	18	2-1318.
	617	321	19	2-1319.
	618	321	20	2-1320.
	618	321	21	2-1321.
	618	321	22	2-1322.
	618	321	23	2-1323.
	619	321	24	2-1324
	619	321	25	2-1325

STATUTES AT LARGE—Continued

VOLUME 52—Continued

Date	Page	Chapter	Section	D. C. 1950
1938				
June 7	619	321	26	2-1326.
	619	321	27	2-1327.
	620	321	28	2-1328.
	620	321	29	Repealing.
	620	322	1	2-1101.
	620	322	2	2-1102.
	620	322	3	2-1103.
	621	322	4	2-1104.
	621	322	5	2-1105.
	621	322	6	2-1106.
	621	322	7	2-1107.
	622	322	8	2-1108.
	622	322	9	2-1109.
	622	322	10	2-1110.
	622	322	11	2-1111.
	622	322	12	2-1112.
	622	322	13	2-1113.
	623	322	14	2-1114.
	623	322	15	2-1114 note.
	623	322	16	2-1115.
	624	322	17	2-1116.
	624	322	18	2-1117.
	624	322	19	2-1118.
	624	323	----------	47-1701 note.
June 8	625	326	1	S. 21-310.
	625	326	2	21-308.
	627	326	3	S. 21-311.
	627	326	4	S. 21-311.
	628	326	5	S. 21-311.
	628	326	6	S. 21-316.
	628	326	7	S. 21-312, 313.
	629	326	8	S. 21-314.
	629	326	9	S. 21-315.
	629	326	10	S. 21-317.
	630	326	11	S. 21-318.
	630	326	12	S. 21-320.
	631	326	13	S. 21-321.
	631	326	14	S. 21-322.
	631	326	15	S. 21-324.
	631	326	16	Repealing.
	631	326	17	Severability.
June 10	639	333	1-6	Special.
June 11	641	339	----------	7-107 note.
	641	340	1, 2	7-107 note.
June 14	683	381	----------	Special.
June 15	684	384	----------	Special.
	689	392	----------	36-502.
	691	395	----------	2-1209.
	691	396	1, 2	25-111.
	691	396	3	25-115.
June 16	709	461	1	47-815.
	709	461	2	47-816.
	755	470	----------	Special.
	758	474	----------	36-403.
June 20	780	527	----------	26-317, 331.
	785	532	1	33-401.
	787	532	2	33-402.
	787	532	3	33-403.
	787	532	4	33-404.
	787	532	5	33-405.
	788	532	6	33-406.
	789	532	7	33-407.
	789	532	8	33-408.
	790	532	9	33-409.
	790	532	10	33-410.
	791	532	11	33-411.
	792	532	12	33-412.
	792	532	13	33-413.
	792	532	14	33-414.
	794	532	15	33-415.
	794	532	16	33-416.
	794	532	17	33-417.
	795	532	18	33-418.
	795	532	19	33-419.
	795	532	20	33-420.
	796	532	21	33-421.
	796	532	22	33-422.
	796	532	23	33-423.
	796	532	24	33-424.
	796	532	25	33-425.
	796	532	26	Repealing.
	796	532	27	Title of act.
	797	534	1	5-413.
	797	534	2	5-414.
	798	534	3	5-415.
	798	534	4	5-416.
	798	534	5	5-417.
	798	534	6	5-418.
	798	534	7	5-419.
	799	534	8	5-420.
	800	534	9	5-421.
	800	534	10	5-422.
	801	534	11	5-423.
	801	534	12	5-424.
	801	534	13	5-425.
	802	534	14	5-426.
	802	534	15	5-427.

VOLUME 52—Continued

Date	Page	Chapter	Section	D. C. 1950
1938				
June 20	802	534	16	5-428.
	802	534	17	5-428 note.
June 22	943	595	1-3	Special.
June 25	1112	680	14	46-301.
	1125	681	1	5-316 note; 11-210 note; 47-201, 204.
	1186	691	1	5-103.
	1187, 1188	691	4	5-105.
	1188	691	5	5-112 to 115.
	1189	691	5	5-116.
	1198	702	1	47-1101.
	1199	702	2	47-1102.
	1199	702	3	47-1103.
	1200	702	4	47-1104.
	1200	702	5	47-1105.
	1201	702	6	47-1106.
	1201	702	7	47-307.
	1201	702	8	47-1009.
	1201, 1202	702	9 (a)-(c)	47-1003.
	1202	702	9 (d)	47-1004.
	1202	702	10	47-308.
	1202	702	11	47-603, 1010.
	1203	704	1	9-208.
	1204	704	2	9-209.
	1204	704	3	9-210.
	1204	704	4	9-211.
	1204	704	5	9-212.
June 29	1226	796	1, 2	Special.
	1233	809	----------	44-301.

VOLUME 53

Date	Page	Chapter	Section	D. C. 1950
1939				
Mar. 6	511	7	----------	7-707.
Mar. 7	512	8	----------	7-506.
Apr. 5	566	37	1	28-1004.
	566	37	2	26-203.
	566	37	3	28-1008.
	567	37	4	26-204.
	567	37	5	26-110.
	567	37	6	28-1009.
	567	37	7	28-1010.
	567	37	8(a)	16-312.
	567	37	8(b)	15-305.
	568	38	----------	43-603.
	568	39	1-5	31-623.
	569	39	6	Effective date.
	569	40	1	43-907.
	569	40	2	43-908.
	570	41	----------	47-2331, 2333.
	571	42	1	31-710.
	571	42	2	31-711.
	571	43	----------	31-628.
Apr. 26	622	97	1-3	Special.
May 10	737	119	1	32-403.
June 20	844	225	----------	7-324.
	844	226	----------	16-201.
	849	228	1, 2	Special.
	849	229	----------	7-1216.
	850	230	1, 2	Special.
	850	231	----------	40-301.
June 21	852	236	----------	9-104.
June 29	903	248	----------	11-210, 331.
June 30	990	255	1	38-301.
	990	255	2	38-302.
	990	255	3	38-303.
	991	255	4	38-304.
	991	255	5	38-305.
July 15	1007	281	1	21-309.
	1009	281	1	11-1519; 40-503 note.
	1010	281	1	40-504; 44-213 note.
	1014	281	1	31-616, 624.
	1015	281	1	31-1115.
	1016	281	1	31-1107.
	1017	281	1	31-609.
	1021, 1022	281	1	Appropriation.
	1023	281	1	47-116 note.
	1024	281	1	47-115 note.
	1026	281	1	47-117 note.
	1033	281	1	40-604.
	1037	281	1	7-603 note.
	1039	281	2-10	Appropriation.
July 17	1045	313	1	40-102.
	1046	313	2	40-103.
	1046	313	3	47-2331, 2333.
	1046	313	4	Repealing.
July 18	1060	322	1	26-405.
	1060	322	2	26-405 note.

STATUTES AT LARGE—Continued

VOLUME 53—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1939					
July 26	1085	367	I		47–134.
	1087	367	II	1	47–1501.
	1087	367	II	2	47–1502
	1088	367	II	3	47–1503.
	1088	367	II	4	47–1504.
	1089	367	II	5	47–1505.
	1091	367	II	6	47–1506.
	1091	367	II	7	47–1507.
	1091	367	II	8	47–1508.
	1092	367	II	9	47–1509.
	1092	367	II	10	47–1510.
	1092	367	II	11	47–1511.
	1093	367	II	12	47–1512.
	1093	367	II	13	47–1513.
	1094	367	II	14	47–1514.
	1094	367	II	15	47–1515.
	1095	367	II	16	47–1516.
	1095	367	II	17	47–1517.
	1095	367	II	18	47–1518.
	1095	367	II	19	47–1519.
	1095	367	II	20	47–1520.
	1096	367	II	21	47–1521.
	1096	367	II	22	47–1522.
	1096	367	II	23	47–1523.
	1097	367	II	24	47–1524.
	1099	367	II	25	47–1525.
	1099	367	II	26	47–1526.
	1100	367	II	27	47–1527.
	1100	367	II	28	47–1528.
	1100	367	II	29	47–1529.
	1101	367	II	30	47–1530.
	1101	367	II	31	47–1531.
	1102	367	II	32	47–1532.
	1102	367	II	33	47–1533.
	1103	367	II	34	47–1534.
	1103	367	II	35	47–1535.
	1103	367	II	36	47–1536.
	1104	367	II	37	47–1537.
	1104	367	II	38	47–1538.
	1104	367	II	39	47–1539.
	1104	367	II	40	47–1540.
	1105	367	II	41	47–1541.
	1105	367	II	42	47–1542.
	1106	367	II	43	47–1543.
	1107	367	III		11–330.
	1107	367	IV	1	47–1201 note.
	1107	367	IV	2 (a)	47–1701.
	1108	367	IV	2 (a)	47–1701 note.
	1108	367	IV	2 (b)	47–1701 note.
	1108	367	IV	2 (c)	Repealing.
	1108	367	IV	3	47–501 note.
	1108	367	IV	4	47–1211.
	1108	367	IV	5 (a)	47–2402.
	1108	367	IV	5 (b)	47–2403.
	1109	367	IV	5 (b)	47–2405.
	1109	367	IV	5 (b)	47–708.
	1109	367	IV	5 (b)	47–709.
	1109	367	IV	5 (b)	47–710.
	1109	367	IV	5 (b)	47–711.
	1110	367	IV	5 (c)	47–2412.
	1110	367	IV	6	47–1204.
	1111	367	V	(I, 1)	47–1601.
	1112	367	V	(I, 2)	47–1602.
	1113	367	V	(I, 3)	47–1603.
	1113	367	V	(I, 4)	47–1604.
	1113	367	V	(I, 5)	47–1605.
	1113	367	V	(I, 6)	47–1606.
	1114	367	V	(I, 7)	47–1607.
	1114	367	V	(II, 1)	47–1608.
	1114	367	V	(II, 2)	47–1609.
	1114	367	V	(II, 3)	47–1610.
	1115	367	V	(II, 4)	47–1611.
	1115	367	V	(II, 5)	47–1612.
	1115	367	V	(II, 6)	47–1613.
	1115	367	V	(II, 7)	47–1614.
	1116	367	V	(II, 8)	47–1615.
	1116	367	V	(III, 1)	47–1616.
	1116	367	V	(III, 2)	47–1617.
	1116	367	V	(III, 3)	47–1618.
	1116	367	V	(III, 4)	47–1619.
	1117	367	V	(III, 5)	47–1620.
	1117	367	V	(III, 6)	47–1621.
	1117	367	V	(III, 7)	47–1622.
	1117	367	V	(III, 8)	47–1623.
	1117	367	V	(III, 9)	47–1624.
	1118	367	V	(III, 10)	47–1625.
	1118	367	V	(III, 11)	47–1626.
	1118	367	V	(III, 12)	47–1627.
	1118	367	V	(III, 13)	47–1628.
	1118	367	V	(III, 14)	Effective date.
	1118	367	VI		47–2501.
	1119	367	VII		47–1701 note.
	1119	367	VIII	1	47–2503.
	1119	367	VIII	2	47–2502.

VOLUME 53—Continued

Date	Page	Chapter	Section	D. C. 1950
1939				
July 26	1124	375	1	23–501.
	1124	375	2	23–502.
	1124	375	3	23–503.
	1124	375	4	23–504.
	1124	375	5, 6	23–504 note.
July 31	1143	397		4–407.
	1143	398		2–1507.
	1144	400		5–410.
Aug. 3	1177	412		8–152 note.
	1179	414	1–3	31–1021 note.
Aug. 5	1210	446		47–1705.
	1211	449	1	9–301.
	1211	449	2	9–302.
	1211	449	3	9–303.
	1211	449	4	9–304.
	1211	449	5	9–305.
	1211	449	6	9–306.
	1211	449	7	Repealing.
	1215	457		10–137 note.
Aug. 7	1248	546		47–1521.
Aug. 9	1293	620	1	21–310.
	1294	620	2	21–311.
	1296	620	3	21–312.
	1296	620	4	21–313.
	1296	620	5	21–314.
	1296	620	6	21–315.
	1297	620	7	21–316.
	1297	620	8	21–317.
	1298	620	9	21–318.
	1298	620	10	21–320.
	1299	620	11	21–321.
	1299	620	12	21–322.
	1299	620	13	21–323.
	1299	620	14	21–324.
	1299	620	15	21–325.
	1299	620	16	21–308.
	1299	620	17	21–325 note.
	1299	620	18	21–325 note.
	1300	622		Special.
Aug. 10	1352	664	1	Title of act.
	1352	664	2	45–1401.
	1352	664	3	45–1402.
	1354	664	4	45–1403.
	1354	664	5	45–1404.
	1354	664	6	45–1405.
	1354	664	7	45–1407.
	1356	664	8	45–1408.
	1357	664	9	45–1410.
	1357	664	10	45–1412.
	1357	664	11	45–1414.
	1358	664	12	45–1417.
Aug. 11	1408	691	1	6–118.
	1408	691	2	6–119.
	1408	691	3	6–119 note.
	1409	692		47–1910.
	1419	718		2–114.

VOLUME 54

Date	Page	Chapter	Section	D. C. 1950
1940				
Mar. 2	38	37	1	47–1518.
	39	37	2	47–1526.
	39	37	3	47–2501.
	39	37	4	47–1504.
Apr. 22	149	127	1	46–301.
	149	127	2	46–301 note.
	154	131	1	6–701 note.
	155	131	2	6–701.
	155	131	3	6–702.
	155	131	4	6–703.
	155	131	5	6–704.
	156	133		4–302.
	156	134		7–107 note.
	157	136		4–901.
	157	137		Special.
	159–161	139	1–4	Temporary.
	161	140	1, 2	Temporary.
Apr. 25	168	157		Temporary.
May 14	207	189	1	11–210, 331; 47–204.
May 20	217	204		35–415, 416.
June 6	235	244		16–204.
	241, 242	253	1–3	Special.
	242	254	1	24–202.
	242	254	2	24–203.
	243	254	3	24–204.
	243	254	4	24–205.
	243	254	5	24–206.
	243	254	6 (a)	22–2601.
	244	254	6 (b)	22–2601 note.

STATUTES AT LARGE—Continued

VOLUME 54—Continued

Date	Page	Chapter	Section	D. C. 1950
1940				
June 6	244	254	7 (a)	24-208.
	244	254	7 (b)	24-208 note.
	244	254	8	24-425.
	244	254	9	24-203 note.
	245	254	10	24-405.
June 8	260	294	1, 2	9-105 note.
June 11	299	317	1, 2	9-105 note.
June 12	307	333	1	1-204 note; 11-204 note; 47-134
	310	333	1	21-309.
	311	333	1	11-1519.
	312	333	1	40-503, note; 40-504; 44-213 note.
	313	333	1	37-110.
	313	333	1	47-118 note.
	315	333	1	7-701 note.
	316	333	1	31-616; 31-624.
	317	333	1	31-1115.
	319	333	1	31-305; 31-609.
	322	333	1	4-413.
	323	333	1	1-215 note; 32-321 note; 33-111, 33-322.
	324	333	1	11-924 note.
	324	333	1	47-116 note.
	325	333	1	11-749.
	326	333	1	47-115 note.
	327	333	1	47-117 note.
	334	333	1	40-604.
	336	333	1	7-618 note.
	338	333	1	7-603 note.
	341	333	2	7-1235 note.
	341	333	2	7-1236 note.
	341	333	2	46-303a.
	341	333	3	7-1237 note.
	342	333	4	7-1238 note.
	342	333	6	1-243.
	342	333	7	1-310a.
	343	333	9	40-603b.
	347	339	----------	22-2401, 2403.
	349	342	1	31-632.
	349	342	2	31-633.
	349	342	3	31-634.
	349	342	4	31-635.
	350	342	5	31-636.
	350	342	6	31-637.
	350	342	7	31-637 note.
June 18	460	395	1	32-403.
June 19	480	397	1	29-801.
	481	397	2	29-802.
	481	397	3	29-803.
	481	397	4	29-804.
	481	397	5	29-805.
	482	397	6	29-806.
	483	397	7	29-807.
	483	397	8	29-808.
	483	397	9	29-809.
	483	397	10	29-810.
	483	397	11	29-811.
	484	397	12	29-812.
	484	397	13	29-813.
	484	397	14	29-814.
	484	397	15	29-815.
	484	397	16	29-816.
	484	397	17	29-817.
	484	397	18	29-818
	485	397	19	29-819.
	485	397	20	29-820.
	485	397	21	29-821.
	485	397	22	29-822.
	485	397	23	29-823.
	485	397	24	29-824.
	485	397	25	29-825.
	485	397	26	29-826.
	486	397	27	29-827.
	486	397	28	29-828.
	486	397	29	29-829.
	486	397	30	29-830.
	486	397	31	29-831.
	488	397	32	29-832.
	488	397	33	29-833.
	488	397	34	29-834.
	488	397	35	29-835.
	489	397	36	29-836.
	489	397	37	29-837.
	489	397	38	29-838.
	490	397	39	29-839.
	490	397	40	29-840.
	490	397	41	29-841.
	490	397	42	29-842.
	490	397	43	29-843.
	490	397	44	29-844.
	490	397	45	29-845.
	491	397	46	29-846.
	491	397	47	29-847.
June 27	639	437	----------	5-316 note; 11-210 note
June 29	686	444	1	7-1301.
	688	444	2	7-1302.
	688	444	3	7-1303.
June 29	----	444	4	7-1304.

VOLUME 54—Continued

Date	Page	Chapter	Section	D. C. 1950
1940				
June 29	--------	444	5	7-1305.
	--------	444	6	7-1306.
	--------	444	7	7-1307.
	689	446	1	11-1421.
	689	446	2	11-1422.
	689	446	3	11-1423.
	694	451	----------	9-104 note.
	696	457	1	2-701.
	697	457	2	2-702.
	697	457	3	2-703.
	697	457	4	2-704.
	697	457	5	2-705.
	698	457	6	2-706.
	698	457	7	2-707.
	699	457	8	2-708.
	699	457	9	2-709.
	700	457	10	2-710.
	700	457	11	2-711.
	700	457	12	2-712.
	700	457	13	2-713.
	701	457	14	2-714.
	701	457	15	2-715.
	701	457	16	2-716.
	701	457	17	2-717.
	701	457	18	2-718.
	701	457	19	2-719.
	701	457	20, 21	2-719 note.
	702	458	----------	2-1502.
July 1	706	494	1	9-213.
	706	494	2	9-214.
July 2	716	513	1	2-301.
	716	513	2	2-302.
	716	513	3	2-303.
	716	513	4	2-304.
	717	513	5	2-305.
	717	513	6	2-306.
	717	513	7	2-307.
	717	513	8	2-308.
	718	513	9	2-309.
	718	513	10	2-310.
	718	513	11	2-311.
	719	513	12	2-312.
	719	513	13	2-313.
	720	513	14	2-314.
	720	513	15	2-315.
	721	513	16	2-316.
	721	513	17	2-317.
	721	513	18	2-318.
	721	513	19	2-319.
	721	513	20	2-320.
	721	513	21	2-321.
	722	513	22	2-322.
	722	513	23	2-323.
	722	513	24	2-324.
	722	513	25	2-325.
	722	513	26	2-326.
	723	513	27	2-327.
	723	513	28	2-328.
	723	513	29	2-329.
	723	513	30	2-330.
	723	513	31	2-331.
	723	513	32	2-331 note.
	723	513	33	2-331 note.
	726	518	----------	35-710, 711.
	729	523	----------	31-120.
	730	524	I	46-301.
	731	524	I	46-303.
	731	524	I, § 1	46-304.
	732	524	I	46-307.
	733	524	I	46-309.
	733	524	I	46-313.
	733	524	I, § 2	46-301 note.
	734	524	I, § 3	46-304 note.
	734	524	II	47-1502.
	735	525	----------	11-907.
	736	527	I	40-701.
	736	527	2	40-702.
	737	527	3	40-703.
	737	527	4	40-704
	737	527	5	40-705.
	737	527	6	40-706.
	738	527	7	40-707.
	738	527	8	40-708.
	739	527	9	40-709.
	739	527	10	40-710.
	739	527	11	40-711.
	739	527	12	40-712.
	739	527	13	40-713.
	739	527	14	40-714.
	740	527	15	40-715.
	740	527	16	Effective date.
July 10	747	568	----------	47-1629.
July 11	748	579	1, 2	Special.
	757	583	1	9-215.
	757	583	2	9-216.
	757	583	3	9-217.
	758	583	4	9-218.

STATUTES AT LARGE—Continued

VOLUME 54—Continued

Date	Page	Chapter		Section	D. C. 1950
		Stat.	Act		
1940					
Oct. 9	1063	792	I	1	35–1301.
	1064	792	I	2	35–1302.
	1064	792	I	3	35–1303.
	1066	792	II	1	35–1304.
	1066	792	II	2	35–1305.
	1066	792	II	3	35–1306.
	1067	792	II	4	35–1307.
	1067	792	II	5	35–1308.
	1068	792	II	6	35–1309.
	1068	792	II	7	35–1310.
	1068	792	II	8	35–1311.
	1069	792	II	9	35–1312.
	1069	792	II	10	35–1313.
	1069	792	II	11	35–1314.
	1070	792	II	12	35–1315.
	1070	792	II	13	35–1316.
	1070	792	II	14	35–1317.
	1071	792	II	15	35–1318.
	1071	792	II	16	35–1319.
	1071	792	II	17	35–1320.
	1072	792	II	18	35–1321.
	1073	792	II	19	35–1322.
	1073	792	II	20	35–1323.
	1073	792	II	20a	35–1324.
	1074	792	II	21	35–1325.
	1074	792	II	22	35–1326.
	1075	792	II	23	35–1327.
	1076	792	II	24	35–1328.
	1076	792	II	25	35–1329.
	1076	792	II	26	35–1330.
	1076	792	II	27	35–1331.
	1076	792	II	28	35–1332.
	1077	792	II	29	35–1333.
	1077	792	II	30	35–1334.
	1077	792	II	31	35–1335.
	1078	792	II	32	35–1336.
	1079	792	II	33	35–1337.
	1079	792	II	34	35–1338.
	1079	792	II	35	35–1339.
	1079	792	II	36	35–1340.
	1080	792	II	37	35–1341.
	1080	792	II	38	35–1342.
	1080	792	II	39	35–1343.
	1080	792	II	40	35–1344.
	1081	792	II	41	35–1345.
	1082	792	II	42	35–1346.
	1082	792	II	43	35–1347.
	1082	792	II	44	35–1348.
	1082	792	II	45	35–1349.
	1083	792	II	46	Repealing.
	1083	792	II	47	35–1350.
	1083	792	II	48	Effective date.

Date	Page	Chapter	Section	D. C. 1950
1940				
Oct. 10	1109	851	1	1–808.
	1110	851	2(g)	31–1023.
Oct. 14	1118	860	----------	4–508.
	1171	876	503	45–1501 note.
Oct. 17	1204	898	1	46–301.
	1205	898	2	46–301 note.
1941				
Jan. 3	1225	936	1	22–2705.
	1225	936	2	22–2706.
	1226	936	3	22–2707.
	1226	936	4	22–2710 to 2712.

VOLUME 55

Date	Page	Chapter	Title	Section	D. C. 1950
1941					
May 9	182	93	----------	1	7–1214.
	182	93	----------	2	7–1214 note.
	182	93	----------	3	7–1214 note.
	184	98	----------	1	40–402.
	185	99	----------	1	4–155.
	185	99	----------	1	4–156.
July 1	511	271	----------	1	31–716a note.
	517	271	----------	1	4–413.
	517	271	----------	1	32–321 note.
	517	271	----------	1	33–111 note.
	528	271	----------	1	40–808 note.
	534	271	----------	1	7–603 note.
	537	271	----------	2	7–1235 note.

VOLUME 55—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1941					
July 1	538	271	----------	2	7–1236 note.
	538	271	----------	2	46–303a note.
	538	271	----------	3	7–1237 note.
	539	271	----------	4	7–1238 note.
	539	271	----------	6	1–243 note.
	539	271	----------	7	1–310a note.
	539	271	----------	8	40–603b note.
	540	272	----------	1	46–314.
	540	272	----------	2	46–314 note.
Aug. 21	656	391	----------	1	46–105.
Oct. 14	738	438	----------	1	36–401, 402.
	738	438	----------	3	36–431, 36–431 note, 36–432 to 36–442.
	741	438	----------	4	36–431 note.
Nov. 7	760	469	----------	1	32–408.
	760	469	----------	2	32–409.
	761	469	----------	3	32–410.
	761	469	----------	4	32–411.
Nov. 21	781	500	----------	1	46–303.
Dec. 2	788	553	----------	1	45–1601.
	788	553	----------	2	45–1602.
	789	553	----------	3	45–1603.
	790	553	----------	4	45–1604.
	791	553	----------	5	45–1605.
	791	553	----------	6	45–1606.
	792	553	----------	7	45–1607.
	792	553	----------	8	45–1608.
	793	553	----------	9	45–1609.
	794	553	----------	10	45–1610.
	794	553	----------	11	45–1611.
	795	553	----------	12	45–1611 note.
	795	553	----------	13	45–1611 note.
	795	553	----------	14	45–1611 note.
Dec. 15	800	572	----------	1	22–2603.
	801	574	----------	1	11–401.
Dec. 16	806	585	----------	1	31–1201.
	807	585	----------	2	31–1202.
	807	585	----------	3	31–1203.
	807	585	----------	4	31–1204 note.
	807	585	----------	5	31–1204.
	807	587	----------	1	22–3416.
	807	587	----------	2	22–3417.
	807	587	----------	3	22–3418.
	808	587	----------	4	22–3419.
	808	587	----------	5	22–3420.
	808	587	----------	6	22–3421.
	808	587	----------	7	22–3422.
Dec. 17	808	589	----------	1	22–3302.
	809	589	----------	2	22–3303.
	809	589	----------	3	22–3304.
	810	589	----------	4	22–3305.
	810	589	----------	5	22–2702, 22–330 repealed, 22–3302 note.
	810	589	----------	6	22–3306.
Dec. 20	849	605	----------	1	3–105.
Dec. 26	858	625	----------	1	6–1001.
	858	625	----------	2	6–1002.
	858	625	----------	3	6–1003.
	858	625	----------	4	6–1004.
	859	625	----------	5	6–1005.
	859	625	----------	6	6–1006.
	859	625	----------	7	6–1007.
	859	625	----------	8	6–1008.
	859	625	----------	9	6–1009.
	860	625	----------	10	6–1010.
	--------	625	----------	11	6–1011.
	--------	625	----------	13	6–1012.
	--------	625	----------	13	6–1013.
	--------	625	----------	14	6–1014.
	--------	625	----------	15	6–1015.
	863	632	----------	1	36–207.
	863	632	----------	2	36–207a.
	864	632	----------	3	36–207 note.
	871	635	----------	1	47–1901a.
	871	635	----------	2	47–1904.
	871	635	----------	2	47–1905.
	871	635	----------	2	47–1906.
1942					
Jan. 12	882	649	----------	1	3–126.
	883	649	----------	2	3–127.
	883	649	----------	3	3–117.
	883	649	----------	4	3–118.

VOLUME 56

Date	Page	Chapter	Title	Section	D. C. 1950
1942					
Jan. 15	3	2	----------	--------	47–2331.
	5	4	----------	1	40–810.
	6	4	----------	2	40–811.
	6	4	----------	3	40–810 note.

STATUTES AT LARGE—Continued

VOLUME 56—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1942					
Feb. 2	42	33		1 (a)	47-1502.
	43	33		1 (b)	47-1504.
	43	33		1 (c)	47-1505.
	43	33		1 (d)	47-1515.
	43	33		1 (e)	47-1516.
	43	33		1 (g)	47-1519.
	44	33		1 (h)	47-1523.
	44	33		1 (i)	47-1524.
	44	33		1 (j)	47-1526.
	44	33		1 (k)	47-1538.
	44	33		1 (l)	47-1541.
	44	33		1 (m)	47-1542.
	45	33		1 (n)	47-1543.
	45	33		1 (o)	47-1544.
	45	33		1 (p)	47-1545.
	45	33		1 (q)	47-1546.
	46	33		1 (r)	47-1547.
	46	33		2	47-1502, 1516, 1546 notes.
	46	33		3 (a)	47-1609.
	47	33		3 (c)	47-1619.
Feb. 16	90	76		1	40-802.
	91	76		2	40-803.
	91	76		3	40-804.
	92	76		4	40-805.
	93	76		5	40-806.
	93	76		6	40-807.
	93	76		7	40-808.
	93	76		8	40-809.
	93	76		9	40-801 note.
	93	76		10	40-801.
Mar. 4	122	126			5-413.
Mar. 7	143	165			22-2204a.
Apr. 1	190	207		1	11-751, 11-752.
	191	207		2	11-753.
	191	207		3	11-754.
	192	207		4	11-755.
	193	207		5	11-756.
	194	207		6	11-771.
	195	207		7	11-772.
	196	207		8	11-773.
	196	207		9	11-774.
	196	207		10	11-775.
	197	207		11	11-776.
	197	207		12	11-751 note.
	197	207		13	11-777.
	197	207		14	11-751 note preceding section.

Date	Page	Chapter	Art.	Title	Section	D. C. 1950
1942						
Apr. 29	261	265				8-201.
	261	265	I		1	8-202.
	261	265	I		2	8-203.
	262	265	I		3	8-204.
	262	265	I		4	8-205.
	262	265	I		5	8-206.
	262	265	I		6	8-207.
	262	265	II		1	8-208.
	262	265	II		2	8-209.
	263	265	II		3	8-210.
	263	265	II		4	8-211.
	263	265	II		5	8-212.
	264	265	II		6	8-213.
	264	265	III		1	8-214.
	264	265	III		2	8-215.
	264	265	III		3	8-216.
	264	265	III		4	8-217.
	264	265	III		5	8-218.
	264	265	III		6	8-219.
	264	265	III		7	8-201 note.
	264	265	III		8	8-201 note.
May 7	143	165				22-2204a

Date	Page	Chapter	Title	Section	D. C. 1950
1942					
June 5	326	353			7-1216.
June 20	374	427		1	4-106a.
	374	427		2	4-108 note.
	375	428			47-2331.
June 22	376	433		1	47-1502.
	376	433		2, 3	47-1546.
	377	433		4 (a)	47-1502 note.
	377	433		4 (b)	47-1546 note.
	377	433		5	47-1630.
	377	433		6	47-1630 note.
June 25	398	450		1	5-105a
	425	452		1	10-103a note.

VOLUME 56—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1942					
June 25	434	452		1	31-716a note.
	439	452		1	4-413 note.
	439	452		1	33-111 note.
	441	452		1	32-321 note.
	451	452		1	40-808 note.
	455	452		1	7-603 note.
	458	452		2	7-1235 note.
	458	452		2	7-1236 note.
	458	452		2	46-303a note.
	459	452		3	7-1237 note.
	459	452		4	7-1238 note.
	460	452		6	1-243 note.
	460	452		7	1-310a note.
	460	452		8	40-603b.
July 1	467	467			31-631a.
Aug. 6	740	548		1	6-1009.
	741	548		2	6-1011.
	741	548		2	6-1012.
	741	548		2	6-1013.
	742	548		3, 4	6-1009 note.
Sept. 26	757	562		1	2-104.
	758	562		2	2-135 and note.
	759	564		1	45-1605.
	759	564		2	45-1607.
	760	565			22-1112.
Nov. 9	1016	636			46-303.
Nov. 25	1023	642		1	40-605.
	1023	642		2	40-301.
Dec. 15	1051	734			44-301.
Dec. 17	1054	762		1	5-603.
	1055	762		2	5-604.
	1055	762		3	5-605.
	1055	762		4	5-607.
	1055	762		5	5-608.
	1056	762		6	5-614 repealed.
	1056	762		7	1-224a.
Dec. 22	1072	804		2	31-810.
	1072	804		3	31-811.
Dec. 24	1083	818		1	5-317.
	1083	818		2	5-318.
	1084	818		3	5-319.
	1084	818		4	5-320.
	1084	818		5	5-321.
	1084	818		6	5-322.
	1085	818		7	5-323.
	1085	818		8, 9	5-317 note.
	1089	826		1	47-801a.
	1091	826		2	47-801b.
	1091	826		3	47-801c.
	1091	826		4	47-801d.
	1091	826		5	47-801e.
	1091	826		6	47-801f.
	1091	826		7 (a, b)	47-801a note.
	1091	826		7 (c, g)	47-801 repealed.
	1092	826		7 (f,e)	47-802, 47-804 repealed.

VOLUME 57

Date	Page	Chapter	Title	Section	D. C. 1950
1943					
Apr. 1	57	32		1, 2	4-108 note.
	57	32		1, 2	31-626 note.
Apr. 9	61	41		1, 2	47-801a.e
May 25	83	98		1	7-612a.
	83	98		2	7-612b.
	83	98		3	7-612c.
	83	98		4	7-612d.
June 1	93	109			36-301.
June 4	100	117			46-301.
	105	117			46-302, 46-303.
	108	117			46-304.
	111	117			46-305.
	112	117			46-306, 46-307.
	114	117			46-308 to 46-310.
	116	117			46-311.
	118	117			46-312, 46-313.
	120	117			46-314.
	121	117			46-315, 46-316.
	122	117			46-317.
	123	117			46-318, 46-319.
	124	117			46-320, 46-321.
	125	117			46-322 to 46-324, 46-301 note, 46-325.
June 26	374	286	I	1	5-105a.
July 1	314	184		1	10-103a note.
	323	184		1	31-716a note.
	324	184		1	31-305.
	326	184		1	4-413 note.
	327	184		1	33-111 note.

STATUTES AT LARGE—Continued

VOLUME 57—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1943					
July 1	328	184		1	32–321 note.
	338	184		1	40–604.
	338	184		1	40–808 note.
	341	184		1	7–603 note.
	344	184		2	7–1235 note.
	344	184		2	7–1236 note.
	344	184		2	46–303a note.
	345	184		3	7–1237 note.
	345	184		4	7–1238 note.
	346	184		6	1–243 note.
	346	184		7	1–310a note.
	346	184		8	40–603b.
July 3	372	188		1	33–501.
	372	188		2	33–503.
	372	188		3	33–502.
July 6	374	190		2	31–501—31–507 repealed.
July 13	560	234			6–1014.
	563	237			27–121 note.
Sept. 28	568	243			37–111.
Sept. 29	568	248			47–801f.
	569	249		1	45–701a.
	569	249		2	32–905a.
Oct. 5	570	256			47–1001a.
Nov. 4	586	296			22–3204.

VOLUME 58

Date	Page	Chapter	Title	Section	D. C. 1950
1944					
Feb. 22	20	29			47–1003.
Feb. 26	105	67			22–1604.
Mar. 11	115	89			4–108 note.
	115	89			31–626 note.
Apr. 22	192	173		1	35–1306.
	192	173		2	35–1340.
	192	173		3	35–1336.
	192	173		4	35–1344.
	193	174		1	32–781.
	193	174		2	32–782.
	193	174		3	32–783.
	193	174		4	32–784.
	194	174		5	32–785.
	194	174		6	32–786.
	195	174		7	32–787.
	195	174		8	32–788.
	195	174		9	32–789.
	195	174		10	36–101 to 36–111 repealed, 32–781 note.
	195	174		11	32–781 note, 32–783 note, 36–101 to 36–111 note.
May 5	217	190			4–405 and note.
June 1	267	224		1	35–1401.
	267	224		2	35–1402.
	267	224		3	35–1403.
	268	224		4	35–1404.
	268	224		5	35–1405.
	268	224		6	35–1406.
	269	224		7	35–1407.
	269	224		8	35–1408.
	269	224		9	35–1409.
	269	224		10, 11	35–1401 notes.
June 8	271	238		1	5–106.
	271	238		2	5–108.
June 14	277	257		1	32–751.
	277	257		2	32–752.
	277	257		3	32–753.
	277	257		4	32–754.
	277	257		5	32–755.
	277	257		6	32–756.
	277	257		7	32–757.
	277	257		8	32–758.
	278	257		9	32–759.
	278	257		10	32–760.
	278	257		11	32–761.
	278	257		12	32–762.
	278	257		13	32–763.
	278	257		14	32–764.
	278	257		15	32–765.
	278	257		16	32–751 note.
	278	257		17	32–701—32–710 repealed; 32–751 note.
	279	257		18	32–751 note.
	279	258			36–434.
June 27	374	286	I	I	5–105a.

VOLUME 58—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1944					
June 28	512	300		1	10–103a note.
	513	300		1	31–716a note.
	515	300		1	31–305.
	517	300		1	4–413.
	519	300		1	33–111 note.
	519	300		1	32–321.
	521	300		1	32–905a.
	522	300		1	47–131.
	526	300		1	7–603 note.
	526	300		1	40–808.
	526	300		1	40–604.
	527	300		1	40–603a.
	530	300		2	7–1235.
	530	300		2	46–303a.
	531	300		2	7–1236.
	531	300		3	7–1237.
	531	300		4	7–1238.
	531	300		5	1–241.
	532	300		6	1–243.
	532	300		7	1–310a.
	532	300		8	40–603b.
	533	300		12	1–816a.
	533	300		13	1–242.
	533	300		16	11–1519.
	533	300		18	47–130a.
July 1	714	373	VI	611	21–330.
Dec. 15	805	587			2–121.
	805	588			40–609.
	806	589		1	40–301.
	807	589		2	40–301 note.
Dec. 16	808	595		1	40–804.
	808	595		2	40–805.
	809	595		3	40–808.
	809	596			27–118, 27–118a. 27–119.
	810	597		1	1–501.
	811	597		2	1–504.
	811	597		3	1–501 note.
	811	597		4	1–517.
Dec. 20	811	597		5	1–518.
	817	610		1	15–401.
	818	610		2	15–403.
	819	610		3	28–2505.
	819	610		4	16–312.
	819	611		1	1–244.
	821	611		2	1–245.
	822	611		3	1–246.
	822	611		4	1–247.
	822	611		6	1–248.
	822	611		6	1–249.
	823	612		1	2–1210.
	823	612		2	2–1211.
	823	612		3	2–1212.
	824	612		4	2–1213.
	824	612		5	2–1214.
	824	612		6	2–1215.
	824	612		7	2–1216.
	825	612		8	2–1217.
	825	612		9	2–1218.
	825	612		10	2–1219.
	826	612		11	2–1220.
	826	612		12	2–1221.
	826	612		13	2–1222.
	826	612		14	2–1223.
	826	612		15	2–1224.
	826	612		16	2–1225.
	826	612		17	2–1201—2–1209 repealed.
	826	613			6–1101.
Dec. 23	927	729		1	28–2901.
	928	729		2	28–2902.
	928	729		3	28–2903.
	928	729		4	28–2904.
	928	729		5	28–2905.
	928	729		6	28–2906.
	929	729		7	28–2907.
	929	729		8	28–2908.
	929	729		9	28–2909.
	929	729		10	28–2910.
	929	729		11	28–2911.
	930	729		12	28–2912.
	930	729		13	28–2913.
	930	729		14	28–2914.
	930	729		15	28–2915.
	930	729		16	28–2916.
	930	729		17	28–2917.
	931	729		18	28–2918.
	931	729		19	28–2919.
	931	729		20	28–2920.
	931	729		21	28–2921.
	931	729		22	28–2922.
	932	729		23	28–2923.
	932	729		24–26	28–2901 notes.

STATUTES AT LARGE—Continued

VOLUME 59

Date	Page	Chapter	Title	Section	D. C. 1950
1945					
Mar. 24	38	37			5–405.
Mar. 31	45	46		1	10–108.
	45	46		2	10–108 note.
Apr. 27	95	97			36–301.
	96	99		1	10–103.
	97	99		2	10–107.
	97	99		3	10–111.
	98	99		4	10–114.
	99	99		5	10–124a.
	99	99		6	10–120.
	99	99		7	10–130.
	100	101			45–711.
Apr. 28	100	102			32–615.
	100	102			32–616.
May 3	121	106	I	1	5–105a.
June 30	274	209		1	10–103a note.
	275	209		1	31–716a note.
	278	209		1	47–118 note.
	280	209		1	11–722a note.
	281	209		1	11–1521.
	282	209		1	33–111 note.
	282	209		1	32–321.
	282	209		1	32–322.
	285	209		1	32–905a.
	285	209		1	47–131.
	289	209		1	7–603 note.
	289	209		1	40–808 note.
	289	209		1	40–604 note.
	289	209		1	40–603a.
	293	209		7	1–250.
	294	209		8	47–135.
	294	209		9	1–310a.
July 2	311	217			24–301.
	313	222			40–603.
	315	224			2–408.
July 3	318	261			4–405.
	318	261			4–405 note.
	366	263	II		32–318a.
July 5	409	267		1	47–2001.
	409	267		2	47–2003.
	409	267		3	1–230.
	410	268		1	5–106.
	410	268		2	5–108.
	411	270			3–108 note.
July 14	470	303		1	4–803.
	470	303		2	4–804.
	471	303		3	4–805.
	471	303		4	4–803 note.
July 21	488	321	I	1	31–638.
	492	321	II	2	31–639.
	492	321	II	3	31–640.
	492	321	III	4	31–641.
	493	321	III	5	31–642.
	493	321	III	6	31–643.
	497	321	IV	7	31–644.
	497	321	IV	8	31–645.
	497	321	IV	9	31–646.
	498	321	IV	10	31–647.
	498	321	V	11	31–648.
	498	321	V	12	31–649.
	498	321	V	13	31–650.
	498	321	V	14	31–651.
	499	321	V	15	31–652.
	499	321	V	16	31–653.
	499	321	V	17	31–654.
	499	321	V	18	31–655.
	499	321	V	19	31–656.
	499	321	V	20	31–657.
	500	321	V	21	31–212.
	500	321	V	21	31–115.
	500	321	V	21	31–601—31–606, 31–610—31–613, 31–617—31–621, 31–626—31–629, repealed.
	500	321	V	21	31–623.
	500	321	V	22	31–658.
	501	321	V	23	31–638 note.
	501	321	V	24	31–638 note.
July 24	502	326–A			31–640.
	502	326–A			31–641.
	502	326–A			31–642.
	502	326–A			31–643.
	502	326–A			31–646.
	502	326–A			31–638 note.
	502	326–A			31–655.
	502	326–A			31–656.
Oct. 29	551	439		1	32–316a note.
	551	439		2	32–316a.
Oct. 31	552	443	I	101–108	1–101 note.
	554	443	II	201	1–101 note.
Nov. 30	588	497			29–603.
	588	498			22–1605.
	588	499			26–318.
	589	501			47–801b–1.

VOLUME 59—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1945					
Dec. 3	592	514			45–1601.
Dec. 15	610	578			40–712.
	610	579			47–1215.
Dec. 28	662	598			4–805 repealed.

VOLUME 60

Date	Page	Chapter	Title	Section	D. C. 1950
1946					
Mar. 28	73	113	I	1	5–105a.
Apr. 11	88	134		1	10–119.
	88	134		1	10–101a.
May 1	159	245		1	45–1701 note.
	159	245		2	45–1701.
	159	245		3	45–1702.
May 9	169	249		1	6–1015.
	169	249		2	6–1015 note.
May 15	181	257		1	47–801a–1.
May 21	204	267		1	36–121.
	204	267		2	36–122.
	204	267		3	36–123.
	205	267		4	36–124.
	205	267		5	36–125.
	205	267		6	36–126.
	205	267		7	36–127.
	206	267		8	36–128.
	206	267		9	36–129.
	206	267		10	36–130.
	207	267		11	36–131.
	207	267		12	36–132.
	207	267		13	36–101 to 36–111 repealed, 36–121 note.
	207	267		14	36–133.
June 24	303	462		1	47–1601.
	303	462		2	47–1601 note.
June 26	314	499			16–204.
	319	503		1	5–106.
	319	503		2	5–108.
June 27	320	507		1	24–441.
	320	507		2	24–442.
	321	507		3	24–443.
	321	507		4	24–444.
	321	507		5	24–445.
	321	507		6	24–446.
June 29	340	521			45–1601.
July 5	480	542		1	4–803.
	481	542		2	4–803 note.
	481	542		3	4–803 note.
July 9	503	544		1	10–103a note.
	505	544		1	31–716a note.
	507	544		1	47–118 note.
	509	544		1	4–413.
	510	544		1	11–722a note.
	511	544		1	11–1521.
	511	544		1	33–111 note.
	511	544		1	32–322.
	513	544		1	32–905a.
	514	544		1	47–131.
	518	544		1	7–603 note.
	518	544		1	40–808 note.
	518	544		1	40–604 note.
	523	544		7	1–250.
July 11	527	557			46–303.
July 13	534	576			28–616.
July 16	541	582		5	31–810, 31–811 repealed.
July 26	687	672	II		32–318a.
July 29	708	693		1	31–622a.
	709	693		2	31–622 repealed.
July 31	718	707		1	9–118.
	718	707		2	9–119.
	718	707		3	9–120.
	718	707		4	9–121.
	718	707		5	9–122.
	718	707		6	9–123.
	719	707		7	9–124.
	719	707		8	9–125.
	719	707		9	9–126.
	719	707		10	9–127.
	719	707		11	9–128.
	719	707		12	9–129.
	720	707		13	9–130.
	720	707		14	9–131.
	720	707		15	9–106—9–117 repealed.
	721	707		16	9–132, 9–118, notes.
Aug. 2	790	736		1	5–701 note.

STATUTES AT LARGE—Continued

VOLUME 60—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1946					
Aug. 2	790	736		2	5-701.
	791	736		3	5-702.
	793	736		4	5-703.
	793	736		5	5-704.
	794	736		6	5-705.
	795	736		7	5-706.
	797	736		8	5-707.
	797	736		9	5-708.
	797	736		10	5-709.
	798	736		11	5-710.
	798	736		12	5-711.
	799	736		13	5-712.
	799	736		14	5-713.
	800	736		15	5-714.
	800	736		16	5-715.
	801	736		17	5-716.
	801	736		18 (a)	5-106 (b) note.
	801	736		18 (b)	5-108 and note.
	801	736		19	5-717.
	802	736		20	5-718.
	802	736		21	5-719.
	860	758		1	45-712.
	861	758		2	45-713.
Aug. 7	871	770		1 (61)	31-1016 repealed.
	875	779		1	31-721.
	876	779		2	31-722.
	876	779		3	31-723.
	877	779		4	31-724.
	878	779		5	31-725.
	878	779		6	31-726.
	879	779		7	31-727.
	879	779		8	31-728.
	880	779		9	31-729.
	880	779		10	31-730.
	880	779		11	31-731.
	881	779		12	31-732.
	881	779		13	31-733.
	881	779		14	31-734.
	881	779		15	31-735.
	881	779		16	31-736.
	882	779		17	31-737.
	882	779		18	31-738.
	882	779		19	31-739.
	882	779		20	31-721 note.
	882	781			29-603.
	889	792			19-403.
Aug. 8	919	871		1	6-118.
	919	871		2	6-119, 6-119a to 6-119k.
	931	881			11-1401.
	933	885		1	2-404.
	933	885		2	2-408.
	936	887			33-313.

VOLUME 61

Date	Page	Chapter	Title	Section	D. C. 1950
1947					
May 15	92	57			11-914.
	94	62			7-1304 to 7-1307.
June 25	179	145			4-108a.
June 26	181	149		1	43-1531a.
	182	149		2	43-1531b.
	182	149		3	43-1531c.
July 1	240	193		1	4-902.
	240	193		2	4-903.
July 7	248	208	I	1	31-659.
	252	208	II	2	31-660.
	253	208	II	3	31-661.
	253	208	III	4	31-662.
	253	208	III	5	31-663.
	254	208	III	6	31-664.
	257	208	IV	7	31-665.
	258	208	IV	8	31-666.
	258	208	IV	9	31-667.
	258	208	V	10	31-668.
	258	208	V	11	31-669.
	258	208	V	12	31-670.
	258	208	V	13	31-671.
	259	208	V	14	31-672.
	259	208	V	15	31-673.
	259	208	V	16	31-674.
	259	208	V	17	31-675.
	259	208	V	18	31-676.
	259	208	V	19	31-677.
	260	208	V	20	21-638 to 31-658 repealed.
	260	208	V	21	31-678.
	260	208	V	22	31-659 note.
	260	208	V	23	31-659 note.
July 8	265	210	II		32-318a.
	271	210	II		32-406a.

VOLUME 61—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1947					
July 11	311	226		1	4-182.
	311	226		2	4-183.
	311	226		3	4-184.
	312	228			16-610.
	313	230			22-1513.
July 16	331	258	(Art. I), I	1	47-1501 to 47-1547 repealed.
					47-1551.
	331	258		2	47-1551a.
	331	258		3	47-1551b.
	332	258		4	47-1551c.
	334	258	(Art. I) II		47-1554.
	335	258	(Art. I) III	1	47-1557.
	335	258		2	47-1557a.
	337	258		3	47-1557b.
	339	258	(Art. I) IV	1	47-1561.
	339	258		2	47-1561a.
	340	258		3	47-1561b.
	340	258		4	47-1561c.
	340	258		5	47-1561d.
	340	258		6	47-1561e.
	340	258	(Art. I) V	1	47-1564.
	341	258		2	47-1564a.
	342	258		3	47-1564b.
	342	258		4	47-1564c.
	343	258	(Art. I) VI	1	47-1567.
	343	258		2	47-1567a.
	344	258		3	47-1567b.
	344	258		4	47-1567c.
	345	258		5	47-1567d.
	345	258	(Art. I) VII	1	47-1571.
	345	258		2	47-1571a.
	345	258	(Art. I) VIII	1	47-1574.
	346	258		2	47-1574a.
	346	258		3	47-1574b.
	346	258		4	47-1574c.
	346	258		5	47-1574d.
	346	258		6	47-1574e.
	346	258	(Art. I) IX	1	47-1577.
	347	258		2	47-1577a.
	347	258		3	47-1577b.
	347	258		4	47-1577c.
	347	258		5	47-1577d.
	348	258		6	47-1577e.
	348	258		7	47-1577f.
	348	258		8	47-1577g.
	348	258		9	47-1577h.
	348	258		10	47-1577i.
	349	258	(Art. I) X	1	47-1580.
	349	258		2	47-1580a.
	349	258		3	47-1580b.
	350	258	XI	1	47-1583.
	350	258		2	47-1583a.
	351	258		3	47-1583b.
	351	258		4	47-1583c.
	351	258		5	47-1583d.
	351	258		6	47-1583e.
	352	258	XII	1	47-1586.
	352	258		2	47-1586a.
	352	258		3	47-1586b.
	352	258		4	47-1586c.
	352	258		5	47-1586d.
	353	258		6	47-1586e.
	353	258		7	47-1586f.
	353	258		8	47-1586g.
	353	258		9	47-1586h.
	354	258		10	47-1586i.
	355	258		11	47-1586j.
	355	258		12	47-1586k.
	355	258		13	47-1586*l*.
	356	258		14	47-1586m.
	356	258		15	47-1586n.
	356	258	(Art. I) XIII	1	47-1589.
	356	258		2	47-1589a.
	356	258		3	47-1589b.
	357	258		4	47-1589c.
	357	258		5	47-1589d.
	357	258		6	47-1589e.
	357	258	(Art. I) XIV	1	47-1591.
	358	258		2	47-1591a.
	358	258		3	47-1591b.
	358	258		4	47-1591c.
	358	258		5	47-1591d.
	358	258		6	47-1591e.
	358	258		7	47-1591f.
	359	258	(Art. I) XV	1	47-1593.
	359	258		2	47-1593a.
	359	258	(Art. I) XVI	1	47-1595.
	359	258	(Art. II)		47-501 note.
	359	258	(Art. III)	1	47-1901b.
	360	258		2	47-1901a repealed.
	360	258	(Art. IV)	1	40-201.
	360	258		2	40-203.

STATUTES AT LARGE—Continued

VOLUME 61—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1947					
July 16	360	258		3	40–204.
	360	258		4	40–201, 40–203, 40–204, notes.
	360	258	(Art. V)	1	43–1502a
	360	258		2	43–1511a
	361	258			47–2501a.
	361	258	(Art. VII)		47–1551 note.
July 17	378	263		1	24–201a.
	378	263		2	24–201b.
	378	263		3	24–204.
	379	263		4	24–201c.
	379	263		5	24–206.
	379	263		6	24–208.
	379	263		7	24–201, 24–202 repealed.
July 18	381	267			11–754a.
July 21	398	272			4–504a.
July 22	402	296		1	47–2302.
	402	296		2	47–2304.
	402	296		3	47–2328, 47–2329, 47–2330.
	402	296		4	47–2302, 47–2304, 47–2328, 47–2329, 47–2330, notes.
July 25	427	324		1	10–103a note.
	428	324		1	31–716a note.
	433	324		1	47–118 note.
	434	324		1	4–413.
	435	324		1	11–722a note.
	436	324		1	33–111 note.
	439	324		1	32–905a.
	443	324		1	7–603 note.
July 26	494	342		1	46–303 (c) (4).
	494	342		2	46–303(c)(9)(b).
	494	342		3	46–303 note.
July 30	600	359		1	5–105a.
Aug. 1	711	427			35–716.
	711	428			47–2344a.
	713	429			45–1601.
	721	442			45–1605.
Aug. 4	730	456			45–701b.
	743	469			22–3204.
	744	472		1	24–501.
	744	472		2	24–502.
	744	472		3	24–503.
	745	472		4	24–504.
	745	472		5	24–505.
	745	472		6	24–506.
	745	472		7	24–507.
	745	472		8	24–508.
	745	472		9	24–509.
	746	472		10	24–510.
	746	472		11	24–511.
	746	472		12	24–512.
	746	472		13	24–513.
	746	472		14	25–111a.
	747	472		15	24–514.
	750	476			31–727.

VOLUME 62

Date	Page	Chapter	Title	Section	D. C. 1950
1948					
Feb. 19	27	66		1	35–701.
	30	66		2	35–703.
	30	66		3	35–704.
	30	66		4	35–705a, 35–705b, 35–705c.
Mar. 30	100	163			45–1601.
Apr. 20	173	215		1, 2	40–301.
	174	216		1	2–104.
	175	216		2	2–108.
	175	216		3 (a)	2–119.
	175	216		3 (b)	2–119.
	175	216		4	2–122a.
	176	217		1	25–104a.
	176	217		2	25–104 note.
Apr. 29	205	243		1	45–1601.
	205	243		2	45–1602.
	206	243		3 (a)	45–1609 (a).
	206	243		3 (b)	45–1609 (c).
	206	243		4	45–1609 note.
May 3	206	246		1	47–1551c (h).
	207	246		2	47–1580.
	207	246		3	47–1557a (b) (13).
	207	246		4	47–1591c repealed.
	207	246		5	47–1551c note, 47–1580 note.

VOLUME 62—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1948					
May 14	235	290		1	11–103.
	235	290		2	11–104.
	235	290		3	11–105.
May 20	242	324		1	35–1501.
	242	324		2	35–1502.
	243	324		3	35–1503.
	243	324		4	35–1504.
	244	324		5	35–1505.
	245	324		6	35–1506.
	246	324		7	35–1507.
	246	324		8	35–1508.
	247	324		9	35–1509.
	247	324		10	35–1510.
	247	324		11	35–1501 note.
	247	324		12	35–1501 note.
	247	324		13	35–1501 note.
June 3	301	392		3	1–501 note.
June 4	339	418		1	2–1701.
	339	418		2	2–1702.
	339	418		3	2–1703.
	339	418		4	2–1704.
	339	418		5	2–1705.
	340	418		6	2–1706.
	341	418		7	2–1707.
	341	418		8	2–1708.
	342	418		9	2–1709.
	342	418		10	2–1710.
June 9	346	428	I	101	22–1112.
	346	428	I	102	22–2701.
	347	428	I	103	22–3501.
	347	428	I	104	22–3502.
	347	428	II	201	22–3503.
	348	428	II	202	22–3504.
	348	428	II	203	22–3505.
	348	428	II	204	22–3506.
	349	428	II	205	22–3507.
	349	428	II	206	22–3508.
	349	428	II	207	22–3509.
	349	428	II	208	22–3510.
	350	428	II	209	22–3511.
June 19	480	503			35–535.
					35–536 repealed
	487	507		1	16–1201.
	487	507		2	16–1203.
	487	508		1	12–101.
	488	508		2	20–501.
	493	522		1	40–712.
	493	522		2	40–712a.
	498	530		1	4–404.
	498	530		2	4–404a.
	498	530		3	4–404 note.
	539	555		1	10–103a note.
	540	555		1	31–716a.
	543	555		1	47–118.
	543	555		1	8–211a.
	544	555		1	4–185.
	544	555		1	4–413.
	545	555		1	11–924 note.
	545	555		1	11–722a note.
	546	555		1	33–111.
	547	555		1	24–447.
	548	555		1	32–905a.
	549	555		1	32–401a.
	553	555		1	7–603 note.
	553	555		1	40–808 note.
	553	555		1	40–604 note.
	565	559			40–804.
June 22	572	597		1	32–412.
	572	597		2	32–413.
	573	597		3	32–414.
	574	597		4	32–415.
	574	597		5	32–416.
	574	597		6	32–412 note.
June 24	579	609			14–302.
June 25	864	645		21	22–1001 repealed.
	988	646		14	11–401.
	988	646		15	11–204.
	989	646		16	11–1501.
	990	646		24	11–301.
	992	646		39	Repealing.
					1–503.
					11–201.
					11–202.
					11–203.
					11–205.
					11–301 (pt).
					11–302.
					11–305 note.
					11–309.
					11–314.
					11–402.
					11–403.
					11–1001.
					11–1101.
					11–1102.
					11–1103.

STATUTES AT LARGE—Continued

VOLUME 62—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1948					
June 25	992	646		39	11-1511,11-1512. 11-1513,11-1514. 14-204.
June 28	1067	692		1	2-1111.
	1067	692		2	2-1111 note.
June 29	1109	735		1	47-2320 (a).
	1109	735		2	47-2320 (c).
	1109	735		3	47-2323 (a).
June 30	1195	774		1, 2	21-311.

VOLUME 63

Date	Page	Chapter	Title	Section	D. C. 1950
1949					
Mar. 31	30	45			45-1601 (b).
Apr. 19	48	73		1	45-1601 (b).
	49	73		2	45-1602 (3) (b).
	49	73		3	45-1602 (4).
	49	73		4	45-1605 (b) (2).
	49	73		5	45-1602 (2) (e).
	49	73		6	45-1610 (b) repealed.
	49	73		7	45-1601, 47-1602, 45-1605, 45-1610 notes.
May 24	108	139		135 (a)	11-305.
	108	139		135 (b)	11-305 note.
	108	139		136	11-312.
	108	139		137	11-204.
	109	139		138	11-206.
	109	139		139	14-204.
	109	139		140	11-502.
	110	139		142	11-208 to 11-210, 11-304, 11-307, 11-310, 11-311, 11-313, 11-315 to 11-318, 11-320, 11-322 to 11-325, 11-331, 11-723, 11-934, 11-1414, 11-1415, 11-1419, 17-101, 17-103 to 17-105 repealed.
May 27	112	146		1	47-2601 note.
	112	146	I	101	47-2601 (1).
	112	146	I	102	47-2601 (2).
	112	146	I	103	47-2601 (3).
	112	146	I	104	47-2601 (4).
	112	146	I	105	47-2601 (5).
	112	146	I	106	47-2601 (6).
	112	146	I	107	47-2601 (7).
	113	146	I	108	47-2601 (8).
	113	146	I	109	47-2601 (9).
	113	146	I	110	47-2601 (10).
	113	146	I	111	47-2601 (11).
	113	146	I	112	47-2601 (12).
	113	146	I	113	47-2601 (13).
	113	146	I	114	47-2601 (14).
	114	146	I	115	47-2601 (15).
	114	146	I	116	47-2601 (16).
	114	146	I	117	47-2601 (17).
	114	146	I	118	47-2601 (18).
	115	146	I	119	47-2601 (19).
	115	146	I	120	47-2601 (20).
	115	146	I	121	47-2601 (21).
	115	146	I	122	47-2601 (22).
	115	146	I	123	47-2601 (23).
	115	146	I	124	47-2601 (24).
	115	146	I	125	47-2602.
	115	146	I	126	47-2603.
	115	146	I	127	47-2604.
	115	146	I	128	47-2605.
	117	146	I	129	47-2606.
	117	146	I	130	47-2607.
	117	146	I	131	47-2608.
	117	146	I	132	47-2609.
	118	146	I	133	47-2610.
	118	146	I	134	47-2611.
	118	146	I	135	47-2612.
	118	146	I	136	47-2613.
	119	146	I	137	47-2614.
	119	146	I	138	47-2615.
	119	146	I	139	47-2616.
	120	146	I	140	47-2617.
	120	146	I	141	47-2618.
	121	146	I	142	47-2619.
	121	146	I	143	47-2620.

VOLUME 63—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1949					
May 27	121	146	I	144	47-2621.
	122	146	I	145	47-2622.
	122	146	I	146	47-2623.
	123	146	I	147	47-2624.
	123	146	I	148	47-2625.
	123	146	I	149	47-2626.
	124	146	I	150	47-2627.
	124	146	I	151	47-2628.
	124	146	I	152	47-2629.
	124	146	II	201	47-2701 (1).
	125	146	II	202	47-2701 (2).
	125	146	II	203	47-2701 (3).
	125	146	II	204	47-2701 (4).
	125	146	II	205	47-2701 (5).
	125	146	II	206	47-2701 (6).
	125	146	II	207	47-2701 (7).
	126	146	II	208	47-2701 (8).
	126	146	II	209	47-2701 (9).
	126	146	II	210	47-2701 (10).
	126	146	II	211	47-2701 (11).
	126	146	II	212	47-2702.
	126	146	II	213	47-2703.
	126	146	II	214	47-2704.
	127	146	II	215	47-2705.
	127	146	II	216	47-2706.
	127	146	II	217	47-2707.
	127	146	II	218	47-2708.
	127	146	II	219	47-2709.
	127	146	II	220	47-2710.
	127	146	II	221	47-2711.
	128	146	II	222	47-2712.
	128	146	II	223	47-2713.
	128	146	III	301	40-603 (j).
	129	146	III	302	40-603 note.
	129	146	III	303	40-603-1.
	129	146	IV	401	47-1551c (s).
	130	146	IV	402	47-1551c (u) (9).
	130	146	IV	403	47-1557a (c).
	130	146	IV	404	47-1557b (a) (1).
	130	146	IV	405	47-1557b (a) (4) (c).
	130	146	IV	406	47-1557b (a) (8).
	130	146	IV	407	47-1557b (a) (9)
	131	146	IV	408	47-1557b (a) (13).
	131	146	IV	409	47-1557b (a) (15).
	131	146	IV	410	47-1561c.
	131	146	IV	411 (a)	47-1564a (a).
	132	146	IV	411 (b)	47-1564a (b).
	132	146	IV	412	47-1567a.
	132	146	IV	413	47-1567b.
	132	146	IV	414	47-1567c repealed.
	132	146	IV	415	47-1577d.
	132	146	IV	416	47-1574c.
	132	146	IV	417	47-1586i (a) (4).
	133	146	IV	418	47-1586j.
	133	146	IV	419	47-1591.
	133	146	IV	420	47-1557a (b) (14).
	133	146	IV	421	47-1551c, 47-1557a, 47-1557b, 47-1561a, 47-1564a, 47-1567b, 47-1567c, 47-1574c, 47-1577d, 47-1586i, 47-1586j, 47-1591, 47-1557a notes.
	133	146	V	501	25-111 (a) to 25-111 (k).
	134	146	V	502	25-111 note.
	135	146	V	503	25-117.
	135	146	V	504	25-111a.
	135	146	V	505	25-124 (a) (1) to 25-124 (a) (4).
	135	146	V	506	25-124 note.
	135	146	V	507	25-124 note.
	136	146	V	508	25-138.
	136	146	V	509	25-111, 25-111a, 25-117, 25-124, 25-138 notes.
	136	146	VI	601	47-2801 note.
	136	146	VI	602	47-2801.
	137	146	VI	603	47-2802.
	138	146	VI	604	47-2803.
	138	146	VI	605	47-2804.
	138	146	VI	606	47-2805.
	139	146	VI	607	47-2806.

STATUTES AT LARGE—Continued

VOLUME 63—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1949					
May 27	139	146	VI	608	47-2807.
	139	146	VI	609	47-2808.
	139	146	VI	610	47-2809.
	139	146	VI	611	47-2810.
	139	146	VI	612	47-2810 note.
	139	146	VI	613	47-2810 note.
	139	146	VII	701	47-501 note.
	139	146	VIII	801	47-2601, 47-2629 notes.
June 20	213	228			16-415.
	213	229			16-418.
	214	230			13-108.
	214	231			11-920 note.
June 21	215	233			16-416.
June 24	267	241		1	19-301.
	267	241		2	19-305.
	268	242		1	18-501.
	268	242		2	20-306.
	268	242		3	18-401.
	268	242		4	18-407.
	268	242		5	18-518.
	268	242		6	18-526.
	268	242		7	20-601.
	268	243			19-309.
	269	244			18-801 to 18-810.
June 29	303	279			4-413, 7-603, 8-211a, 10-103a, 11-722a, 11-924, 24-447, 31-716a, 32-905a, 33-111, 40-604, 40-808, 47-118 notes.
June 30	376	287		1	4-806.
	376	287		2	4-108.
	376	287		3	31-679.
	376	287		4	4-806 note.
	377	287		5	4-806, 4-108, 31-679 notes.
July 15	441	338	VI	608	5-717 note.
	441	338	VI	609	5-717a.
July 26	481	365		1	28-1011(a).
	481	365		2	28-1011(b).
	481	365		3	28-1011(c).
	482	365		4	28-1011(d).
	482	365		5	28-1011(e).
July 28	482	369		2	11-753.
	483	369		3	11-771.
Aug. 2	491	383		1	19-401, 21-308, 24-101 notes.
	491	383		2	19-401 note.
	491	383		3	19-401.
	491	383		4	19-401 note.
	491	383		5	19-404a.
	491	383		6	47-213, 19-404, 21-308, 24-105, 24-401 notes.
	491	383		7	11-330.
	492	383		8	21-308.
	492	383		9	19-404, 19-405 repealed.
	492	383		10	19-401, 19-404, 19-404a, 21-308, 24-101, notes.
Aug. 3	493	386			1-807.
Aug. 4	565	394		1	4-507.
	566	394		2	4-509.
	566	394		3	4-507 a.
	566	394		4	4-504.
	566	394		5	4-507 note.
Aug. 16	607	438			1-245.
Sept. 7	690	538		2	1-318.
	694	564			47-801a-2.
Oct. 6	706	618		1	31-659.
	707	618		2	31-664 (aq).
	707	618		3	31-664 (ar).
	707	618		4	31-678 (b).
Oct. 11	759	672		1	32-417.
	760	672		2	32-417a.
	761	672		3	32-417b.
	761	672		4	32-417c.
	761	672		5	32-417d.
	761	672		6	32-417e.
	761	672		7	32-417f.
	761	672		8	32-417g.
Oct. 13	842	686		1	31-691.
	842	686		2	31-692.
	843	686		3	31-693.
	843	686		4	31-694.
	843	686		5	31-695.
	843	686		6	31-696.

VOLUME 63—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1949					
Oct. 13	843	686		7	31-697.
	843	686		8	31-697 note.
	843	686		9(a)	31-672.
	844	686		9(b)	31-676 repealed.
	844	686		9(c)	31-607 repealed.
	844	686		10	31-691 note.
	844	686		11	Effective date.
Oct. 25	887	706		1	11-752.
	887	706		2	11-753, 11-771.
	887	706		3	11-753.
	888	709			47-827.
	889	710			21-308.
Oct. 27	938	767		1	26-701.
	938	767		2	26-702.
	938	767		3	26-703.
	939	767		4	26-704.
	939	767		5-8	26-701 notes.
Oct. 28	951	779			4-806 note.

VOLUME 64

Date	Page	Chapter	Title	Section	D. C. 1950
1950					
Mar. 24	35	74			1-187a.
Apr. 26	88	106			25-118.
Apr. 28	90	119			26-511 (c)
Apr. 29	96	138			4-203.
May 4	103	157		1	35-405.
	103	157		2	35-426.
	104	157		3	35-431.
	104	157		4	35-508.
	104	157		5	35-532 repealed.
	104	157		6	35-601 (h).
	104	157		7	35-722 to 35-724.
	106	157		8	35-405 note.
June 2	195	218		1	43-1539.
	195	218		2	43-1540.
June 14	212	235			32-1010.
June 16	231	267			4-404, 4-404a notes.
June 30	310	428		1	45-1601 (b).
	310	428		2	45-1602 (5).
	310	428		3	45-1604 (b).
July 12	330	457		1	35-710.
	333	457		2	35-711, 35-711a.
	335	457		3	35-712 (k) (1).
July 18	347	467			4-413, 7-603, 8-211a, 10-103a, 11-722a, 11-924, 24-447, 31-716a, 32-905a, 33-111, 40-604, 40-808, 47-118 notes.
Aug. 1	393	513		1	6-101, 6-102, 6 104, 6-106, 6-107, 6-108, 6-109, 6-113, 6-115, 6-116, 6-119a to 6-119f, 6-119h, 6-119j, 2-103, 2-701, 2-706, 5-601, 5-602, 6-201, 6-202, 6-301, 6-302, 6-303, 6-401, 6-604, 6-606, 6-607, 6-608, 6-702, 6-901, 22-3418, 27-119a, 33-104, 33-105, 33-302, 33-303, 33-305, 33-306, 33-307, 33-309, 33-312, 33-313, 33-315, 33-316, 33-317, 33-318, 33-401, 33-502, 47-2316.
	393	513		2	6-101 note.
Aug. 7	416	602		1	28-714a (a).
	417	602		2	28-714a (b)
	417	602		3	28-714a (c).
Aug. 11	438	686		1	6-1201.
	438	686		2	6-1202.

STATUTES AT LARGE—Continued

VOLUME 64—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1950					
Aug. 11	439	686		3	6–1203.
	440	686		4	6–1204.
	440	686		5	6–1205.
	440	686		6	6–1206.
Aug. 14	441	706		1	4–414 (a).
	441	706		2	4–414 (b).
	441	706		3	4–414 (c).
	441	706		4	4–414 (d).
Aug. 15	447	715		1	4–904.
	448	715		3	4–904 note.
Aug. 16	450	720		1	31–1301.
	450	720		2	31–1302.
	451	720		3	31–1303.
Aug. 19	466	762		1	2–1210.
	466	762		2	2–1226.
Sept. 7	770	905		1	7–1401.
	771	905		2	7–1402.
	771	905		3	7–1403.
	771	905		4	7–1404.
	771	905		5	7–1405.
	771	905		6	7–1406.
	772	905		7	7–1407.
	772	905		8	7–1408.
	772	905		9	7–1409.
	772	905		10	7–1410.
	772	905		11	7–1411.
	773	905		12	7–1412.
Sept. 7	780	908		1	2–1010.
	780	908		2	2–1014.
	781	908		3	2–1016 to 2–1027.
	783	908		4	2–1030.
	783	908		4	2–1031 note.
	784	908		5	2–1031.
	784	908		6	2–1031.
	784	908		7	2–1019.
	784	908		8	2–1031.
Sept. 8	791	921		1	40–101 (e).
	792	921		2	40–101 (j).
	792	921		3	40–102.
	793	921		4	40–103 (a).
	793	921		5	40–103 (b).

VOLUME 64—Continued

Date	Page	Chapter	Title	Section	D. C. 1950
1950					
Sept. 8	793	921		6	40–103 (c).
	793	921		6	40–103 (d).
	794	921		7	40–104 (a) (1).
	794	921		7	40–104 (a) (2).
	794	921		7	40–104 (a) (3).
Sept. 19	854	953		1	2–1901.
	854	953		2	2–1902.
	855	953		3	2–1903.
	855	953		4	2–1904.
	855	953		5	2–1905.
	856	953		6	2–1906.
	856	953		7	2–1907.
	856	953		8	2–1908.
	862	953		9	2–1909.
	863	953		10	2–1910.
	864	953		11	2–1911.
	864	953		12	2–1912.
	864	953		13	2–1913.
	865	953		14	2–1914.
	866	953		15	2–1915.
	866	953		16	2–1916.
	866	953		17	2–1917.
	866	953		18	2–1918.
	866	953		19	2–1901, 2–1905, 2–1908, 2–1910, notes.
Sept. 22	903	984		1	5–801.
	904	984		2	5–802.
	904	984		3	5–803.
	904	984		4	5–804.
	904	984		5	5–805.
	904	985		1	27–119a.
	904	985		1	27–118, 27–118a, 27–119 repealed.
	904	985		2	27–119a note.
Sept. 28	1076	1091		1	31–699.
	1077	1091		2	31–699a.
	1077	1091		3	31–699b.

TABLE OF CASES

References are to Sections

A

Abbot v. Bralove, 81 F. Supp. 532, aff'd 176 F. 2d 64, 85 U. S. App. D. C. 189 45–1605, 45–1611
Abbott v. Font, 38 A. 2d 618 11–774, 45–1605
Abdu, In re, 247 U. S. 27 11–1508
Abramson v. Abramson, 60 App. D. C. 119, 49 Fed. (2d) 501 30–101
Accarino v. United States, 179 F. 2d 456, 85 U. S. App. D. C. 394 22–1501, 22–1502, 22–1504
Acker v. Acker, 22 App. D. C. 353 16–403
Ackerman v. Cardillo, 140 F. 2d 348, 78 U. S. App. D. C. 310 36–501
Acquisition of Original Lot 14, and Assessment and Taxation Lot in Washington, D. C., In re, 60 App. D. C. 216, 50 Fed. (2d) 981 16–607
Acuino v. Winthrop, 65 A. 2d 602 45–1605, 45–1609
Adams v. Davis, 47 A. 2d 792 11–756
Addison v. Barnes, 45 App. D. C. 284 16–1301
Aderhold v. Edwards, 71 Fed. (2d) 297 24–402
Aderhold v. Hudson, 84 Fed. (2d) 559 24–405
Aderhold v. Lee, 68 Fed. (2d) 824 24–201, 24–203, 24–207, 24–208, 24–402
Aderhold v. Soileau, 67 Fed. (2d) 259 22–2601, 32–816, 32–909
Adoption of a Minor, In re, 136 F. 2d 790, 78 U. S. App. D. C. 48 16–202
Adoption of a Minor, In re, 144 F. 2d 644, 79 U. S. App. D. C. 191 16–201, 16–202, 16–203
Adoption of a Minor, In re, 155 F. 2d 870, 81 U. S. App. D. C. 138 16–201, 16–202
Adoption of a Minor, In re, 160 F. 2d 928 16–201, 16–202
Adriance, Platt & Co. v. Heiskell, 8 App. D. C. 240 16–322
Aetna Life Ins. Co. v. Hoage, 62 App. D. C. 6, 63 Fed. (2d) 818 36–501
Aetna Life Ins. Co. v. Moses, 287 U. S. 530 16–1202, 36–501
Agnew v. Board of Governors of Federal Reserve System, 153 F. 2d 785, 80 U. S. App. D. C. 377 17–101
Akowskey v. U. S., 158 F. 2d 649, 81 U. S. App. D. C. 353 22–1801
Alaska S. S. Co. v. McHugh, 268 U. S. 23 44–401
Albaugh v. Litho-Marble Decorating Co., 14 App. D. C. 113 38–101
Alderman v. U. S., 165 F. 2d 622 23–301
Aldridge v. United States, 282 U. S. 836 11–1508
Aldridge v. United States, 60 App. D. C. 45, 47 Fed. (2d) 407 22–2401
Alexander v. Alexander, 13 App. D. C. 334 17–101
Alexander v. Alexander, 36 App. D. C. 78 16–403, 16–410
Alexander v. U. S., 136 F. 2d 783, 78 U. S. App. D. C. 34 22–601
Alfred Richards Brick Co. v. Atkinson, 16 App. D. C. 462 13–301, 38–101
Alfred Richards Brick Co. v. Trott, 23 App. D. C. 284 38–101, 38–102, 38–114
Allen v. Allen, 52 App. D. C. 228, 285 Fed. 962 16–419
Allen v. Heron, 157 F. 2d 707 19–103
Allen v. Jones, 56 App. D. C. 245, 12 Fed. (2d) 186 16–1301
Allen's Estate, In re, (D. C. D. C.), 30 Fed. Supp. 243 20–101
Allen's Estate, In re, 64 F. Supp. 107 19–101, 19–103, 19–301
Alpert v. Wolf, 73 A. 2d 525 11–772, 13–301, 45–901, 45–902
Alsop v. Fedarwisch, 9 App. D. C. 408 45–816
Alvarado v. Rosenberg, 50 A. 2d 269 11–715
Amalgamated Casualty Ins. Co. v. Winslow, 135 F. 2d 663, 77 U. S. App. D. C. 382 44–301
Ambler v. Archer, 1 App. D. C. 94 13–103
Ambrose v. Brown, 42 App. D. C. 25 12–201, 28–617
Ambrose v. United States, 45 App. D. C. 112 22–1202, 22–1210
American Automobile Association v. Merrick, 117 F. 2d 23, 73 App. D. C. 151 11–805
American Eagle Fire Ins. Co. v. Jordan, 67 F. Supp. 76 35–1403
American Elementary Elec. Co. v. Normandy, 46 App. D. C. 329 16–1101
American Federation of Labor v. National Labor Relations Board, 60 S. Ct. 300, 308 U. S. 401, 84 L. Ed. 47 11–205
American Home Life Ins. Co. v. Drake, 30 App. D. C. 263 35–102, 35–105
American Ice Co. v. Eastern Trust & Banking Co., 17 App. D. C. 422 16–102
American Indemnity Co. v. Cardillo, 135 F. 2d 241, 77 U. S. App. D. C. 306 36–501
American-Mexican Claims Bureau, Inc. v. Morgenthau, (D. C. D. C.), 26 Fed. Supp. 904 13–108
American Nat. Red Cross v. Jameson, 178 F. 2d 717, 85 U. S. App. D. C. 381 16–312
American Sav. Bank v. Eisminger, 35 App. D. C. 51 45–501
American Security & Trust Co. v. Comrs. of District of Columbia, 224 U. S. 491 7–202

American Security & Trust Co. v. District of Columbia, 29 App. D. C. 265 26–318
American Security & Trust Co. v. District of Columbia, 91 F. Supp. 713 47–1701, 47–1703
American Sec. & Trust Co. v. Sullivan, 72 F. Supp. 925 45–812, 45–816
American Security & Trust Co. v. Walker, 23 App. D. C. 583 11–320
American Storage Co. v. Briggs, 56 A. 2d 557 11–772
Amos v. Cummings, 67 A. 2d 87 5–419, 45–1605
Anacostia & P. R. R. Co. v. Klein, 8 App D. C. 75 14–201
Anacostia Bank v. U. S. Fidelity & Guaranty Co., 119 F. 2d 455, 73 App. D. C. 388 28–2305
Ancient Egyptian Arabic Order v. Michaux, 279 U. S. 737 29–601
Anders v. Overholser, 168 F. 2d 151 16–806
Anderson v. District of Columbia, 48 A. 2d 710 11–606, 36–309
Anderson v. Hoage, 63 App. D. C. 169, 70 Fed. (2d) 773 36–501
Anderson v. Lee D. Butler, Inc., 61 App. D. C. 380, 63 Fed. (2d) 271 28–802
Anderson v. Reid, 10 App. D. C. 426 16–505, 16–519
Anderson v. Rives, 66 App. D. C. 174, 85 Fed. (2d) 673 22–1301, 22–1801, 22–2403, 22–2404, 24–203, 24–207
Anderson v. White, 2 App. D. C. 408 45–603
Andreas v. Clark, 71 Fed. (2d) 908 24–401
Andrews, R. P., Paper Co. v. Southern Soda Fountain Co., 46 App. D. C. 84 42–101
Angell v. Groff, 42 App. D. C. 198 14–501, 19–310
Anglo-Colombian Dev. Co. v. Stapleton, 57 App. D. C. 209, 19 Fed. (2d) 683 12–201
Appel v. Overholser, 164 F. 2d 511, 82 U. S. App. D. C. 370 21–308
Aquino v. Knox, 60 A. 2d 237 45–1608, 45–1609
Arbaugh v. District of Columbia, 176 F. 2d 28, 85 U. S. App. D. C. 97 47–1502
Arbuckle v. U. S., 146 F. 2d 657, 79 U. S. App. D. C. 282 14–306
Armour v. Flook, 44 App. D. C. 415 13–301
Armour & Co. v. Kloeb, 109 Fed. (2d) 72 16–1001
Arms v. Burg, 67 App. D. C. 155, 90 Fed. (2d) 400 14–405
Armstrong v. Ashley, 22 App. D. C. 368 16–519, 45–501
Armstrong v. United States Bldg. & Loan Assn., 15 App. D. C. 1 26–406
Army & Navy Club v. District of Columbia, 8 App. D. C. 544 25–103
Arnstein v. United States, 54 App. D. C. 199, 296 Fed. 946 22–108, 22–2501, 23–104
Arsenault v. Angle, 43 A. 2d 709 45–904, 45–1601, 45–1605
Associated General Contractors v. Cardillo, 70 App. D. C. 303, 106 Fed. (2d) 327 36–501
Associates Discount Corporation v. Hardesty, 122 F. 2d 18, 74 App. D. C. 44 40–603
Astin v. Phillips, 66 A. 2d 690 45–1610
Astor Pictures Corp. v. Shull, 64 A. 2d 160 11–755
Atchison & Keller v. Taylor, 51 A. 2d 297 11–722, 12–201
Atkins v. Best, 27 App. D. C. 148 45–802
Atkins v. Children's Hosp., 261 U. S. 525 36–401
Atkinson v. Atkinson, 65 App. D. C. 241, 82 Fed. (2d) 847 16–403
Atkinson v. United States, 53 App. D. C. 277, 289 Fed. 935 22–2203
Atlantic Coast Lines R. Co. v. Goldberg, 39 A. 2d 563 11–772, 13–103
Atlantic Greyhound Lines, Inc. v. Keesee, 72 App. D. C. 45, 111 Fed. (2d) 657 11–312
Atlantic Life Ins. Co. of Richmond, Va. v. Wolf, 54 A. 2d 641 28–2703, 28–2704
Atlantic Ref. Co. v. Virginia, 302 U. S. 22 45–708
Atlas Portland Cement Co. v. Fox, 49 App. D. C. 292, 265 Fed. 444 15–103, 45–501
Atlas Van Lines v. Austin, 44 A. 2d 696 11–722, 11–772
Autogiro Co. of America v. Kay Gyroplanes, 55 F. Supp. 919 11–307
Automatic Weighing Mach. Co. v. Pneumatic Scale Corp., 158 Fed. 415 11–201
Automobile Brokerage Corp. v. United States, 59 App. D. C. 243, 39 Fed. (2d) 288 17–103
Ayers v. Hoage, 61 App. D. C. 388, 63 Fed. (2d) 364 36–501

B

Bader v. Williams, 61 A. 2d 637 28–102, 28–201, 28–205
Bacon v. Bacon, 169 F. 2d 679 17–101
Baer v. United States, 54 App. D. C. 24, 293 Fed. 843 22–2205
Bailey v. Allan E. Walker, Inc., 55 App. D. C. 74, 2 Fed. (2d) 123 11–703, 17–101
Bailey v. Allan E. Walker & Co., 53 App. D. C. 307, 290 Fed. 282 45–932
Bailey v. District of Columbia, 4 App. D. C. 356 16–1701
Bailey v. Maple, 63 A. 2d 333 11–772, 45–1604, 45–1609
Bailey v. Scott, 57 App. D. C. 142, 18 Fed. (2d) 184 16–410
Bailey v. United States, 69 App. D. C. 25, 98 Fed. (2d) 306 11–616, 22–2701
Bailey v. Walker, 55 App. D. C. 74, 2 Fed. (2d) 123 11–703, 17–101
Bailey v. Young, 149 F. 2d 15, 80 U. S. App. D. C. 65 7–301
Bailey v. Zlotnick, 133 F. 2d 35, 77 U. S. App. D. C. 84 13–401
Baker v. District of Columbia, 39 App. D. C. 42 21–301
Baker v. Rosen, 48 A. 2d 687 45–1610
Baker v. Warner, 231 U. S. 588 22–1508
Baldi v. Ambrogi, 67 App. D. C. 101, 89 Fed. (2d) 845 12–303
Bale v. District of Columbia, 62 A. 2d 551 11–772, 14–101
Balinovic v. Evening Star Newspaper Co., 72 App. D. C. 176, 113 Fed. (2d) 505 40–403
Ballou v. Kemp, 68 App. D. C. 7, 92 Fed. (2d) 556 16–1001, 31–301, 31–303, 31–305
Balster v. Cadick, 29 App. D. C. 405 18–215
Baltimore & O. R. Co. v. Harris, 12 Wall. (79 U. S.) 65 11–305
Baltimore & O. R. Co. v. Interstate Commerce Comm., 221 U. S. 612 44–401

Baltimore & O. R. Co. v. Morgan, 35 App. D. C. 195 14–308
Baltimore & O. R. Co. v. Thomas, 37 App. D. C. 255 49–301
Baltimore & P. R. Co. v. Cumberland, 176 U. S. 232 1–224
Baltimore & P. R. Co. v. Fifth Baptist Church, 137 U. S. 568 29–601
Baltimore & P. R. Co. v. Golway, 6 App. D. C. 143 16–1201
Baltimore & P. R. Co. v. Taylor, 6 App. D. C. 259 18–202
Baltimore & P. R. Co. v. Trustees of the Sixth Presbyterian Church, 19 Wall. (86 U. S.) 64 11–305
Baltimore and P. R. Co. v. Trustees of the Sixth Presbyterian Church, 1 Otto (91 U. S.) 127 11–313
Bank of Columbia v. Okely, 4 Wheat. (17 U. S.) 235 49–301
Bank of Commerce & Savings v. Laughlin, 38 F. Supp. 755 16–311
Banks v. Thorwarth, 68 A. 2d 906 45–1602
Banks v. Torre, 56 A. 2d 52 45–932
Banville v. Sullivan, 11 App. D. C. 23 16–303
Barbagollo v. Fishbien, 52 App. D. C. 318, 286 Fed. 780 30–208
Barbour v. Hickey, 2 App. D. C. 207 18–202
Barbour v. Paige Hotel Co., 2 App. D. C. 174 16–301
Barbour v. Moore, 4 App. D. C. 535 19–101
Barclay, Inc. v. Maxfield, 48 A. 2d 768 45–1602
Bardwell v. Petty, 52 App. D. C. 310, 286 Fed. 772 22–1111, 47–2003, 49–201
Barker v. Magruder, 68 App. D. C. 211, 95 Fed. (2d) 122 28–2701
Barksdale v. Morgan, 34 App. D. C. 549 17–101
Barnes v. Conner, 44 A. 2d 925 11–722, 11–772
Barnes v. Paanakker, 72 App. D. C. 39, 111 Fed. (2d) 193 13–105, 16–201—16–203, 17–101
Barnett v. Bachrach, 34 A. 2d 626 11–772
Barrett v. Adkins Furniture Co., 43 A. 2d 44 11–772, 11–774
Barrett v. Bigger, 57 App. D. C. 81, 17 Fed. (2d) 669 23–401
Barrett v. Commercial Credit Co., 54 App. D. C. 249, 296 Fed. 996 38–201
Barrett v. Freed, 35 A. 2d 180 28–1802, 28–1914
Barrett v. United States, 62 App. D. C. 25, 64 Fed. (2d) 148 22–504
Barry v. Hall, 68 App. D. C. 350, 98 Fed. (2d) 222 16–801, 16–808, 21–306, 21–314, 21–316
Barry v. White, 62 App. D. C. 69, 64 Fed. (2d) 707 16–806, 24–301
Basile v. U. S., 38 A. 2d 620 11–755, 22–2202, 24–102
Bata Shoe Co. v. Perkins (D. C. D. C.), 33 Fed. Supp. 508 16–801
Bateman v. Bateman, 42 App. D. C. 230 16–403
Bateman v. Crim, 34 A. 2d 257 22–1108
Bates v. Bates, 141 F. 2d 723, 79 U. S. App. D. C. 14 11–326, 11–327, 16–415, 16–806, 17–101
Battista v. Horton, Myers & Raymond, 128 F. 2d 29, 76 U. S. App. D. C. 1 38–103
Baugh v. Young, 39 A. 2d 478 11–772
Baum v. Knabe Mfg. Co., 33 App. D. C. 237 42–103
Bauman v. Ross, 167 U. S. 548 1–102, 7–102, 7–109, 7–110, 47–807
Beach v. District of Columbia, 44 A. 2d 926 11–772, 11–774
Beall v. Everson, 34 A. 2d 41 45–1605
Beall v. White, 94 U. S. 382 45–915
Bealle v. District of Columbia, 80 F. Supp. 75 1–102
Bean v. Patterson, 110 U. S. 401 11–1507
Bean v. Reynolds, 15 App. D. C. 125 18–301
Bean v. Wheatley, 13 App. D. C. 473 12–305
Beard v. Bennett, 72 App. D. C. 269, 114 Fed. (2d) 578 24–402
Beard v. Bennett, 114 F. 2d 578, 72 App. D. C. 269 24–402
Beard v. Sanford, 99 Fed. (2d) 750 22–1504, 22–1505, 22–2601
Beard v. Sanford, 105 Fed. (2d) 141 22–1504
Beard v. United States, 65 App. D. C. 231, 82 Fed. (2d) 837 22–1504
Beasley v. Baltimore & P. R. R. Co., 27 App. D. C. 595 12–201, 13–301
Beausoliel v. United States, 71 App. D. C. 111, 107 Fed. (2d) 292 22–501, 22–502, 22–503, 22–504, 22–901
Beck v. Bechtel Hotel, 72 A. 2d 36 45–1605
Beck v. U. S. 140 F. 2d 169, 78 U. S. App. D. C. 10 22–2901
Beddoo v. Smoot Sand & Gravel Corp., 128 F. 2d 608, 76 U. S. App. D. C. 39 36–501, 36–502
Bedell v. U. S., 63 App. D. C. 31, 68 Fed. (2d) 776 14–104
Bedrosian v. Wong Kok Chung, 33 A. 2d 811 11–735, 11–772
Beedy v. District of Columbia, 126 F. 2d 647, 75 U. S. App. D. C. 289 47–1502
Behrle v. United States, 69 App. D. C. 304, 100 Fed. (2d) 714 22–2405
Behrman v. Sims, 157 F. 2d 862 11–205
Belfiore v. B. J. Crivella, Inc., 60 A. 2d 542 28–205
Bell v. District of Columbia, 50 App. D. C. 351, 273 Fed. 315 40–617
Bell v. Harlan, 57 App. D. C. 255, 20 Fed. (2d) 271 43–103, 43–122
Bell v. United States, 49 App. D. C. 367, 265 Fed. 1007 22–3204
Bell v. United States, 60 App. D. C. 76, 47 Fed. (2d) 438 22–2401
Bell v. Westbrook, 50 A. 2d 264 11–735, 45–820, 45–901
Bellmore v. Baum, 68 A. 2d 588 11–735, 13–214, 45–1605
Benjamin v. United States, 74 A. 2d 64 22–2001
Bennett v. Bennett, 83 F. Supp. 19 12–101, 12–303
Benson v. Henkel, 198 U. S. 1 11–305
Benson v. United States, 27 App. D. C. 331 22–701
Bergheimer v. Bergheimer, 17 App. D. C. 381 14–306, 16–419
Berkeley v. Culley, 42 App. D. C. 140 13–103
Berkley v. Harper, 3 App. D. C. 308 35–901
Berl v. Dulany, 42 App. D. C. 121 18–202
Bernhardt v. City & S. R. Co., 49 App. D. C. 265, 263 Fed. 1009 14–201
Bernsdorff v. Bernsdorff, 26 App. D. C. 228 17–101
Bernsdorff v. Bernsdorff, 26 App. D. C. 520 16–415

Berrien v. Pollitzer, 165 F. 2d 21 11–325
Berry & Whitmore Co. v. Dante, 43 App. D. C. 110 12–202, 18–509, 18–518, 20–403
Better Business Bureau of Washington, D. C. v. District Unemployment Compensation Board, 34 A. 2d 614 29–601, 29–602, 46–301
Betts v. Lonas, 172 A. 2d 759, 84 U. S. App. D. C. 206 10–103
Beyer v. Brownlow, 51 App. D. C. 92, 276 Fed. 460 16–601, 16–606, 16–607, 16–610
Beyer v. Le Fevre, 186 U. S. 114 11–503, 19–313
Beyer v. Smith, 59 App. D. C. 32, 32 Fed. (2d) 423 45–904
B. F. Goodrich Co. v. Britton, 139 F. 2d 362, 78 U. S. App. D. C. 221 36–501
Biddle v. United States, 156 Fed. 759 22–1301
Bieber v. Fechheimer, 9 App. D. C. 548 15–201
Bieber v. Gans, 24 App. D. C. 517 45–501
Biggs v. Campbell, 46 App. D. C. 288 15–103
Bilbrey v. Chicago Daily News, 57 F. Supp. 579 13–103
Billeci v. United States, 184 F. 2d 394 22–1501
Billings v. Field, 36 App. D. C. 16 11–305
Billings v. Woody, 167 F. 2d 756 19–103
Bill's Auto Rental, Inc. v. Bonded Taxi Company, 72 A. 2d 254 11–772, 40–403
Bilsborough v. Bilsborough, 160 F. 2d 933 16–409
Binford v. Diller, 177 F. 2d 731 18–101, 18–711
Biscayne Trust Co. v. American Security & Trust Co., 57 App. D. C. 251, 20 Fed. (2d) 267 12–108, 12–116, 16–411, 16–413
Bischoff v. Person, 73 A. 2d 716 45–1610
Bishop v. United States, 71 App. D. C. 132, 107 Fed. (2d) 297 22–2401
Black v. Tamamian, 49 A. 2d 547 45–1605
Blackburn v. United States, 66 App. D. C. 15, 84 Fed. (2d) 269 11–616, 22–2701
Bladgen v. United States ex rel. Preinkert, 18 App. D. C. 370 13–401
Blair v. United States ex rel. Hellman, 45 App. D. C. 353 16–1001
Blandy v. Blandy, 20 App. D. C. 535 16–403
Blanks v. Hazen, 66 App. D. C. 118, 85 Fed. (2d) 284 47–2329
Bledsoe v. Bledsoe, 43 F. Supp. 784 16–403
Blethyn v. Bidder, 80 F. Supp. 962 18–103, 18–104, 18–106, 18–107
Bliss v. Bliss, 60 App. D. C. 237, 50 Fed. (2d) 1002 13–108, 16–410, 16–413, 16–415
Bliss v. Duncan, 44 App. D. C. 93 11–736, 45–822, 45–902
Block v. Gates, 68 A. 2d 215, modified on other grounds, 68 A. 2d 898 45–1609, 45–1610, 45–1611, 45–1805
Block v. Means, 64 A. 2d 163 45–1602
Block v. Ryan, 4 App. D. C. 283 16–1501
Block v. Tenants, 70 A. 2d 59 45–1601, 45–1604, 45–1608
Block v. Wilson, 54 A. 2d 646, 61 A. 2d 493 11–772, 45–1605, 45–1610
Bloedorn v. Bloedorn, 64 App. D. C. 199, 76 Fed. (2d) 812 16–403
Bloedorn v. Washington Times Co., 67 App. D. C. 91, 89 Fed. (2d) 835 13–103, 29–718
Blok v. United States, 70 A. 2d 55 11–772, 22–2202
Blount v. Huff, 144 F. 2d 21, 79 U. S. App. D. C. 204 16–806, 17–101
Blount v. United States, 59 Ct. Cls. 328 45–816
Boardman v. Carey, 62 App. D. C. 152, 65 Fed. (2d) 600 16–410
Bolt v. United States, 55 App. D. C. 120, 2 Fed. (2d) 922 22–3204
Bond v. Carter Hdw. Co., 15 App. D. C. 72 11–744
Bond v. Pinchot, 66 A. 2d 213 45–1610
Bonded Taxi Company v. Bill's Auto Rental, Inc., 72 A. 2d 254 11–772, 40–403
Bonding Co. v. United States ex rel. Paynter, 23 App. D. C. 535 20–117
Bonds v. Smith, 143 F. 2d 369, 79 U. S. App. D. C. 118 11–503, 11–519
Bonuso v. Shroyer Loan & Finance Co., 37 A. 2d 760 28–320, 28–401, 28–402
Booger v. Roach, 25 App. D. C. 324 12–201
Boone v. Boone, 150 F. 2d 153 16–808
Boosalis v. Crawford, 69 App. D. C. 141, 99 Fed. (2d) 374 22–1504, 22–1505
Borak v. Biddle, 141 F. 2d 278, 78 U. S. App. D. C. 374 11–208, 11–305
Bord v. U. S. 133 F. 2d 313, 76 U. S. App. D. C. 205 22–1801, 22–2201
Boss v. District of Columbia, 134 F. 2d 14, 77 U. S. App. D. C. 142 7–211
Boss v. Hagan, 49 App. D. C. 106, 261 Fed. 254 45–820, 45–902
Boss v. Hardee, 68 App. D. C. 75, 93 Fed. (2d) 234 16–1901
Bost v. Rexine Co., 56 App. D. C. 34, 8 Fed. (2d) 795 28–701, 28–724
Bostic v. United States, 68 App. D. C. 167, 94 Fed. (2d) 636 14–305
Bovello v. Falvey Granite Co., 71 A. 2d 536 11–772
Bowen v. Howenstein, 39 App. D. C. 585 19–301, 19–308, 19–309
Bowen v. Mount Vernon Sav. Bank, 66 App. D. C. 139, 85 Fed. (2d) 396 45–614
Bowen v. Mount Vernon Sav. Bank, 70 App. D. C. 273, 105 Fed. (2d) 796 28–405, 28–2701, 28–2702
Bowers v. Basiliko, 38 A. 2d 623 11–774, 11–776
Bowers v. Bowers, 143 F. 2d 158, 79 U. S. App. D. C. 146 16–403
Bowles v. District of Columbia, 22 App. D. C. 321 11–606, 11–616
Bowles v. Stonebraker, 65 A. 2d 575 11–755
Boyce v. Boyce, 153 F. 2d 229 16–403
Boyer v. U. S., 132 F. 2d 12, 76 U. S. App. D. C. 397 22–1301
Boyer v. U. S., 40 A. 2d 247 11–772, 14–305
Boykin v. U. S., 130 F. 2d 416, 76 U. S. App. D. C. 147 22–2707
Boyle v. Smith, 64 A. 2d 428 11–755, 11–772, 13–301, 14–101, 41–131
Bracey v. Hill, 11 Fed. Supp. 148 24–204, 24–209
Bracey v. U. S., 142 F. 2d 85, 79 U. S. App. D. C. 23 22–2801
Bracey v. Zerbst, 93 Fed. (2d) 8 22–502, 24–203
Bradbury v. Howard, 58 App. D. C. 383, 31 Fed. (2d) 222 30–207
Bradfield v. Roberts, 175 U. S. 291 29–501

Bradford v. Brown, 22 App. D. C. 455 16–301
Bradford v. Matthews, 9 App. D. C. 438 19–205
Bradley, Ex parte, 7 Wall. (74 U. S.) 364 11–316, 11–322, 16–1001
Bradley v. Fisher, 13 Wall. (80 U. S.) 335 11–301, 11–501, 11–1301
Bradley v. Triplex Shoe Company, 66 A. 2d 208 11–755, 11–772
Bradshaw v. Ashley, 180 U. S. 59 16–501
Bradshaw v. Ashley, 14 App. D. C. 485 16–515
Brady v. Games, 128 F. 2d 754, 76 U. S. App. D. C. 47 12–401, 30–207
Bralove v. Bralove, 57 F. Supp. 1016 1–401
Brandenburg v. Brandenburg, 80 F. Supp. 562 16–415
Brandenberg v. District of Columbia, 205 U. S. 135 7–317
Brandenburg v. Dante, 49 App. D. C. 141, 261 Fed. 1021 20–403, 20–404, 20–405
Branham v. Johnson, 66 App. D. C. 230, 85 Fed. (2d) 807 11–718
Braniff Airways v. Civil Aeronautics, Bd., 147 F. 2d 152, 79 U. S. App. D. C. 341 11–205
Branson v. Reichelderfer, 62 App. D. C. 129, 65 Fed. (2d) 280 16–606, 16–607
Brauer v. O'Daniel, 47 A. 2d 89 45–1605
Bray v. United States, 39 App. D. C. 600 22–3001
Breckenridge v. Mebane and Calvert Fire Insurance Company v. Mebane, 75 A. 2d 441 11–772
Breneman v. Herdman, 35 App. D. C. 27 45–812
Brennan Constr. Co. v. Cumberland, 29 App. D. C. 554 22–1703
Breuninger v. Lightbown, 60 App. D. C. 297, 53 Fed. (2d) 551 17–104
Brice v. Curtis, 38 App. D. C. 304 22–2304
Bridgett v. Perpetual Building Association, 75 A. 2d 780 11–772, 11–1501
Briel v. Jordan, 27 App. D. C. 202 16–515
Briggs v. Brownlow, 49 App. D. C. 345, 265 Fed. 985 7–201, 7–206, 7–208
Brodie v. Young, 133 F. 2d 406, 77 U. S. App. D. C. 169 4–121, 4–122
Brooks v. District of Columbia, 48 A. 2d 339 11–756
Brooks v. Jensen, 73 A. 2d 32 11–772
Brooks v. Southern Pac. Co., 148 Fed. 986 44–402
Brooks v. Trigg, 51 A. 2d 302 11–772, 45–1605
Brooks Transp. Co. v. McCutcheon, 154 F. 2d 841, 80 U. S. App. D. C. 406 11–306
Brosius v. Botkin, 72 App. D. C. 279, 114 Fed. (2d) 22 24–401
Brosnan v. Brosnan, 263 U. S. 345 19–101, 19–307, 19–309, 19–312
Brosnan v. Brosnan, 53 App. D. C. 149, 289 Fed. 547 11–515, 20–204, 20–504
Brosnan v. Fox, 52 App. D. C. 143, 284 Fed. 923 18–301, 20–605, 20–610
Brotherhood of Railroad Trainmen v. Groves, 48 App. D. C. 151 35–202, 35–203
Brown v. Allen E. Walker & Co., 58 App. D. C. 173, 26 Fed. (2d) 545 11–718, 11–724, 11–743, 15–101, 15–102
Brown v. Baltimore & O. R. Co., 6 App. D. C. 237 13–301
Brown v. Brown, 134 F. 2d 505, 77 U. S. App. D. C. 73 11–312
Brown v. Christman, 126 F. 2d 625, 75 U. S. App. D. C. 203 28–1007, 45–1405
Brown v. Delafield & Baxter Cement Co., 1 App. D. C. 232 29–701
Brown v. District of Columbia, 143 F. 2d 374, 79 U. S. App. D. C. 148 7–204, 7–209, 16–628
Brown v. Easterhazy, 25 W. L. R. 478 18–406
Brown v. Grand Fountain, 28 App. D. C. 200 35–901
Brown v. Haas, 72 A. 2d 39 11–772
Brown v. Macfarland, 19 App. D. C. 525 7–204
Brown v. Macfarland, 22 App. D. C. 412 11–1507
Brown v. Petersen, 25 App. D. C. 359 11–744, 45–915
Brown v. Randle & Garvin, 32 A. 2d 104 11–772
Brown v. Rudolph, 58 App. D. C. 116, 25 Fed. (2d) 540 21–328
Brown v. Savings Bank, 28 App. D. C. 351 13–301
Brown v. Sellers, 53 App. D. C. 378, 292 Fed. 655 11–907
Brown v. Slater, 23 App. D. C. 51 11–735
Brown v. Slocum, 30 App. D. C. 576 28–2704
Brown v. United States, 35 App. D. C. 548 22–2201
Brown v. United States, 58 App. D. C. 311, 30 Fed. (2d) 474 22–3204
Brown v. United States, 59 App. D. C. 57, 32 Fed. (2d) 953 22–1504
Brown v. U. S., 40 A. 2d 832 22–501
Brown v. United States, 66 A. 2d 491 22–3204
Brown v. U. S. 152 F. 2d 138 22–501
Brown v. Waring, 1 App. D. C. 378 38–110
Brownlow v. O'Donoghue, 51 App. D. C. 114, 276 Fed. 636 7–102
Brownlow v. O'Donoghue Bros. 276 F. 636, 51 App. D. C. 114 8–144
Bruckner-Mitchell v. Sun Indemnity Co., 65 App. D. C. 178, 82 Fed. (2d) 434 1–804, 38–110
Brumbaugh v. Gompers, 50 App. D. C. 130, 269 Fed. 472 16–1501
Bryan v. Curtis, 30 App. D. C. 234 20–501
Buchanan v. Farmer, 62 A. 2d 367 11–772, 12–402, 13–301
Buchanan v. National Sav. & Trust Co., 146 F. 2d 13, 79 U. S. App. D. C. 278 13–108, 16–301
Buck v. Putnam, 146 F. 2d 662, 79 U. S. App. D. C. 295 20–403
Buckner v. U. S., 154 F. 2d 317, 81 U. S. App. D. C. 38 22–2501
Buffalo Union Furnace Co. v. United States Ship. Board Emergency Fleet Corp., 283 Fed. 673 29–201
Buford v. Buford, 156 F. 2d 567 14–306, 16–403, 16–419
Bugher v. Gottwals, 60 App. D. C. 340, 54 Fed. (2d) 451 5–414
Bullock v. Morehouse, 57 App. D. C. 231, 19 Fed. (2d) 705 19–103
Bullock v. U. S., 122 F. 2d 213, 74 App. D. C. 220 22–2401
Bullock v. U. S., 157 F. 2d 702 22–2901
Bunch v. United States ex rel. Keppler, 40 App. D. C. 156 16–906
Bunker v. Jones, 181 F. 2d 619, 86 U. S. App. D. C. 231 19–110

Bunten v. American Security & Trust Co., 25 App. D. C. 226 45–501
Burdette v. Burdette, 2 Mackey (13 D. C.) 469 16–419
Burdick v. Burdick, (D. C. D. C.), 33 Fed. Supp. 921 45–102, 49–301
Burge v. United States, 26 App. D. C. 524 22–2401
Burke v. Canfield, 121 F. 2d 877, 74 App. D. C. 6 18–602
Burman v. Lenkin Const. Co., 149 F. 2d 827, 80 U. S. App. D. C. 125 11–205
Burns v. District of Columbia, 34 A. 2d 714 4–140, 11–772, 22–3302, 22–3303, 28–616
Burns v. Spiller, 4 F. R. D. 299 12–201
Burns v. United States, 287 U. S. 216 24–205
Burns v. Welch, 159 F. 2d 29 16–801, 16–802
Burroughs v. Burroughs, 55 App. D. C. 271, 4 Fed. (2d) 938 30–103
Burrowes v. Burrowes, 64 App. D. C. 392, 78 Fed. (2d) 742 16–807
Burrows Motor Company v. Davis, 76 A. 2d 163 11–735
Bursey v. Lyon, 30 App. D. C. 597 16–505, 16–1301
Burton v. U. S., 151 F. 2d 17 22–2401
Busby v. Electric Utilities Emp. Union, 147 F. 2d 865, 79 U. S. App. D. C. 336 47–1502
Busey v. District of Columbia, 63 S. Ct. 1277, 319 U. S. 579 17–101
Busey v. District of Columbia, 138 F. 2d 592, 78 U. S. App. D. C. 189 47–2336
Butler v. Butler, 154 F. 2d 203 16–403
Butler v. District of Columbia, 153 F. 2d 617 47–1502
Butts v. Merchants & Miners Transp. Co., 230 U. S. 126 44–401
Byas v. United States, 182 F. 2d 94, 86 U. S. App. D. C. 309 22–2707
Byrd v. District of Columbia, 43 A. 2d 46 14–104, 47–2344
Byrne v. Morrison, 25 App. D. C. 72 15–201, 45–902
Byrne v. Tabet, 50 A. 2d 815 11–726, 11–731, 16–1805
Byrnes v. Flanagan, 48 F. Supp. 703 43–317

C

Cadarr v. United States, 24 App. D. C. 143 23–105
Cady v. United States, 54 App. D. C. 10, 293 Fed. 829 22–1801
Caffrey v. Caffrey, 55 App. D. C. 285, 4 Fed. (2d) 952 16–411, 16–413
Cafritz v. Corporation Audit Co., 60 F. Supp. 627 2–902, 14–302, 14–304, 20–502
Cafritz v. Hazen, 66 App. D. C. 94, 85 Fed. (2d) 260 7–204, 7–221
Cafritz v. Koslow, 167 F. 2d 749 12–305
Cahill v. Bryan, 184 F. 2d 277 11–1501
Cahill v. Eberly, 59 App. D. C. 228, 38 Fed. (2d) 539 18–211, 18–214
Cain v. Hutson, 127 F. 2d 19, 75 U. S. App. D. C. 335 20–501
Cain v. Southern R. Co., 199 Fed. 211 44–401
Caine v. Payne, 182 F. 2d 246, 86 U. S. App. D. C. 404 45–812
Calhoun v. Jacobs, 141 F. 2d 729, 79 U. S. App. D. C. 29 14–308
California Co-op. Canneries v. United States, 55 App. D. C. 36, 299 Fed. 908 11–312
Callan v. Wilson, 127 U. S. 540 11–312, 11–601, 11–616
Calvary Baptist Church Extension Assn. v. District of Columbia, 158 F. 2d 237 47–801a
Calvert v. Terminal Taxicab Co., 48 App. D. C. 119 16–1201
Camack v. Howard, 154 F. 2d 22, 81 U. S. App. D. C. 22 17–101
Cameron v. Riggs Nat. Bank of Washington, D. C. 53 F. Supp. 56 18–501
Camp v. Boyd, 35 App. D. C. 159 16–501, 45–809
Camp v. Canelacos, 131 F. 2d 236, 76 U. S. App. D. C. 337 45–618
Campbell v. Campbell, 58 A. 2d 825 11–722, 11–772
Campbell v. District of Columbia, 32 A. 2d 394 22–1120
Campbell v. Porter, 162 U. S. 478 11–310, 11–501, 11–504, 14–403
Campbell v. Rawlings, 52 App. D. C. 37, 280 Fed. 1011 12–302
Campbell v. United States, 65 A. 2d 191 11–755, 11–756, 22–2202
Campbell v. United States, 176 F. 2d 45 14–305
Campbell v. Willis, 53 App. D. C. 296, 290 Fed. 271 14–201
Cancelmo v. Seaboard A. L. R. Co., 56 App. D. C. 225, 12 Fed. (2d) 166 13–103
Canelacos v. Hollway, 123 F. 2d 934, 75 U. S. App. D. C. 58 45–603
Capital Apartment Corp. v. Vassos, 62 App. D. C. 136, 65 Fed. (2d) 482 11–735
Capital City Life Insurance Company v. Saunders, 65 A. 2d 588 35–1002
Capital Trac. Co. v. Hof, 174 U. S. 1 11–101, 11–616
Capital Trac. Co. v. King, 44 App. D. C. 315 14–303
Capital Trac. Co. v. Lusby, 12 App. D. C. 295 14–306
Capital Trac. Co. v. Rockwell, 17 App. D. C. 369 30–208
Capital Trac. Co. v. United States, 34 App. D. C. 591 17–103
Capital Transit Co. v. Crusade, 68 A. 2d 207 11–772
Capital Transit Co. v. District of Columbia, 66 App. D. C. 351, 87 Fed. (2d) 748 47–2331
Capital Transit Co. v. Hazen, 68 App. D. C. 91, 93 Fed. (2d) 250 44–211
Capital Transit Co. v. Hoage, 65 App. D. C. 382, 84 Fed. (2d) 235 36–501
Capital Transit Co. v. Smallwood, 162 F. 2d 14 1–224
Capital Transit Co. v. U. S., 55 F. Supp. 51 43–401
Capitol Dress Mfg. Co. v. Moran, 65 App. D. C. 400, 84 Fed. (2d) 253 29–211
Caplan, In re, 23 Fed. (2d) 680 45–915
Cardillo v. Hartford Acc. & Indem. Co., 71 App. D. C. 330, 109 Fed. (2d) 674 36–501
Cardillo v. Liberty Mut. Ins. Co., 68 App. D. C. 330, 101 Fed. (2d) 254 36–501
Cardillo v. Liberty Mut. Ins. Co., 67 S. Ct. 801 36–501
Cardillo v. Mockabee, 70 App. D. C. 16, 102 Fed. (2d) 620 36–501
Carmody v. Capital Trac. Co., 43 App. D. C. 245 14–308
Carow v. Bishop, 50 A. 2d 598 45–1605
Carpenter v. Carpenter, 156 F. 2d 857 11–1506

Carpenter v. District of Columbia, 32 A. 2d 251 40–609
Carpenter v. United States, 69 App. D. C. 306, 100 Fed. (2d) 716 22–2501
Carranzo v. District of Columbia, 56 App. D. C. 118, 10 Fed. (2d) 983 1–224
Carroll v. E. Heidenheimer, Inc., 44 A. 2d 71 4–156
Carroll v. Elkins, 58 App. D. C. 265, 29 Fed. (2d) 638 15–103, 30–207
Carroll v. Parry, 48 App. D. C. 453 4–136
Carroll v. Reidy, 5 App. D. C. 59 45–816
Carroll Elec. Co. v. Freed-Eisemann Radio Corp., 60 App. D. C. 228, 50 Fed. (2d) 993 13–103
Carson v. Cardillo, 132 F. 2d 604, 77 U. S. App. D. C. 82 36–501
Carson v. Jackson, 52 App. D. C. 51, 281 Fed. 411 12–201
Carter, In re, 177 F. 2d 75, 85 U. S. App. D. C. 229, cert. den. 70 S. Ct. 250, 338 U. S. 900, 94 L. Ed. 198 17–101, 23–608
Carter v. Cutting, 8 Cranch (12 U. S.) 251 11–501
Carter v. Provident Ins. Co., 122 F. 2d 960, 74 App. D. C. 348 35–414
Carusi v. Savary, 6 App. D. C. 330 45–501
Carver v. Clephane, 137 F. 2d 684, 78 U. S. App. D. C. 91 11–1301
Carver v. Hall, 3 App. D. C. 170 16–1901
Case v. Helwig, 62 App. D. C. 98, 65 Fed. (2d) 186 17–101
Case v. Ricketts, 42 A. 2d 304 12–201
Cashell v. Eslin, 55 F. Supp. 747 19–309, 20–106, 20–117
Cassel v. Overholser, 169 F. 2d 683 16–802
Castleman v. Avignone, 56 App. D. C. 253, 12 Fed. (2d) 326 5–419
Catholic Home for Aged Ladies v. District of Columbia, 161 F. 2d 901 47–801a
Catholic University v. Waggaman, 32 App. D. C. 307 12–305, 28–409
Catoe v. U. S., 131 F. 2d 16, 76 U. S. App. D. C. 292 14–308, 22–2801
Cavanaugh v. Ballou, 36 F. Supp. 445 31–118, 31–303
Cave v. District of Columbia, 67 App. D. C. 138, 90 Fed. (2d) 383 47–2331
Cave v. Rudolph, 53 App. D. C. 12, 287 Fed. 989 1–226
Central Dispensary and Emergency Hospital v. Saunders, 165 F. 2d 626, 83 U. S. App. D. C. 52 18–105
Central Nat. Bank v. National Met. Bank, 31 App. D. C. 391 28–124
Central of Georgia R. Co. v. W. Va. Pulp & Paper Co., 67 App. D. C. 309, 92 Fed. (2d) 292 11–317
Chaconas' Estate, In re, 80 F. Supp. 549 19–103, 19–109
Chaifetz, In re, 68 A. 2d 228 11–756
Chalaire v. Franklin, 81 Fed. (2d) 105 12–201
Chamberlain Metal Weather Strip Co. v. Karrick, 60 App. D. C. 316, 53 Fed. (2d) 928 38–102
Champ v. Atkins, 128 F. 2d 601, 76 U. S. App. D. C. 15 40–403
Chandler & Taylor Co. v. Norwood, 14 App. D. C. 357 28–504
Chanock v. United States, 50 App. D. C. 54, 267 Fed. 612 22–1202, 22–1205, 22–2201
Chaparas v. Kountakis, 59 App. D. C. 367, 42 Fed. (2d) 351 17–101
Chaplin v. U. S., 157 F. 2d 697 22–1301
Chapman v. Dismer, 14 App. D. C. 446 19–101, 19–103
Chapman v. Griffiths-Consumers Co., 71 App. D. C. 64, 107 Fed. (2d) 263 36–501
Chapman v. Hoage, 296 U. S. 526 12–201
Chapman v. Hoage, 64 App. D. C. 349, 78 Fed. (2d) 233 36–501
Chapman v. United States, 164 U. S. 436 11–305
Chappell v. O'Brien, 22 App. D. C. 190 17–101
Charles v. United States, 183 Fed. 566 33–103
Chase v. Du Pont Nat. Bank, 277 Fed. 235 28–206
Chase v. United States, 7 App. D. C. 149 14–306
Chase Bag Co. v. Munson S. S. Line, 54 App. D. C. 169, 295 Fed. 990 13–103
Chebithes v. Price, 59 App. D. C. 212, 37 Fed. (2d) 1008 14–305
Chesapeake Beach R. Co. v. Washington, P. & C. R. Co., 199 U. S. 247 45–603
Chesapeake Beach R. Co. v. Washington, P. & C. R. Co., 23 App. D. C. 587 16–501, 16–515
Chesapeake & Ohio Canal Co. v. Key, 3 Cranch (7 U. S.) 599, 601 47–807
Chesapeake & Potomac Tel. Co. v. District of Columbia, 137 F. 2d 674, 78 U. S. App. D. C. 53 47–1701
Chesapeake & Potomac Tel. Co. v. Manning, 186 U. S. 238 43–1401, 43–1402
Chesevoir v. District of Columbia, 58 App. D. C. 268, 29 Fed. (2d) 798 40–301, 40–302
Chewning v. District of Columbia, 119 F. 2d 459, 73 App. D. C. 392 1–102
Chicago Business College v. Payne, 20 App. D. C. 606 29–401
Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559 44–401
Chicago, M. & St. P. R. Co. v. Westby, 178 Fed. 619 44–401
Children's Hosp. v. Adkins, 52 App. D. C. 109, 284 Fed. 613 11–201
Chiswell v. Johnston, 55 App. D. C. 3, 299 Fed. 681 12–303
Christman, H. G., Co. v. Michigan Gypsum Co., 85 Fed. (2d) 474 1–804
Christoffel v. United States, 69 S. Ct. 1447, 338 U. S. 89, 93 L. Ed. 1826 22–2501
Christopher v. Shapiro, 76 A. 2d 781 45–904
Chunn v. City & S. R. Co., 23 App. D. C. 551 13–301
Church v. Church, 50 App. D. C. 237, 270 Fed. 359 16–410, 16–419, 16–808, 21–108
Church v. Church, 50 App. D. C. 239, 270 Fed. 361 17–101
Cissell v. Cissell, 61 App. D. C. 271, 61 Fed. (2d) 679 16–415
Cissell v. Johnston, 4 App. D. C. 335 16–301, 16–326, 28–2601
C. I. T. Corp. v. Carl, 66 App. D. C. 232, 85 Fed. (2d) 809 42–103

City Bank v. Hamilton Nat. Bank, 71 App. D. C. 225, 108 Fed. (2d) 588 28–124
Clagett v. United States, 53 App. D. C. 134, 289 Fed. 532 22–1301
Claiborne-Annapolis Ferry Co. v. United States, 285 U. S. 382 11–305
Clark v. Associated Retail Credit Men, 70 App. D. C. 183, 105 Fed. (2d) 62 22–2305
Clark v. Clark, 79 F. Supp. 722 16–401, 16–416
Clark v. District of Columbia, 34 A. 2d 711 4–140, 22–3302
Clark v. General Electric Credit Corp., 72 A. 2d 43 11–772, 15–103
Clark v. Harmer, 5 App. D. C. 114 45–501, 45–503
Clark v. Mathewson, 7 App. D. C. 382 21–303, 45–1104
Clark v. Read, 12 App. D. C. 343 28–123
Clark v. United States, 19 App. D. C. 295 11–1401, 49–301
Clarke v. Cleckley, 71 A. 2d 616 45–1604
Clarke v. Huff, 165 F. 2d 247 38–101, 38–119
Claudy v. Duvall, 55 App. D. C. 319, 5 Fed. (2d) 381 18–723, 20–604, 20–605
Clawans v. District of Columbia, 61 App. D. C. 298, 62 Fed. (2d) 383 14–305
Clawans v. District of Columbia, 66 App. D. C. 11, 84 Fed. (2d) 265 11–616
Clawans v. District of Columbia, 67 App. D. C. 58, 89 Fed. (2d) 802 11–208
Clawans v. Sheetz, 67 App. D. C. 366, 92 Fed. (2d) 517 18–501, 18–503, 18–513, 18–516—18–519, 18–521, 18–525, 18–526, 18–530, 20–501, 49–301
Claxton, R. W., Inc. v. Schaff, 169 F. 2d 303 40–603
Clemens v. Clemens, 143 F. 2d 24, 79 U. S. App. D. C. 116 16–403, 16–411
Cleveland v. Mattingly, 52 App. D. C. 374, 287 Fed. 948 11–602, 11–616, 24–401
Clifton v. United States, 54 App. D. C. 104, 295 Fed. 925 14–305
Clinton v. U. S., 151 F. 2d 12, 80 U. S. App. D. C. 413 11–205, 22–2801
Clore Restaurant v. Payne, 72 F. Supp. 677 25–106, 25–110, 25–115
Coates v. Ellis, 61 A. 2d 28 11–756
Cobb v. Shore, 183 F. 2d 980 12–201, 47–1003, 47–1007
Cobb v. United States, 172 F. 2d 277, 84 U. S. App. D. C. 228 47–801a, 47–1003, 47–1011
Cockrell v. First Federal Savings & Loan Ass'n, 33 A. 2d 621 28–2704
Cogger v. Hazen, 66 App. D. C. 196, 85 Fed. (2d) 695 47–1205, 47–1207, 47–1209
Cogswell v. Cogswell, 49 App. D. C. 31, 258 Fed. 287 16–419
Cohen v. Brandt, 63 A. 2d 853 11–755
Cohen v. District Unemployment Compensation Bd., 167 F. 2d 883 46–303
Cohen v. United States, 63 A. 2d 854 11–772, 14–101
Coit's Estate, In re, 3 App. D. C. 246 20–106, 20–201
Colbert v. Baetjer, 4 App. D. C. 416 42–101
Colbert v. U. S., 146 F. 2d 10, 79 U. S. App. D. C. 261 22–2707
Colby v. Riggs Nat. Bank, 67 App. D. C. 259, 92 Fed. (2d) 183 28–2301, 28–2302, 28–2306, 28–2309, 28–2313
Coldicott v. W. C. & A. N. Miller Development Co., 47 A. 2d 518 45–1408
Cole v. Cole, 52 App. D. C. 302, 286 Fed. 764 16–419
Cole v. Cole, 67 F. Supp. 134 16–410
Cole v. Cole, 161 F. 2d 883 11–326, 16–410, 16–411
Cole v. Zellan, 55 A. 2d 516 12–201
Coleman v. Chudnow, 35 A. 2d 925 11–772, 14–406
Coleman v. District of Columbia, 51 App. D. C. 352, 279 Fed. 990 31–102
Coleman v. Schwartz, 50 App. D. C. 111, 268 Fed. 701 21–301
Collier v. District of Columbia, 161 F. 2d 649 47–1502
Colliflower, James E., & Co. v. McCallum-Sauber Co., 61 App. D. C. 390, 63 Fed. (2d) 366 16–319, 16–320
Collins v. McBlair, 29 App. D. C. 354 15–106
Collins v. U. S., 41 A. 2d 515 11–772, 22–2722, 23–301
Colonna v. Alton, 23 App. D. C. 296 19–103
Colpoys v. Foreman, 163 F. 2d 908, 83 U. S. App. D. C. 349 12–101
Colts v. District of Columbia, 59 App. D. C. 224, 38 Fed. (2d) 535 49–301
Columbia v. Krause, 11 App. D. C. 398 12–201
Columbia Brick Co. v. District of Columbia, 1 App. D. C. 351 38–101
Columbia Heights Realty Co. v. Rudolph, 217 U. S. 547 7–202
Columbia Nat. Bank v. Schacklett, 57 App. D. C. 130, 18 Fed. (2d) 172 30–201, 30–208
Columbia Operating Corp. v. Kettler, 67 A. 2d 267 11–772
Columbia University v. Taylor, 25 App. D. C. 124 12–201
Columbian Cat Fanciers v. Koehne, 68 App. D. C. 257, 96 Fed. (2d) 529 16–1602
Columbian Fraternal Assn. v. Smith, 54 App. D. C. 308, 297 Fed. 887 35–910
Colwell v. Stonebraker, 31 A. 2d 866 45–1605
Combined Congregations of District of Columbia v. Dent, 140 F. 2d 9, 78 U. S. App. D. C. 254 47–801, 47–801a
Commercial Bank v. Consumers Brew. Co., 16 App. D. C. 186 17–101
Commercial Casualty Ins. Co. v. Hoage, 64 App. D. C. 158, 75 Fed. (2d) 677 36–501
Commercial Credit Co. v. Campbell, 64 App. D. C. 64, 74 Fed. (2d) 468 45–501
Commercial Credit Co. v. McReynolds, 63 App. D. C. 42, 68 Fed. (2d) 990 14–306, 14–307, 15–312
Commercial Nat. Bank v. McCandish, 57 App. D. C. 378, 23 Fed. (2d) 986 28–110, 28–202
Commercial Telegraphers' Union, A. F. L. v. Western Union Telegraph Co., 53 F. Supp. 90 11–315
Commissioners of District of Columbia v. Baltimore & P. R. Co., 114 U. S. 453 7–1210, 7–1212, 7–1213
Commissioners of District of Columbia v. Shannon & Luchs Constr. Co., 57 App. D. C. 67, 17 Fed. (2d) 219 5–413, 16–601

Compton v. Rudolph, 56 App. D. C. 211, 12 Fed. (2d) 152 7–301, 7–302, 7–303
Concord Imp. Co. v. Reichelderfer, 62 App. D. C. 101, 65 Fed. (2d) 189 7–315
Condemnation of Lots Nos. 2, 27, 803, etc. in Square 3960, In re, 58 F. Supp. 832 16–603
Condon v. Mallan, 58 App. D. C. 371, 30 Fed. (2d) 995 18–704, 18–713
Conkling v. New York Life Ins. & Trust Co., 49 App. D. C. 166, 262 Fed. 620 14–302
Connecticut Ave. Cafe v. District of Columbia, 169 F. 2d 304 47–1505, 47–2404
Connecticut Inv. Corp. v. Pearson, 42 A. 2d 685 47–1505
Connolly v. B. F. Saul Co., Inc., 68 A. 2d 236 11–772, 45–1609, 45–1610
Connors v. Pine, 153 F. 2d 643 11–208
Conrad v. Medina, 47 A. 2d 562 11–722, 11–756, 11–774, 45–1502, 45–1605
Consaul v. Cummings, 24 App. D. C. 36 16–102
Consolidated Radio Artists v. Washington Section, 70 App. D. C. 262, 105 Fed. (2d) 785 13–103
Consumers Credit Service v. Craig, 75 A. 2d 525 11–772
Contella v. Clayton, 140 F. 2d 469, 78 U. S. App. D. C. 291 13–108, 17–101
Continental Casualty Co. v. Kelly, 70 App. D. C. 320, 106 Fed. (2d) 841 16–1909
Continental Casualty Co. v. North American Cement Corp., 67 App. D. C. 234, 91 Fed. (2d) 307 1–804
Continental Ins. Co. v. Reading Co., 259 U. S. 156 17–101
Continental Trust Co. v. Corbin, 80 F. Supp. 394 13–217
Cook v. Alaska S. S. Co., 8 Fed. (2d) 207 11–305
Cook v. Cook, 135 F. 2d 945, 77 U. S. App. D. C. 383 16–808
Cook v. Speare, 13 App. D. C. 446 18–503, 20–503
Cooke v. Board of Ed., 161 F. 2d 877 31–644, 31–665
Coombe v. United States ex rel. Selis, 55 App. D. C. 190, 3 Fed. (2d) 714 1–226, 47–2339
Cooper v. Anderson, 156 F. 2d 564, 81 U. S. App. D. C. 166 11–305
Cooper v. Burton, 127 F. 2d 741, 75 U. S. App. D. C. 298 13–108, 21–301
Cooper v. Cooper, 30 Fed. Supp. 151 16–403
Cooper v. Cooper, 35 A. 2d 921 11–772
Cooper v. Marosy, 42 A. 2d 135 28–112
Cooper v. Olcott, 1 App. D. C. 123 12–305
Cooper v. U. S., 48 A. 2d 771 24–101, 24–104
Cooper v. Woodin, 63 App. D. C. 311, 72 Fed. (2d) 179 26–101, 26–102
Copeland v. U. S., 152 F. 2d 769, 80 U. S. App. D. C. 308 22–2401
Coratola v. United States, 24 App. D. C. 229 22–501
Corbett v. Pond, 10 App. D. C. 17 12–102
Corbett v. Urciolo, 54 A. 2d 577 11–772, 11–774
Corey v. Fitzgerald, 73 A. 2d 230 45–1602, 45–1604, 45–1609
Corporation Audit Co. v. Cafritz, 156 F. 2d 839 14–302, 14–304
Cosby v. Shoemaker, 34 A. 2d 27 5–301, 5–317, 11–772, 45–1605
Costello v. Costello, 149 F. 2d 379 18–105
Costello v. Palmer, 20 App. D. C. 210 17–101, 49–301
Costigan v. Adkins, 57 App. D. C. 153, 18 Fed. (2d) 803 11–1302
Cottrill's Estate, In re, 39 F. Supp. 689 14–306, 19–312
Council v. Clemmer, 165 F. 2d 249 16–801, 16–806
Counselman v. Pitzer, 65 App. D. C. 71, 79 Fed. (2d) 707 28–105, 28–110, 28–406
Coupe v. United States, 72 App. D. C. 86, 113 Fed. (2d) 145 22–1501
Cox v. Cogswell, 69 A. 2d 659 45–1604, 45–1609
Cox v. McConnell, 80 Fed. (2d) 258 24–402
Craig v. Heil, 47 A. 2d 871 11–805, 45–906, 45–908, 45–1605
Craig v. Rowland, 10 App. D. C. 402 18–714, 45–204, 45–812
Craighead v. Alexander, 38 App. D. C. 229 11–503, 17–101, 19–309
Craighill v. Lambert, 18 S. Ct. 217, 168 U. S. 611, 42 L. Ed. 599 8–146
Crandall v. Lynch, 20 App. D. C. 73 13–302
Crane v. District of Columbia, 53 App. D. C. 159, 289 Fed. 557 1–224, 1–226, 7–1205
Crawford v. United States, 212 U. S. 183 11–1417
Crawford v. United States, 59 App. D. C. 356, 41 Fed. (2d) 979 14–305
Creel v. Adams, 49 App. D. C. 306, 265 Fed. 456 45–904
Creel v. Creel, 43 App. D. C. 82 16–401
Crenshaw v. McCormick, 19 App. D. C. 494 19–205
Crescent Cafe Co. v. Kass Realty Co., 48 A. 2d 618 11–736
Creswill v. Grand Lodge K. of P., 225 U. S. 246 29–601
Crichton v. United States, 67 App. D. C. 300, 92 Fed. (2d) 224 22–201
Crisp v. Giles, 65 A. 2d 204 45–1604, 45–1609
Croissant v. Empire State Realty Co., 29 App. D. C. 538 26–406, 28–2703
Cromer v. U. S., 142 F. 2d 697, 78 U. S. App. D. C. 400 17–101
Crook v. International Trust Co., 32 App. D. C. 490 28–2503
Cropley v. Eyster, 9 App. D. C. 373 12–201, 12–305, 45–612
Cropper v. McLane, 6 App. D. C. 119 20–108
Crosby v. Dodge, 60 App. D. C. 36, 46 Fed. (2d) 727 7–611
Crosby v. Moebs, 61 App. D. C. 42, 57 Fed. (2d) 408 7–611
Crosby v. Ridout, 27 App. D. C. 481 45–501
Croson v. District of Columbia, 55 App. D. C. 122, 2 Fed. (2d) 924 1–101, 1–102, 1–224, 40–301
Cross v. United States, 145 U. S. 571 11–305, 11–310, 11–322
Crowder v. Lackey, 44 A. 2d 223 11–772
Crowder v. Lackey, 46 A. 2d 699 45–911
Crowley v. Wood, 31 A. 2d 861 11–772, 11–774
Cruit v. Owen, 21 App. D. C. 378 19–101, 19–103
Crusade v. Capital Transit Co., 63 A. 2d 878, see also 68 A. 2d 207 11–755, 11–772
Cummings v. Peters, 66 A. 2d 516 45–1610
Cundiff v. Wills, 76 A. 2d 55 45–1405
Cunningham v. Cunningham, 157 F. 2d 859 28–2405

Cunningham v. Dade, 52 A. 2d 894 11–774
Cunningham v. Rodgers, 50 App. D. C. 51, 267 Fed. 609 49–301
Curran v. U. S. 52 A. 2d 121 22–2701
Curriden v. Middleton, 232 U. S. 633 11–325
Curriden v. Middleton, 37 App. D. C. 568 14–405
Curtis v. Rives, 123 F. 2d 936, 75 U. S. App. D. C. 66 16–806
Curtis v. Whiteford, 59 App. D. C. 330, 41 Fed. (2d) 302 11–1302
Cush v. Allen, 56 App. D. C. 327, 13 Fed. (2d) 299 14–302

D

Dahlgren, In re, 30 App. D. C. 588 19–312
Dahlgren v. Dahlgren, 55 App. D. C. 52, 1 Fed. (2d) 755 12–303
Dahlgren v. National Sav. & Trust Co., 41 App. D. C. 201 18–612
Daine v. Price, 63 A. 2d 767 28–113, 28–1101, 28–1202, 28–1203, 28–1405
Daine v. Price, 71 A. 2d 611 11–772, 16–1801, 17–104
Dalton v. White, 129 F. 2d 55, 76 U. S. App. D. C. 93 18–717
Daly v. Sacks, 59 App. D. C. 216, 38 Fed. (2d) 388 13–301
Daly v. Scala, 39 A. 2d 478 11–715, 11–772, 11–775
Dancy v. Clark, 24 App. D. C. 487 29–201, 29–204, 29–231, 45–503
Dane v. United States, 57 App. D. C. 161, 18 Fed. (2d) 811 22–105, 22–1105
Danenhower v. Ball, 8 App. D. C. 137 12–102
Dangerfield v. Williams, 26 App. D. C. 508 12–201
Daniel v. Drury, 50 App. D. C. 107, 267 Fed. 751 12–201
Dante, Ex parte, 228 U. S. 429 11–205
Dante v. Hutchins, 49 App. D. C. 348, 265 Fed. 988 16–1801
Dante v. Miniggio, 46 App. D. C. 162 11–504
Darby v. Montgomery County Nat. Bank, 63 App. D. C. 313, 72 Fed. (2d) 181 11–317, 11–318
Darnall v. United States, 33 A. 2d 734 22–2722, 23–301
Davenport v. District of Columbia, 61 A. 2d 486 22–3302, 22–3303
Davenport v. District of Columbia, 65 A. 2d 209; app den 180 F. 2d 909, 85 U. S. App. D. C. 430 11–756, 11–772, 14–101, 25–132
Davenport v. District of Columbia, 67 A. 2d 522 25–132
Davenport v. U. S., 56 A. 2d 851, 60 A. 2d 226 8–143, 11–756, 22–503
David v. Nemerofsky, 41 A. 2d 838 11–735
Davidson v. E. F. Brooks Co., 46 App. D. C. 457 38–122
Davidson v. Jones, 34 A. 2d 261 11–772
Davis v. Boyle Brothers, 73 A. 2d 517 11–756
Davis v. Bruno, 57 A. 2d 828 11–722, 11–772
Davis v. Casey, 70 App. D. C. 27, 103 Fed. (2d) 529 28–801
Davis v. Coblens, 174 U. S. 719 16–1501
Davis v. Davis, 305 U. S. 32 16–403
Davis v. Davis, 61 App. D. C. 48, 57 Fed. (2d) 414 16–412
Davis v. Davis, 68 App. D. C. 240, 96 Fed. (2d) 512 16–413
Davis v. District of Columbia, 59 A. 2d 208 36–433, 36–442
Davis v. Fidelity & Deposit Co., 63 App. D. C. 395, 73 Fed. (2d) 118 16–1715, 28–2707, 28–2708
Davis v. Taylor, 51 App. D. C. 97, 276 Fed. 619 11–735, 17–101
Davis v. Trumbull, 61 A. 2d 622 16–307
Davis v. United States, 16 App. D. C. 442 22–501
Davis v. United States, 18 App. D. C. 468 22–2201
Davis v. United States, 37 App. D. C. 126 22–1202, 22–1301, 23–201
Davison v. Cardillo, 143 F. 2d 154, 79 U. S. App. D. C. 121 36–501
Dawson v. District of Columbia, 72 A. 2d 776 22–3302
Dawson v. Fox, 64 A. 2d 162 11–772, 28–1102
Dawson v. Taylor, 55 App. D. C. 237, 4 Fed. (2d) 430 45–611
Dawson v. Waggaman, 23 App. D. C. 428 14–302
De Benque v. United States, 66 App. D. C. 36, 85 Fed. (2d) 202 22–2201, 24–203, 24–204, 24–206
De Bobula v. Coppedge, 40 A. 2d 255 11–772, 21–116, 45–1605, 45–1608
De Bobula v. Tamamian, 55 A. 2d 204 11–772
De Bobula v. Winston, 57 A. 2d 742 11–772, 45–1610
Decatur Corporation v. Friedman, 39 F. Supp. 692 8–110, 9–101
Deffebach v. Lansburgh & Bro., 150 F. 2d 591, 80 U. S. App. D. C. 185 28–1115
De Forest v. United States, 11 App. D. C. 466 49–301
Degge v. Hitchcock, 35 App. D. C. 218 11–305
De Grazia v. Anderson, 58 A. 2d 306, 62 A. 2d 194 11–735, 11–772, 12–302
Dekelbaum v. Lloyd, 41 A. 2d 174 45–1602, 45–1610
Deland v. Wagner, 62 App. D. C. 54, 64 Fed. (2d) 552 38–109, 38–118, 38–120
D'Elia & Marks Co. v. Lyon, 31 A. 2d 647 16–301
Delpan v. Rarosky, 72 A. 2d 33 45–1610
Delsnider v. Gould, 154 F. 2d 844 45–1602, 45–1604, 45–1610, 45–1611
Del Vecchio v. Bowers, 296 U. S. 280 36–501
Del Vecchio v. Bowers, 62 App. D. C. 327, 67 Fed. (2d) 751 36–501
De Marco v. Kertz, 151 F. 2d 305 18–604
De Marcos, Ex parte, 65 F. Supp. 231 16–806, 21–308, 21–315
De Marcos, In re, 139 F. 2d 841, 78 U. S. App. D. C. 187 11–205, 11–208, 16–1001
De Marcos v. Overholser, 137 F. 2d 698, 78 U. S. App. D. C. 131 16–801, 16–806, 21–308
Deming v. Turner, 63 F. Supp. 220 45–816, 47–701, 47–1014
Deming v. Wardman Constr. Co., 59 App. D. C. 254, 39 Fed. (2d) 504 38–101
Dengel v. Brown, 1 App. D. C. 423 45–802
Dennett v. Dennett, 63 App. D. C. 252, 71 Fed. (2d) 975 16–401
Dennis v. Hamilton, 48 App. D. C. 160 11–504, 20–203
Dennis v. United States, 70 S. Ct. 519, 339 U. S. 162, 94 L. Ed. 461 11–1420
DePoilly v. Palmer, 28 App. D. C. 324 23–401

DePue v. District of Columbia, 45 App. D. C. 54 21–301
De Ruiz v. De Ruiz, 66 App. D. C. 370, 88 Fed. (2d) 752 20–701
Desio v. Hutchinson, 36 App. D. C. 68 11–735
Devlin v. Esher, 52 App. D. C. 30, 280 Fed. 1004 16–1301, 16–1304—16–1306
Dewey v. Clark, 61 A. 2d 475 45–1605
Dewey v. Clark, 180 F. 2d 766, 86 U. S. App. D. C. 137 11–715, 11–736
Dexter v. Lichliter, 24 App. D. C. 222 13–108, 13–217
Diamantopoulos v. Glekas, 56 App. D. C. 151, 11 Fed. (2d) 200 20–201, 20–202, 20–204
Diatz v. Washington Technical School, 73 A. 2d 227, reh den 73 A. 2d 718 11–772, 12–301
Dibble v. District of Columbia, 35 A. 2d 825 6–1011, 14–406
Dickhart v. United States, 57 App. D. C. 5, 16 Fed. (2d) 345 17–103
Dickinson v. Brooks, 71 App. D. C. 106, 108 Fed. (2d) 4 15–304, 15–309
Dick Murphy, Inc. v. Holcer, 61 App. D. C. 65, 57 Fed. (2d) 431 12–306
Dicks v. United States, 72 A. 2d 34 11–943
Dieterich v. Dieterich, 48 App. D. C. 356 17–101
Diggs v. Thurston, 39 App. D. C. 267 11–1301, 11–1302
Diggs v. Welch, 148 F. 2d 667 16–801
Dilling v. U. S. 142 F. 2d 473, 79 U. S. App. D. C. 47 11–205, 11–208, 16–1001
Dingman v. Henry, 51 App. D. C. 339, 279 Fed. 795 12–101
District-Florida Corp. v. Penny, 62 App. D. C. 268, 66 Fed. (2d) 794 12–201
District Hauling & Construction Co. v. Argerakis, 34 A. 2d 31 11–772
District Nat. Bank v. Trimble, 46 App. D. C. 319 16–1801
District Nat. Bank v. Washington Loan & Trust Co., 62 App. D. C. 198, 65 Fed. (2d) 831 28–124
District of Columbia v. American Excavation Co., 64 F. Supp. 19 1–804
District of Columbia v. American Oil Co., 59 App. D. C. 260, 39 Fed. (2d) 510 47–1902, 47–1903
District of Columbia v. American Pharmaceutical Ass'n, 133 F. 2d 43, 77 U. S. App. D. C. 94 47–801a
District of Columbia v. Bailey, 171 U. S. 161 1–218, 1–220, 16–1701
District of Columbia v. Bailey, 57 App. D. C. 151, 18 Fed. (2d) 367 40–603, 40–605, 47–1915
District of Columbia v. Ball, 22 App. D. C. 543 28–2406
District of Columbia v. Basiliko, 44 A. 2d 407 5–308, 47–2346
District of Columbia v. Brooke, 214 U. S. 138 6–401, 6–404
District of Columbia v. Buckley, 128 F. 2d 17, 75 U. S. App. D. C. 301 40–609
District of Columbia v. Burns, 32 App. D. C. 203 23–105
District of Columbia v. Cahill, 60 App. D. C. 342, 54 Fed. (2d) 453 5–419, 5–422
District of Columbia v. Camden Iron Works, 181 U. S. 453 7–602
District of Columbia v. Capital Mortg. & Title Co., 84 F. Supp. 788 47–1002, 47–1011
District of Columbia v. Clark, 175 F. 2d 821, 84 U. S. App. D. C. 88 45–812, 47–1607
District of Columbia v. Clawans, 300 U. S. 617 11–616, 17–103, 47–2339, 47–2347
District of Columbia v. Colts, 282 U. S. 63 11–616 40–605
District of Columbia v. Cranford Paving Co., 50 App. D. C. 300, 271 Fed. 374 7–601
District of Columbia v. Dewalt, 31 App. D. C. 326 2–808
District of Columbia v. Frazer, 21 App. D. C. 154 12–201, 13–301
District of Columbia v. Fred, 281 U. S. 49 40–302, 40–303
District of Columbia v. Gant, 28 App. D. C. 186 23–105
District of Columbia v. Gardner, 54 App. D. C. 390, 298 Fed. 1005 31–114
District of Columbia v. Garrison, 25 App. D. C. 563 23–105
District of Columbia v. Georgetown & T. R. Co., 59 App. D. C. 335, 41 Fed. (2d) 424 47–1918
District of Columbia v. Georgetown Gas Light Co., 45 App. D. C. 63 35–105, 47–1701
District of Columbia v. Hamilton National Bank, 76 A. 2d 60 4–160, 12–208, 26–601, 28–2503
District of Columbia v. H. D. Lee Co., 161 F. 2d 646 47–1502
District of Columbia v. Humphries, 11 App. D. C. 68 11–205
District of Columbia v. Hunt, 163 F. 2d 833, 82 U. S. App. D. C. 159 11–722, 22–3302, 22–3305
District of Columbia v. Hutton, 143 U. S. 18 4–103
District of Columbia v. Johnson & Wimsatt, 160 F. 2d 913 47–1504
District of Columbia v. Kendall, 57 App. D. C. 271, 20 Fed. (2d) 287 11–616, 23–105
District of Columbia v. Lloyd, 160 F. 2d 581 47–1601
District of Columbia v. Lockwood, 57 App. D. C. 270, 20 Fed. (2d) 286 5–101
District of Columbia v. Lynham, 16 App. D. C. 85 23–105, 33–101, 33–103
District of Columbia v. Metropolitan R. Co., 8 App. D. C. 322 28–2701
District of Columbia v. Monumental Motor Tours, 122 F. 2d 195, 74 App. D. C. 147 47–2331
District of Columbia v. Morris, 159 F. 2d 13 47–1202, 47–1203, 47–2403, 47–2404
District of Columbia v. Mt. Vernon Seminary, 69 App. D. C. 251, 100 Fed. (2d) 116 29–403, 29–404, 31–302, 47–802
District of Columbia v. Moyer, 68 App. D. C. 98, 93 Fed. (2d) 527 23–101, 40–603
District of Columbia v. Murphy, 62 S. Ct. 303, 314 U. S. 441 47–1502
District of Columbia v. Nash, 57 App. D. C. 269, 20 Fed. (2d) 285 5–101
District of Columbia v. Newman, 59 App. D. C. 163, 37 Fed. (2d) 444 31–610, 31–617
District of Columbia v. Pace, 64 S. Ct. 406, 320 U. S. 698 47–2404

District of Columbia v. Petty, 229 U. S. 593 47–112
District of Columbia v. Riggs Nat. Bank, 58 App. D. C. 349, 30 Fed. (2d) 873 47–1207, 47–1701
District of Columbia v. Robinson, 30 App. D. C. 283 49–301
District of Columbia v. Roth, 18 App. D. C. 547 11–205
District of Columbia v. R. P. Andrews Paper Co., 256 U. S. 582 7–901
District of Columbia v. Safe Deposit & Trust Co. of Baltimore, 116 F. 2d 21, 72 App. D. C. 197 47–1601, 47–1608
District of Columbia v. Simpson, 40 App. D. C. 498 23–101
District of Columbia v. Simpson, 47 App. D. C. 6 33–301
District of Columbia v. Smith, 63 App. D. C. 363, 72 Fed. (2d) 735 4–405, 4–504
District of Columbia v. Smith, 68 App. D. C. 104, 93 Fed. (2d) 650 40–603
District of Columbia v. Thompson, 281 U. S. 25 7–211, 11–703, 12–201
District of Columbia v. Tyrrell, 41 App. D. C. 463 1–101
District of Columbia v. Vestry of St. James Parish, 153 F. 2d 621 47–801b
District of Columbia v. Washington Market Co., 108 U. S. 243 10–137
District of Columbia v. Washington Terminal Co., 47 App. D. C. 570 13–301
District of Columbia v. Wheeler, 57 App. D. C. 106, 17 Fed. (2d) 953 1–224, 40–602
District of Columbia v. Wilcox, 4 App. D. C. 90 16–1201
District of Columbia v. Woodbury, 136 U. S. 450 1–102, 7–102, 22–3122
District of Columbia v. World Fire and Marine Insurance Co., 68 A. 2d 222 1–902, 12–208
District of Columbia ex rel. Langellotti v. Fidelity & Deposit Co., 50 App. D. C. 309, 271 Fed. 383 24–415, 28–2405
Dobbins v. Thomas, 26 App. D. C. 157 30–208, 30–211
Dobbins v. Thomas, 30 App. D. C. 511 30–208
Dobbins v. U. S., 157 F. 2d 257 14–307, 22–1202, 22–1301, 22–2203
Dodd v. Peak, 60 App. D. C. 68, 47 Fed. (2d) 430 11–601, 11–602, 11–616
Dodge v. Freedman's Sav. & Trust Co., 106 U. S. 445 45–616
Doerschuck v. Mellon, 60 App. D. C. 383, 55 Fed. (2d) 741 13–108
Doherty v. Kalmbach, 66 App. D. C. 322, 87 Fed. (2d) 539 11–312, 11–1101
Doherty v. Stoner, 169 F. 2d 965 20–605
Doing v. District of Columbia, 67 A. 2d 396 40–804
Doleman v. Levine, 295 U. S. 221 16–1202, 18–704, 18–705, 18–708
Donald v. United States, 70 App. D. C. 14, 102 Fed. (2d) 618 22–1504
Donnelley v. United States, 276 U. S. 505 25–132
Doremus v. National Cotton Impr. Co., 39 App. D. C. 295 13–103
Dorsey v. Gill, 148 F. 2d 857, 80 U. S. App. D. C. 9 16–801, 16–806
Dorsey v. Gotwals, 61 App. D. C. 41, 57 Fed. (2d) 407 5–401
Dorsey v. Peak, 58 App. D. C. 54, 24 Fed (2d) 892 11–616, 40–301
Dostal, Ex parte, 243 Fed. 664 39–401
Dougherty v. American Security & Trust Co., 59 App. D. C. 301, 40 Fed. (2d) 813 7–611, 47–1101
Dougherty v. Galliher, 58 App. D. C. 166, 26 Fed. (2d) 538 7–117, 16–601
Dougherty v. United States ex rel. Browning, 60 App. D. C. 8, 45 Fed. (2d) 926 4–501, 4–505
Dougherty v. United States ex rel. Roberts, 58 App. D. C. 308, 30 Fed. (2d) 471 4–501, 4–507, 4–517
Dowling v. Buckley, 27 App. D. C. 205 11–735
Dowling v. United States, 41 App. D. C. 11 22–1202, 22–1401
Downey v. United States, 67 App. D. C. 192, 91 Fed. (2d) 223 11–315, 16–801
Downs v. Karsh, 33 A. 2d 620 45–1605
Drake v. United States ex rel. Bates, 30 App. D. C. 312 35–101, 35–202, 35–1201
Drazich v. Archer, 282 U. S. 893 11–1508
Dreslin v. Phillips, 51 App. D. C. 324, 279 Fed. 303 11–743
Droop v. Ridenour, 11 App. D. C. 224 14–402
Drum v. Benton, 13 App. D. C. 245 35–901
Duckett v. Duckett, 150 F. 2d 985 17–101, 19–312
Duckett v. Duckett, 134 F. 2d 527, 77 U. S. App. D. C. 303 14–302, 19–101, 19–312
Duehay v. Acacia Mut. Life Ins. Co., 70 App. D. C. 245, 105 Fed. (2d) 768 11–512, 18–501, 18–520, 20–505
Dugan v. Northcutt, 7 App. D. C. 351 17–101, 19–301, 19–312
Dulany v. Morse, 39 App. D. C. 523 45–501, 45–601
Duncanson v. Manson, 3 App. D. C. 260 18–607, 18–612
Dunigan, D. J., Inc. v. District of Columbia, 59 App. D. C. 384, 44 Fed. (2d) 892 1–228
Dunn v. O'Connor, 67 App. D. C. 76, 89 Fed. (2d) 820 26–101, 26–301, 26–308, 26–322, 29–215
Dunn v. Parker, 8 F. R. D. 373 13–108
Dunning v. Harrah, 65 App. D. C. 92, 80 Fed. (2d) 535 11–201, 17–101
Dunning v. Randall Hagner Co., 63 A. 2d 770 45–1601, 45–1605, 45–1610, 45–1611
Dunnington v. Dunnington, 45 App. D. C. 277 16–410
Durant v. Murdock, 3 App. D. C. 114 12–201, 16–1901
Dutton v. Parish, 34 App. D. C. 393 15–101
Duvall v. Humphrey, 153 F. 2d 798 21–310, 21–315
Duvall v. Southern Municipal Corp., 63 A. 2d 336 11–703, 11–755
Dyker Bldg. Co. v. U. S., 182 F. 2d 85, 86 U. S. App. D. C. 297 28–2708
Dysert v. Ring Management Company, 69 A. 2d 655 45–1604

E

Eagles v. United States, 58 App. D. C. 122, 25 Fed. (2d) 546 11–1407, 11–1413

Earll v. Picken, 72 App. D. C. 91, 113 Fed. (2d) 150 28–2708
Early v. Early, 49 App. D. C. 123, 261 Fed. 1003 14–306, 16–410, 16–419
Easterday v. United States, 53 App. D. C. 387, 292 Fed. 664 22–1401, 23–203
Eastern Acceptance Corp. v. Henry, 62 A. 2d 309 28–402, 28–407, 28–801
Eastern Bldg. & Loan Assn. v. Olmsted, 16 App. D. C. 387 26–406
Eastern Shore Shipbuilding Corp., In re, 274 Fed. 893 29–201, 29–203, 29–204
Eastman Kodak Co. v. District of Columbia, 131 F. 2d 347, 76 U. S. App. D. C. 339 47–1502, 47–1504, 47–1529, 47–2404
Eberman v. Massachusetts Bonding & Ins. Co., 41 A. 2d 844 45–1401, 45–1402, 45–1405
Eberhard v. Mehlman, 60 A. 2d 540 11–772
Ebert v. Ebert, 148 F. 2d 226, 80 U. S. App. D. C. 69 16–410
Ecker v. Potts, 72 App. D. C. 174, 112 Fed (2d) 581 11–312, 11–504
Eckloff v. District of Columbia, 135 U. S. 240 4–119, 4–121
Eclipse Bicycle Co. v. Farrow, 23 App. D. C. 411 16–106
Edward Thompson Co. v. Thomas, 60 App. D. C. 118, 49 Fed. (2d) 500 11–723
Eclov v. Dalton, 38 A. 2d 661 11–772
Edgerton v. Kingsland, 168 F. 2d 128 16–1001
Edmonston v. Stanley, 76 A. 2d 778 11–774
Edwards v. Brownlow, 50 App. D. C. 331, 271 Fed. 797 7–204
Edwards v. District of Columbia, 68 A. 2d 286 13–102, 25–109
Edwards v. Fox, 40 App. D. C. 439 28–402
Edwards v. U. S., 139 F. 2d 365, 78 U. S. App. D. C. 226 11–205, 11–322, 22–1801, 22–2201, 22–2901
Eesley v. Dottellis, 61 A. 2d 564 11–772
Egan v. United States, 52 App. D. C. 384, 287 Fed. 958 22–105, 22–701
Eggleston v. Wayland, 56 App. D. C. 77, 10 Fed. (2d) 642 45–302
Eggleton v. Vaughn, 45 A. 2d 362 11–717, 11–756
Eichberg v. United States Shipping Bd., 51 App. D. C. 44, 273 Fed. 886 16–102
Eichelberger v. Symons, 53 App. D. C. 116, 288 Fed. 654 11–1501, 16–410, 16–417
Eide v. Traten, 73 A. 2d 522 11–772, 45–1609, 45–1610
Eisinger v. E. J. Murphy Co. 52 App. D. C. 197, 285 Fed. 931 28–121
Electric Storage Battery Co. v. District of Columbia, 155 F. 2d 867 11–205, 28–1203, 47–1502
Electrical Workers Ben. Assn. v. Brown, 58 App. D. C. 203, 26 Fed. (2d) 981 35–901
Elkins v. Elkins, 55 App. D. C. 9, 299 Fed. 690 16–413
Ellerbe v. Goldberg, 60 A. 2d 232 11–772, 11–805, 11–815, 16–307
Elliott v. United States, 23 App. D. C. 456 11–305
Ellis v. Ellis, 51 App. D. C. 383, 280 Fed. 457 14–302
Ellis v. Morgan, 65 A. 2d 797 11–772, 14–101, 45–1408
Ellison v. Splain, 49 App. D. C. 99, 261 Fed. 247 23–401
Elmhurst v. Shoreham Hotel, 58 F. Supp. 484 49–301
El Paso & N. E. R. Co. v. Gutierrez, 215 U. S. 87 44–401
Emack v. Campbell, 14 App. D. C. 186 16–1302, 38–110
Emack v. Rushenberger, 8 App. D. C. 249 38–110, 38–122
Emery v. Emery, 45 App. D. C. 576 11–504
Employers Liability Assur. Corp. v. Hoage, 63 App. D. C. 53, 69 Fed. (2d) 227 36–501
Employer's Liability Assur. Corp. v. Hoage, 67 App. D. C. 245, 91 Fed. (2d) 318 36–501
Emrich v. McNeil, 126 F. 2d 841, 75 U. S. App. D. C. 307 11–325, 16–410, 16–413, 21–101
Encyclopaedia Britannica v. Shannon, 133 F. 2d 397, 77 U. S. App. D. C. 125 13–103
Endy v. Baltimore and Ohio Railway Company, 73 A. 2d 514 11–772
Engle v. United States, 48 App. D. C. 466 22–1301
Epps v. U. S. 157 F. 2d 11 22–2204
Equitable Surety Co. v. United States ex rel. McMillan, 234 U. S. 448 1–804
Equitable Trust Co. v. Denver & R. G. R. Co. 250 Fed. 327 17–101
Ercoli v. U. S., 131 F. 2d 354, 76 U. S. App. D. C. 360 40–606
Etelson v. André, 61 A. 2d 806 11–736
Ethyl Gasoline Corporation v. Coe, 139 F. 2d 372, 78 U. S. App. D. C. 233 11–205
Etty v. Federal Consulting Service, 59 A. 2d 692 11–756, 11–772
Etty v. Middleton, 62 A. 2d 371 11–755, 11–772
Eureka-Maryland Assurance Co. v. Gray, 121 F. 2d 104, 74 App. D. C. 191 14–308, 35–203, 35–1002
Eury v. Huff, 146 F. 2d 17, 79 U. S. App. D. C. 289 16–801, 16–806
Evans v. Evans, 60 App. D. C. 371, 55 Fed. (2d) 533 18–211, 18–703
Evans v. Evans, 36 F. Supp. 12 11–326, 16–413
Evans v. Humphreys, 9 App. D. C. 392 11–320
Evans v. Neumann, 51 App. D. C. 300, 278 Fed. 1013 30–101
Evans v. Rives, 126 F. 2d 633, 75 U. S. App. D. C. 242 11–901, 16–806, 22–903
Evans v. Schlein, 61 A. 2d 32 45–1610
Evans v. United States, 30 App. D. C. 58 23–105
Evans v. United States, 31 App. D. C. 544 22–1601
Everett v. Miller, 67 A. 2d 399 11–736, 11–755
Ewald v. Lane, 70 App. D. C. 89, 104 Fed. (2d) 222 22–2304, 30–208
Ewing v. United States ex rel. Fowler Car. Co., 45 App. D. C. 185 16–1001
Ewing v. U. S., 135 F. 2d 633, 77 U. S. App. D. C. 14 22–2801

F

Fabianich v. Hart, 31 A. 2d 881 45–1609
Fabrizio v. Anderson, 62 A. 2d 314 11–772, 28–401, 28–406, 28–407
Fairclaw v. Forrest, 130 F. 2d 829, 76 U. S. App. D. C. 197 19–201, 19–205, 30–201, 30–208
Fairmac Corp. v. Roberts, 67 A. 2d 684 45–1604
Fall v. United States, 60 App. D. C. 124, 49 Fed. (2d) 506 11–1418

Fardon v. Washington Loan & Trust Co., 44 App. D. C. 69 19–304, 19–309
Farnsworth v. Zerbst, 98 Fed. (2d) 541 24–203
Farr v. Palmer, 24 App. D. C. 234 23–401
Farrell v. Ward, 53 A. 2d 46 1–102, 43–1519, 43–1521
Faulks v. Schrider, 69 App. D. C. 137, 99 Fed. (2d) 370 1–605, 1–614, 7–214, 45–101
Faulks v. Schrider, 114 F. 2d 587, 72 App. D. C. 308 12–201, 16–515
Faunce v. Woods, 55 App. D. C. 330, 5 Fed. (2d) 753 12–302, 14–302
Fay v. Macfarland, 32 App. D. C. 295 7–204
Fay v. Miller, 183 F. 2d 986 43–301
Fazio v. Cardillo, 71 App. D. C. 264, 109 Fed. (2d) 835 36–501
Fearson v. United States, 10 App. D. C. 536 22–2401
Fedarwisch v. Alsop, 18 App. D. C. 318 16–1901
Federal Communications Commission v. Pottsville Broadcasting Co., 60 S. Ct. 437, 309, U. S. 134 11–205, 17–101
Federal Intermediate Credit Bank v. Mitchell, 38 Fed. (2d) 824 11–1512
Federal Trade Comm. v. Klesner, 274 U. S. 145 11–305, 11–324, 17–101
Federal Trade Comm. v. Millers Nat. Federation, 57 App. D. C. 360, 23 Fed. (2d) 968 11–306
Fehlhaber Pile Co. v. Tennessee Val. Authority 155 F. 2d 864, 81 U. S. App. D. C. 124 11–305, 11–306, 13–103
Fellowship Foundation v. District of Columbia, 179 F. 2d 56, 86 U. S. App. D. C. 40 47–801
Feltman v. Sammond, 166 F. 2d 213, 82 U. S. App. D. C. 404 17–101
Felton v. U. S., 170 F. 2d 153 22–2901
Ferguson v. Dent, 46 Fed. 88 11–1509
Ferguson v. District of Columbia, 270 U. S. 633 17–103
Ferguson v. Washington & R. G. Co., 6 App. D. C. 525 16–1202
Ferguson Contracting Co. v. Coal & Coke R. Co., 33 App. D. C. 159 13–103
Ferranti v. Capital Transit Co., 38 A. 2d 116 11–772
Feucht v. Keller, 70 App. D. C. 117, 104 Fed. (2d) 250 12–201
Fidelity & Casualty Co. v. Burris, 61 App. D. C. 228, 59 Fed. (2d) 1042 36–501
Fidelity & Deposit Co. v. Hurley, 63 App. D. C. 377, 72 Fed. (2d) 927 16–311
Fidelity & Deposit Co. v. Shepherd, 56 App. D. C. 117, 11 Fed. (2d) 563 16–311
Fidelity & Deposit Co. of Maryland v. McQuade 123 F. 2d 337, 74 App. D. C. 383 11–504, 15–104
Fidelity Sav. Co. v. Fawcett, 57 App. D. C. 285, 22 Fed. (2d) 591 15–401
Fidelity Sav. Co. v. Security Sav. & Commercial Bank, 55 App. D. C. 180, 3 Fed. (2d) 351 16–303, 16–317
Fidelity Storage Co. v. Jaques, 61 App. D. C. 337, 62 Fed. (2d) 876 17–101
Fidelity Storage Co. v. Kingsbury, 64 App. D. C. 208, 76 Fed. (2d) 978 28–1803, 28–2006
Fidelity Storage Co. v. Reliable Stores Corp., 63 App. D. C. 83, 69 Fed. (2d) 569 28–1921, 28–1922, 42–103
Fidelity Storage Corp. v. Trussed Concrete Steel Co., 35 App. D. C. 1 38–101, 38–102
Fields v. Gwynn, 19 App. D. C. 99 45–812
Fields v. United States, 27 App. D. C. 433 11–320, 22–1210, 29–701
Fields v. U. S., 164 F. 2d 97 14–104
Fifth Congregational Church v. Bright, 28 App. D. C. 229 28–801
Filippone v. District of Columbia, 61 A. 2d 565 11–772
Fillipone v. United States, 55 App. D. C. 126, 2 Fed. (2d) 928 11–907
Fink v. Katz, 68 A. 2d 813 16–301
Finney v. Pennsylvania Iron Works Co., 22 App. D. C. 476 13–203
Firestone Tire and Rubber Company v. Billow, To the Use of American Automobile Insurance Company, 65 A. 2d 338 11–772
First Nat. Bank v. Fox, 40 App. D. C. 430 28–205
First Nat. Bank v. United States (D. C. D. C.), 30 Fed. Supp. 730 21–115, 21–116
First Nat. Bank, Ex parte, 228 U. S. 516 11–205
Fischer v. Munsey Trust Co., 44 App. D. C. 212 11–317
Fishel v. Kite, 69 App. D. C. 360, 101 Fed. (2d) 685 15–201, 15–301, 15–303
Fisher v. District of Columbia, 164 F. 2d 707, 82 U. S. App. D. C. 371 47–709, 47–1601, 47–1602
Fisher v. U. S. 149 F. 2d 28 22–2401
Fisher, V. G., Art Co., v. Huchins, 41 App. D. C. 156 42–101
Fitzgan v. Burke, 61 A. 2d 721 12–302
Fitzgerald v. Wiley, 22 App. D. C. 329 16–1901
Fitzgerald v. Wynne, 1 App. D. C. 107 11–503, 45–501
Fitzhugh v. District of Columbia, 71 App. D. C. 290, 109 Fed. (2d) 837 21–304, 21–306, 21–318, 21–319, 32–401, 32–406
Fitzwater's Guardianship, In re, 69 F. Supp. 866 20–605
Flaherty v. Columbus, 41 App. D. C. 525 45–816
Flanaghan v. Charles H. Thompkins Co., 182 F. 2d 92, 86 U. S. App. D. C. 307 28–2708
Flannery v. Maine Red Granite Co., 3 App. D. C. 395 12–305
Fleischhauer v. Hazen, 80 F. Supp. 74 4–507
Fleming v. Capital Trac. Co., 40 App. D. C. 489 16–1202, 16–1203
Fleming v. Tate, 156 F. 2d 848 16–806, 24–206
Fletcher v. Coomes, 52 App. D. C. 159, 285 Fed. 893 11–1501, 11–1502, 16–1301
Fletcher v. Evening Star Newspaper Co., 114 F. 2d 582, 72 App. D. C. 303 17–101
Fletcher v. Kellogg, 55 App. D. C. 97, 2 Fed. (2d) 315 15–201
Fletcher v. McMahon, 121 F. 2d 729, 73 App. D. C. 263 11–603, 22–3102
Fletcher v. Stephens, 133 F. 2d 394, 77 U. S. App. D. C. 98 17–101
Fletcher v. United States, 42 App. D. C. 53 11–1407, 22–107, 22–2304, 22–2501
Fletcher v. U. S., 49 A. 2d 88 22–1502

Fletcher v. Wheat, 69 App. D. C. 259, 100 Fed. (2d) 432 11–305, 11–1302
Flick, In re, 76 F. Supp. 979 16–801
Flynn v. Potomac Elec. Power Co., 60 App. D. C. 82, 47 Fed. (2d) 978 15–304, 16–303, 16–317
Fogle v. General Credit, 122 F. 2d 45, 74 App. D. C. 208 40–603, 42–101
Foley, Ex parte, 243 Fed. 470 39–401
Follansbee v. Follansbee, 1 App. D. C. 326 18–202, 30–216
Fontano v. Robbins, 18 App. D. C. 402 16–1701
Ford v. Ford, 27 App. D. C. 401 45–402
Forrester v. Jerman, 67 App. D. C. 167, 90 Fed. (2d) 412 40–403
Forster v. Eliot, 52 App. D. C. 107, 282 Fed. 735 45–820
Forte v. United States, 65 App. D. C. 355, 83 Fed. (2d) 612 22–1501, 22–1504
Foster v. Goldsoll, 48 App. D. C. 505 22–1301, 23–401
1425 F. St. Corp. v. Jardin, 53 A. 2d 278 11–772, 11–809
Fowel v. Continental Life Ins. Co., 55 A. 2d 205 11–735, 45–910
Fowel v. Wood, 62 A. 2d 636 11–772, 14–101, 14–301
Fowler v. Gill, 156 F. 2d 565, 81 U. S. App. D. C. 167 16–801, 16–806
Fowler v. Koehler, 43 App. D. C. 349 1–625
Fowler v. Pilson, 123 F. 2d 918, 74 App. D. C. 340 12–203
Fowler v. Rapley, 15 Wall. (82 U. S.) 328 45–915
Fowler v. Saks, 7 Mackey (18 D. C.) 570 1–625
Fox v. Johnson (D. C. D. C.), 31 Fed. Supp. 64 29–204
France v. Coleman, 29 App. D. C. 386 16–102
Frank v. Malone, 126 F. 2d 651, 75 U. S. App. D. C. 296 11–703, 11–733, 16–313, 20–501
Frankfurt v. District of Columbia, 65 A. 2d 197 45–1605, 45–1610
Franklin v. Chas. C. Schulman Co., 31 A. 2d 871 11–772, 11–774
Franklin v. Franklin, 171 F. 2d 12, 83 U. S. App. D. C. 385 16–415
Fraser v. Crounse, 45 A. 2d 757, 47 A. 2d 96, 56 A. 2d 54 11–756, 11–771, 11–772, 11–774, 11–775, 11–1501
Fraser v. Doing, 130 F. 2d 617, 76 U. S. App. D. C. 111 17–101
Frazier v. Kutz, 139 F. 2d 380, 78 U. S. App. D. C. 241 11–504, 18–717, 20–216
Frazier v. United States, 69 S. Ct. 201, 335 U. S. 497, 93 L. Ed. 187, reh. den. 336 U. S. 907, 69 S. Ct. 488, 93 L. Ed. 1072 11–1407, 11–1420
Freeman v. Pew, 61 App. D. C. 223, 59 Fed. (2d) 1037 12–201
Freid v. McGrath, 133 F. 2d 350, 76 U. S. App. D. C. 388 17–101
Frend v. United States, 69 App. D. C. 281, 100 Fed. (2d) 691 22–105
Frene v. Louisville Cement Co., 134 F. 2d 511, 77 U. S. App. D. C. 129 13–103, 13–108
Frene v. Muratori, 142 F. 2d 768, 79 U. S. App. D. C. 101 19–312
Fretz v. U. S., 140 F. 2d 468, 78 U. S. App. D. C. 290 22–1801, 22–2202
Frey v. Allen, 9 App. D. C. 400 18–215
Frey v. Frey, 61 App. D. C. 232, 59 Fed. (2d) 1046 16–403, 16–406, 30–101
Friedenwald v. Friedenwald, 57 App. D. C. 13, 16 Fed. (2d) 509 16–410
Friedlander v. Rapley, 38 App. D. C. 208 13–208, 22–1301
Friedman v. Decatur Corporation, 135 F. 2d 812, 77 U. S. App. D. C. 326 17–101
Friedman v. Kennedy, 40 A. 2d 72 45–1605, 45–1610, 45–1611
Friedman v. Sherman, 74 A. 2d 57 45–904, 45–1605
Frisby v. United States, 35 App. D. C. 513 22–1401
Frisby v. United States, 38 App. D. C. 22 22–1401
Frizell v. Murphy, 19 App. D. C. 440 11–318, 11–320
Frizzell v. United States, 55 App. D. C. 103, 2 Fed. (2d) 398 11–907
Frye v. Batavia (N. Y.) Veterans' Administration Emp. Federal Credit Union No. 189, Inc., 8 F. R. D. 334 13–103
Frye v. U. S., 72 F. Supp. 405 4–507
Fullam, In re, 152 F. 2d 141, 80 U. S. App. D. C. 273 16–1001
Fuller v. United States, 53 App. D. C. 88, 288 Fed. 442 22–1401
Fuller v. United States, 65 A. 2d 589 11–944, 11–945
Fulton v. Hoage, 64 App. D. C. 232, 77 Fed. (2d) 110 36–501
Fulton v. United States, 45 App. D. C. 27 22–1202, 23–201
Fulton R. Gordon, Inc. v. Schram, 44 A. 2d 662 45–1602, 45–1605, 45–1610
Furqueron v. U. S. 158 F. 2d 193 22–2901
Furr v. U. S. 32 A. 2d 111 22–2202

G

Gaines v. Gaines, 157 F. 2d 521, 81 U. S. App. D. C. 260 13–108, 13–109, 16–410
Gallen, In re (D. C. D. C.), 18 Fed. Supp. 683 21–126
Galloway v. Bell, 56 App. D. C. 172, 11 Fed. (2d) 558 43–301, 43–323
Galt v. Todd, 5 App. D. C. 350 15–101, 15–204
Gambill v. Aderhold, 4 Fed. Supp. 567 22–2601
Gannon v. Manning, 42 App. D. C. 206 12–305
Garcia v. De Leon, 59 A. 2d 637 36–501
Garden City Feeder Co. v. Com. Int. Rev., 75 Fed. (2d) 804 14–103
Gardner v. Capital Transit Co., 152 F. 2d 288 11–305, 17–101
Garnett v. United States, 11 Wall. (78 U. S.) 256 11–316
Garrett v. District of Columbia, 159 F. 2d 457 47–1506
Garrett v. Garrett, 61 App. D. C. 309, 62 Fed. (2d) 471 16–413
Garrity v. District of Columbia, 66 App. D. C. 256, 86 Fed. (2d) 207 5–412
Gasque v. Saidman, 44 A. 2d 537 40–403
Gassenheimer v. District of Columbia, 6 App. D. C. 108 11–301, 11–602
Gassenheimer v. United States, 26 App. D. C. 432 22–1202, 22–1203, 22–1204
Gaston v. U. S., 143 F. 2d 10, 79 U. S. App. D. C. 37 17–101, 24–102

Geist v. United States, 26 App. D. C. 594 22–1301
General Broadcasting System v. Bridgeport Broadcasting Station, 53 Fed. (2d) 664 11–208
General Credit v. Universal Credit Co., 69 App. D. C. 80, 99 Fed. (2d) 115 28–1207
General Elec. Co. v. District of Columbia, 71 App. D. C. 321, 110 Fed. (2d) 261 47–2406
General Elec. Co. v. Hygrade Sylvania Corp., 61 F. Supp. 476 11–307
George v. Capital Trac. Co., 54 App. D. C. 144, 295 Fed. 965 17–104
Georgetown College v. Stone, 61 App. D. C. 200, 59 Fed. (2d) 875 36–501
George Washington University v. Riggs Nat. Bank, 66 App. D. C. 389, 88 Fed. (2d) 771 19–110
Georgia Casualty Co. v. Hoage, 61 App. D. C. 195, 59 Fed. (2d) 870 36–501
Geracy, Inc. v. Hoover, 133 F. 2d 25, 77 U. S. App. D. C. 55 16–1903
Germaine v. Cramer, 65 A. 2d 573 11–772
German Soc. v. Prospect Hill Cemetery, 2 App. D. C. 310 13–301
Gersing, In re, 145 F. 2d 481, 79 U. S. App. D. C. 245 16–801, 16–806
Gersing v. Chafitz, 133 F. 2d 384, 77 U. S. App. D. C. 38 17–101
Gertman v. Burdick, 123 F. 2d 924, 75 U. S. App. D. C. 48 45–102, 49–301
Gibson v. Gibson, 53 App. D. C. 380, 292 Fed. 657 18–215
Gibson v. Industrial Bank of Washington, 36 A. 2d 62 11–772, 13–401, 18–211, 19–103, 26–201
Gilbert v. Washington Benefit Assn., 21 App. D. C. 344 16–102
Gilbert v. Washington Beneficial Endowment Assn., 10 App. D. C. 316 17–101, 29–211
Gill v. Gill, 147 F. 2d 154, 79 U. S. App. D. C. 357 16–415
Gill v. Kahl-Holt Co., 47 App. D. C. 53 42–103
Gillars v. U. S. 182 F. 2d 962, 86 U. S. App. D. C. 386 14–101
Gillem v. Carusi, 59 App. D. C. 46, 32 Fed. (2d) 942 31–114
Ginder v. Guiffrida, 61 App. D. C. 338, 62 Fed. (2d) 877 11–724, 15–103
Gittleson v. Robinson, 61 A. 2d 635 11–756, 11–772
Givens v. Goldstein, 52 A. 2d 725 11–772
Glassman v. Graver, 56 A. 2d 160 11–772, 45–1602, 45–1610
Glenn v. Mindell, 74 A. 2d 835 11–755, 45–906
Glenn v. Sothoron, 4 App. D. C. 125 12–201 18–612, 29–211
Glennan v. Glennan, 3 App. D. C. 333 16–419
Glennan v. Lincoln Inv. Corp., 71 App. D. C. 365, 110 Fed. (2d) 130 12–201, 12–305
Glennon v. Butler, 66 A. 2d 519 11–772, 29–804, 45–501, 45–1605
Globe Clothing Shop v. Skolnick, 50 A. 2d 271 11–722, 45–904
Globe Indemnity Co. v. United States, 291 U. S. 476 1–804
Glover v. Jewish War Veterans of United States, 68 A. 2d 233 11–772
Glover v. Patten, 165 U. S. 394 18–518, 19–109
Goff v. United States, 22 App. D. C. 512 28–2406
Goldberg v. Charles C. Koones & Co., 66 A. 2d 495 45–1610
Goldberg v. Roumel, 40 A. 2d 253, 47 A. 2d 790 11–772, 11–804, 11–808, 45–1610
Goldberg v. Southern Builders, Inc., 184 F. 2d 345 13–103
Goldberg v. Stouck, 76 A. 2d 785 11–772, 14–101
Goldsmith v. Clabaugh, 55 App. D. C. 346, 6 Fed. (2d) 94 2–906
Goldsmith v. Valentine, 35 App. D. C. 299 17–101
Goldwyn Distributing Corp. v. Carroll, 51 App. D. C. 75, 276 Fed. 63 5–301
Golf, Inc. v. District of Columbia, 62 App. D. C. 309, 67 Fed. (2d) 575 5–412, 5–422
Gompers v. Buck's Stove & Range Co., 221 U. S. 418 17–101
Gompers v. United States, 233 U. S. 604 17–101, 49–301
Gonzales v. United States, 40 App. D. C. 450 24–301
Goodacre v. Shulmier, 64 App. D. C. 10, 73 Fed. (2d) 519 12–201
Goodale v. Splain, 42 App. D. C. 235 23–401
Goodall v. U. S., 180 F. 2d 397, 86 U. S. App. D. C. 148 cert. den. 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924 22–2401, 22–2403
Goode v. United States, 44 App. D. C. 162 11–317, 11–318
Goode v. U. S., 149 F. 2d 377, 80 U. S. App. D. C. 67 14–305
Goodloe v. Hawk, 72 App. D. C. 287, 113 Fed. (2d) 753 30–101
Goodman v. District of Columbia, 50 A. 2d 812 32–782, 45–781, 45–788
Goodman v. Wren, 34 App. D. C. 516 16–1301
Gordon v. Tino, 50 A. 2d 593 11–736, 45–902, 45–1605
Gordon v. United States, 53 App. D. C. 154, 289 Fed. 552 14–305
Gotwals v. Miller, 61 App. D. C. 402, 59 Fed. (2d) 1051 7–611
Gould, Ex parte, 51 F. Supp. 354 24–209
Gould v. Butler, 31 A. 2d 867 45–1601, 45–1605
Gould v. Com. Int. Rev., 21 B. T. A. 824 29–216
Gould v. Delsnider, 42 A. 2d 140, 81 U. S. App. D. C. 54 11–772, 45–1602, 45–1608, 45–1610
Gould v. Green, 141 F. 2d 533, 78 U. S. App. D. C. 363 24–201, 24–206, 24–208
Gracie v. American Security & Trust Co., 51 App. D. C. 141, 277 Fed. 543 11–325, 11–503, 11–504, 13–215, 19–301, 19–304, 19–307
Grafton v. Paine, 7 App. D. C. 257 16–102
Graham v. Brotherhood of Locomotive Firemen and Enginemen, 70 S. Ct. 14, 338 U. S. 232, 94 L. Ed. 1 11–308
Graham v. Fitch, 13 App. D. C. 569 13–108, 16–301
Grant v. United States, 28 App. D. C. 169 22–2401
Graves v. MacDonald, 47 A. 2d 91 11–774
Gray v. District of Columbia, 1 App. D. C. 20 28–2701
Gray v. Droze, 55 A. 2d 340 11–772, 13–105
Gray v. Ward, 45 App. D. C. 498 11–703
Great American Indemnity Co. v. Cardillo, 135 F. 2d 241, 77 U. S. App. D. C. 306 36–501

Great Atlantic & Pacific Tea Co. v. Cardillo, 127 F. 2d 334, 75 U. S. App. D. C. 342 36–501, 36–502
Great A. & P. Tea Co. v. District of Columbia, 67 App. D. C. 30, 89 Fed. (2d) 502 10–107, 10–134, 11–1420
Green v. Brophy, 71 App. D. C. 299, 110 Fed. (2d) 539 13–108
Green v. Elbert, 137 U. S. 615 11–1507
Green v. Gordon, 38 App. D. C. 443 45–812
Green v. Higgin Mfg. Co., 44 App. D. C. 186 28–721
Green v. Mann, 19 App. D. C. 243 11–743, 15–204
Green v. McIntire, 42 App. D. C. 250 1–101, 11–735
Green v. Peak, 62 App. D. C. 176, 65 Fed. (2d) 809 11–616
Green v. Reeves, 47 App. D. C. 83 12–305
Green v. United States, 25 App. D. C. 549 22–1206
Green v. United States, 40 App. D. C. 426 22–2801
Greene, In re, 140 F. 2d 175, 78 U. S. App. D. C. 320 11–208, 16–801
Greene v. Mindell, 72 A. 2d 775 11–772
Greenwood v. Page, 138 F. 2d 921, 78 U. S. App. D. C. 166 16–1301, 45–201
Griffin v. Clemmer, 169 F. 2d 961 17–101
Griffin v. Griffin, 164 F. 2d 906 11–205
Griffin v. Metropolitan Life Ins. Co., 36 App. D. C. 8 35–203
Griffin v. U. S., 164 F. 2d 903 22–2403
Griffith v. Rudolph, 54 App. D. C. 350, 298 Fed. 672 35–101
Griffith v. Slaybaugh, 58 App. D. C. 237, 29 Fed. (2d) 437 40–603
Griffith v. Stewart, 31 App. D. C. 29 20–501, 20–505
Griffith-Consumers Co. v. Noonan, 136 F. 2d 271 28–1115
Grinnage's Estate, In re, 69 App. D. C. 370, 101 Fed. (2d) 695 20–201
Groff v. Groff, 36 App. D. C. 560 14–501
Groff v. Miller, 20 App. D. C. 353 30–103
Groff v. Miller, 30 W. L. R. 434 17–101
Groo v. Norman, 42 App. D. C. 387 29–201
Groom v. Cardillo, 119 F. 2d 697, 73 App. D. C. 358 36–501
Gross v. Delaney, 34 A. 2d 629 28–203, 28–205, 28–406, 28–407
Gross v. Utilities Engineering Institute, 75 A. 2d 363 11–772
Group Health Assn. v. Moor, (D. C. D. C.), 24 Fed. Supp. 445 29–601, 35–202
Group Health Ass'n v. Shepherd, 37 A. 2d 749 11–772
Guardian Management Corp. v. Huffman, 61 A. 2d 472 16–301, 16–310
Gudmundson v. Cardillo, 126 F. 2d 521, 75 U. S. App. D. C. 230 36–501
Guilford Granite Co. v. Harrison Granite Co., 23 App. D. C. 1 13–103
Gullet v. Gullet, 149 F. 2d 17, 80 U. S. App. D. C. 73 16–415
Gunn v. Brown, 59 A. 2d 518 45–910
Guthrie v. Welch, 24 App. D. C. 562 11–503, 11–504, 11–513, 20–504
Gwin v. Brown, 21 App. D. C. 295 12–201, 16–1501

H

Hainsworth v. District of Columbia, 72 A. 2d 776 22–3302
Haislip v. U. S., 129 F. 2d 53, 76 U. S. App. D. C. 91 24–301, 24–303
Haje's, Inc. v. Wire, 56 A. 2d 158 45–902
Halback v. Hill, 49 App. D. C. 127, 261 Fed. 1007 14–301, 14–306, 14–307
Hale v. United States, 67 Fed. (2d) 673 22–2601
Haliday v. Haliday, 56 App. D. C. 179, 11 Fed. (2d) 565 12–303
Hall v. Chaltis, 31 A. 2d 699 11–804
Hall v. Chicago, R. I. & P. R. Co., 149 Fed. 564 44–401—44–403
Hall v. District of Columbia, 47 App. D. C. 552 12–201
Hall v. Gordon, 128 F. 2d 461, 76 U. S. App. D. C. 33 14–306
Hall v. Henry J. Robb, Inc., 32 A. 2d 707, 34 A. 2d 863 11–772, 45–820, 45–1605, 45–1609, 45–1610, 45–1611
Hall v. Louisville & N. R. Co., 157 Fed. 464 44–401
Hall v. Ring Management Company, 63 A. 2d 656 45–1604, 45–1609
Hall v. Scarlett, 181 F. 2d 277, 86 U. S. App. D. C. 165 16–205, 16–207
Hall v. U. S., 34 A. 2d 631, 168 F. 2d 161 11–1401, 22–105, 22–2401, 22–2701, 23–107
Hall v. United States, 171 F. 2d 347, 84 U. S. App. D. C. 209 22–2801
Halls Safe Co. v. Herring-Hall-Marvin Safe Co., 31 App. D. C. 498 1–501
Halperin v. Cohen, 67 A. 2d 295 11–752, 11–755
Halpern v. Committee on Admissions and Grievances of the District Court, 139 F. 2d 361, 78 U. S. App. D. C. 220 11–1302
Halpern v. Gunn, 57 A. 2d 741 11–772
Halpern v. Gunn, 66 A. 2d 207 13–101
Hamilton v. Bergling, 66 App. D. C. 83, 85 Fed. (2d) 249 26–101, 26–104
Hamilton v. Offutt, 64 App. D. C. 385, 78 Fed. (2d) 735 26–101, 26–103, 26–313, 26–322
Hamilton v. Rathbone, 9 App. D. C. 48 14–501
Hamilton v. Shillington, 19 App. D. C. 268 11–504
Hamilton v. United States, 26 App. D. C. 382 22–2401
Hamilton v. United States, 41 App. D. C. 359 22–3001
Hamilton v. U. S., 31 A. 2d 887, 140 F. 2d 679, 78 U. S. App. D. C. 316 11–772, 22–2701
Hamilton Nat. Bank v. District of Columbia, 156 F. 2d 843, 81 U. S. App. D. C. 200 47–1701, 47–1703, 47–2403, 47–2404
Hamilton National Bank v. District of Columbia, 176 F. 2d 624, 85 U. S. App. D. C. 109 47–1703
Hammerer v. Huff, 71 App. D. C. 246, 110 Fed. (2d) 113 16–801, 24–205, 24–206
Hammond v. Hull, 131 F. 2d 23, 76 U. S. App. D. C. 301 16–1001
Hammond v. U. S., 127 F. 2d 752, 75 U. S. App. D. C. 397 22–501
Hampton v. Mott Motors, 32 A. 2d 247 45–820, 45–904

Hanback v. District of Columbia, 35 A. 2d 189 11–606, 11–772, 17–103
Hanback v. Dutch Baker Boy, Inc., 70 App. D. C. 398, 107 Fed. (2d) 203 28–1115, 28–1507, 28–1601, 33–101
Handel v. Lane, 45 App. D. C. 389 16–1001
Hannan v. Hardee, 63 App. D. C. 76, 79, 69 Fed. (2d) 394, 397 28–507
Hannan v. U. S., 131 F. 2d 441, 76 U. S. App. D. C. 118 16–632, 16–634, 16–638
Hard v. Splain, 45 App. D. C. 1 22–2101, 23–401
Hardebeck v. Hamilton, 50 App. D. C. 113, 268 Fed. 703 45–906
Harding v. Aaronson, 63 App. D. C. 107, 69 Fed. (2d) 845 12–401, 30–207
Hariston v. Washington Housing Corp., 45 A. 2d 287 11–772
Harlow, Ex parte, 3 App. D. C. 203 17–101
Harper v. Cunningham, 8 App. D. C. 430 15–106
Harper v. Galliher & Huguely, 58 App. D. C. 252, 29 Fed. (2d) 452 38–102, 38–105, 38–110
Harper v. Moran, 64 App. D. C. 210, 76 Fed. (2d) 980 26–101
Harper v. Strange, 158 F. 2d 408 11–912
Harriman v. Richardson, 51 App. D. C. 24, 273 Fed. 752 16–301, 16–302, 16–308
Harris v. American R. Exp. Co., 56 App. D. C. 264, 12 Fed. (2d) 487 13–103
Harris v. Embrey, 70 App. D. C. 232, 105 Fed. (2d) 111 16–1201, 16–1202
Harris v. Harris, 67 App. D. C. 85, 89 Fed. (2d) 829 16–412
Harris v. Hoage, 62 App. D. C. 275, 66 Fed. (2d) 801 36–501
Harris v. Lang, 27 App. D. C. 84 11–616, 24–401, 24–405
Harris v. Leonhardt, 2 App. D. C. 318 13–401, 16–901
Harris v. Nixon, 27 App. D. C. 94 11–609, 11–616, 24–401
Harris v. United States, 50 App. D. C. 139, 269 Fed. 481 22–2801
Harris v. U. S., 32 A. 2d 101, 169 F. 2d 887 22–1502, 22–2403
Harrison v. Moyer, 224 Fed. 224 11–316, 22–107
Harrod v. United States, 58 App. D. C. 254, 29 Fed. (2d) 454 22–201
Hart v. Commissioners of District of Columbia, 155 F. 2d 877 12–202, 32–405
Hart v. Hines, 10 App. D. C. 366 15–201
Hart v. United States, 70 App. D. C. 269, 105 Fed. (2d) 792 22–201
Hart v. U. S., 130 F. 2d 456, 76 U. S. App. D. C. 193 27–120
Hartford Acc. & Indem. Co. v. Cardillo, 71 App. D. C. 330, 112 Fed. (2d) 11 36–501
Hartford Acc. & Indem. Co. v. Hoage, 66 App. D. C. 154, 85 Fed. (2d) 411 36–501
Hartford Acc. & Indem. Co. v. Hoage, 66 App. D. C. 160, 85 Fed. (2d) 417 36–501
Hartford Acc. & Indem. Co. v. Hoage, 66 App. D. C. 163, 85 Fed. (2d) 420 36–501
Hartman v. Lubar, 133 F. 2d 44, 77 U. S. App. D. C. 95, 49 A. 2d 553 26–601, 26–605, 28–2703, 28–2704, 47–1701
Hartman v. Masters, 46 App. D. C. 271 17–101
Hartman v. Masters, 57 App. D. C. 196, 19 Fed. (2d) 670 17–101
Hartranft v. Mullowny, 247 U. S. 295 11–315, 17–101
Hartranft v. Mullowny, 43 App. D. C. 44 24–401
Harwood v. United States Shipping Bd. Emergency Fleet Corp., 26 Fed. (2d) 116 29–201
Hasler v. Williams, 34 App. D. C. 319 16–1301, 16–1302
Hauptman v. Carpenter, 16 App. D. C. 524 45–812
Haviland v. Harriss, 60 App. D. C. 255, 50 Fed. (2d) 1069 20–105, 20–206
Hawkins v. United States, 59 App. D. C. 249, 39 Fed. (2d) 294 14–305
Hawkins v. U. S., 158 F. 2d 652 22–2401
Hawley v. Hawley, 72 App. D. C. 357, 114 Fed. (2d) 505 11–512, 11–514
Hawley v. Hawley, 114 F. 2d 745, 72 App. D. C. 376 20–117, 20–301, 20–303, 20–502
Hayden v. Filippone, 51 App. D. C. 246, 278 Fed. 329 45–904
Hayden v. International Banking Corp., 59 App. D. C. 313, 41 Fed. (2d) 107 12–305
Hayes v. Burns, 25 App. D. C. 243 16–1602
Hayes v. Conger, 36 App. D. C. 202 16–301, 17–101
Hayes v. District of Columbia, 34 A. 2d 709 4–140, 22–3302
Hayes v. Home Life Ins. Co., 168 F. 2d 152 35–708
Hayes v. Palmer, 21 App. D. C. 450 23–401
Hazard v. Blessing, 55 App. D. C. 114, 2 Fed. (2d) 916 5–422, 47–405
Hazen v. Chambers, 71 App. D. C. 220, 108 Fed. (2d) 741 47–2331
Hazen v. Hardee, 64 App. D. C. 346, 78 Fed. (2d) 230 47–1208, 47–1209
Hazen v. Hawley, 66 App. D. C. 266, 86 Fed. (2d) 217 5–412
Hazen v. National Rifle Assn., 69 App. D. C. 339, 101 Fed. (2d) 432 47–802, 47–1205, 47–1207, 47–1209
Hazen v. Van Senden, 43 App. D. C. 161 28–406, 28–409
Hazen v. Washington R. & E. Co., 64 App. D. C. 57, 74 Fed. (2d) 461 7–505
Heald v. District of Calumbia, 254 U. S. 20 47–1207
Heald v. District of Columbia, 259 U. S. 114 47–1205, 47–1207
Heald v. District of Columbia, 50 App. D. C. 231, 269 Fed. 1015 47–1207
Healey v. Maroney, 34 App. D. C. 99 17–101
Hearn v. Cogswell, 68 A. 2d 219 45–1608, 45–1609
Heath, In re, 144 U. S. 92 11–305, 11–316
Hebrew Home for the Aged v. District of Columbia, 142 F. 2d 573 47–801a
Hecht Co. v. District of Columbia, 129 F. 2d 353, 76 U. S. App. D. C. 142 47–1207, 47–1212, 47–2403
Heckman v. Heckman, 83 F. Supp. 687 16–412, 16–413
Hein, In re, 166 U. S. 432 11–205
Heindrich v. Dimas-Aruti, 42 A. 2d 138 11–772, 45–1601, 45–1605
Heiskell v. Mozie, 65 App. D. C. 255, 82 Fed. (2d) 861 11–735
Heitmuller v. Berkow, 51 A. 2d 302, 165 F. 2d 961 45–1610

Heitmuller v. Berkow, 171 F. 2d 741, 83 U. S. App. D. C. 342 45–1610
Helfgott v. Helfgott, 179 F. 2d 39, 86 U. S. App. D. C. 409 16–403
Helvestine v. Helvestine, 67 App. D. C. 121, 89 Fed. (2d) 970 16–403
Henderson v. Allison, 44 A. 2d 220 11–715, 11–772
Henderson v. E Street Theatre Corporation, 63 A. 2d 649 11–703, 11–755, 11–772
Henderson v. Mann, 47 App. D. C. 174 16–1501
Henderson v. Porter, 52 A. 2d 779 45–1402, 45–1408
Henderson v. United States, 84 U. S. App. D. C. 295 22–1801
Hendrick v. District of Columbia, 183 F. 2d 1002 45–1574b
Hengesbach v. Hengesbach, 114 F. 2d 845, 73 App. D. C. 1, 130 F. 2d 838, 76 U. S. App. D. C. 209 11–504, 17–101, 19–309, 30–101
Henkel v. Varner, 138 F. 2d 934, 78 U. S. App. D. C. 197 14–101
Henry v. Fraser, 58 App. D. C. 260, 29 Fed. (2d) 633 19–103
Henry v. United States, 49 App. D. C. 207, 263 Fed. 459 22–1202
Henry v. United States, 50 App. D. C. 366, 273 Fed. 330 22–1202, 22–2203
Henry J. Robb, Inc. v. District of Columbia, 152 F. 2d 283 47–1506
Herald v. United States, 52 App. D. C. 147, 284 Fed. 927 1–101, 22–1601
Herb v. Gerstein, 41 F. Supp. 634 45–816
Herfurth, H., Jr., Inc. v. United States, 66 App. D. C. 220, 85 Fed. (2d) 719 1–804
H. Herfurth, Jr., Inc. v. Acker, 177 F. 2d 38, 85 U. S. App. D. C. 158 12–201
Herrell v. Donovan, 7 App. D. C. 322 38–103
Herrell v. Herrell, 47 App. D. C. 30 45–205
Herson v. United States, 65 App. D. C. 86, 80 Fed. (2d) 529 23–301
Herzog v. Colpoys, 143 F. 2d 137, 79 U. S. App. D. C. 81 23–403
Heslop v. Robert A. Grahame, Inc., 31 A. 2d 856 11–774
Hevner v. Matthews, 4 App. D. C. 380 45–401
Hicks v. Behrend, 40 A. 2d 78 45–1604, 45–1605, 45–1608
Hicks v. Bigelow, 55 A. 2d 924 45–1601, 45–1605, 45–1611
Hicks v. Hicks, 80 F. Supp. 219 11–305, 16–416
Hieston v. National City Bank, 51 App. D. C. 394, 280 Fed. 525 30–207
Higgins v. Central Cigar Co., 59 App. D. C. 9, 32 Fed. (2d) 400 42–103
Higgins v. Dail, 61 A. 2d 38 11–772
Hight v. McCoy, 46 App. D. C. 238 16–1001
Hight v. Richmond Park Imp. Co., 47 App. D. C. 518 29–201
Hightstown Rug Co. v. National Sav. & Trust Co., 162 F. 2d 10, 82 U. S. App. D. C. 204 18–501
Hildebrand v. Nee, 54 A. 2d 640 45–1602, 45–1605, 45–1608
Hill v. Dorsey, 57 App. D. C. 305, 22 Fed. (2d) 1003 23–401
Hill v. Hawes, 132 F. 2d 569, 76 U. S. App. D. C. 308, 144 F. 2d 511, 79 U. S. App. D. C. 168 11–205, 11–312, 12–201, 28–402, 28–405, 28–2704
Hill v. Hawes, 64 S. Ct. 334, 320 U. S. 520 11–205
Hill v. Raymond, 65 App. D. C. 144, 81 Fed. (2d) 278 1–228, 5–301, 5–302
Hill v. United States, 22 App. D. C. 395 22–2401
Hill v. United States, 75 A. 2d 138 11–772, 11–774
Hillyard v. Kline, 64 A. 2d 759 11–755, 11–756
Hillyard v. Smither & Mayton, Inc., 76 A. 2d 166 11–755, 11–772, 13–301
Hines v. Paregol, 64 App. D. C. 306, 77 Fed. (2d) 953 21–126
Hirsh v. Block, 50 App. D. C. 56, 267 Fed. 614 45–906
Hiscox v. Jackson, 127 F. 2d 160, 75 U. S. App. D. C. 293 40–403
Hitchcock v. Hitchcock, 15 App. D. C. 81 16–403
Hitchens v. Hitchens, 47 F. Supp. 73 16–402, 30–103, 30–111
Hitz v. Jenks, 123 U. S. 297 30–216, 45–402
Hitz v. National Metropolitan Bank, 111 U. S. 722 45–501
Hoage v. Hartford Acc. & Indem. Co., 64 App. D. C. 258, 77 Fed. (2d) 381 36–501, 36–502
Hoage v. Liberty Mut. Ins. Co., 64 App. D. C. 395, 78 Fed. (2d) 874 36–501
Hoage v. Murch Bros. Constr. Co., 60 App. D. C. 218, 50 Fed. (2d) 983 16–401, 30–101
Hoage v. Royal Indem. Co., 67 App. D. C. 142, 90 Fed. (2d) 387 36–501
Hoage v. Terminal Refrigerating & Warehousing Co., 65 App. D. C. 5, 78 Fed. (2d) 1009 36–501
Hockman v. Shreve, 50 App. D. C. 140, 269 Fed. 482 45–906
Hodge v. Hodge, 80 F. Supp. 379 16–415
Hodge v. U. S., 126 F. 2d 849, 75 U. S. App. D. C. 332 22–1901
Hodgkins v. Beckner, 32 A. 2d 113 11–808, 11–815
Hoffman v. Apostolic Works, 43 A. 2d 848 45–1605, 45–1611
Hoffman v. F. H. Duehay, Inc., 62 App. D. C. 206, 65 Fed. (2d) 839 45–106
Hoffman v. Sheahin, 121 F. 2d 861, 73 App. D. C. 374 12–201, 45–616
Hoffman v. Washington-Virginia R. Co., 44 App. D. C. 418 13–103
Hogan v. Kurtz, 94 U. S. 773 16–501
Hoglund v. Lane, 44 App. D. C. 310 16–1001
Holden v. Matteson, 38 App. D. C. 128 16–417, 16–419
Holden v. United States, 24 App. D. C. 318 22–1703
Holland v. Eng, 75 A. 2d 143 11–772
Holley v. Smalley, 50 App. D. C. 178, 269 Fed. 694 28–201
Hollingsworth v. Rieffer, 57 A. 2d 199 11–772
Hollis v. Kutz, 255 U. S. 452 43–411, 43–704
Hollis v. Kutz, 49 App. D. C. 301, 265 Fed. 451 43–408
Holloway v. U. S., 148 F. 2d 665 22–2801
Holmes v. Floyd E. Davis Company, 66 A. 2d 212 11–772
Holmes v. Holmes, 155 F. 2d 737 16–403, 16–411, 16–413

Holmes v. United States, 50 App. D. C. 147, 269 Fed. 489 22–2713
Holmes v. United States, 56 App. D. C. 183, 11 Fed. (2d) 569 1–224
Holmes v. United States, 171 F. 2d 1022, 84 U. S. App. D. C. 168 22–2801
Holt v. Holt, 64 App. D. C. 280, 77 Fed. (2d) 538 16–403
Holtsclaw v. Mercer, 145 F. 2d 388, 79 U. S. App. D. C. 252 16–808
Holtzman v. Douglas, 168 U. S. 278 16–505, 16–515
Holtzman v. Douglas, 5 App. D. C. 397 16–1501
Holzbeierlein v. Grant, 117 F. 2d 26, 73 App. D. C. 154 11–504
Holzworth, In re, 74 F. Supp. 388 16–801
Hood v. Defense Homes Corp., 83 F. Supp. 365 12–201, 13–103
Hoover v. Babcock, 53 A. 2d 591 11–772, 11–774
Hoover v. District of Columbia, 42 A. 2d 730 4–140, 25–109
Hoover v. Lacey, 80 F. Supp. 691 11–1501
Hopkins v. Grimshaw, 165 U. S. 342 14–301, 14–306, 45–102
Hopkins v. United States, 4 App. D. C. 430 22–2401
Hopper v. Smith, 72 A. 2d 466 11–772
Hornblower v. George Washington University, 31 App. D. C. 64 12–201, 12–305, 16–1901
Horne v. Ostmann, 35 A. 2d 174 11–722, 11–772
Horning v. District of Columbia, 254 U. S. 135 26–601
Horning v. Lindsay, 169 F. 2d 963 35–716
Hornor v. Henning, 93 U. S. 228 29–204
Horton v. United States, 15 App. D. C. 310 22–2401
Hoskins v. Dickerson, 239 Fed. 275 39–401
Houston v. Ormes, 252 U. S. 469 13–108
Howard v. Chesapeake & O. R. Co., 11 App. D. C. 300 13–103
Howard v. Howard, 38 App. D. C. 575 11–504, 18–406, 20–610
Howard v. Howard, 72 App. D. C. 145, 112 Fed. (2d) 44 16–415
Howard v. Illinois Cent. R. Co., 207 U. S. 463 44–401, 44–402
Howard v. Illinois Cent. R. Co., 148 Fed. 997 44–401
Howard v. Overholser, 130 F. 2d 429, 76 U. S. App. D. C. 166 21–317
Howard v. Trust Co., 12 App. D. C. 222 16–301
Howard v. United States, 58 App. D. C. 179, 26 Fed. (2d) 551 11–1418
Howard University v. Cassell, 126 F. 2d 6, 75 U. S. App. D. C. 75 12–201
Howard University v. District of Columbia, 155 F. 2d 10 47–801a, 47–811
Howe v. United States, 61 App. D. C. 8, 56 Fed. (2d) 305 22–1301
Howell v. Commercial Nat. Bank, 40 App. D. C. 370 28–406
Howenstein Realty Corporation v. Richardson, 135 F. 2d 803, 77 U. S. App. D. C. 299 11–703, 13–214
Howerton v. District of Columbia, 53 App. D. C. 230, 289 Fed. 628 2–711
Howgate v. United States, 3 App. D. C. 277 28–2406
Howison v. Masson, 29 App. D. C. 338 16–1501
Huff v. Kraft, 63 A. 2d 667 11–722, 11–772
Huff v. O'Bryant, 121 F. 2d 890, 74 App. D. C. 19 11–927
Huffines v. American Security & Trust Co., 63 App. D. C. 224, 71 Fed. (2d) 345 45–616
Huffman v. District of Columbia, 39 A. 2d 558 6–118
Hughes v. President and Directors of Georgetown College, (D. C. D. C.), 33 Fed. Supp. 867 32–301
Hume v. Riggs, 12 App. D. C. 355 45–915
Humphries v. United States, 68 A. 2d 803 22–504
Hunt v. District of Columbia, 71 App. D. C. 143, 108 Fed. (2d) 10 47–713, 47–1203, 47–1206, 47–1213, 47–2404, 47–2406
Hunt v. District of Columbia, 47 A. 2d 783 22–3302, 22–3303, 22–3305
Huntington v. National Sav. Bank, 96 U. S. 388 26–101
Hurd v. Hurd, 179 F. 2d 68, 86 U. S. App. D. C. 62 16–403
Hurd v. Letts, 152 F. 2d 121, 80 U. S. App. D. C. 233 11–208
Hurdle v. American Sec. & Tr. Co., 59 App. D. C. 58, 32 Fed. (2d) 954 12–201
Hurley v. Lowe, 168 F. 2d 553 36–501
Hurley v. United States ex rel. Gladman, 60 App. D. C. 69, 47 Fed. (2d) 431 39–212
Hurwitz v. Hurwitz, 136 F. 2d 796, 78 U. S. App. D. C. 66 12–401, 12–403
Hutchins v. Dante, 40 App. D. C. 262 18–720, 20–403
Hutchins v. Hutchins, 40 App. D. C. 180 17–101, 19–312
Hutchins v. Hutchins, 41 App. D. C. 122 18–720, 20–403
Hutchins v. Hutchins, 41 App. D. C. 367 14–201, 14–203, 19–306
Hutchins v. Hutchins, 48 App. D. C. 286 11–504, 11–518, 20–605
Hutchins v. Hutchins, 48 App. D. C. 495 14–308
Hutchins v. Hutchins, 49 App. D. C. 118, 261 Fed. 460 11–504, 19–307
Hutchins v. Langley, 27 App. D. C. 234 28–118, 28–406
Hutchins v. Munn, 28 App. D. C. 271 16–102
Hutchins Mut. Ins. Co. v. Hazen, 70 App. D. C. 174, 105 Fed. (2d) 53 35–102, 35–103, 35–202, 35–1104, 35–1201
Hutchinson v. Brown, 8 App. D. C. 157 28–2501
Hutchinson v. Peacock, 73 A. 2d 903 45–1610
Huyler's v. Houston, 41 App. D. C. 452 11–602
Huysman v. Evening Star, 12 App. D. C. 586 12–201
Hyde v. Shine, 199 U. S. 62 11–305
Hyde v. Southern R. Co., 31 App. D. C. 466 16–1201
Hyde v. United States, 35 App. D. C. 451 11–1407
Hysler v. United States, 86 Fed. (2d) 918 23–301

I

Iglehart v. Iglehart, 204 U. S. 478 27–113, 45–102
Iglehart v. Iglehart, 26 App. D. C. 209 45–102
Imhoff v. Walker, 51 A. 2d 309 11–728, 11–772, 16–1808
Indemnity Ins. Co. of North America v. Smoot, 152 F. 2d 667, 80 U. S. App. D. C. 287 13–109

Ingram Day Lbr. Co. v. United States Shipping Bd. Emergency Fleet Corp., 267 Fed. 283 29–201, 29–203
International Exch. Bank v. Pullo, 52 App. D. C. 199, 285 Fed. 933 13–214, 13–216
International Finance Corp. v. General Motors Acceptance Corp., 63 App. D. C. 325, 72 Fed. (2d) 376 11–317, 11–318
International Finance Corp. v. Jawish, 63 App. D. C. 262, 71 Fed. (2d) 985 15–204, 15–305, 16–312
International Finance Corp. v. Peoples Bank, 27 Fed. (2d) 523 28–402
International Reform Federation v. District Unemployment Compensation Board, 131 F. 2d 337, 76 U. S. App. D. C. 282 46–301
International Seal Co. v. Beyer, 33 App. D. C. 172 16–303, 16–323
Interstate Bankers Corporation v. Kennedy, 33 A. 2d 165 11–801, 11–805, 11–808, 28–407, 28–409
Ionescue v. Dettmers, 53 A. 2d 287 11–772, 11–774
Irwin v. Hawfield, 62 A. 2d 926 11–755, 16–411, 16–415
Irwin v. United States, 67 App. D. C. 41, 89 Fed. (2d) 678 23–301
Ishkanian v. U. S., 35 A. 2d 176 22–2722, 24–103
Isojoki, Ex parte, 222 Fed. 151 22–1001
Isquith v. Athanas, 33 A. 2d 733 45–818, 45–1602

J

Jackson v. Clifford, 5 App. D. C. 312 29–213
Jackson v. Emmons, 25 App. D. C. 146 12–201
Jackson v. Finance Corp., 59 App. D. C. 309, 41 Fed. (2d) 103 16–314
Jackson v. Goode, 49 A. 2d 913 11–731, 16–1811
Jackson v. Smith, 254 U. S. 586 45–603, 45–617
Jackson v. Snyder, 54 App. D. C. 23, 293 Fed. 842 23–401
Jackson v. United States, 48 App. D. C. 272 22–2401
Jackson v. United States, 58 App. D. C. 125, 25 Fed. (2d) 549 22–2801, 24–301
Jacobi v. Jacobi, 45 App. D. C. 442 16–410
Jacobsen v. Jacobsen, 126 F. 2d 13, 75 U. S. App. D. C. 223 11–315, 17–101
J. & J. Slater, Inc. v. Brainerd, 43 A. 2d 714 11–715, 11–735, 45–1611
Jaffe v. Jaffe, 124 F. 2d 233, 74 App. D. C. 394 16–410, 16–412
Jaffe v. Sterrett Operating Services, Inc., 76 A. 2d 780 11–772
James v. Noorbolm, 47 A. 2d 105 45–1602, 45–1611
Janes v. Janes, 51 App. D. C. 267, 278 Fed. 576 14–302
Jarcy v. Griffith, 65 A. 2d 919 11–755, 11–772
Jarman v. United States, 92 Fed. (2d) 309 24–201
Jaselli v. Riggs Nat. Bank, 36 App. D. C. 159 28–102
Jay v. General Realties Co., 49 A. 2d 752 45–1408
Jay's Restaurant v. Jackstone Co., 62 A. 2d 799 12–302, 14–101
J. E. Dyer & Co. v. District of Columbia, 115 F. 2d 945, 73 App. D. C. 52 47–2403
Jeffe v. Jeffe, 152 F. 2d 24 16–334
Jefferson v. District of Columbia, 40 App. D. C. 381 1–101, 17–103
Jemison v. Metropolitan Life Ins. Co., 32 A. 2d 704 14–501
Jenkins v. Purcell, 29 App. D. C. 209 16–308
Jennings v. Gilbertson, 74 A. 2d 839 45–1609
Jerman v. Edwards, 29 App. D. C. 535 28–301, 28–319
Jett v. Montague Mfg. Co., 61 App. D. C. 277, 61 Fed. (2d) 918 30–208
Jillson v. Caprio, 181 F. 2d 523, 86 U. S. App. D. C. 168 21–326, 21–327
Joerns v. Irvin, 72 App. D. C. 170, 114 Fed. (2d) 458 11–322
John v. Splain, 50 App. D. C. 201, 269 Fed. 717 23–401
Johns v. Herbert, 2 App. D. C. 485 20–501
Johnson v. Aderhold, 73 Fed. (2d) 102 22–503, 22–2901
Johnson v. District Court, 30 App. D. C. 520 49–302
Johnson v. Hazen, 69 App. D. C. 151, 99 Fed. (2d) 384 7–209, 7–221, 16–607
Johnson v. Kupper, 67 A. 2d 265 11–772
Johnson v. M. J. Uline Co., 40 A. 2d 260 13–301
Johnson v. Newton, 58 App. D. C. 118, 25 Fed. (2d) 542 14–104
Johnson v. Nickoloff, 52 Fed. (2d) 1074 11–1508
Johnson v. Reichelderfer, 60 App. D. C. 186, 50 Fed. (2d) 336 16–601, 16–606, 47–605
Johnson v. Reichelderfer, 62 App. D. C. 237, 66 Fed. (2d) 217 7–219, 16–601
Johnson v. Rudolph, 57 App. D. C. 29, 16 Fed. (2d) 525 7–611, 43–1511, 47–703, 47–1101
Johnson v. Simmons, 53 App. D. C. 356, 290 Fed. 331 1–625, 11–703
Johnson v. Taylor, 73 App. D. C. 64, 73 F. Supp. 537 12–201
Johnson v. Thomas, 23 App. D. C. 141 16–515, 16–1501
Johnson v. United States, 225 U. S. 405 22–2404
Johnson v. United States, 26 App. D. C. 128 22–2501
Johnson v. United States, 38 App. D. C. 347 22–2401, 49–301
Johnson v. Washington Loan & Trust Co., 33 App. D. C. 242 45–812
Johnston v. Board of Dental Examiners, 134 F. 2d 9, 77 U. S. App. D. C. 119 2–301, 2–302, 2–311
Johnston v. Johnston, 64 App. D. C. 87, 74 Fed. (2d) 774 13–108, 16–410
Jones v. Clemmer, 163 F. 2d 852 24–206
Jones v. District of Columbia, 51 App. D. C. 319, 279 Fed. 188 1–902
Jones v. Dunlap, 115 F. 2d 689, 73 App. D. C. 59 11–504
Jones v. Guice, 57 A. 2d 190 12–302, 38–121
Jones v. Huff, 152 F. 2d 14, 80 U. S. App. D. C. 254 16–801, 16–808
Jones v. Jones, 63 App. D. C. 373, 72 Fed. (2d) 829 18–722, 19–101, 21–129, 30–111, 30–201, 36–103
Jones v. King, 72 App. D. C. 257, 113 Fed. (2d) 522 40–403
Jones v. Metropolitan Life Ins. Co., 116 F. 2d 555, 73 App. D. C. 92 14–501
Jones v. Rutherford, 26 App. D. C. 114 13–108
Jones v. United States, 53 App. D. C. 138, 289 Fed. 536 22–2201

Jones v. Welch, 151 F. 2d 769 16–801
Jordan v. American Eagle Fire Ins. Co., 169 F. 2d 281 35–1403
Jordan v. American Security & Trust Co., 38 App. D. C. 391 18–214
Jordan v. Clemmer, 80 F. Supp. 539 16–801, 16–806
Jordan v. Group Health Assn., 71 App. D. C. 38, 107 Fed. (2d) 239 29–601, 29–602, 35–102, 35–103, 35–105, 35–108, 35–202, 47–1801, 47–1808
Jordan v. Landram, 35 App. D. C. 89 13–108, 16–301, 16–313
Jordan v. O'Brien, 33 App. D. C. 189 16–1301
Jordon v. United States, 66 App. D. C. 309. 87 Fed. (2d) 64 22–2401, 22–2403
Josey v. U. S., 135 F. 2d 809, 77 U. S. App. D. C. 321 22–502
J. R. Beaton Co. v. Berberich, 135 F. 2d 831, 77 U. S. App. D. C. 377 12–401
Judson v. Judson, 8 F. R. D. 336 11–315
Junghans v. Junghans, 72 App. D. C. 129, 112 Fed. (2d) 212 16–413

K

Kahn v. Wall, 68 A. 2d 862 45–1601
Kaitlin v. Metropolitan Life Insurance Co., 65 A. 2d 188 35–414
Kalbfus v. Siddons, 42 App. D. C. 310 16–1001
Kane v. Paul, 14 Pet. (39 U. S.) 33 20–505
Kaplan v. Manhattan Life Ins. Co., 71 App. D. C. 250, 109 Fed. (2d) 463 12–201, 14–308, 35–414
Kaplowitz Bros. v. Kahan, 59 A. 2d 795 11–756, 11–772
Karika v. District of Columbia, 47 A. 2d 93 11–772, 11–774
Karrick v. Edes, 57 App. D. C. 219, 19 Fed. (2d) 693 11–327
Karrick v. Landon, 41 App. D. C. 416 19–307, 19–309
Karrick v. Wetmore, 22 App. D. C. 487 13–301
Kashouty v. Deep, 126 F. 2d 233, 75 U. S. App. D. C. 259 20–302
Kass v. Baskin. 164 F. 2d 513, 82 U. S. App. D. C. 385 11–715, 11–772
Kaufman v. Kaufman, 164 F. 2d 519, 82 U. S. App. D. C. 397 16–403
Kavakos v. Equitable Life Assur. Soc., 66 App. D. C. 380, 88 Fed. (2d) 762 14–308
Keane v. Chamberlain, 14 App. D. C. 84 28–2601
Keehn v. United States, 300 Fed. 493 25–132
Keely v. Moore, 196 U. S. 38 19–103
Keely v. Moore, 22 App. D. C. 9 19–101, 19–305
Keep v. District of Columbia, 181 F. 2d 789, 86 U. S. App. D. C. 206 45–812, 47–1607
Keffer v. Capital Transit Co., 183 F. 2d 808 36–501, 36–502, 44–401
Keith v. Berry, 64 A. 2d 300 11–772, 45–1408
Keleher v. Keleher, 62 A. 2d 638 11–755
Kelleher v. United States, 59 App. D. C. 107, 35 Fed. (2d) 877 22–1504, 22–1505, 22–1508, 24–401
Keller v. Potomac Elec. Power Co., 261 U. S. 428 43–704, 43–705
Kelley v. Great Northern R. Co., 152 Fed. 211 44–402
Kelly v. Kelly, 137 F. 2d 254, 78 U. S. App. D. C. 97 16–411
Kelly v. Moore, 22 App. D. C. 1 11–320, 17–101
Kelly v. United States, 73 A. 2d 232 11–772, 22–2701
Kemp v. Medical Supervisors, 46 App. D. C. 173 12–201
Kemp v. United States, 41 App. D. C. 539 22–201
Kendall v. United States, 37 U. S. 524 11–316
Kengla v. Randall, 22 App. D. C. 463 11–504
Kennedy v. David, 71 App. D. C. 340, 109 Fed. (2d) 676 11–715, 11–722
Kennedy v. Mangan, 51 App. D. C. 296, 278 Fed. 1009 18–606
Kennedy v. Washington, 3 Cranch C. C. 595, 14 Fed. Cas. No. 7708 9–102
Kenney v. U. S., 157 F. 2d 442 22–1501, 22–1502
Kenyon v. Youngman, 59 App. D. C. 300, 40 Fed. (2d) 812 12–201
Keroes v. Westchester Apartments, 36 A. 2d 263 45–820, 45–1605
Kern v. Cogswell, 59 A. 2d 793 45–1602, 45–1609, 45–1610
Kernan v. Kernan, 165 F. 2d 232, 82 U. S. App. D. C. 382 11–312, 16–410
Key, In re, 139 U. S. 84 17–101
Keyes v. Madsen, 179 F. 2d 40, 86 U. S. App. D. C. 24, cert. den. 70 S. Ct. 628, 339 U. S. 928, 94 L. Ed. 546 5–605, 17–101
Keyes v. U. S., 119 F. 2d 444, 73 App. D. C. 273 5–113
Kidwell v. United States, 38 App. D. C. 566 22–2801
Kiess v. Baldwin, 64 App. D. C. 66, 74 Fed. (2d) 470 28–206, 30–207
Kiess v. Baldwin, 67 App. D. C. 147, 90 Fed. (2d) 392 28–201, 28–205
Kimmell v. Kimmell, 171 F. 2d 340, 84 U. S. App. D. C. 177 16–403
Kincade v. Wah, 38 A. 2d 112 11–735, 11–772
Kinchlow v. Peoples Rapid Transit Co., 66 App. D. C. 382, 88 Fed. (2d) 764 13–301
Kindleberger v. Lincoln Nat. Bank of Wash., 155 F. 2d 281, 86 U. S. App. D. C. 101 35–716
King v. Curtin, 31 App. D. C. 23 28–2705
King v. District of Columbia, 51 App. D. C. 160, 277 Fed. 562 40–303
King v. Harrington, 35 App. D. C. 111 17–101
King v. McKnight, 61 A. 2d 714 11–772, 45–1609, 45–1610
King v. Wall & Beaver Street Corporation, 145 F. 2d 377, 79 U. S. App. D. C. 234 11–305, 11–308
Kinney v. Plymouth Rock Squab Co., 236 U. S. 43 11–1508
Kirk v. Kirk, 150 F. 2d 589, 80 U. S. App. D. C. 183 16–410, 16–808
Klein v. Fields, 32 A. 2d 398 45–1605
Klein v. Hilton, 40 A. 2d 77 45–1605
Klein v. Insurance Bldg., 46 A. 2d 368 45–908, 45–915
Klein v. Liss, 43 A. 2d 757 11–722, 11–772, 11–774, 11–775
Klein v. Longo, 34 A. 2d 359 45–305, 45–1301
Klein v. Miles, 35 A. 2d 243 45–902
Kleindienst v. United States, 48 App. D. C. 190 22–301, 23–107

Klepinger v. Rhodes, 140 F. 2d 697, 78 U. S. App. D. C. 340 11–306, 11–755
Klingstein v. Thomas Circle Cafe, 68 App. D. C. 5, 92 Fed. (2d) 554 28–401
Klopfer v. District of Columbia, 25 App. D. C. 41 4–115
Knight v. W. T. Walker Brick Co., 23 App. D. C. 519 16–1901
Knighton v. Overholser, 145 F. 2d 860, 79 U. S. App. D. C. 294 21–312
Knobel v. Seaboard A. L. R. Co., 56 App. D. C. 228, 12 Fed. (2d) 169 13–103
Knott v. Giles, 27 App. D. C. 581 21–401
Knott v. Jackson, 31 A. 2d 662 26–601, 28–2704
Knowles v. Mosher, 45 A. 2d 755 11–738, 11–739, 45–902, 45–904, 45–1605
Koehne v. Harvey, 39 A. 2d 871, 45 A. 2d 780 11–722, 11–756, 11–772, 28–2503, 45–910
Koehne v. Matthews, 169 F. 2d 889 16–801
Koehne v. Price, 68 A. 2d 806 11–772, 12–203, 14–401
Koppers United Co. v. Securities and Exchange Commission, 138 F. 2d 577, 78 U. S. App. D. C. 151 11–205
Kosters v. Hoover, 69 App. D. C. 66, 98 Fed. (2d) 595 45–617
Kreis v. Block, 75 A. 2d 523 11–772
Kresge v. Crowley, 47 App. D. C. 13 45–106, 45–401, 45–501
Krevait v. Turover, 39 A. 2d 207 28–2703
Kroll, In re, 43 A. 2d 706 3–116, 11–902, 11–907, 11–915, 32–209, 32–815
Krous v. Krous, 41 App. D. C. 200 16–419
Krupsaw v. W. T. Cowan, Inc., 61 A. 2d 624 11–756, 11–772
Kurtz v. Capital Wall Paper Co., 61 A. 2d 470 36–431

L

Labofish v. Berman, 60 App. D. C. 397, 55 Fed. (2d) 1022 6–102, 6–112, 14–308
Ladrey v. U. S., 155 F. 2d 417 22–105, 22–701
La Forest v. Board of Commissioners of District of Columbia, 67 App. D. C. 396, 92 Fed. (2d) 547 1–223, 40–301, 40–603
Lake for Use of Peyser v. District of Columbia, 63 App. D. C. 306, 72 Fed. (2d) 174 1–902, 1–903, 12–201
Lalekos v. Manset, 47 A. 2d 617 13–214
Lamar v. Splain, 42 App. D. C. 300 23–401
Lambie, James B., Co. v. Bigelow, 34 App. D. C. 49 38–101
Lambros v. Young, 145 F. 2d 341, 79 U. S. App. D. C. 247 11–205, 25–106, 25–118
Lancer v. Anchor Line, 155 Fed. 433 44–401
Lanckton v. United States, 18 App. D. C. 348 22–2401
Land v. Dollar, 67 S. Ct. 1009 11–305
Landram v. Jordan, 203 U. S. 56 45–102
Landram v. Jordan, 25 App. D. C. 291 13–108
Landvoight v. Melovich, 1 App. D. C. 498 38–110
Lane v. District of Columbia, 182 F. 2d 105, 86 U. S. App. D. C. 337 47–1601j
Lane v. Duncan Townsite Co., 44 App. D. C. 63 16–1001
Laney v. United States, 54 App. D. C. 56, 294 Fed. 412 27–118, 27–128
Lang v. F. G. Arwood and Co., 65 A. 2d 194 11–772
Langan v. Langan, 150 F. 2d 979 16–808
Langley v. D'Audigne, 31 App. D. C. 409 38–101
Lansburgh & Bro. v. Clark, 127 F. 2d 331, 75 U. S. App. D. C. 339 30–208
Lanston v. Schwartz, 174 F. 2d 31, 84 U. S. App. D. C. 329 19–309
Lappin v. District of Columbia, 22 App. D. C. 68, 80 47–1707
La Raw v. Prudential Ins. Co., 57 App. D. C. 289, 22 Fed. (2d) 717 14–501
Larrabee v. Bell, 56 App. D. C. 121, 10 Fed. (2d) 986 5–412, 5–413
Latney v. United States, 18 App. D. C. 265 22–104
Laughlin v. Bank of Commerce & Savings, 134 F. 2d 530, 77 U. S. App. D. C. 312 16–308, 16–311
Laughlin v. Berens, 128 F. 2d 23, 75 U. S. App. D. C. 409 17–101
Laughlin v. Clephane, 77 F. Supp. 103 11–1301
Laughlin v. Eicher, 145 F. 2d 700, 79 U. S. App. D. C. 266 11–205, 11–756
Laughlin v. Wheat, 68 App. D. C. 190, 95 Fed. (2d) 101 11–1302
Lawrence v. Middle States Loan Bldg. & Constr. Co., 7 App. D. C. 161 28–2703
Layne v. Tribune Co., 63 App. D. C. 213, 71 Fed. (2d) 223 13–103
Leach v. Burr, 188 U. S. 510 11–501, 13–111, 19–313
Leach v. Burr, 17 App. D. C. 128 19–312
Leaman v. District of Columbia, 60 App. D. C. 395, 55 Fed. (2d) 1020 33–301
Le Crone v. McAdoo, 253 U. S. 217 16–1006
Le Crone v. McAdoo, 48 App. D. C. 181 16–1001
Ledrick v. United States, 42 App. D. C. 384 13–105
Lee v. Dunbar, 37 A. 2d 178 11–772, 15–401
Lee v. Lee, 8 Pet. (33 U. S.) 44 49–301
Lee v. Mitcham, 69 App. D. C. 17, 98 Fed. (2d) 298 28–117, 28–401, 45–614
Lee v. United States, 37 App. D. C. 442 22–1801, 22–2201
Lee v. United States, 61 App. D. C. 153, 58 Fed. (2d) 879 16–628
Lee v. United States, 72 App. D. C. 147, 112 Fed. (2d) 46 22–2403
Lee v. U. S., 40 A. 2d 250 11–772, 22–1202
Lee v. Zentz, 44 A. 2d 872 11–772
Lee's Estate, In re, 80 F. Supp. 293 19–103, 49–301
Lee Won Sing v. Cottone, 123 F. 2d 169, 74 App. D. C. 374 23–401
Lefler v. Forsberg, 1 App. D. C. 36 38–102, 38–110
Lehmer v. Hardy, 54 App. D. C. 51, 294 Fed. 407 21–109
Leigh, In re, 139 F. 2d 386, 78 U. S. App. D. C. 261 17–101
Leitch v. Emergency Hosp., 6 App. D. C. 247 38–103
Lely v. Kalinoglu, 64 App. D. C. 213, 76 Fed. (2d) 983 20–207
Lem Moon Sing v. United States, 158 U. S. 538 16–801
Lemon v. Martin, 55 App. D. C. 186, 3 Fed. (2d) 710 14–302
Lenoir v. Lenoir, 24 App. D. C. 160 14–306, 16–402, 16–403, 16–418, 16–419, 30–103

Leonardo v. Leonardo, 145 F. 2d 849, 79 U. S. App. D. C. 258 11–326, 45–1601, 45–1605
Lesh v. Lesh, 21 App. D. C. 475 16–410, 16–415, 17–101
Leventhal v. District of Columbia, 69 App. D. C. 229, 100 Fed. (2d) 94 5–413
Levy v. Arsenault, 62 A. 2d 642 45–1605, 45–1608, 45–1609, 45–1610
Levy v. Arsenault, 63 A. 2d 671 11–772
Levy v. Bryce, 46 A. 2d 765 11–722, 11–755, 11–772
Levy v. Splain, 50 App. D. C. 31, 267 Fed. 333 23–401
Levy Court v. Ringgold, 5 Pet. (30 U. S.) 451 11–1001
Levy Court v. Woodward, 2 Wall. (69 U. S.) 501 11–1101, 11–1205
Lewis v. American Security & Trust Co., 53 App D. C. 258, 289 Fed. 916 19–101
Lewis v. Cockrell, 80 F. Supp. 380 45–102, 45–812
Lewis v. Denison, 2 App. D. C. 387 12–201
Lewis v. District of Columbia, 51 App. D. C. 221, 277 Fed. 620 22–3301
Lewis v. Luckett, 32 App. D. C. 188 19–301
Lewis v. Potomac Elec. Power Co., 62 App. D. C. 63, 64 Fed. (2d) 701 43–301, 43–704
Lewis v. Reconstruction Finance Corp. 177 F. 2d 654, 85 U. S. App. D. C. 339 16–1201
Lewis v. Shiffers, 67 A. 2d 269 11–772
Liberty Mut. Ins. Co. v. Cardillo, 154 F. 2d 529 36–501
Liberty Mut. Ins. Co. v. Hoage, 62 App. D. C. 189, 65 Fed. (2d) 822 36–501
Lichtenberg v. Bullis Schools, Inc., 68 A. 2d 586 13–103
Life Ins. Co. of Virginia v. Herrmann, 35 A. 2d 828 21–312
Light v. Farmer, 62 A. 2d 367 11–772, 12–402, 13–301
Lillie v. Dennert, 232 Fed. 104 11–317
Lincoln v. Grant, 47 App. D. C. 475 16–1904, 28–408
Lincoln v. Virginia Portland Cement Co., 49 App. D. C. 33, 258 Fed. 505 16–102
Lindberg v. Humphrey, 53 App. D. C. 243, 289 Fed. 901 13–108
Lindner v. District of Columbia, 32 A. 2d 540 47–2402, 47–2403
Lindquist v. Steele, 42 A. 2d 925 11–772
Lindsey v. U. S., 133 F. 2d 368, 77 U. S. App. D. C. 1 22–2801
Lingo v. Wolfe, 37 A. 2d 270 45–1601, 45–1605, 45–1611
Lipphard v. Humphrey, 28 App. D. C. 355 19–101, 19–305, 19–306, 19–308
Lipscomb v. Hough, 52 App. D. C. 313, 286 Fed. 775 38–101
Lisner v. Hughes, 49 App. D. C. 40, 258 Fed. 512 49–301
Little v. Dilling, 46 A. 2d 371 11–772
Little v. District of Columbia, 62 A. 2d 874, aff'd 178 F. 2d 13, 85 U. S. App. D. C. 242, 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424 1–226, 6–114, 6–501
Little v. French, 71 A. 2d 534 45–1604
Livingston v. Fuhrman, 37 A. 2d 747 28–1112
Lloyd v. U. S. Fidelity & Guaranty Co., 31 A. 2d 669 11–774, 16–2002
Local Union No. 368 v. Barker Painting Co., 58 App. D. C. 51, 24 Fed. (2d) 879 28–2404
Lockwood v. Lockwood, 160 F. 2d 923 16–411
Lockwood v. Rucker, 34 App. D. C. 376 14–302
Loehler, G. G., Constr. Co. v. Auth, 60 App. D. C. 273, 51 Fed. (2d) 435 12–303
Lohman v. District of Columbia, 51 A. 2d 382 1–224
Lomax v. United States, 37 App. D. C. 414 22–2401
Lonas v. Betts, 160 F. 2d 281, 82 U. S. App. D. C. 55 19–309
London Guarantee & Accident Co. v. Britton, 138 F. 2d 932, 78 U. S. App. D. C. 195 36–501
London Guarantee & Acc. Co. v. Hoage, 63 App D. C. 323, 72 Fed. (2d) 191 36–501
London & Lancashire Indem. Co. v. Smoot, 52 App. D. C. 378, 287 Fed. 952 28–2707
Long v. Murchison, 62 A. 2d 370 14–101, 45–1408
Lorenz v. United States, 24 App. D. C. 337 23–107
Loring v. Bartlett, 4 App. D. C. 1 11–735
Loube v. District of Columbia, 67 App. D. C. 322, 92 Fed. (2d) 473 6–504
Loughran v. Loughran, 292 U. S. 216 16–403, 16–421, 30–101, 30–105, 49–301
Loughran v. United States, 62 App. D. C. 57, 64 Fed. (2d) 555 16–629
Loving v. Moore, 37 App. D. C. 214 16–1301
Lucas v. Auto City Parking Co., 62 A. 2d 557 11–772, 14–101
Lucas v. Hamilton Realty Corp., 70 App. D. C. 277, 105 Fed. (2d) 800 14–302
Luchs v. Christman, 42 App. D. C. 326 12–201
Lumbermen's Mut. Casualty Co. v. Hoage, 61 App. D. C. 171, 58 Fed. (2d) 1072 36–501
Lustine v. Williams, 68 A. 2d 900 45–1610
Lyles v. United States, 20 App. D. C. 559 22–2801
Lyman v. Knickerbocker Theatre Co., 55 App. D. C. 323, 5 Fed. (2d) 538 29–718
Lynch v. Bernstein, 48 A. 2d 467 45–906
Lynchburg Inv. Corp. v. Rudolph, 40 App. D. C. 129 7–204
Lynham v. Hufty, 44 App. D. C. 589 16–410, 17–101, 28–2501
Lyon v. Bursey, 36 App. D. C. 235 16–501, 16–518
Lyon v. Bursey, 42 App. D. C. 519 16–505, 16–1301
Lyon v. Ford, 7 App. D. C. 314 11–320
Lyons v. Bank of Discount, 154 Fed. 391 26–101
Lyons v. Capital Transit Co., 62 A. 2d 312 11–772

M

MacAboy v. Klecka, 22 Fed. Supp. 960 24–201, 24–209
Macafee v. Higgins, 31 App. D. C. 355 14–201
Macalester v. Maryland, 114 U. S. 598 47–807
MacDonald v. United States, 69 S. Ct. 191, 335 U. S. 451, 93 L. Ed. 53 22–1501, 22–1502, 22–1504
MacDonald, to Use of Emmco Ins. Co. v. Capital Transit Co., 31 A. 2d 862 11–772
Macfarland, In re, 30 App. D. C. 365 11–201, 11–305, 17–101
Macfarland v. Elverson, 32 App. D. C. 81 16–601, 16–606

Macfarland v. Washington, A. & Mt. V. R. Co., 18 App. D. C. 456 17–101
Mackall v. Chesapeake & Ohio Canal Co., 94 U. S. 308 47–807
Mackenzie v. Crouse, 35 App. D. C. 291 16–301
Mackey v. Peters, 22 App. D. C. 341 16–402, 16–403, 21–301, 30–103, 30–104
MacKie v. Howland, 3 App. D. C. 461 11–504
Madden v. Horigan, 66 A. 2d 525 11–772
Mades v. Miller, 2 App. D. C. 455 11–513, 20–604
Madison v. White, 60 App. D. C. 329, 54 Fed. (2d) 440 12–305
Maghan v. Board of Com'rs of District of Columbia, 141 F. 2d 274, 78 U. S. App. D. C. 370 4–121
Maghan v. Jerome, 67 App. D. C. 9, 88 Fed. (2d) 1001 4–140, 22–2201, 49–301
Magruder v. Belt, 7 App. D. C. 303 13–301, 13–401, 16–901
Magruder v. Magruder, 141 F. 2d 537, 78 U. S. App. D. C. 378 16–1301, 16–1302, 16–1305
Magruder v. National Metropolitan Bank of Wash., 40 A. 2d 828 20–501
Maiatico v. Fletcher, 59 App. D. C. 250, 39 Fed. (2d) 295 38–118
Maiatico v. Mortgage Security Corp., 61 App. D. C. 245, 60 Fed. (2d) 1081 28–2404
Major v. Shaver, 6 F. R. D. 207 12–302
Maktos v. Hill, 32 A. 2d 706 11–805
Mallery v. Frye, 21 App. D. C. 105 14–306
Malloy v. Northern Pac. R. Co., 151 Fed. 1019 44–401, 44–403
Malone v. Hoage, 64 App. D. C. 38, 73 Fed. (2d) 855 36–501
Maloney v. Foundry M. E. Church, 139 F. 2d 388, 78 U. S. App. D. C. 263 20–610
Maltby v. Thompson, 55 A. 2d 142 11–772
Mancuso v. L. Gillarde Co., 61 A. 2d 677 16–1707
Mancuso v. Santucci, 60 A. 2d 697 45–1605, 45–1611
Manucuso v. Santucci, 69 A. 2d 274 11–722, 45–1610
Mangum v. Capital Trac. Co., 59 App. D. C. 241, 39 Fed. (2d) 286 44–404
Manhattan Co. v. Goldberg, 38 A. 2d 172 11–772
Mann v. Cooper, 2 App. D. C. 226 12–201, 12–305, 15–101
Mann v. McDonald, 6 App. D. C. 548 15–101
Manning v. Childress, 48 App. D. C. 256 11–518
Manning v. Gannon, 44 App. D. C. 98 12–305
Manogue v. Bryant, 15 App. D. C. 245 45–501
Manogue v. Heilbroner, 63 A. 876 45–1605
Manogue v. Herrell, 13 App. D. C. 455 14–302, 19–101
Manos v. Fickenscher, 62, A. 2d 791 11–756, 11–772
Mansfield, Ex parte, 11 App. D. C. 558 17–101
Manson v. Duncanson, 166 U. S. 533 13–105
Marbury v. Madison, 1 Cranch (5 U. S.) 137 11–101
Marcum v. Marcum, 61 App. D. C. 332, 62 Fed. (2d) 871 16–401, 16–415
Marcus v. United States, 66 App. D. C. 298, 86 Fed. (2d) 854 22–105, 22–2401, 22–2403, 22–2404
Mare v. Alexander, 2 Fed. (2d) 895 47–107
Marfield v. McCurdy, 25 App. D. C. 342 20–115, 20–310, 20–610
Marine R. & Coal Co. v. United States, 257 U. S. 47 1–101, 22–1601
Marine R. & Coal Co. v. United States, 49 App. D. C. 285, 265 Fed. 437 16–501
Marks v. Frigidaire Sales Corp., 60 App. D. C. 359, 54 Fed. (2d) 974 16–1808, 16–1901
Mars. v. Herman, 37 A. 2d 351 11–772, 28–1112, 28–1115, 28–1507
Mars v. Spanos, 139 F. 2d 369, 78 U. S. App. D. C. 230 12–301, 45–932
Marschalk v. Marschalk, 45 App. D. C. 455 16–415
Marsh v. Kenyon, 37 App. D. C. 574 16–1501
Marshall v. Augusta, 5 App. D. C. 183 45–812
Marshall v. Kraak, 23 App. D. C. 129 45–603, 45–611
Marshall v. Lane, 27 App. D. C. 276 45–816
Marshall v. United States, 45 App. D. C. 373 22–2401
Martin v. Martin, 57 App. D. C. 173, 18 Fed. (2d) 823 16–410
Martin v. Martin, 160 F. 2d 20 16–403
Martin v. Poole, 36 App. D. C. 281 28–406
Martin v. Schlein, 71 A. 2d 614 11–772, 45–1605
Martin v. Staples, 164 F. 2d 106, 82 U. S. App. D. C. 370 19–312
Martin v. U. S., 127 F. 2d 865, 75 U. S. App. D. C. 399 22–504
Martin v. Wills, 76 A. 2d 55 45–1405
Martin Co. v. Sumpter, 64 A. 2d 425 28–1101, 28–1302
Marvin's Credit v. Kitching, 34 A. 2d 866 11–808
Maryland Casualty Co. v. Cardillo, 69 App. D. C. 199, 99 Fed. (2d) 432 36–501
Maryland Casualty Co. v. Cardillo, 71 App. D. C. 160, 107 Fed. (2d) 959 36–501
Maryland & Virginia Milk Producers' Assn. v. District of Columbia, 119 F. 2d 787, 73 App. D. C. 399 47–1205, 47–1408
Mas v. U. S., 151 F. 2d 32, 80 U. S. App. D. C. 223 11–205, 22–1401
Maschaur v. Maschaur, 23 App. D. C. 87 16–403
Mason v. Automobile Finance Co., 121 F. 2d 32, 73 App. D. C. 284 40–404
Mason v. Curro, 41 A. 2d 164 45–1605
Massachusetts, In re, 197 U. S. 482 11–201, 17–101
Massachusetts Bonding & Ins. Co. v. Hoage, 63 App. D. C. 89, 69 Fed. (2d) 575 36–501
Massachusetts Mut. Acc. Assn. v. Dudley, 15 App. D. C. 472 14–201
Masters v. United States, 42 App. D. C. 350 22–1202
Mathews v. Libbey, 42 App. D. C. 272 38–121
Matson v. Mackubin, 61 App. D. C. 102, 57 Fed. (2d) 941 13–103
Matthews v. Matthews, 80 F. Supp. 560 16–808
Matz v. U. S., 158 F. 2d 190 22–601
Maxey v. United States, 30 App. D. C. 63 22–105, 22–201
Mayer v. American Security & Trust Co., 33 App. D. C. 391 19–201
Mayer v. Buchanan, 50 A. 2d 595 45–1601, 45–1602, 45–1610, 45–1611
Mays v. New Amsterdam Cas. Co., 40 App. D. C. 249 14–308
Mazo v. Ed. L. Stock, Inc., 31 A. 2d 660 11–703, 11–755, 28–305, 28–308
Mazza v. Russell, 47 App. D. C. 87 28–2602

McAfee v. United States, 72 App. D. C. 60, 111 Fed. (2d) 199 22–2401
McAleer v. Schneider, 2 App. D. C. 461 19–205
McBoyle v. United States, 283 U. S. 25 40–602
McCabe v. Atchison, T. & S. F. R. Co., 186 Fed. 966 44–401
McCarl v. United States ex rel. Societa Ligure di Armamento, 58 App. D. C. 319, 30 Fed. (2d) 561 16–1001
McCarthy v. Holtman, 19 App. D. C. 150 38–122
McCartney v. Fletcher, 10 App. D. C. 572 14–306
McCartney v. Holmquist, 70 App. D. C. 334, 106 Fed. (2d) 855 14–308
McCaul Co. v. Harr, 51 App. D. C. 111, 276 Fed. 633 17–101
McCloskey & Co. v. Dickinson, 56 A. 2d 442 12–201
McConchie v. Realty Associates, 54 A. 2d 862 11–756
McCoy v. Duehay, 51 App. D. C. 363, 279 Fed. 1001 28–616, 45–902
McCurley v. National Sav. & Trust Co., 49 App. D. C. 10, 258 Fed. 154 12–201, 14–302
McDevitt v. Waple & James, 34 A. 2d 39 11–772
McDonald v. Johnston, 86 Fed. (2d) 329 22–2901, 22–2902, 24–203
McDonald v. Maxwell, 56 App. D. C. 287, 12 Fed. (2d) 822 45–102, 45–822
McDonald v. U. S., 166 F. 2d 957 22–1504
McFarland v. U. S., 174 F. 2d 538, 85 U. S. App. D. C. 19 16–401
McGowan v. Elroy, 28 App. D. C. 188 19–103, 19–111, 22–1403
McGowan v. Moody, 22 App. D. C. 148 11–305, 11–315
McGrady v. Munsey Trust Co., 32 A. 2d 106 11–711
McGraw v. District of Columbia, 3 App. D. C. 405 16–1201
McGrew v. McGrew, 54 App. D. C. 331, 298 Fed. 204 14–306
McGrew v. McGrew, 59 App. D. C. 230, 38 Fed. (2d) 541 11–326
McGuire v. Gerstley, 204 U. S. 489 16–1906
McGuire v. Gerstley, 26 App. D. C. 193 16–1901
McHenry v. United States, 51 App. D. C. 119, 276 Fed. 761 22–2401
McHugh v. Duane, 53 A. 2d 282 11–774
McIntire v. McIntire, 192 U. S. 116 18–710, 20–604
McIntire v. McIntire, 14 App. D. C. 337 11–503, 11–504, 20–610
McKay v. Bradley, 26 App. D. C. 449 12–201, 12–203, 15–101
McKee v. District Nat. Bank, 38 App. D. C. 465 28–301, 28–401
McKenna v. Wilcox, 41 A. 2d 303 11–772
McKenzie v. U. S., 126 F. 2d 533, 75 U. S. App. D. C. 270 11–1401, 22–2801, 22–2901
McKitrick v. McKitrick, 49 App. D. C. 109, 261 Fed. 451 16–419
McKnight's Estate, In re, 1 App. D. C. 28 20–109
McLane v. Cropper, 5 App. D. C. 276 11–504
McLarren v. McLarren, 44 App. D. C. 555 17–101
McLarren v. McLarren, 45 App. D. C. 237 16–417
McLaughlin v. Bank of Potomac, 7 How. (48 U. S.) 220 11–325
McLean v. Nolan, 44 App. D. C. 1 38–101, 38–103
McMahon v. Weiner, 67 A. 2d 682 45–1605
McManus v. Lynch, 28 App. D. C. 381 18–101
McManus v. Newcomb, 61 A. 2d 36 45–1407
McMillan v. Fuller, 41 App. D. C. 384 12–201, 13–301, 16–501
McMurray v. Brown, 91 U. S. 257 38–101
McMurtrey v. Clark, 157 F. 2d 703, 81 U. S. App. D. C. 294 16–1001
McNeil v. Gary, 40 App. D. C. 397 45–303
McNeill v. Lilly, 65 App. D. C. 210, 82 Fed. (2d) 620 28–202, 28–801
McReynolds v. National Woodworking Co., 58 App. D. C. 197, 26 Fed. (2d) 975 28–205
McSweeney v. Wilson, 48 A. 2d 469 11–756, 45–1605
McUin v. United States, 17 App. D. C. 323 22–2401
Mead v. Kane Transfer Co., 36 A. 2d 567 11–772
Mead v. Phillips, 135 F. 2d 819, 77 U. S. App. D. C. 365 18–210, 18–211, 18–214
Means v. United States, 62 App. D. C. 112, 65 Fed. (2d) 206 23–201
Mearns v. Sullivan, 49 App. D. C. 179, 262 Fed. 633 17–101
Mears v. United States, 60 App. D. C. 387, 55 Fed. (2d) 745 22–2801
Medley v. U. S., 155 F. 2d 857, 81 U. S. App. D. C. 85 22–2401
Mee v. Marlyn Apartment Co., 31 A. 2d 864 11–774, 45–1605, 45–1611
Mellen v. Hirsch, 8 F. R. D. 250 36–501
Mellon v. Mertz, 58 App. D. C. 302, 30 Fed. (2d) 311 17–101
Mellon v. Seymoure, 56 App. D. C. 301, 12 Fed. (2d) 836 12–201
Melvin v. Melvin, 129 F. 2d 39, 76 U. S. App. D. C. 56 11–306, 16–415, 16–416
Melvin v. Pence, 130 F. 2d 423, 76 U. S. App. D. C. 154 47–2341
Memphian, The, 245 Fed. 484 11–1508
Menna v. Menna, 70 App. D. C. 13, 102 Fed. (2d) 617 16–403
Mercer v. Equitable Life Insurance Society, 65 A. 2d 207 11–772
Mercury Press v. District of Columbia, 173 F. 2d 636, 84 U. S. App. D. C. 203, cert. den., 69 S. Ct. 1495, 337 U. S. 931, 93 L. Ed. 1738 47–1207
Mergardt v. Colonial-American Nat. Bank of Roanoke, 140 F. 2d 701, 78 U. S. App. D. C. 348 45–611, 45–614
Mergner v. U. S., 147 F. 2d 572, 79 U. S. App. D. C. 373 22–2401
Merriam v. Sugrue, 41 A. 2d 166 11–722
Merrick v. American Automobile Assn., 31 Fed. Supp. 876 11–1301
Merrill v. B. R. Acker Co., 142 F. 2d 102, 79 U. S. App. D. C. 51 38–108
Merritt v. Kay, 54 App. D. C. 152, 295 Fed. 973 45–911
Merritt v. Thompson, 53 App. D. C. 233, 289 Fed. 631 45–902
Messall v. Efron, 72 A. 2d 694 11–772
Metcalf v. Metcalf, 142 F. 2d 102, 79 U. S. App. D. C. 51 16–401
Metropolitan Casualty Ins. Co. v. Hoage, 63 App. D. C. 307, 72 Fed. (2d) 175 36–501

Metropolitan Casualty Ins. Co. v. Hoage, 67 App. D. C. 54, 89 Fed. (2d) 798 36–501
Metropolitan Life Ins. Co. v. Adams, 37 A. 2d 345 35–414
Metropolitan Life Ins. Co. v. Burch, 39 App. D. C. 397 35–202, 35–203
Metropolitan Life Ins. Co. v. Hawkins, 31 App. D. C. 493 35–202
Metropolitan Loan & Trust Co. v. Schafer, 44 App. D. C. 356 28–106, 28–2703
Metropolitan R. Co. v. District of Columbia, 132 U. S. 1 1–101, 1–102
Metropolitan R. Co. v. Moore, 121 U. S. 558 11–310
Metzger v. Kelly, 34 App. D. C. 548 17–101
Metzger v. Metzger, 35 App. D. C. 389 28–2707
Metzger v. O'Donoghue, 53 App. D. C. 107, 288 Fed. 461 12–101, 20–403
Metzler v. Edwards, 53 A. 2d 42 45–1414
Meyers v. United States, 171 F. 2d 800, 84 U. S. App. D. C. 101, 181 F. 2d 802, 86 U. S. App. D. C. 320, cert. den. 70 S. Ct. 1030, 339 U. S. 983, 94 L. Ed. 923 22–2501
Michalowicz v. Michalowicz, 25 App. D. C. 484 16–419
Michigan Tool Co. v. Drummond, 33 Fed. Supp. 540 11–307
Middle States Loan v. Baker, 19 App. D. C. 1 26–406
Middleton v. Parke, 3 App. D. C. 149 21–211, 21–212
Mike's Mfg. Company v. Zimzoris, 66 A. 2d 414 11–772
Milano v. United States, 40 App. D. C. 379 11–1401, 11–1412, 11–1413, 49–301
Miles v. McGrath, 4 Fed. Supp. 604 12–201
Millard v. Roberts, 202 U. S. 429 7–1213
Miller v. Ambrose, 35 App. D. C. 75 13–209
Miller v. Miller, 114 F. 2d 596, 72 App. D. C. 348, 122 F. 2d 209, 74 App. D. C. 216 12–202, 16–403
Miller v. Payne, 28 App. D. C. 396 18–706
Miller v. Prophet, 37 A. 2d 450 11–738, 11–772, 45–1605
Miller v. United States, 6 App. D. C. 6 22–1504
Miller v. United States, 38 App. D. C. 361 23–107
Miller v. United States, 41 App. D. C. 52 22–1405, 22–2201
Miller v. United States, 57 App. D. C. 228, 19 Fed. (2d) 702 22–501
Miller v. United States, 61 App. D. C. 58, 57 Fed. (2d) 424 7–210
Miller v. U. S., 169 F. 2d 967 22–201, 22–301
Miller-Shoemaker Co. v. Sturgeon, 31 App. D. C. 406 18–701, 18–723
Milton v. United States, 71 App. D. C. 394, 110 Fed. (2d) 556 22–1401, 28–305, 28–507
Minar v. Sheehy, 56 App. D. C. 318, 13 Fed. (2d) 290 13–208
Mindell v. Glenn, 65 A. 2d 340, aff'd 74 A. 2d 835 11–735, 11–738, 11–772
Mine Safety Appliances Co. v. Knox, 59 F. Supp. 733 11–305
Minick v. Associates Inv. Co., 71 App. D. C. 367, 110 Fed. (2d) 267 11–305, 11–703
Miniggio v. Hutchins, 43 App. D. C. 117 11–503, 11–504, 18–503
Minnix Co. v. L. C. Smith Bros. Typewriter Co., 33 App. D. C. 357 42–103
Minton v. F. G. Smith Piano Co., 36 App. D. C. 137 13–208
Missouri Pac. R. Co. v. Castle, 172 Fed. 841 44–401
Mitchell v. David, 49 A. 2d 84, 51 A. 2d 375, 52 A. 2d 125 11–722, 11–755, 11–772, 13–214, 45–1602
Mitchell v. Reichelderfer, 61 App. D. C. 50, 57 Fed. (2d) 416 7–204, 7–209
Mitchell v. U. S., 138 F. 2d 426, 78 U. S. App. D. C. 171 4–140
Mitchell Min. Co. v. Emig, 35 App. D. C. 527 13–103
Moder v. United States, 62 App. D. C. 65, 64 Fed. (2d) 703 11–305
Modern Engineering & Service Corp. v. McCrea, 46 A. 2d 767 11–722, 28–1004
Moens v. United States, 50 App. D. C. 15, 267 Fed. 317 22–2001
Moffatt v. United States, 60 App. D. C. 35, 46 Fed. (2d) 616 22–1301
Mollohan v. Masters, 45 App. D. C. 414 28–2703
Monahan v. Hoage, 67 App. D. C. 174, 90 Fed. (2d) 419 36–501
Monalokos v. United States, 41 App. D. C. 19 22–2801
Moncure v. Curry, 42 A. 2d 143 11–772, 45–902
Moncure v. Moncure, 51 App. D. C. 292, 278 Fed. 1005 11–325, 16–403, 16–416
Monday v. United States, 76 A. 2d 68 11–772, 11–945
Mondell v. Thom, 143 F. 2d 157, 79 U. S. App. D. C. 145 45–102, 45–1017
Monroe v. Huff, 145 F. 2d 249, 79 U. S. App. D. C. 246 16–806
Monroe v. United States, 56 App. D. C. 80, 10 Fed. (2d) 645 22–2401
Montgomery v. Brown, 25 App. D. C. 490 45–812
Montgomery v. Montgomery, 153 F. 2d 634 16–308, 16–410, 16–411
Moore v. Coates, 40 A. 2d 68 45–1601, 45–1602, 45–1610
Moore v. Guy, 135 F. 2d 476, 77 U. S. App. D. C. 379 12–303
Moore v. Hechinger, 127 F. 2d 746, 75 U. S. App. D. C. 391 36–501
Moore v. Moore, 47 App. D. C. 23 18–723
Moore v. Moore, 179 F. 2d 38, 86 U. S. App. D. C. 16 16–403
Moore v. Pywell, 29 App. D. C. 312 11–305, 16–1201
Moore v. Shoemaker, 10 App. D. C. 6 1–625
Moore v. Snyder, 71 App. D. C. 293, 109 Fed. (2d) 840 12–201, 12–305
Moore's Victoria Theatre Co. v. District of Columbia, 55 App. D. C. 46, 299 Fed. 923 5–301, 5–309, 5–311
Moran v. Cobb, 120 F. 2d 16, 73 App. D. C. 200 26–101
Moran v. Harrison, 67 App. D. C. 237, 91 Fed. (2d) 310 12–201
Moran v. Moran, (D. C. D. C.), 31 Fed. Supp. 227 16–411
Moran v. Moran, 160 F. 2d 925 16–409
Moran v. Schlosberg, 67 App. D. C. 163, 90 Fed. (2d) 408 12–201, 26–101
Morehead v. New York ex rel. Tipaldo, 298 U. S. 587 36–401

Moreland v. United States, 51 App. D. C. 118, 276 Fed. 640 22–903
Morgan v. Adams, 29 App. D. C. 198 19–101
Morgan v. Hoage, 63 App. D. C. 355, 72 Fed. (2d) 727 36–501
Morgan v. Howard, 54 App. D. C. 3, 293 Fed. 650 29–223, 29–224, 29–237
Morgan v. Kraft, 52 App. D. C. 172, 285 Fed. 906 13–217
Morgan v. Morgan, 30 App. D. C. 436 19–101
Morganthau v. Fidelity & Deposit Co., 68 App. D. C. 163, 94 Fed. (2d) 632 13–108
Morimura v. Samaha, 25 App. D. C. 189 16–328, 16–329
Moritz v. Moritz, 80 F. Supp. 267 16–401
Morris v. Breaker, 38 A. 2d 632 45–908, 45–1605
Morris v. District of Columbia, 124 F. 2d 284, 75 U. S. App. D. C. 82 40–607
Morris v. District of Columbia, 31 A. 2d 652 22–1107
Morris v. Foster, 51 App. D. C. 238, 278 Fed. 321 19–103, 19–312, 20–106
Morris v. United States, 174 U. S. 196 47–807, 49–301
Morse v. Brainerd, 42 App. D. C. 448 28–616, 45–819, 45–904
Morse v. United States ex rel. Hine, 29 App. D. C. 433 28–2407
Morsell v. First Nat. Bank, 1 Otto (91 U. S.) 357 15–103
Morton v. U. S., 147 F. 2d 28, 79 U. S. App. D. C. 329 4–140, 11–205
Morton v. United States, 183 F. 2d 844 22–3204
Morton v. Welch, 162 F. 2d 840 22–2404, 23–101
Moses v. Hayes, 36 App. D. C. 194 11–301, 16–301, 16–303, 16–305
Moses v. Labofish, 132 F. 2d 16, 76 U. S. App. D. C. 401 45–915
Moses v. Lockwood, 54 App. D. C. 115, 295 Fed. 936 16–311
Moses v. United States, 19 App. D. C. 290 15–204
Moss, In re, 23 App. D. C. 474 23–106
Moss v. Littleton, 6 App. D. C. 201 35–901
Moss v. United States, 72 Fed. (2d) 30 24–401
Moss v. United States, 23 App. D. C. 475 11–305, 49–301
Mostyn v. United States, 62 App. D. C. 22, 64 Fed. (2d) 145 14–305
Mount Vernon Savings Bank v. Wardman, 173 F. 2d 648, 84 U. S. App. D. C. 343 17–101
Moyer v. Cardillo, 119 F. 2d 785, 73 App. D. C. 261 36–501
Moyers v. Leoffler, 80 F. Supp. 221 11–1506
Mueller Brass Co. v. Alexander Milburn Co., 152 F. 2d 142 11–205, 13–103, 17–101
Mullen v. Canfield, 70 App. D. C. 168, 105 Fed. (2d) 47 11–601, 11–602, 11–606
Mullowny v. Mowatt, 43 App. D. C. 49 23–102
Mulvihill v. Clabaugh, 21 App. D. C. 440 11–208
Mumforde v. U. S., 130 F. 2d 411, 76 U. S. App. D. C. 107 22–2401
Munday v. Bricklayers, Masons & Plasterers Intern. Union of America, 47 A. 2d 398 45–915
Munoz v. Porto Rico R. Light & Power Co., 83 Fed. (2d) 262 11–316
Munsey v. Safeway Stores, 63 A. 2d 598 11–756, 11–772
Munsey Trust Co. v. Alexander, 59 App. D. C. 369, 42 Fed. (2d) 604 45–106, 45–302
Murphy v. Gould, 38 App. D. C. 363 11–205
Murphy v. Mallos, 59 A. 2d 514 45–1408
Murphy v. O'Donnell, 63 A. 2d 340 11–722, 11–756, 45–1408
Murphy v. Paris, 57 App. D. C. 19, 16 Fed. (2d) 515 11–315
Murray v. United States, 53 App. D. C. 119, 288 Fed. 1008 14–305, 22–2401
Mutual Benefit Health and Accident Association v. McGinn, 75 A. 2d 643 11–772, 14–308
Mutual Ben. Life Ins. Co. v. Flynn, 60 App. D. C. 108, 48 Fed. (2d) 1020 15–312, 16–303, 16–323
Mutual Comm. & Stock Co. v. Moore, 13 App. D. C. 78 16–1801
Mutual Life Ins. Co. v. Gott, 62 App. D. C. 379, 68 Fed. (2d) 426 35–202
Myers v. H. L. Rust Co., 134 F., 2d 417, 77 U. S. App. D. C. 218 15–201, 45–1601, 45–1605
Myers v. Mayhew, 32 App. D. C. 205 16–1501
Myers v. Morgan, 224 Fed. 413 24–402
Myers v. Myers, 55 App. D. C. 224, 4 Fed. (2d) 300 16–410
Myers v. United States, 272 U. S. 52 1–206, 11–601

N

Nalle v. Oyster, 230 U. S. 165 11–205, 11–312, 11–316, 11–318, 11–320
Nash v. District of Columbia, 48 A. 2d 469 11–774
Nash v. Holzbeierlein, 68 A. 2d 403 14–302
Nash v. Ober, 2 App. D. C. 304 20–604
Nash v. Rawlett, 41 App. D. C. 456 16–501
Nashville Interurban R. Co. v. Barnum, 212 Fed. 634 11–301
Nation v. District of Columbia, 34 App. D. C. 453 22–403, 22–3112, 23–101
National Assn. of Certified Public Accountants v. United States, 53 App. D. C. 391, 292 Fed. 668 29–402, 29–601, 29–725
National Bank of Washington v. District of Columbia, 176 F. 2d 62, 85 U. S. App. D. C. 187 47–1202
National Ben. Life Ins. Co. v. Shaw-Walker Co., 71 App. D. C. 276, 111 Fed. (2d) 497 29–726, 29–727
National Bondholders Corp. v. McClintic, 99 Fed. (2d) 595 16–1001
National Broadcasting Co. v. Federal Communications Commission, 132 F. 2d 545, 76 U. S. App. D. C. 238 17–101
National Cafes v. Elite Laundry Co., 57 App. D. C. 178, 18 Fed. (2d) 828 45–820
National Capital Bank v. Bryan, 20 App. D. C. 26 28–115, 28–806
National Casualty v. Hoage, 64 App. D. C. 33, 73 Fed. (2d) 850 36–501
National City Bank v. Bankers Trust Co., 37 App. D. C. 553 28–401
National City Development Co. v. McFerran, 55 A. 2d 342 11–756

National Council Junior Order United American Mechanics v. State Council, 27 App. D. C. 1 35–901
National Exp. Co. v. Morris, 15 App. D. C. 262 29–211
National Homeopathic Hospital v. Phillips, 181 F. 2d 293, 86 U. S. App. D. C. 295 2–101, 2–102, 2–134
National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton, 147 F. 2d 561, 79 U. S. App. D. C. 309 36–501
National Hospital Service Soc. v. Jordon, 128 F. 2d 460, 76 U. S. App. D. C. 23 35–906
National Life Ins. Co. v. White, 38 A. 2d 663 11–772, 11–774
National Metropolitan Bank v. U. S., 142 F. 2d 474, 79 U. S. App. D. C. 54, 65 S. Ct. 354, 323 U. S. 454 11–205, 28–124, 28–305, 28–307
National Metropolitan Bank of Washington v. Joseph Gawler's Sons, 52 A. 2d 280, 168 F. 2d 571 18–520
National Metropolitan Bank of Washington v. Judge, 37 A. 2d 446 45–1601, 45–1605
National Rifle Ass'n of America v. Young, 134 F. 2d 524, 77 U. S. App. D. C. 290 46–301, 46–303, 46–304, 46–312
National Safe Deposit, Sav. & Trust Co. v. Gray, 12 App. D. C. 276 29–225
National Safe Deposit, Sav. & Trust Co. v. Heiberger, 19 App. D. C. 506 17–101, 19–101, 19–304, 19–312
National Safe Deposit, Sav. & Trust Co. v. Hibbs, 32 App. D. C. 459 28–2503, 29–225
National Safe Deposit, Sav. & Trust Co. v. Sweeney, 3 App. D. C. 401 17–101, 19–312
National Sav. & Trust Co. v. Reichelderfer, 61 App. D. C. 38, 57 Fed. (2d) 404 5–203, 7–204, 7–314
National Sav. & Trust Co. v. Ryan, 49 App. D. C. 159, 262 Fed. 613 12–201
National Surety Co. v. Poates, 43 App. D. C. 334 16–301
National Trucking and Storage Co. v. Driscoll, 64 A. 2d 304 40–401, 40–403
National Union v. Sawyer, 42 App. D. C. 475 14–501
National War Labor Board v. U. S. Gypsum Co., 145 F. 2d 97, 79 U. S. App. D. C. 239 11–205
Naylor v. Mealy, 62 App. D. C. 321, 67 Fed. (2d) 693 19–309
Nealy v. Hazen, 63 App. D. C. 239, 71 Fed. (2d) 692 7–117, 7–201, 16–601
Neely v. Philadelphia Inquirer Co., 61 App. D. C. 334, 62 Fed. (2d) 873 13–103
Neely v. U. S., 144 F. 2d 519, 79 U. S. App. D. C. 177 11–1205
Neely v. U. S., 150 F. 2d 977 24–301
Neild v. District of Columbia, 71 App. D. C. 306, 110 Fed. (2d) 246 1–102, 47–1401
Nelson v. B. Simon Hardware Co., 145 F. 2d 386, 79 U. S. App. D. C. 250 11–205
Nelson v. Nelson, 60 App. D. C. 156, 49 Fed. (2d) 680 16–417
Nelson v. Nelson, 171 F. 2d 1021, 84 U. S. App. D. C. 167 16–409
Nelson v. United States, 28 App. D. C. 32 22–1504, 22–1505
Nelson v. United States, 60 App. D. C. 323, 53 Fed. (2d) 935 23–108
Nestlerode v. U. S., 122 F. 2d 56, 74 App. D. C. 276 22–2403, 23–107
Neubeck v. Lynch, 37 App. D. C. 576 16–1201
Neudecker v. Philpot, 174 F. 2d 668, 85 U. S. App. D. C. 28 16–410
Neufield v. U. S. 118 F. 2d 375, 73 App. D. C. 174 22–2901, 23–202
Neuland's Estate, In re, 44 W. L. R. 378 18–520
New Amsterdam Casualty Co. v. Cardillo, 71 App. D. C. 172, 108 Fed. (2d) 492 36–501
New Amsterdam Casualty Co. v. Hoage, 61 App. D. C. 306, 62 Fed. (2d) 468 36–501
New Arcade Co. v. Owens, 49 App. D. C. 65, 258 Fed. 965 14–201
Newberry v. H. L. Rust Company, 65 A. 2d 342 45–1604
Newlin v. Weaver Brothers, 69 A. 2d 500, reh den 70 A. 2d 61, aff'd 74 A. 2d 65 45–910
Newman v. Baker, 10 App. D. C. 197 45–501
Newman v. Lynchburg Inv. Corp., 236 U. S. 692 7–202, 7–204, 7–208
Newman v. United States ex rel. Frizzell, 238 U. S. 537 1–103, 16–1602, 16–1603
New Negro Alliance v. Harry Kaufman, 64 App. D. C. 362, 78 Fed. (2d) 415 17–101
Newyahr v. U. S., 177 F. 2d 658, 85 U. S. App. D. C. 384, cert. den. 70 S. Ct. 350, 338 U. S. 936, 94 L. Ed. 257 22–1501
New York Continental Filtration Co. v. Karr, 31 App. D. C. 459 13–103
New York Life Ins. Co. v. Taylor, 143 F. 2d 14, 147 F. 2d 297, 79 U. S. App. D. C. 66 14–308
Nicholls v. Hodges, 1 Pet. (26 U. S.) 562 11–316
Niosi v. Aiello, 69 A. 2d 57 11–772
Noble v. Botkin, 153 F. 2d 228, 80 U. S. App. D. C. 354 11–315, 16–806
Noble v. Eicher, 143 F. 2d 1001, 79 U. S. App. D. C. 217 11–208
Noel v. Baskin, 131 F. 2d 231, 76 U. S. App. D. C. 332 12–201
Noel v. Olds, 138 F. 2d 581, 78 U. S. App. D. C. 155 19–110
Noffsinger v. Noffsinger, 50 F. Supp. 810 16–411
Nolan v. Werth, 142 F. 2d 9, 79 U. S. App. D. C. 33 11–772
Nolan Motor Co., Inc., In re (D. C. D. C.), 25 Fed. Supp. 186 12–401, 42–101
Nordlinger v. United States, 24 App. D. C. 406 22–2201
Norman v. United States, 20 App. D. C. 494 22–2401
Norwood v. Francis, 25 App. D. C. 463 30–208
Norris v. Rael, 47 A. 2d 766 45–1611
Northeast Auto Wrecker v. Sanford, 43 A. 2d 292 45–903
Notes v. Doyle, 32 App. D. C. 413 19–103
Notes v. Snyder, 55 App. D. C. 233, 4 Fed. (2d) 426 30–207, 30–208
Novak v. District of Columbia, 49 A. 2d 88 40–609

Noyes v. Parker, 68 App. D. C. 13, 92 Fed. (2d) 562 45–203, 45–816
Nuckols v. Nuckols, 38 App. D. C. 441 17–101
Nuckols v. United States, 69 App. D. C. 120, 99 Fed. (2d) 353 22–1504, 23–301, 49–301
Nusbaum v. District of Columbia, 58 App. D. C. 47, 24 Fed. (2d) 622 10–137
Nutting's Estate, in re, 82 F. Supp. 689 19–108, 19–202

O

Ober v. Riggs Nat. Bank of Washington, D. C., 31 A. 2d 877 28–119, 28–802
O'Brien v. Dougherty, 1 App. D. C. 148 45–812, 45–816
O'Brien v. United States, 27 App. D. C. 263 22–1202
O'Brien v. United States, 69 App. D. C. 135, 99 Fed. (2d) 368 22–301, 22–2501
Ochs v. Weil, 142 F. 2d 758, 79 U. S. App. D. C. 84 12–302
Ockstadt v. Bowles, 34 App. D. C. 58 14–302
O'Connor v. District of Columbia, 153 F. 2d 225, 80 U. S. App. D. C. 351 47–1601
Ocumpaugh v. Norton, 24 App. D. C. 296 28–616
Oden v. District of Columbia, 65 App. D. C. 50, 79 Fed. (2d) 175 40–609
O'Donoghue v. United States, 289 U. S. 516 11–101, 11–203, 11–302, 11–316, 11–324
Ofenstein v. Bryan, 20 App. D. C. 1 28–115, 28–806
O'Hara v. District of Columbia, 147 F. 2d 146, 79 U. S. App. D. C. 302 16–601, 16–605, 16–606
Ohio Bank v. Central Constr. Co., 17 App. D. C. 524 29–719
Ohio Nat. Bank v. Berlin, 26 App. D. C. 218 45–402, 45–501
Okie v. Person, 23 App. D. C. 170 45–915
Olessoff v. Osbourn, 47 A. 2d 514 45–1605
Olverson v. Olverson, 54 App. D. C. 48, 293 Fed. 1015 16–403
O'Malley v. Woodrough, 307 U. S. 277 11–101
O'Neal v. O'Neal, 80 F. Supp. 538 16–403
O'Neil v. O'Neil, 55 App. D. C. 40, 299 Fed. 914 16–403, 22–301
O'Neill v. District of Columbia, 132 F. 2d 601, 77 U. S. App. D. C. 79 45–812, 47–1607
Operative Plasterers and Cement Finishers International Assn. v. Case, 68 App. D. C. 43, 93 Fed. (2d) 56 11–317, 11–318
Oregon R. & N. Co. v. Campbell, 177 Fed. 318 44–401
Orenberg v. Thecker, 143 F. 2d 375, 79 U. S. App. D. C. 149 11–319
Orencia v. Overholser, 163 F. 2d 763 24–303
Orenstein & Koppel, Aktiengesellschaft v. Koppel Industrial Car Equipment Co., 59 App. D. C. 221, 38 Fed. (2d) 532 16–301
Orlove v. National Sav. & Trust Co., 68 App. D. C. 387, 98 Fed. (2d) 259 45–617
Ormsby v. United States, 273 Fed. 977 11–305, 21–310, 22–2301, 22–2302, 22–2304, 24–301, 24–303.
Ormsby v. Webb, 134 U. S. 47 11–310, 11–316, 11–501
Orndorff v. Cohen, 62 A. 2d 794 11–722, 14–101, 41–102, 41–126, 46–313f
Orrison v. Ferrante, 72 A. 2d 771 28–1112, 28–1115, 28–1507
Ostrow v. Horning, Inc., 69 A. 2d 277 45–1604, 45–1610
Ostrow v. McNeal, 68 App. D. C. 69, 93 Fed. (2d) 228 15–304, 15–308, 15–310, 15–312
O'Toole v. Lamson, 41 App. D. C. 276 28–205, 28–409
Otterback v. Patch, 5 App. D. C. 69 11–320, 13–301, 15–204
Ould v. Washington Hosp. for Foundlings, 95 U. S. 303 32–701, 45–102
Overby v. Gordon, 177 U. S. 214 11–517
Overholser v. Boddie, 184 F. 2d 240 21–306, 21–315
Overholser v. De Marcos, 147 F. 2d 145, 79 U. S. App. D. C. 397 16–806
Overholser v. De Marcos, 149 F. 2d 23 16–806
Overholser v. Treibly, 147 F. 2d 705, 79 U. S. App. D. C. 389 16–801, 21–306, 21–315, 21–320
Owens v. Liff, 65 A. 2d 921 45–501, 45–1605
Oxley v. Oxley, 159 F. 2d 10 16–409, 21–101

P

Pace v. Bradley, 171 F. 2d 340, 84 U. S. App. D. C. 212 19–110
Pace v. District of Columbia, 135 F. 2d 249, 77 U. S. App. D. C. 332 47–1601
Page v. Burnstine, 102 U. S. 664 14–301
Palais Royal v. Calhoun, 67 App. D. C. 364, 92 Fed. (2d) 515 11–744
Paley v. Solomon, 59 F. Supp. 887 11–306, 11–752, 11–755
Palm v. Bachrach, 55 App. D. C. 302, 5 Fed. (2d) 125 42–103
Palmer v. Associates Discount Corp., 124 F. 2d 225, 74 App. D. C. 386 28–405, 28–409, 28–1112
Palmer v. Costello, 41 App. D. C. 165 11–1101
Palmer v. King, 41 App. D. C. 419 16–1801
Palmer v. Lenovitz, 35 App. D. C. 303 11–602, 22–107, 22–2722, 49–301
Palmer v. United States ex rel. Lane, 41 App. D. C. 341 11–1101
Palmer Const. Co. v. Patouillet, 42 A. 2d 273 11–772
Panama Ref. Co. v. Ryan, 293 U. S. 388 5–105
Panitz v. District of Columbia, 72 App. D. C. 131, 112 Fed. (2d) 39 47–2406
Paolucci v. United States, 30 App. D. C. 217 23–108
Parish v. Hedges, 34 App. D. C. 21 18–526
Parish v. McGowan, 39 App. D. C. 184 14–302, 20–108
Parker, In re, 299 Fed. 1006 22–903, 22–904
Parker v. District of Columbia, 50 App. D. C. 356, 273 Fed. 320 40–617
Parker v. Hot Shoppes, 49 A. 2d 657 11–756
Parker v. Sager, 174 F. 2d 657, 85 U. S. App. D. C. 4 45–1602, 45–1604, 45–1608, 45–1609, 45–1610
Parker v. United States, 3 Fed. (2d) 903 22–903
Parker v. U. S., 158 F. 2d 185 22–2403
Parker v. Williams, 71 A. 2d 770 45–1609
Parks v. Parks, 68 App. D. C. 363, 98 Fed. (2d) 235 16–403
Parks v. Parks, 116 F. 2d 556, 73 App. D. C. 93 16–403, 16–404
Parlton v. United States, 64 App. D. C. 169, 75 Fed. (2d) 772 22–401

Parrella v. Parrella (D. C. D. C.), 33 Fed. Supp. 614 16–403, 16–410
Parrella v. Parrella, 120 F. 2d 728, 74 App. D. C. 161 16–415
Parsons v. Barry, 59 F. Supp. 221 26–101
Parsons v. District of Columbia, 170 U. S. 45 43–1501, 43–1503, 43–1511
Pascucci v. Alsop, 147 F. 2d 880, 79 U. S. App. D. C. 354 19–101, 19–103, 19–301
Pascucci v. Hart, 160 F. 2d 255 18–607
Patrick v. Smith, 60 App. D. C. 6, 45 Fed. (2d) 924 43–202
Partridge v. United States, 39 App. D. C. 571 22–1301
Patten v. Glover, 1 App. D. C. 466 14–302, 18–706
Patten v. United States, 42 App. D. C. 239 11–1407, 22–2401
Patterson v. United States, 39 App. D. C. 84 22–1202
Pavarini v. Title Guar. & S. Co., 36 App. D. C. 348 12–201
Pawnee, 205 Fed. 333 44–401
Paylor v. United States, 42 App. D. C. 428 22–105, 22–1508
Payne v. Payne, 54 App. D. C. 149, 295 Fed. 970 16–410, 16–415
Payne v. Payne, 56 App. D. C. 167, 11 Fed. (2d) 464 14–302
Payne v. Robinson, 26 App. D. C. 283 20–115
Peak v. Calhoun, 63 App. D. C. 113, 69 Fed (2d) 989 11–907
Peak v Reed, 58 App. D. C. 44, 24 Fed. (2d) 619 3–121, 11–602, 11–907
Peake v. Ramsey, 43 A. 2d 763 11–722, 13–301
Pearson v. Small, 65 App. D. C. 243, 82 Fed. (2d) 849 45–603
Peay v. Parks, 42 A. 2d 250 11–755, 11–772
Peck v. Heurich, 6 App. D. C. 273 16–1501
Peden v. Fleming, 153 F. 2d 800 11–754, 24–102
Pedersen v. Delaware, L. & W. R. Co., 229 U. S. 146 44–401
Pedersen v. Pedersen, 71 App. D. C. 26, 107 Fed. (2d) 227 16–403, 16–410, 16–415
Peeples v. District of Columbia, 74 A. 2d 845 11–606, 11–616, 24–504, 25–128
Pegues v. Wray, 41 A. 2d 299 11–772
Pelley v. Botkin, 152 F. 2d 12, 80 U. S. App. D. C. 251 16–801, 16–806
Pelley v. U. S. Marshal, 163 F. 2d 700, 82 U. S. App. D. C. 264 16–801
Penfield's Estate, In re, 81 F. Supp. 622 16–205, 16–207
Penker Construction Co. v. Cardillo, 118 F. 2d 14, 73 App. D. C. 168 36–501
Penn v. Whidden, 42 A. 2d 136 20–216
Penn Bridge Co. v. United States, 29 App. D. C. 452 22–3407
Penwell v. District of Columbia, 31 A. 2d 891 40–301, 40–609
Peoples Nat. Bank v. Saville, 25 App. D. C. 139 29–210, 29-211
Perin v. Perin, 41 W. L. R. 265 18–722
Perkins v. Berger, 145 F. 2d 856, 79 U. S. App. D. C. 286 11–501, 11–512, 18–512, 20–201
Perlman v. Chal-Bro., Inc., 43 A. 2d 755 11–744, 11–772
Perper v. Danford, 63 A. 2d 773 45–1610, 45–1611
Perry v. Reeve, 56 App. D. C. 243, 12 Fed. (2d) 184 1–625
Perry v. Wilson, 60 App. D. C. 109, 48 Fed. (2d) 1021 17–101, 20–101
Persham v. United States, 70 App. D. C. 116, 104 Fed. (2d) 249 1–224, 23–101, 40–603
Persing v. Daniels, 43 App. D. C. 470 16–1001
Peters v. Peters, 64 App. D. C. 331, 78 Fed. (2d) 215 19–103
Peyser v. Owen, 116 F. 2d 298, 73 App. D. C. 64 12–201
Philadelphia & Reading R. Co. v. McKibben, 243 U. S. 264 13–103
Philadelphia B. & W. R. R. v. Hazen, 116 F. 2d 543, 73 App. D. C. 37 7–632
Philadelphia, B. & W. R. Co. v. Schubert, 224 U. S. 603 44–401
Philips v. Bailey, 57 App. D. C. 287, 22 Fed. (2d) 715 17–101
Phillips v. Capital Investment & Guaranty Co., 32 A. 2d 249 47–2302
Phillips v. Gilbert, 101 U. S. 721 38–114
Phillips v. Lust, 82 F. Supp. 63 12–101, 20–501
Phillips v. Marvin's Credit, 35 A. 2d 825 11–772
Phillips v. Negley, 117 U. S. 665 49–301
Phoenix Mut. Life Ins. Co. v. Harris, 45 App. D. C. 474 18–602
Phucas v. Washington-Virginia-Maryland Coach Company, 76 A. 2d 59 11–774
Pierce v. Gillet & Co., 64 App. D. C. 156, 75 Fed. (2d) 675 12–304, 28–2503, 28–2504
Pierce v. United States, 37 App. D. C. 582 17–101
Pilger v. Sutherland, 61 App. D. C. 84, 57 Fed. (2d) 604 13–108
Pinchot v. Bond, 66 A. 2d 213 45–1610
Pitts v. Peak, 60 App. D. C. 195, 50 Fed. (2d) 485 11–305, 11–306, 11–322, 49–301
Plant v. Plant, 57 A. 2d 204 11–772
Plitt v. Seven Corners Realty, 149 F. 2d 832 28–2703
Plumb v. Bateman, 2 App. D. C. 156 13–109, 18–612, 20–501
Plummer v. Johnson, 35 A. 2d 647 11–722, 13–301, 17–101
Plummer v. Northern Pac. R. Co., 152 Fed. 206 44–402
Poff v. Washington Terminal Co. 63 App. D. C. 86, 69 Fed. (2d) 572 36–501
Pointer v. Shepard, 49 A. 2d 659 45–902, 45–906
Polen v. United States, 41 App. D. C. 4 22–105, 22–503
Pollard v. Hawfield, 170 F. 2d 170 19–312
Poole v. Hurlbert, 67 A. 2d 266 11–772
Pope v. Huff, 117 F. 2d 779, 141 F. 2d 727, 73 App. D. C. 170, 79 U. S. App. D. C. 18 16–801, 16–806, 22–2901, 22–2902
Posey v. Tennessee Valley Authority, 93 Fed. (2d) 726 36–501
Posey v. United States, 26 App. D. C. 302 22–401
Posey v. U. S., 41 A. 2d 300 11–772, 14–301, 22–503, 23–101
Pothier v. Rodman, 261 U. S. 307 11–1508

Potomac Elec. Power Co. v. Cardillo, 71 App. D. C. 163, 107 Fed. (2d) 962 36–501
Potomac Elec. Power Co. v. Hazen, 67 App. D. C. 161, 90 Fed. (2d) 406 1–102, 47–1701
Potomac Elec. Power Co. v. Public Utilities Comm., 51 App. D. C. 77, 276 Fed. 327 43–706
Potomac Electric Power Co. v. Public Utilities Commission of District of Columbia, 158 F. 2d 521 43–306
Potomac Elec. Power Co. v. Rudolph, 58 App. D. C. 261, 29 Fed. (2d) 634 44–215, 47–1701
Potomac Elec. Power Co. v. United States, 66 App. D. C. 77, 85 Fed. (2d) 243 16–619
Potomac Small Loan Co. v. Myles, 34 A. 2d 609 11–772, 11–801, 11–815
Potomac Steamboat Co. v. Upper Potomac Steamboat Co., 109 U. S. 672 9–101
Powell v. Hoage, 61 App. D. C. 99, 57 Fed. (2d) 766 36–501
Powell v. Wisconsin Cent. R. Co., 159 Fed. 864 44–402
Powers v. U. S., 128 F. 2d 300 2–102
Prall v. Prall, 56 App. D. C. 333, 13 Fed. (2d) 305 14–402
Prall v. Stafford, 42 App. D. C. 383 16–1001
Premier Poultry Co. v. Wm. Bornstein & Son, 61 A. 2d 632 11–731, 11–756
Presbrey v. Thomas, 1 App. D. C. 171 1–509, 13–401, 28–928, 28–2703, 41–201
Prezzi v. U. S., 62 A. 2d 196 11–772, 40–606, 40–608
Price v. Daine, 71 A. 2d 608 11–772
Price v. District of Columbia, 54 A. 2d 142 40–609
Price v. Moyer, 53 App. D. C. 63, 288 Fed. 269 23–701
Price v. Quill, 46 A. 2d 311 11–812
Price v. United States, 51 App. D. C. 106, 276 Fed. 628 22–2401
Price v. United States, 53 App. D. C. 164, 289 Fed. 562 22–1401
Prince v. Klune, 148 F. 2d 18 16–1001
Prioleau v. Superintendent of Wash. Asylum & Jail, 55 App. D. C. 99, 2 Fed. (2d) 317 17–103, 22–3102
Proctor v. Hoage, 65 App. D. C. 153, 81 Fed. (2d) 555 36–501
Proctor v. Miller, 63 A. 2d 655 45–1604, 45–1609
Proctor v. U. S., 177 F. 2d 656, 85 U. S. App. D. C. 341 22–2204
Provident Life Ins. Co. v. Grant, 31 A. 2d 885 11–772
Provident Relief Assn. v. Vernon, 57 App. D. C. 235, 19 Fed. (2d) 709 35–202
Prudential Ins. Co. v. Lear, 31 App. D. C. 184 14–308
Prudential Ins. Co. of America v. Saxe, 134 F. 2d 16, 77 U. S. App. D. C. 144 35–414
Prudent Patricians of Pompeii v. Marr, 20 App. D. C. 363 35–901
Public Motor Service v. Standard Oil Co., 69 App. D. C. 89, 99 Fed. (2d) 124 28–508
Public Utilities Comm. v. Capital Trac Co. 57 App. D. C. 85, 17 Fed. (2d) 673 43–305
Pullen v. Sun Life Ins. Co. of America, 121 F. 2d 110, 74 App. D. C. 197 35–203
Pumphrey v. Boggan, 8 App. D. C. 449 12–305
Purcell v. Cramton, 143 F. 2d 22, 79 U. S. App. D. C. 99 20–301, 20–505
Pyle v. U. S., 156 F. 2d 852, 81 U. S. App. D. C. 209 11–301, 22–2501
Pyne v. Pyne, 154 F. 2d 297 45–101, 45–812, 45–814, 45–815
Pyramid National Van Lines, Inc. v. Goetze, 66 A. 2d 693 11–755, 11–756, 11–772, 13–301

Q

Quarles v. Quarles, 179 F. 2d 57, 86 U. S. App. D. C. 41 16–412
Queen City Brewing Co. v. District of Columbia, 134 F. 2d 44, 77 U. S. App. D. C. 213 47–501, 47–1203
Quick v. District of Columbia, 71 A. 2d 771 45–1610
Quick v. Paregol, 61 A. 2d 407 11–772
Quick v. Paregol, 68 A. 2d 211 11–772, 45–1605
Quinn v. Dougherty, 58 App. D. C. 339, 30 Fed. (2d) 749 8–133
Quinn v. Milner, to Use of Hartford Fire Ins. Co., 34 A. 2d 259 13–401
Quinn v. National Mtg. & Inv. Co., 61 App. D. C. 44, 57 Fed. (2d) 410 28–2702, 28–2704
Quirin, Ex parte, 68 S. Ct. 2, 317 U. S. 1 16–801, 16–806

R

Radinsky v. Ellis, 167 F. 2d 745 7–801
Ragan v. Wardell, 67 App. D. C. 222, 91 Fed. (2d) 253 28–402, 28–407
Railey v. Railey (D. C. D. C.), 30 Fed. Supp. 121 18–301
Raimonde v. Purcell, 68 A. 2d 678 11–772
Ralph v. Hazen, 68 App. D. C. 55, 93 Fed. (2d) 68 7–520
Ramsey v. Curtis, 182 F. 2d 687, 86 U. S. App. D. C. 386 12–403, 18–607, 18–608, 18–609, 20–501
Ramsey v. Ross, 66 App. D. C. 186, 85 Fed. (2d) 685 16–1201
Randle v. Davis Coal Co., 15 App. D. C. 357 28–504
Randle v. United States, 72 App. D. C. 368, 113 Fed. (2d) 945 22–1301
Randolph & Co. v. Columbia Graphophone Co., 45 App. D. C. 146 42–103
Rapeer v. Colpoys, 66 App. D. C. 216, 85 Fed. (2d) 715 11–326, 16–410, 16–411, 16–415
Ray v. Bruce, 31 A. 2d 693 11–772, 16–323
Raymond v. United States, 25 App. D. C. 555 22–2301
Raymond v. United States, 26 App. D. C. 250 11–320
Read v. LaSalle Extension University, 156 F. 2d 575 13–103
Read v. United States, 55 App. D. C. 43, 299 Fed. 918 22–1401
Real Estate Mortgage & Guaranty Corporation v. District of Columbia, 141 F. 2d 361, 78 U. S. App. D. C. 390 47–1506, 47–2404
Real Estate Title Ins. Co. v. District of Columbia, 161 F. 2d 887 47–1806
Reamy v. District of Columbia, 50 App. D. C. 359, 273 Fed. 323 40–617
Redman v. Campbell, 46 App. D. C. 288 15–103
Reed, In re, 158 F. 2d 323 22–204, 22–208
Reed v. Allen, 286 U. S. 191 16–518

Reed v. Colpoys, 69 App. D. C. 163, 99 Fed. (2d) 396 23–401
Reed v. Cushman, 251 Fed. 872 39–401
Reed v. Reed, 52 App. D. C. 35, 280 Fed. 1009 16–415
Reed v. Tierney, 12 App. D. C. 165 12–305
Reese v. Wells, 73 A. 2d 899 11–772, 45–1605
Reeves v. American Security & Trust Co., 115 F. 2d 145, 72 App. D. C. 403 45–812
Reeves v. United States, 56 App. D. C. 376, 15 Fed. (2d) 734 22–1202
Reichelderfer v. Hechinger, 61 App. D. C. 104, 57 Fed. (2d) 943 7–611, 7–612, 47–1901, 47–1919
Reichelderfer v. Ihrie, 61 App. D. C. 198, 59 Fed. (2d) 873 4–402
Reichelderfer v. Quinn, 287 U. S. 315 5–412, 8–133
Reid v. Aderhold, 65 Fed. (2d) 110 22–1401
Reid v. Anderson, 13 App. D. C. 30 16–1501
Reilly v. Cullinane, 53 App. D. C. 17, 287 Fed. 994 18–202
Reilly v. Millis, 52 F. Supp. 172 11–205
Reilly v. Reilly, 182 F. 2d 108, appeal pending 11–325, 16–403, 16–409
Reilly v. Sabin, 65 App. D. C. 125, 81 Fed. (2d) 259 12–401, 15–103
Resler v. Shehee, 1 Cranch. (5 U. S.) 110 11–316
Resnick v. Hammond, 61 A. 2d 495 45–1605
Resnick v. Wolf & Cohen, 49 A. 2d 809 11–756, 11–772
Reynolds v. Needle, 132 F. 2d 161, 77 U. S. App. D. C. 53 12–201
Rhees v. Morris, 52 App. D. C. 27, 280 Fed. 1001 16–901, 16–905
Rhodes v. Bell, 2 How. (43 U. S.) 397 1–101
Rhodes v. Bowling Green White Stone Co., 43 App. D. C. 298 16–301
Rhodes v. Rhodes, 36 App. D. C. 261 16–415
Rhodes v. Rhodes, 68 App. D. C. 313, 96 Fed. (2d) 715 30–101, 30–104
Rhodes v. Robie, 9 App. D. C. 305 18–215
Rice, In re, 165 F. 2d 617 43–111
Rice v. Simmons, 53 A. 2d 587 11–756, 11–772, 40–403
Rice v. United States, 64 A. 2d 567 22–2202
Richards v. Bippus, 18 App. D. C. 293 28–2701, 28–2703, 28–2708, 30–208
Richards v. Davison, 45 App. D. C. 395 16–1001
Richards v. Street, 31 App. D. C. 427 28–402
Richards v. Washington Terminal Co., 233 U. S. 546 7–1212, 7–1213
Richardson v. Browning, 57 App. D. C. 186, 18 Fed. (2d) 1008 3–116, 11–907, 21–129, 30–101, 32–208, 32–209, 32–815, 32–907, 32–908
Richardson v. Daggett, 24 App. D. C. 440 11–503, 18–503, 20–503
Richardson v. Penicks, 1 App. D. C. 261 45–812
Richardson v. Richardson, 71 App. D. C. 26, 112 Fed. (2d) 19 16–409
Richardson v. Richardson, 72 App. D. C. 67, 112 Fed. (2d) 19 16–403
Richardson v. Van Auken, 5 App. D. C. 209 16–102
Richmond v. Cake, 1 App. D. C. 447 16–308, 45–915
Rick v. U. S., 161 F. 2d 897 47–1542
Rickets v. Sun Printing & Pub. Co., 27 App. D. C. 222 13–103
Riddle v. Gibson, 29 App. D. C. 237 19–101
Ridgley v. U. S., 45 A. 2d 475 11–306, 11–755
Ridgeway v. Ridgeway, 61 App. D. C. 395, 63 Fed. (2d) 458 16–401
Ridolfi v. Benton, 58 A. 2d 723 45–1610, 45–1611
Rieffer v. Home Indem. Co., 61 A. 2d 26 16–301
Riegel v. Public Utilities Comm., 60 App. D. C. 111, 48 Fed. (2d) 1023 43–317, 43–902
Riggs Development Co. v. District of Columbia, 184 F. 2d 698 47–1506
Riggs Fire Ins. Co. v. Shedd, 16 App. D. C. 150 38–102, 38–103, 38–106, 38–108
Rives v. O'Hearne, 64 App. D. C. 48, 73 Fed. (2d) 984 24–401
Rizzi v. Fanelli, 63 A. 2d 872 11–1501
Roach, Ex parte, 244 Fed. 625 39–401, 39–901
Roberds v. Markham, 81 F. Supp. 38 19–110, 45–803
Roberts v. International Bank, 58 App. D. C. 87, 25 Fed. (2d) 214 1–501, 26–110, 28–701
Roberts v. Reilly, 116 U. S. 80 23–401
Robertson v. United States ex rel. Baff, 52 App. D. C. 177, 285 Fed. 911 16–1001
Robinson v. Duvall, 27 App. D. C. 535 19–101
Robinson v. Hillman, 36 App. D. C. 576 16–501, 16–505, 16–509, 16–516, 16–519
Robinson v. Morrison, 2 App. D. C. 105 16–301
Robinson v. Robinson, 80 F. Supp. 397 16–418
Robinson v. United States, 42 App. D. C. 186 22–1301
Robinson v. United States, 61 App. D. C. 370, 63 Fed. (2d) 147 22–2401
Robinson v. United States, 72 App. D. C. 254, 114 Fed. (2d) 475 22–2501
Robinson v. U. S., 128 F. 2d 322, 136 F. 2d 283, 76 U. S. App. D. C. 29, 78 U. S. App. D. C. 63 22–501, 22–2801
Robinson v. Wayne, 136 F. 2d 767, 78 U. S. App. D. C. 15 11–307
Rockwell v. Capital Trac. Co., 25 App. D. C. 98 11–320
Rogers v. Cox, 76 A. 2d 776 11–772, 40–603
Rogers v. District of Columbia, 31 A. 2d 649 22–3302, 22–3303
Rogers v. Rogers, 130 F. 2d 905, 76 U. S. App. D. C. 297 16–401
Rogge v. Michael Del Balso, Inc., 15 Fed. Supp. 499 1–804
Rohde v. United States, 34 App. D. C. 249 22–2201
Roller v. Caruthers, 5 App. D. C. 368 15–107, 15–204
Roller v. Clarke, 19 App. D. C. 539 16–1301
Rollings v. Rollings, 60 App. D. C. 305, 53 Fed. (2d) 917 16–401
Romney v. U. S., 167 F. 2d 521 11–1420
Rone v. Rone, 141 F. 2d 23, 78 U. S. App. D. C. 369 16–410, 17–101
Roney v. United States, 43 App. D. C. 533 22–2801
Rookard v. Huff, 145 F. 2d 708, 79 U. S. App. D. C. 291 16–806
Rose v. District of Columbia, 51 App. D. C. 222, 277 Fed. 621 22–3301
Rose v. Washington Times Co., 57 App. D. C. 385, 23 Fed. 993 12–201
Rose Campbell Mission v. Richardson, 64 App. D. C. 21, 73 Fed. (2d) 661 29–501, 29–502, 29–511, 29–601
Rosen v. Powers, 65 A. 2d 200 45–1604

Rosenberg v. District of Columbia, 66 A. 2d 489 11–772
Rosenberg v. Ichcovitz, 72 A. 2d 466 11–772, 11–774, 12–203
Rosenberg v. Murray, 116 F. 2d 552, 73 App. D. C. 67 40–403, 40–404
Rosenscheim v. Citron, 169 F. 2d 885 14–302
Rosier, Ex parte, 133 F. 2d 316, 76 U. S. App. D. C. 214 16–801
Rosinski v. Whiteford, 184 F. 2d 700 14–302
Ross v. Brainerd, 54 A. 2d 859 45–106
Ross v. Fickling, 11 App. D. C. 442 12–201
Ross v. Hartman, 139 F. 2d 14, 78 U. S. App. D. C. 217 40–603
Rossiter v. National Saving & Trust Co., 46 A. 2d 540 11–772
Rosslyn Steel & Cement Co. v. Etchison, 61 App. D. C. 43, 57 Fed. (2d) 409 28–2702
Roth v. Eisinger Mill & Lbr. Co., 63 App. D. C. 128, 70 Fed. (2d) 294 38–110, 38–114
Roumel v. Goldberg, 46 A. 2d 114 45–1602, 45–1610
Rowe v. Colpoys, 137 F. 2d 249, 78 U. S. App. D. C. 75 15–210
Rowe v. Nolan Finance Co., 142 F. 2d 93, 79 U. S. App. D. C. 35 11–305, 11–317, 11–755
Rowlett v. Nash, 38 App. D. C. 598 16–501
Rowlette v. Rothstein Dental Laboratories, 61 App. D. C. 373, 63 Fed. (2d) 150 36–501
Rowley v. Welch, 72 App. D. C. 351, 114 Fed. (2d) 499 22–201
Rowley v. Welch, 114 F. 2d 499, 72 App. D. C. 351 22–301
Royal Glue Co. v. Lange, 40 App. D. C. 9 29–211
Rubenstein v. Swagart, 72 A. 2d 690 11–756, 45–904, 45–906
Rubenstein v. U. S., 152 F. 2d 127 22–3416
Rubin v. Douglas, 59 A. 2d 690 2–102
Rubin v. United States, 59 App. D. C. 195, 37 Fed. (2d) 991 2–101
Rudolph v. Creamer, 39 App. D. C. 1 4–121
Rudolph v. Hunt, 52 App. D. C. 343, 286 Fed. 1007 32–307
Rudolph v. Knox, 52 App. D. C. 33, 280 Fed. 1007 7–611
Rudolph v. Lockwood, 55 App. D. C. 101, 2 Fed. (2d) 319 5–101
Rudolph v. Moshewvel, 37 App. D. C. 76 16–1001
Rudolph v. Peters, 35 App. D. C. 438 16–515, 16–1501
Rudolph v. Potomac Elec. Power Co., 58 App. D. C. 54, 24 Fed. (2d) 882 47–701, 47–1701
Rudolph v. United States ex rel. Rock, 55 App. D. C. 362, 6 Fed. (2d) 487 4–510, 4–513
Rudolph v. Warwick, 56 App. D. C. 128, 10 Fed. (2d) 993 7–108, 7–301, 47–405
Ruppert v. Beavans, 2 App. D. C. 298 12–305
Ruppert v. Ruppert, 134 F. 2d 497, 77 U. S. App. D. C. 65 16–403, 16–416, 30–101, 30–104
Russell v. Moderns Restaurant, 65 App. D. C. 90, 80 Fed. (2d) 533 16–327, 16–328
Russell v. Russell, 142 F. 2d 753, 79 U. S. App. D. C. 44 16–411
Rust, H. L., Co. v. Drury, 62 App. D. C. 329, 68 Fed. (2d) 167 45–820, 45–908
Ryan v. McAdoo, 46 App. D. C. 117 20–501
Ryan v. Security Sav. & Commercial Bank, 50 App. D. C. 292, 271 Fed. 366 28–205, 28–504, 28–801, 28–802
Ryan v. United States, 26 App. D. C. 74 22–2201
Rynex v. District of Columbia, 72 App. D. C. 386, 114 Fed. (2d) 842 47–1604, 47–2403

S

Sabens v. United States, 40 App. D. C. 440 22–2401
Sackett, Chapman, Brown & Cross v. Osgood, 149 F. 2d 825 18–501
Sachs v. Kinyoun, 47 App. D. C. 561 28–1929
Sacks v. Sacks, 124 F. 2d 527, 75 U. S. App. D. C. 165 14–307
Sacks v. United States, 41 App. D. C. 34 22–2801
Sacrini v. United States, 38 App. D. C. 371 22–2401
Sager v. Parker, 55 A. 2d 349 45–1602
Sager v. Stamps, 38 A. 2d 113 45–1602, 45–1604, 45–1608, 45–1609
St. Louis, I. M. & S. R. Co. v. Conley, 187 Fed. 949 44–401
Saks v. B. H. Stinemetz & Son Co., 54 App. D. C. 38, 293 Fed. 1005 13–214, 13–215
Saks v. Huddleston, 59 App. D. C. 133, 36 Fed. (2d) 537 30–211
Salvoni v. Pilson, 181 F. 2d 615, 86 U. S. App. D. C. 227, cert. den. 70 S. Ct. 1030, 339 U. S. 981, 94 L. Ed. 922 15–101, 15–102, 15–107
Samaha v. Mason, 27 App. D. C. 470 16–1801
Samaha v. Samaha, 18 App. D. C. 76 16–1901
Sambataro v. Caffo, 57 App. D. C. 260, 20 Fed. (2d) 276 13–214
Sanders v. Allen, 69 App. D. C. 307, 100 Fed. (2d) 717 16–802, 24–403
Sanders v. Bennett, 148 F. 2d 19 16–801
Sandler v. Kass Realty Co., 48 A. 2d 617 11–736
Sandler v. Wertlieb, 60 A. 2d 222 45–816, 45–904, 45–1605
Sandstrom v. Pacific S. S. Co., 260 Fed. 661 44–401
Sanford v. Sanford, 52 App. D. C. 315, 286 Fed. 777 11–703, 15–306, 20–501, 20–502
Sanford v. United States, 69 App. D. C. 44, 98 Fed. (2d) 325 14–305
Sanselo v. United States, 44 App. D. C. 508 22–103, 22–501, 22–503, 22–2801
Sanstrom v. Pacific S. S. Co., 260 Fed. 661 44–404
Santa Fe Cent. R. Co. v. Friday, 232 U. S. 694 44–401
Sardo v. Villapiano, 65 App. D. C. 121, 81 Fed. (2d) 255 21–101
Sarfert Co. v. Chipman, 205 Fed. 937 11–1509
Sasnett v. Iowa State Traveling Men's Assn., 90 Fed. (2d) 514 13–103
Saul v. Saul, 70 App. D. C. 112, 104 Fed. (2d) 245 11–312
Saunders, Ex parte, 275 U. S. 507 11–1508
Saunders v. Goldstein, (D. C. D. C.), 30 Fed. Supp. 150 33–201
Saunders System Washington Co., v. Kuffner, 75 A. 2d 136 11–722, 11–755, 11–756, 12–302
Savage v. District of Columbia, 54 A. 2d 562 5–422, 11–606, 11–616, 11–756, 47–2344, 47–2346, 47–2347
Savage v. White, 56 App. D. C. 365, 14 Fed. (2d) 352 24–301

Sawyer v. Warner, 63 A. 2d 653 45–1602, 45–1609, 45–1610
Scaffidi v. United States, 37 Fed. (2d) 203 14–305
Schachter v. Singer, 45 A. 2d 364 45–1608
Schaff v. R. W. Claxton, Inc., 144 F. 2d 532, 79 U. S. App. D. C. 207 17–101
Scharfeld v. Richardson, 133 F. 2d 340, 77 U. S. App. D. C. 378 47–2004, 47–2005
Scheve v. United States, 184 F. 2d 695 22–1504
Schilling v. Schwitzer-Cummins Co., 142 F. 2d 82, 79 U. S. App. D. C. 20 11–208, 17–101
Schlaefer v. Schlaefer, 71 App. D. C. 350, 112 Fed. (2d) 177 16–410, 35–717
Schlein v. Evans, 61 A. 2d 35 45–1609
Schlosberg v. District Unemployment Compensation Bd., 167 F. 2d 881 46–303
Schlosberg v. Shannon & Luchs Co., 53 A. 2d 722 28–401
Schneider v. Schneider, 141 F. 2d 542, 78 U. S. App. D. C. 383 16–415
Scholl v. Scholl, 152 F. 2d 672, 80 U. S. App. D. C. 292, 72 F. Supp. 823 11–325, 16–409, 16–1301
Scholl v. Tibbs, 36 A. 2d 352 11–772, 45–1605
Schooler v. Schooler, 173 A. 2d 299, 84 U. S. App. D. C. 147 17–104, 45–106, 45–501
Schooley v. Dimmick, 56 App. D. C. 350, 13 Fed. (2d) 956 29–604
Schoon v. Marvins Credit, Inc., 65 A. 2d 212 11–772
Schrot v. Schoenfeld, 23 App. D. C. 421 13–301
Schulz v. Schulz, 179 F. 2d 59, 86 U. S. App. D. C. 43 16–412
Schupp v. Taendler, 154 F. 2d 849 12–201
Schwaner v. George, 56 A. 2d 161 11–735, 11–737, 11–756, 11–772
Schwartz v. Brown, 64 A. 2d 298 11–755, 45–1408
Schwartz v. Brownlow, 50 App. D. C. 279, 270 Fed. 1019 1–228, 5–413, 5–423
Schwartz v. Murphy, 72 App. D. C. 103, 112 Fed. (2d) 24 11–703
Schwartz v. Sacks, 55 App. D. C. 87, 2 Fed. (2d) 188 30–207, 30–208
Schwartz v. Sandidge, 63 A. 2d 869 11–722, 11–756, 45–1610
Schwartz v. Westbrook, 154 F. 2d 854 45–306
Schwartzbach v. Thompson, 33 A. 2d 624 40–403
Scott v. District of Columbia, 55 A. 2d 854 40–609
Scott v. Herrell, 27 App. D. C. 395 14–402, 16–505
Scott v. Herrell, 31 App. D. C. 45 19–306
Scott v. H. G. Smithy Co., 53 A. 2d 45 45–910, 45–1611
Scott v. Hoage, 63 App. D. C. 391, 73 Fed. (2d) 114 36–501
Scott v. Powell, 182 F. 2d 75, 86 U. S. App. D. C. 277 45–101, 45–812
Scripps-Howard Radio v. Federal Communications Commission, 62 S. Ct. 875, 316 U. S. 4 11–208
Seaboard Realty v. District of Columbia, 184 F. 2d 269 47–1506, 47–1529
Searl v. Earl, 62 A. 2d 374 28–2703
Sears v. Sears, 67 App. D. C. 379, 92 Fed. (2d) 530 16–401, 16–403
Second Nat. Bank v. Yankon, 55 App. D. C. 252, 4 Fed. (2d) 445 28–1703
Secor v. Charles H. Thompkins Co., 45 A. 2d 117 28–1202, 28–1203
Secrist v. Bryant, 52 App. D. C. 286, 286 Fed. 456 15–201
Securities and Exchange Commission v. Harrison, 80 F. Supp. 226 11–315
Security Savings & Commercial Bank v. Aukam, 120 F. 2d 722, 74 App. D. C. 155 17–104
Security Sav. & Commercial Bank v. District of Columbia, 51 App. D. C. 316, 279 Fed. 185 47–1703
Sedgwick v. Beasley, 173 F. 2d 918, 84 U. S. App. D. C. 325 29–716, 29–718
Seeley v. Seeley, 50 App. D. C. 391 16–410
Seher v. District of Columbia, 68 App. D. C. 207, 95 Fed. (2d) 118 40–609
Seidenberg v. District of Columbia, 71 A. 2d 607 40–605
Seitz v. Seitz, 11 App. D. C. 358 45–816
Selden v. Lee, 55 App. D. C. 164, 3 Fed. (2d) 335 45–932
Semmes v. United States, 6 Fed. Supp. 119 18–211
Senator Cab Co. v. Rothberg, 42 A. 2d 245 40–401, 40–403
Serkowich v. Wardell, 69 App. D. C. 389, 102 Fed. (2d) 253 17–101, 17–102
Service Parking Corp. v. Trans-Lux Radio City Corp., 47 A. 2d 400 11–704, 11–735, 16–513
Sesso v. U. S., 133 F. 2d 381, 77 U. S. App. D. C. 35 22–1504
Settle v. Settle, 56 App. D. C. 50, 8 Fed. (2d) 911 45–816
Settlemier v. Sullivan, 7 Otto (97 U. S.) 444 11–736
Seufferle v. Macfarland, 28 App. D. C. 94 16–601, 17–101
Seymour v. Hawkins, 133 F. 2d 15, 76 U. S. App. D. C. 376 16–1202, 40–403
Shaffer v. Bowes, 31 A. 2d 690 45–1605
Shannon & Luchs Constr. Co. v. Reichelderfer, 61 App. D. C. 36, 57 Fed. (2d) 402 7–209, 7–221, 16–303
Shapiro v. Bombardier, 63 A. 2d 772 45–1604, 45–1609
Shapiro v. Vautier, 36 A. 2d 349 11–772
Sharpe v. Goldwyn, 65 A. 2d 185 45–1604, 45–1608
Shay v. Randall H. Hagner & Co., 34 A. 2d 358 45–910
Shay v. Randall H. Hagner & Co., 38 A. 2d 617 11–724, 45–1611
Sheehan v. Huff, 142 F. 2d 81, 78 U. S. App. D. C. 391 11–322, 16–801
Sheehy v. O'Donoghue, 68 App. D. C. 127, 94 Fed. (2d) 252 45–816
Shell Eastern Petroleum Products v. White, 62 App. D. C. 332, 68 Fed. (2d) 379 12–302
Shelley v. Westcott, 23 App. D. C. 135 12–305
Shellman v. Shellman, 68 App. D. C. 197, 95 Fed. (2d) 108 16–410
Shelton v. U. S., 165 F. 2d 241 22–2501, 23–101, 40–603, 40–714
Shepherd v. Pepper, 133 U. S. 626 45–616
Sheriger v. Gruner, 34 A. 2d 35 28–201
Sherman v. United States, 36 A. 2d 556 11–772

Sherwood Bros., Inc. v. District of Columbia, 72 App. D. C. 155, 113 Fed. (2d) 162 47–2406
Shettel v. United States, 72 App. D. C. 250, 113 Fed. (2d) 34 22–1501, 23–107
Shick v. United States, 195 U. S. 65 11–616
Shields v. Hawkins, 125 F. 2d 204, 75 U. S. App. D. C. 172 11–722, 16–1903
Shields v. Shields, 69 App. D. C. 331, 101 Fed. (2d) 255 11–504, 11–703, 18–607
Shima v. Brown, 133 F. 2d 48, 77 U. S. App. D. C. 115 16–103, 28–2707
Shima v. Shima, 130 F. 2d 809, 139 F. 2d 533, 75 U. S. App. D. C. 370, 78 U. S. App. D. C. 265 16–401, 16–403, 16–410, 16–1901
Shipley v. Major, 44 A. 2d 540 11–735, 11–737, 11–1501, 45–911
Shipley v. Shamwell, 41 App. D. C. 267 15–201
Shipp v. Weaver, 75 A. 2d 925 11–772
Shlopak v. Davison, 34 A. 2d 126 14–302, 16–512
Shoemaker v. U. S., 13 S. Ct. 361, 147 U. S. 282, 37 L. Ed. 107 8–146
Shokuwan Shimabukuro v. Higeyoshi Nagayama, 140 F. 2d 13, 78 U. S. App. D. C. 271 11–205
Shore v. Splain, 49 App. D. C. 6, 258 Fed. 150 11–205, 11–610, 11–707
Shpetner v. Hollywood Credit Clothing Co., 42 A. 2d 522 28–1304
Shu v. Basinger, 57 A. 2d 295 11–772
Shugard v. Hoage, 67 App. D. C. 52, 89 Fed. (2d) 796 36–501
Siegal v. United States, 61 App. D. C. 282, 61 Fed. (2d) 923 22–701
Silver v. Lansburgh & Bro., 72 App. D. C. 77, 111 Fed. (2d) 518 2–502
Silverman v. Central Amusement Co., 49 F. Supp. 364 11–305, 49–301
Simm v. Bovee, 68 A. 2d 800 11–772
Simmons v. Brook, 66 A. 2d 517 28–1507
Simmons v. District of Columbia, 53 App. D. C. 372, 290 Fed. 347 1–228
Simmons v. Jaselli, 38 App. D. C. 242 16–1901
Simmons v. Morrison, 13 App. D. C. 161 16–102
Simmons v. Quick, 37 A. 2d 656 11–808, 43–1521
Simmons v. Simmons, 57 App. D. C. 216, 19 Fed. (2d) 690 16–403, 30–101, 30–102
Simmons v. Weinsoff, 58 A. 2d 497 45–1605
Simon v. Simon, 58 App. D. C. 158, 26 Fed. (2d) 530 45–1101, 45–1104
Simon v. United States, 37 App. D. C. 280 22–1401
Simpkins v. Brooks, 49 A. 2d 549 45–1605
Simpkins v. McDermott, 65 App. D. C. 123, 81 Fed. (2d) 257 35–901
Simpson v. Minnix, 30 App. D. C. 582 15–101, 15–204, 16–317
Sims v. Rives, 66 App. D. C. 24, 84 Fed. (2d) 871 24–201, 24–203, 24–205, 24–209, 25–101, 25–107, 43–1511
Sincell v. Davis, 24 App. D. C. 218 28–2503
Sinclair v. District of Columbia, 192 U. S. 16 6–803, 11–316
Sinclair v. United States, 49 App. D. C. 351, 265 Fed. 991 22–2405
Singer v. Friedman, 66 App. D. C. 191, 85 Fed. (2d) 690 12–201
Sinnott v. Kenaday, 12 App. D. C. 115 11–504
Sinnott v. Kenaday, 14 App. D. C. 1 11–504, 18–520, 20–610
Sis v. Boarman, 11 App. D. C. 116 12–201, 16–1301, 18–202, 45–501, 45–603, 45–612
Skolnick v. Swagart, 66 A. 2d 523 36–501
Slack v. Perrine, 9 App. D. C. 128 16–410
Slack v. Rich, 182 F. 2d 706 12–101
Slater v. Taylor, 31 App. D. C. 100 22–2305
Slaughter v. District of Columbia, 58 A. 2d 309 11–772
Slaughter v. Madison, 135 F. 2d 650, 77 U. S. App. D. C. 226 12–301
Slaughter v. Slaughter, 171 F. 2d 129, 83 U. S. App. D. C. 301 16–409
Slaughter v. U. S., 60 A. 2d 700 11–755, 14–305
Slaughter v. U. S., 65 A. 2d 570, 172 F. 2d 281 11–755
Sloan v. Sloan, 66 A. 2d 799 11–772
Sloan Shipyards Corp. v. United States Shipping Board, 258 U. S. 549 29–203
Smallwood v. District of Columbia, 57 App. D. C. 58, 17 Fed. (2d) 210 1–223, 40–602, 40–603
Smallwood v. District of Columbia, 17 F. 2d 210, 57 App. D. C. 58 40–602, 40–605
Smeltzer v. St. Louis & S. F. R. Co., 158 Fed. 649 44–401
Smith v. American Bonding & Trust Co., 12 App. D. C. 192 16–102
Smith v. Butler, 15 App. D. C. 345 16–1301
Smith v. Cissel, 22 App. D. C. 318 16–1201
Smith v. District of Columbia, 71 A. 2d 766 11–772, 40–102
Smith v. Doyle, 69 App. D. C. 60, 98 Fed. (2d) 341 40–403
Smith v. Gilmore, 7 App. D. C. 192 42–103
Smith v. Gotwals, 61 App. D. C. 304, 62 Fed. (2d) 466 7–204, 7–221
Smith v. Herrell, 11 App. D. C. 425 28–2601
Smith v. Jackson, 48 App. D. C. 565 45–603
Smith v. Mason, 14 Wall. (81 U. S.) 419 11–101
Smith v. O'Connor, 66 App. D. C. 367, 88 Fed. (2d) 749 13–214
Smith v. Schlein, 144 F. 2d 257, 79 U. S. App. D. C. 166 11–306, 13–206
Smith v. Shapiro, 61 App. D. C. 66, 57 Fed. (2d) 432 15–201
Smith v. United States, 50 App. D. C. 208, 269 Fed. 860 22–2401
Smith v. United States, 57 App. D. C. 71, 17 Fed. (2d) 223 14–104
Smith v. United States, 72 App. D. C. 187, 112 Fed. (2d) 217 22–1501
Smith v. U. S., 157 F. 2d 705 22–2901
Smith v. U. S., 180 F. 2d 775 11–1418, 11–1420, 22–2707
Smith's Estate, In re, 77 F. Supp. 217 19–103
Smith's Transfer & Storage Co. v. Hawkins, 50 A. 2d 267 45–818
Smiths Transfer & Storage Co. v. Reliable Stores Corp., 61 App. D. C. 106, 58 Fed. (2d) 511 28–1803, 28–1921, 28–1922
Smithson v. Callahan, 141 F. 2d 13, 78 U. S. App. D. C. 355 11–312
Smoot v. Heyl, 227 U. S. 518 1–228, 1–625

Smoot Sand & Gravel Corp. v. Britton, 152 F. 2d 17, 80 U. S. App. D. C. 260 36–501
Smoot Sand & Gravel Corp. v. District of Columbia, 174 F. 2d 505, 84 U. S. App. D. C. 367, cert. den. 69 S. Ct. 1515, 337 U. S. 939, 93 L. Ed. 1744 47–1202
Snead v. Central of Georgia R. Co., 151 Fed. 608 44–402
Snell v. United States, 16 App. D. C. 501 22–2401
Snider v. Kelly, 135 F. 2d 817, 77 U. S. App. D. C. 363 12–401
Snow v. Snow, 48 App. D. C. 448 16–403
Snow v. Snow, 52 App. D. C. 39, 280 Fed. 1013 16–410
Snowden v. United States, 2 App. D. C. 89 22–2801
Snyder v. Buck, 75 F. Supp. 902 16–422, 16–1001
Snyder v. Charles Levine, Inc., 65 App. D. C. 81, 80 Fed. (2d) 382 11–744, 11–746, 11–747
Snyder v. Thorniley, 62 A. 2d 316 11–756, 11–772
Soffos v. Eaton, 152 F. 2d 682 45–1605
Solis v. Clemmer, 168 F. 2d 155 16–806
Sommerville v. Williams, 12 App. D. C. 520 38–103
Sonnemann v. Loeb, 11 App. D. C. 143 30–208
Soper v. Myers, 45 App. D. C. 286 45–819
Soresi v. Repetti, 76 A. 2d 585 11–772, 45–911
Sorrels v. Alexander, 142 F. 2d 769, 79 U. S. App. D. C. 112 17–101, 19–312
Southern Bridge Co. v. United States Shipping Bd. Emergency Fleet Corp., 266 Fed. 747 29–201
Southern Pac. Co. v. McGinnis, 174 Fed. 649 44–401
Southern R. Co. v. Hawkins, 35 App. D. C. 313 16–1201, 16-1202, 18–716, 20–505
Southern R. Co. v. Taylor, 57 App. D. C. 21, 16 Fed. (2d) 517 44–401
Spain v. St. Louis & S. F. R. Co., 151 Fed. 522 44–401
Spang v. Roper, 13 Fed. Supp. 840 1–815
Sparks v. Sparks, 25 App. D. C. 356 16–410
Speaks v. Hoage, 64 App. D. C. 324, 78 Fed. (2d) 208 36–501
Spector v. Weisman, 59 App. D. C. 280, 40 Fed. (2d) 792 30–208
Speer v. Colbert, 200 U. S. 130 19–202
Spencer v. U. S., 116 F. 2d 801, 73 App. D. C. 98 22–2901
Spigel v. Gumenick, 141 F. 2d 19, 78 U. S. App. D. C. 361 11–205
Spilman v. Geiger, 61 App. D. C. 164, 58 Fed. (2d) 890 45–915
Splain v. B. F. Goodrich Rubber Co., 53 App. D. C. 300, 290 Fed. 275 16–318, 42–101
Spriggs v. Stones, 174 F. 2d 671, 85 U. S. App. D. C. 95 17–101
Spruill v. Brooks, 68 A. 2d 204 11–735, 16–501, 45–822, 45–910
Spruill v. O'Toole, 64 App. D. C. 85, 74 Fed. (2d) 559 11–735
Sprunt v. Direction Der Disconto Gesellschaft, 61 App. D. C. 350, 63 Fed. (2d) 127 12–201
Staffan v. Zeust, 10 App. D. C. 260 16–515
Stafford v. American Secur. & Trust Co., 60 App. D. C. 380, 55 Fed. (2d) 542 14–308
Stallings v. Splain, 49 App. D. C. 38, 258 Fed. 510 23–401
Stamates v. Andelman, 68 A. 2d 903 28–1104, 28–1308
Stanberger v. Mason, 124 F. 2d 401, 75 U. S. App. D. C. 105 4–121
Standard Sav. Bank v. Stone, 52 App. D. C. 42, 280 Fed. 1016 12–301, 45–904
Stanfield v. Vollbehr, 61 App. D. C. 239, 60 Fed. (2d) 670 28–2404
Staples v. Warren, 46 App. D. C. 363 45–501
Stark v. Wickard, 64 S. Ct. 559, 321 U. S. 288 11–305
Starr v. United States, 8 App. D. C. 552 15–201, 28–2405
State of Maryland v. Eastern Airlines, 81 F. Supp. 345 13–103, 16–1202
Staub v. Staub, 47 App. D. C. 180 16–1301
Staves v. Johnson, 44 A. 2d 870 45–1605
Stea v. Stea, 83 F. Supp. 625 16–403
Steele v. Harrison, 59 App. D. C. 69, 32 Fed. (2d) 965 30–207, 30–208
Steele v. Steele, 65 F. Supp. 329, 168 F. 2d 562 16–410, 16–413, 16–421, 30–208
Steever v. Rickman, 109 U. S. 74 11–1507
Stein v. Stein, 170 F. 2d 162 11–205, 16–412
Stern v. Ace Wrecking Co., 38 A. 2d 626 28–1113, 28–1311, 28–1503, 28–1505
Stern v. Drew, 52 App. D. C. 191, 285 Fed. 925 42–103
Stern v. Stern, 80 F. Supp. 266 13–101, 16–403, 16–416
Stern Co. of Washington v. Rosenberg, 67 App. D. C. 99, 89 Fed. (2d) 843 11–744, 42–103, 45–915
Sterrett v. National Safe Deposit, Sav. & Trust Co., 10 App. D. C. 131 18–701
Stevens v. Gordon, 48 App. D. C. 604 38–103
Stewart v. Baltimore & O. R. Co., 168 U. S. 445 16–1201
Stewart v. District of Columbia, 35 A. 2d 247 44–301, 47–2331
Stewart v. Johnston, 97 Fed. (2d) 548 24–402
Stewart v. Roberts, 154 F. 2d 697 11–205, 17–101
Stewart v. Shannon & Luchs Co., 46 A. 2d 863 45–910
Stewart v. Stewart, 52 App. D. C. 323, 286 Fed. 987 16–401, 16–410, 16–419
Stickel v. Stickel, 18 App. D. C. 149 16–410
Stinson v. New York Life Ins., Co., 167 F. 2d 233 35–708
Stitely v. U. S., 61 A. 2d 491 22–504, 22–2801
Stokes v. Hinden, 66 App. D. C. 34, 85 Fed. (2d) 200 45–603, 45–604, 45–615
Stokes v. Realest Corp., 60 A. 2d 532 45–1604, 45–1608
Stone v. Stone, 136 F. 2d 761, 78 U. S. App. D. C. 5 14–308, 16–419, 30–103
Stoneburg v. Hiatt, 47 F. Supp. 596 24–401
Stoner v. Doherty, 182 F. 2d 673, 86 U. S. App. D. C. 368 20–116, 20–605
Stoner v. National Metropolitan Bank of Washington, 77 F. Supp. 699 20–502
Storey v. Storey, 30 App. D. C. 41 19–312
Storrow v. Concord Club, 63 App. D. C. 190, 70 Fed. (2d) 852 12–302
Story v. Rives, 68 App. D. C. 325, 97 Fed. (2d) 182 24–203, 24–208, 24–209, 24–402

Story v. United States, 57 App. D. C. 3, 16 Fed. (2d) 342 22–105, 22–2405
Stoutenburgh v. Hennick, 129 U. S. 141 1–102
Stover v. District of Columbia, 32 A. 2d 536 35–1343
Strasburger v. Dodge, 12 App. D. C. 37 28–2601
Strasburger v. Schram, 68 App. D. C. 87, 93 Fed. (2d) 246 12–201
Street v. Maddux, 58 App. D. C. 42, 24 Fed. (2d) 617 12–302
Street v. Stubblefield, 57 App. D. C. 276, 20 Fed. (2d) 1017 18–301
Strong v. Andros, 34 App. D. C. 278 12–305
Strong v. Huff, 148 F. 2d 692 16–801
Stroup v. Howe, 32 A. 2d 297 11–774
Stuart, In re, 114 F. 2d 825, 72 App. D. C. 389 11–902, 11–905, 11–915
Students Book Company v. Semerjian, 66 A. 2d 487 11–772
Suburban Title & Investment Corp. v. District of Columbia, 180 F. 2d 387, 86 U. S. App. D. C. 112 47–1602, 47–1702, 47–1806
Sullivan v. District of Columbia, 19 App. D. C. 210 17–103
Sullivan v. Goldman, 38 App. D. C. 319 17–101
Sulzer v. Bellevue, Inc., 66 A. 2d 407 45–1604
Summar v. Besser Mfg. Co., 17 N. W. 2d 209, 310 Mich. 347 16–1202
Supreme Commandery of United Order of Golden Cross v. Bernard, 26 App. D. C. 169 35–901
Surratt v. Real Estate Exchange, Inc., 76 A. 2d 587 11–735,45–822, 45–1605, 45–1611
Survivors of Seventh Georgia Regiment v. Larner, 55 App. D. C. 156, 3 Fed. (2d) 201 19–103
Suter v. Lockwood Dental Co., 45 App. D. C. 92 16–301
Sutherland v. Kreisch, 59 App. D. C. 351, 41 Fed. (2d) 974 16–320
Suydam v. Ameli, 46 A. 2d 763 11–755
Swan v. United States, 54 App. D. C. 100, 295 Fed. 921 22–1507
Sweeney v. District of Columbia, 72 App. D. C. 30, 113 Fed. (2d) 25 47–1205
Swenk v. Nicholls, 39 App. D. C. 350 28–616
Sykes v. Jenny Wren Co., 64 App. D. C. 379, 78 Fed. (2d) 729 17–101
Sykes v. U. S., 143 F. 2d 140, 79 U. S. App. D. C. 97 4–140, 17–101, 22–2901
Symons v. Symons, 51 App. D. C. 69, 275 Fed. 1015 16–419
Syndicated Construction Corp. v. Ross, 73 A. 2d 899 11–772, 14–101

T

Tait v. Dante, 78 Fed. (2d) 303 18–609
Talbert v. United States, 42 App. D. C. 1 22–2201, 22–2203
Talbott v. Hill, 49 App. D. C. 96, 261 Fed. 244 12–201
Taliaferro v. Railway Terminal Warehouse Co., 59 App. D. C. 376, 43 Fed. (2d) 271 7–611, 47–703, 47–1101
Tamamian v. Gabbard, 55 A. 2d 513 11–735, 45–904, 45–1605, 45–1611
Talty v. District of Columbia, 20 App. D. C. 489 11–205, 11–320, 17–101, 17–103
Talty v. Talty, 40 App. D. C. 587 18–202
Tate v. Brawner, 58 A. 2d 307 11–722, 11–735
Tate v. Nelson, 71 F. Supp. 465 16–1201
Tate, In re, 63 F. Supp. 961 16–806, 24–206
Tatum v. Townsend, 61 A. 2d 478 45–1605
Tatum v. United States, 71 App. D. C. 393, 110 Fed. (2d) 555 22–502
Tayloe v. Kjaer, 171 F. 2d 343, 84 U. S. App. D. C. 183 47–1001
Taylor v. Drury, 56 App. D. C. 266, 12 Fed. (2d) 489 12–201, 45–611
Taylor v. Leesnitzer, 37 App. D. C. 356 16–1301, 19–205
Taylor v. Southern R. Co., 178 Fed. 380 44–401
Taylor v. Taylor, 62 App. D. C. 316, 67 Fed. (2d) 582 16–403
Taylor v. United Broadcasting Co., 61 A. 2d 480 11–756, 11–774
Taylor v. United States, 7 App. D. C. 27 22–2401
Taylor v. U. S., 167 F. 2d 752 22–1304
Taylor v. Yellow Cab Co. of D. C., 53 A. 2d 691, 169 F. 2d 299 11–755, 11–756, 11–773
Tendler v. District of Columbia, 50 A. 2d 263 1–227
Tendler v. L. E. Massey, Inc., 34 A. 2d 33 11–774
Tendler v. L. E. Massey, Inc., 33 A. 2d 626 16–1903
Tendler v. Tendler, 56 App. D. C. 296, 12 Fed. (2d) 831 16–410
Tenney v. Taylor, 1 App. D. C. 223 28–2401, 28–2402
Tepper v. Fraser, 63 App. D. C. 174, 70 Fed. (2d) 778 47–701
Terminal Taxicab Co. v. Kutz, 241 U. S. 252 43–111, 43–122
Terminal Warehouse & Refrigeration Co. v. Cross Transp. Co., 33 A. 2d 617 28–1801, 28–1901, 28–1903, 28–2201
Thaw v. Ritchie, 136 U. S. 519 11–316, 11–504, 21–204
Thayer v. Brainerd, 47 A. 2d 787 45–901, 45–904
Thomas v. District of Columbia, 67 App. D. C. 179, 90 Fed. (2d) 424 1–223
Thomas, Ex parte, 114 F. 2d 847, 73 App. D. C. 50 17–101
Thomas v. Marvins Credit, Inc., 76 A. 2d 773 11–772
Thomas v. Murphy, 71 App. D. C. 69, 107 Fed. (2d) 268 11–907, 16–403, 18–106, 30–101
Thomas v. Ogilby, 59 App. D. C. 382, 44 Fed. (2d) 890 11–1302
Thomas v. Presbrey, 5 App. D. C. 217 11–320
Thomas v. U. S., 121 F. 2d 905, 74 App. D. C. 167 11–907, 14–305
Thomas v. U. S., 158 F. 2d 97 22–2401, 22–2403
Thomas v. Vinson, 153 F. 2d 636, 80 U. S. App. D. C. 346 16–1001
Thomas v. Young, 57 App. D. C. 282, 22 Fed. (2d) 588 18–101
Thompson v. Clark, 61 A. 2d 477 45–1605
Thompson v. Clark, 64 A. 2d 166 11–722
Thompson v. Franklin Nat. Bank, 45 App. D. C. 218 28–203, 28–407, 28–504
Thompson v. Gray, 50 A. 2d 594 45–1605
Thompson v. Lawson, 132 F. 2d 21, 77 U. S. App. D. C. 31 45–305

Thompson v. Park Sav. Bank, 64 App. D. C. 308, 77 Fed. (2d) 955 26–101, 26–102
Thompson v. Park Sav. Bank, 68 App. D. C. 272, 96 Fed. (2d) 544 26–102
Thompson v. Smith, 70 App. D. C. 65, 103 Fed. (2d) 936 14–308, 19–101
Thompson v. Tanner, 53 App. D. C. 3, 287 Fed. 980 13–108, 13–109, 13–111, 16–410
Thompson v. Thompson, 226 U. S. 551 16–415
Thompson v. United States, 30 App. D. C. 352 22–105, 22–201, 22–701
Thompson v. Young, 63 F. Supp. 887, 63 F. Supp. 890 4–507
Thomson v. Huff, 149 F. 2d 842 16–801
Thorn v. Miller, 60 A. 2d 223 45–1604, 45–1608
Thorne, Neale & Co. v. Coe, 3 F. R. D. 259 11–307
Thornhill v. Atlantic Life Ins. Co., 63 App. D. C. 184, 70 Fed. (2d) 846 11–735, 45–822, 45–903, 45–910
Throckmorton v. Holt, 180 U. S. 552 19–103
Thurston v. Anderson, 40 A. 2d 342 11–704, 11–735
Tilghman v. Tilghman, 57 F. Supp. 417 11–756, 13–103, 13–108
Tillinghast v. Tillinghast, 58 App. D. C. 107, 25 Fed. (2d) 531 16–421, 16–422, 30–101, 30–103
Tipp v. District of Columbia, 69 App. D. C. 400, 102 Fed. (2d) 264 11–603
Tipping v. Tipping, 65 App. D. C. 222, 82 Fed. (2d) 828 16–403
Todd v. Kauffman, 8 Mackey (19 D. C.) 204 16–1501
Toledo Computing Scales Co. v. Miller, 38 App. D. C. 237 13–103
Tolman v. Tolman, 1 App. D. C. 299 16–415
Tolty v. Tolty, 40 App. D. C. 587 45–814
Tomlin v. United States, 66 App. D. C. 32, 84 Fed. (2d) 879 24–201
Tomlinson v. United States, 68 App. D. C. 106, 93 Fed. (2d) 652 22–105, 22–2901, 22–3202
Toomey v. Toomey, 149 F. 2d 19 17–101
Topham v. Topham, 50 App. D. C. 229, 269 Fed. 1013 16–419
Totten v. Harlowe, 66 App. D. C. 373, 88 Fed. (2d) 755 45–611, 45–614
Towles v Tanner, 21 App. D. C. 530 28–201, 28–806
Towles v. United States, 19 App. D. C. 471 22–1401
Towson v. Towson, 49 App. D. C. 45, 258 Fed. 571 16–410, 16–415
Tractenberg v. United States, 53 App. D. C. 396, 293 Fed. 476 22–2201
Tracy v. Atwell, 58 App. D. C. 397, 32 Fed. (2d) 392 20–506
Trammel v. Estep, 42 A. 2d 501 45–820, 45–1605
Trans-Atlantic Trust Co. v. Pagenstecher, 53 App. D. C. 42, 287 Fed. 1019 17–101
Travelers Ins. Co. v. Cardillo, 140 F. 2d 10, 141 F. 2d 362, 364, 78 U. S. App. D. C. 255 392, 394 36–501
Travers v. United States, 6 App. D. C. 450 22–2401
Tribby v. O'Neal, 39 App. D. C. 467 11–744, 11–745
Trice v. Trice, 55 App. D. C. 328, 5 Fed. (2d) 543 16–403
Tri-State Motor Corp. v. Standard Steel Car Co., 51 App. D. C. 109, 276 Fed. 631 16–301, 28–2403, 49–201
Trometer v. District of Columbia, 24 App. D. C. 242 14–307
Trost v. Tompkins, 44 A. 2d 226 11–772
Tryson v. Southern Realty Corp., 51 App. D. C. 55, 274 Fed. 135 29–204, 29–702, 29–707
Tschiffely v. Tschiffely, 70 App. D. C. 386, 107 Fed. (2d) 191 12–302
Tubins v. District of Columbia, 21 App. D. C. 267 17–103
Tucker v. Beazley, 57 A. 2d 191 45–1607
Tuckerman v. Mearns, 49 App. D. C. 153, 262 Fed. 607 11–325
Tulman v. Committee on Admissions and Grievances, 135 F. 2d 268, 77 U. S. App. D. C. 357 11–1304
Tumulty v. District of Columbia, 69 App. D. C. 390, 102 Fed. (2d) 254 47–701, 47–712, 47–1005, 47–1201, 47–1203, 47–1209, 47–1212, 47–1213, 47–1301, 47–1401, 47–1408
Tunison's Estate, In re, 75 F. Supp. 573 20–605, 30–211
Tuohy v. Hanlon, 18 App. D. C. 225 11–504
Tuohy v. Trail, 19 App. D. C. 79 12–201, 14–302, 20–501
Turner v. American Security & Trust Co. 29 App. D. C. 460 19–101
Turner v. Bowman, 68 A. 2d 231 11–772, 45–1610
Turner v. Christian Heurich Brewing Co., 169 F. 2d 681 11–755, 36–501
Turner v. Deming, 155 F. 2d 181 45–701
Turner v. Fendall, 1 Cranch (5 U. S.) 117 49–301
Turner v. Henning, 49 App. D. C. 183, 262 Fed. 637 38–101
Turner v. Metz, 55 App. D. C. 177, 3 Fed. (2d) 348 45–904
Turner v. National Hospitalization, 52 A. 2d 274 35–712
Turner v. United States, 57 App. D. C. 39, 16 Fed. (2d) 535 22–1202, 22–2901, 22–2902
Tyler v. Dixson, 57 A. 2d 648 12–101, 45–1610
Tyner v. United States, 23 App. D. C. 324 11–316

U

Uebersee Finanz-Korporation, A. G., v. Markham, 158 F. 2d 313, 81 U. S. App. D. C. 284 11–305
Uhler v. Adams, 1 App. D. C. 392 18–215
Underwood v. Underwood, 50 App. D. C. 323, 271 Fed. 553 16–403
Union Provision & Distributing Corp. v. Thomas J. Fisher & Co., 49 A. 2d 85 11–772
Union Storage & Transfer Co. v. Lamphere, 40 A. 2d 258 11–772
Union Timber Products Co. v. United States Shipping Bd. Emergency Fleet Corp., 252 Fed. 320 29–201
Union Tool Co. v. Wilson, 259 U. S. 107 11–305, 11–315
United Cigar-Whalen Stores Corp. v. District of Columbia, 176 F. 2d 952, 85 U. S. App. D. C. 301 47–1506
United Retail Cleaners and Tailors Ass'n of D. C. v. Denahan, 44 A. 2d 69 11–772, 11–774
United Services Life Ins. Co. v. Farr, 60 F. Supp. 829 35–704
United States, Ex parte, 242 U. S. 27 24–101

United States v. Ainsworth, 3 App. D. C. 483 23–105
United States v. Antikamnia Chemical Co., 231 U. S. 654 33–103
United States v. Baltimore & O. R. Co., 26 App. D. C. 581 11–305, 11–324, 11–325
United States v. Bank of New York Nat. Banking Assn., 219 Fed. 648 28–104, 28–124
United States v. Basiliko, 35 A. 2d 185 11–772, 23–105
United States v. Beach, 65 S. Ct. 602, 324 U. S. 193 11–201, 22–2701
United States v. Belt, 142 F. 2d 761, 319 U. S. 521, 79 U. S. App. D. C. 87, 63 S. Ct. 1278 8–104, 11–205, 11–305, 11–324, 17–101
United States v. Boeckmann, 176 Fed. 382 33–103
United States v. Boyd, 8 App. D. C. 440 28–2405
United States v. Boyer, 150 F. 2d 595, 80 U. S. App. D. C. 202 14–305, 22–1301
United States v. Briggs, 54 F. Supp. 731 22–1301, 22–1401
United States v. Burroughs, 289 U. S. 159 11–305, 11–322, 23–105
United States v. Burroughs, 62 App. D. C. 163, 65 Fed. (2d) 796 23–105
United States v. Cadarr, 197 U. S. 475 23–104
United States v. Cadarr, 24 App. D. C. 143 17–101, 23–105
United States v. California Co-op. Canneries, 279 U. S. 553 17–101
United States v. Campbell, 179 Fed. 762 22–1509
United States v. Capital Trac. Co., 38 App. D. C. 469 23–101, 44–202, 44–203, 44–207
United States v. Cella, 37 App. D. C. 423 22–1509, 23–101, 23–105
United States v. Charles L. Heinle Specialty Co., 175 Fed. 299 33–103
United States v. Chicago, M. & P. S. R. Co., 218 Fed. 701 44–401
United States v. Crandol, 233 Fed. 331 14–201
United States v. Davis, 71 F. Supp. 749, 167 F. 2d 228 21–107, 22–107, 49–301
United States v. Doheny, 56 App. D. C. 86, 10 Fed. (2d) 651 11–1001, 23–101
United States v. Edmonds, 63 F. Supp. 968 22–2403, 22–2405
United States v. Eliason, 16 Pet. (41 U. S.) 291 1–101
United States v. Evans, 28 App. D. C. 264 22–2401, 22–2902, 24–401
United States v. Evans, 30 App. D. C. 58 23–105
United States v. Fair, 235 Fed. 1015 11–1508
United States v. Fall, 56 App. D. C. 83, 10 Fed. (2d) 648 11–1001, 23–101
United States v. Fitzpatrick, 13 Wall. (80 U. S.) 568 11–1101
United States v. Geare, 54 App. D. C. 30, 293 Fed. 997 22–2405
United States v. Griffith, 55 App. D. C. 123, 2 Fed. (2d) 925 11–1401, 11–1402, 49–301
United States v. Groome, 13 App. D. C. 460 16–102
United States v. Henderson, 121 F. 2d 75, 73 App. D. C. 369 40–606
United States v. Interstate Properties, 153 F. 2d 469, 80 U. S. App. D. C. 392 5–301, 5–305, 22–2405
United States v. Johnson, 177 Fed. 313 33–103
United States v. Johnson, 63 F. Supp. 315 22–903
United States v. Kloman, 176 F. 2d 27 11–306
United States v. Mace, 281 Fed. 635 16–1701
United States v. Maloney, 4 App. D. C. 505 28–2405
United States v. McMillan, 165 U. S. 504 11–1507
United States v. McWilliams, 54 F. Supp. 791 11–322
United States v. Meyers, 75 F. Supp. 486 22–2501, 23–204
United States v. Mills, 11 App. D. C. 500 11–602
United States v. Mitchell, 64 S. Ct. 896, 322 U. S. 65 4–140
United States v. Moreland, 258 U. S. 433 22–903, 24–401
United States v. Neufield, 62 F. Supp. 600 24–203
United States v. Plisco (D. C. D. C.), 22 Fed. Supp. 242 22–1501, 22–1504
United States v. Public Utilities Commission of District of Columbia, 158 F. 2d 533 43–502, 43–705, 43–706
United States v. Public Utilities Commission of District of Columbia, 151 F. 2d 609 43–705
United States v. Pumphrey, 11 App. D. C. 44 28–2405
United States v. Reing, 81 F. Supp. 367 22–2201, 22–2901
United States v. Rick, 48 A. 2d 614 47–1542
United States v. Ringgold, 8 Pet. (33 U. S.) 150 11–1101
United States v. Ross, 298 Fed. 64 11–1508
United States v. St. Louis, S. W. R. Co., 189 Fed. 954 44–401
United States v. Securities Corp. General, 55 App. D. C. 256, 4 Fed. (2d) 619 17–101
United States v. Seigel, 168 F. 2d 143 17–101
United States v. Sheriff Motor Co., 63 F. Supp 685 11–755
United States v. Simms, 1 Cranch (5 U. S.) 252 13–222
United States v. Sing Tuck, 194 U. S. 161 16–801
United States v. Sixty-eight Cases of Syrup, 172 Fed. 781 33–103
United States v. Southern R. Co., 164 Fed. 347 44–401
United States v. Taliaferro, 290 Fed. 214 11–317
United States v. Terranova, 7 Fed. Supp. 989 1–815
United States v. Von Jenny, 39 App. D. C. 377 11–607
United States v. Washington Loan & Trust Co., 47 F. Supp. 25, 77 U. S. App. D. C. 284 12–204
United States v. Waters, 73 F. Supp. 72 22–3204
United States v. Waters, 175 F. 2d 340, 84 U. S. App. D. C. 127 23–105
United States v. Watkins, Fed. Cas. 16649 11–316
United States v. West, 8 App. D. C. 59 16–1901
United States v. Willis, 75 F. Supp. 628 22–2801
United States v. Witbeck, 72 App. D. C. 231, 113 Fed. (2d) 185 14–308
United States v. Wittek, 48 A. 2d 805 45–902, 45–1605
United States v. Wittek, 69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1906 45–1601, 45–1605, 45–1611
United States v. Wood, 299 U. S. 123 11–606, 11–1417, 11–1420, 23–107
United States Casualty Co. v. District of Columbia, 71 App. D. C. 92, 107 Fed. (2d) 652 1–804

United States Casualty Co. v. Hoage, 64 App. D. C. 284, 77 Fed. (2d) 542 36–501
United States Elec. Lighting Co. v. Metropolitan Club, 6 App. D. C. 536 17–101
United States Elec. Lighting Co. v. Sullivan, 22 App. D. C. 115 16–1201
United States ex rel. Anderson v. Simon, 50 App. D. C. 199, 269 Fed. 715 16–1001
United States ex rel. Arant v. Lane, 249 U. S. 367 12–201, 16–1001
United States ex rel. Arlington & F. Auto R. Co. v. Elgen, 68 App. D. C. 392, 98 Fed. (2d) 264 40–603
United States ex rel. Ashley v. Roper, 48 App. D. C. 69 16–1001
United States ex rel. Baldwin v. Robertson, 265 U. S. 168 17–101
United States ex rel. Boucher v. Murphy, 11 Fed. Supp. 572 1–815
United States ex rel. Bowlegs v. Lane, 43 App. D. C. 494 16–1001
United States ex rel. Bracey v. Hill, 77 Fed. (2d) 970 22–502, 24–203
United States ex rel. Coal Co. v. Lane, 46 App. D. C. 443 16–1001
United States ex rel. Connor v. District of Columbia, 61 App. D. C. 288, 61 Fed. (2d) 1015 5–412
United States ex rel. Corbin v. Doyle, 68 App. D. C. 100, 93 Fed. (2d) 646 31–620
United States ex rel. Cromwell v. Doyle, 69 App. D. C. 215, 99 Fed. (2d) 448 31–102
United States ex rel. Crupper v. Newman, 47 App. D. C. 345 8–108
United States ex rel. Daly v. Macfarland, 28 App. D. C. 552 1–102
United States ex rel. Dascomb v. Board of Tax Appeals, 56 App. D. C. 392, 16 Fed. (2d) 337 11–208
United States ex rel. Denney v. Callahan, 54 App. D. C. 61, 294 Fed. 992 31–102, 31–620
United States ex rel. Estabrook v. Otis, 18 Fed. (2d) 689 11–1508
United States ex rel. Eure v. Borden, 65 App. D. C. 84, 80 Fed. (2d) 527 11–201, 11–703, 11–723, 17–104, 49–301
United States ex rel. Gillem v. Carusi, 59 App. D. C. 46, 32 Fed. (2d) 942 31–114, 31–620
United States ex rel. Goodenow v. Aetna Casualty & Surety Co., 5 Fed. (2d) 412 1–804
United States ex rel. Greathouse v. Hurley, 61 App. D. C. 360, 63 Fed. (2d) 137 9–101, 49–301
United States ex rel. Hammond v. Custis, 37 App. D. C. 449 16–1001
United States ex rel. Hine v. Morse, 218 U. S. 493 16–1301, 21–204, 21–210, 45–1101, 45–1104
United States ex rel. Holmead v. Barnard, 29 App. D. C. 431 11–208
United States ex rel. Johnson v. Morley Construction Co., 98 Fed. (2d) 78 1–815
United States ex rel. Johnson v. Morley Construction Co., 17 Fed. Supp. 378 1–815
United States ex rel. Kreh v. Ingram, 38 App. D. C. 379 35–1201
United States ex rel. Laughlin v. Eicher, 56 F. Supp. 972 11–301
United States ex rel. McBride v. Schurz, 12 Otto (102 U. S.) 378 11–305, 11–316
United States ex rel. McDonald v. Lane, 49 App. D. C. 234 16–1001
United States ex rel. McDuffie v. Hawley, 50 App. D. C. 137, 269 Fed. 479 2–308, 16–1001
United States ex rel. McKenzie v. Fisher, 39 App. D. C. 7 16–1001
United States ex rel. Moser v. Myer, 38 App. D. C. 13 16–1001
United States ex rel. Mulvihill v. Clabaugh, 21 App. D. C. 440 11–205
United States ex rel. Newman v. City & Suburban R. Co., 42 App. D. C. 417 16–1001
United States ex rel. Noel v. Carmody, 148 F. 2d 684 16–1601, 16–1602
United States ex rel. Norris v. Forbes, 51 App. D. C. 248, 278 Fed. 331 16–1001
United States ex rel. Ordmann v. Cummings, 66 App. D. C. 107, 85 Fed. (2d) 273 16–302, 16–303, 16–312, 16–315, 16–316
United States ex rel. Phillips v. Ballinger, 35 App. D. C. 520 16–1001
United States ex rel. Queen v. Alvey, 182 U. S. 456 11–205
United States ex rel. Reynolds v. Lane, 45 App. D. C. 50 16–1001
United States ex rel. Robertson v. Barnard, 24 App. D. C. 8 11–745, 16–331, 17–101
United States ex rel. Russell v. District of Columbia, 50 App. D. C. 296, 271 Fed. 370 16–1001
United States ex rel. Schwerdtfeger v. Brownlow, 45 App. D. C. 412 16–1001
United States ex rel. Skinner & Eddy Corp. v. McCarl, 275 U. S. 1 16–1001, 47–107
United States ex rel. Smith v. Mathues, 284 Fed. 368 22–903
United States ex rel. Stevens v. Richards, 33 App. D. C. 410 16–1201
United States ex rel. Stowell v. Deming, 57 App. D. C. 223, 19 Fed. (2d) 697 11–315
United States ex rel. Thomson v. Custis, 35 App. D. C. 247 16–1001
United States ex rel. Todd v. Gongwer, 37 App. D. C. 555 16–1001
United States ex rel. Turnover v. Charles H. Tompkins Co., 63 App. D. C. 332, 72 Fed. (2d) 383 1–804
United States ex rel. Vause v. McCarthy, 250 Fed. 800 22–1509
United States ex rel. W. A. Pierce Co. v. Faircloth, 49 App. D. C. 323, 265 Fed. 963 1–804
United States ex rel. Wylie v. W. S. Barstow & Co., 79 Fed. (2d) 496 1–815
United States Fidelity & Guar. Co. v. Klein, 60 App. D. C. 354, 54 Fed. (2d) 828 28–2407
United States Fidelity & Guar. Co. v. Wrenn, 67 App. D. C. 94, 89 Fed. (2d) 838 16–301, 16–302, 16–308, 16–323
United States Sav. Bank v. Morgenthau, 66 App. D. C. 234, 85 Fed. (2d) 811 26–101
United States Shipping Bd. v. Greenwald, 16 Fed. (2d) 948 16–1201

United States Shipping Bd. Emergency Fleet Corp. v. Western Union Tel. Co., 275 U. S. 415 29–201, 43–317
United States Shipping Board Merchant Fleet Corp. v. Hirsch Lbr. Co., 59 App. D. C. 116, 35 Fed. (2d) 1010 16–313
United States Shipping Bd. Merchant Fleet Corp. v. United States Fidelity & Guar. Co., 64 App. D. C. 247, 77 Fed. (2d) 370 16–102
United Surety Co. v. American Fruit Product Co., 238 U. S. 140 16–310, 16–311, 16–316
Universal Dealers Co. v. Cromelin, 71 App. D. C. 234, 109 Fed. (2d) 828 12–401
Universal Jewelry Company, Inc. v. McIver, 68 A. 2d 226 11–801, 16–701
Unkelsbee v. Homestead Fire Ins. Co. of Baltimore, 41 A. 2d 168 11–772, 35–1331
Upshaw v. U. S., 168 F. 2d 167 17–101
Urciolo v. O'Connor, 149 F. 2d 386 45–1402, 45–1408
Urciolo v. Sachs, 62 A. 2d 308 11–772, 14–101
Utermehle v. McGreal, 1 App. D. C. 359 45–612
Utermehle v. Norment, 197 U. S. 40 11–501
Utterback v. Utterback, 71 F. Supp. 231 16–403

V

Vanderbilt v. Com. Int. Rev., 93 Fed. (2d) 360 29–601
Vanderhuff v. Vanderhuff, 144 F. 2d 509, 79 U. S. App. D. C. 153 16–403
Van Ness v. Van Ness, 6 How. (47 U. S.) 62 11–316
Varrella v. United States, 64 A. 2d 310 11–772, 22–504
Vaughn v. Neal, 60 A. 2d 234 11–772, 45–2344, 47–2345
Velati v. Dante, 39 App. D. C. 372 45–106
Vernon v. Provident Relief Assn., 57 App. D. C. 236, 19 Fed. (2d) 710 17–101
Vertner v. Vertner, 63 App. D. C. 179, 70 Fed. (2d) 783 13–108
Vestry of St. John's Parish v. Bostwick, 8 App. D. C. 452 11–503, 11–504, 19–101, 19–103, 19–302, 19–307
Vietti v. Wayne, 136 F. 2d 769, 78 U. S. App. D. C. 17 11–307
Vincennes Steel Corp. v. Miller, 94 Fed. (2d) 347 11–1512
Vinci v. U. S., 159 F. 2d 777 22–2901
Vinson v. Washington Gas Light Co., 64 S. Ct. 731, 321 U. S. 489 43–401, 43–402
Voehl v. Indemnity Ins. Co., 288 U. S. 162 36–501
Vogt v. Vogt, 26 App. D. C. 46 45–812
Von Rosen v. Dean, 59 App. D. C. 359, 41 Fed. (2d) 982 26–601, 28–2703, 28–2704

W

Wade v. Union Storage & Transfer Co., 58 A. 2d 493 11–756, 11–772
Wade v. United States, 33 App. D. C. 29 22–1504
Wagenhurst v. Wineland, 22 App. D. C. 356 13–301
Waggaman v. Dulany, 48 App. D. C. 14 18–202
Wagner v. White, 38 App. D. C. 554 24–301, 24–303
Walker v. Gish, 260 U. S. 447 1–228, 1–625
Walker v. Gish, 51 App. D. C. 4, 273 Fed. 366 1–625
Walker v. Hazen, 67 App. D. C. 188, 90 Fed. (2d) 502 7–209, 16–604
Walker v. Lyon, 6 App. D. C. 484 16–1301
Walker v. Pilkerton, 82 F. Supp. 321 12–201
Walker v. Superior Life Ins. Co., 62 A. 2d 192 35–1003
Walker v. Warner, 31 App. D. C. 76 14–201, 45–501
Wall v. De Mitkiewicz, 9 App. D. C. 109 42–103
Wallace v. Shoreham Hotel Corp., 49 A. 2d 81 22–1205
Wallace v. United States, 18 App. D. C. 152 22–2401
Walsh v. Cooper, 31 A. 2d 883 45–1605
Walsh v. Schafer, 61 A. 2d 716 11–722, 11–756, 14–101, 14–301
Waltenberg v. Waltenberg, 54 App. D. C. 383, 298 Fed. 842 16–403
Ward v. Cardillo, 135 F. 2d 260, 77 U. S. App. D. C. 343 36–501
Warde v. U. S., 158 F. 2d 651 22–105, 22–1504
Wardman-Justice Motors v. Petrie, 59 App. D. C. 262, 39 Fed. (2d) 512 16–1811, 16–1814
Wardman Real Estate Inv. Corp. v. District of Columbia, 152 F. 2d 285 47–1506
Warner v. Warner, 58 App. D. C. 34, 24 Fed. (2d) 609 16–413
Warner Bros. Pictures v. District of Columbia, 168 F. 2d 157 47–1502
Warring v. Huff, 122 F. 2d 641, 74 App. D. C. 302 24–203
Warthen v. Lamas, 43 A. 2d 759 11–735, 45–820, 45–904, 45–910, 45–1605
Washington v. Clemmer, 169 F. 2d 300 24–206
Washington A. & Mt. V. R. Co. v. Downey, 236 U. S. 190 44–401
Washington & G. R. Co. v. Tobriner, 147 U. S. 571 28–2701
Washington Asphalt Block & Tile Co. v. Mackey, 15 App. D. C. 410 16–1201
Washington Coca Cola Bottling Works v. Kelly, 40 A. 2d 85 17–101
Washington Coin Mach. Ass'n v. Callahan, 142 F. 2d 97, 79 U. S. App. D. C. 41 22–1504
Washington Fidelity Nat. Ins. Co. v. Burton, 287 U. S. 97 35–203
Washington Gas Light Co. v. Byrnes, 137 F. 2d 547, 78 U. S. App. D. C. 107 41–202, 43–317, 43–401, 43–402, 43–408, 43–705
Washington Gas Light Co. v. Dann, 63 App. D. C. 142, 70 Fed. (2d) 746 29–216, 43–501
Washington Gas Light Co. v. Public Utilities Commission of District of Columbia, 55 F. Supp. 627 43–411, 43–705
Washington Loan & Trust Co. v. Allman, 63 App. D. C. 116, 70 Fed. (2d) 282 26–101
Washington Loan & Trust Co. v. Colby 71 App. D. C. 236, 108 Fed. (2d) 743 28–802, 28–805
Washington Loan & Trust Co. v. Convention of Protestant Episcopal Church, 54 App. D. C. 14, 293 Fed. 833 20–610
Washington Loan & Trust Co. v. Cowgill, 66 App. D. C. 89, 85 Fed. (2d) 255 28–301, 28–402, 28–406, 28–409
Washington Loan & Trust Co. v. Darling, 21 App. D. C. 132 12–201

Washington Loan & Trust Co. v. Hammond, 51 App. D. C. 260, 278 Fed. 569 19–110, 45–102
Washington Loan & Trust Co. v. Susquehanna Coal Co., 26 App. D. C. 149 16–302, 16–303, 16–308, 16–312, 16–326
Washington Loan & Trust Co. v. U. S., 134 F. 2d 59, 77 U. S. App. D. C. 284 28–124
Washington Market Co. v. Hoffman, 11 Otto (101 U. S.) 112 10–137
Washington Nat. Bldg. & Loan Assn. v. Fiske, 20 App. D. C. 514 26–406
Washington Nat. Bldg. & Loan Assn. v. Pifer, 31 App. D. C. 434 28–2703
Washington Nat. Ins. Co. v. Stanton, 31 A. 2d 680 11–774, 35–1002
Washington R. & Elec. Co. v. District of Columbia, 56 App. D. C. 134, 10 Fed. (2d) 999 43–208, 44–202, 44–203, 44–205
Washington R. & Elec. Co. v. District of Columbia, 64 App. D. C. 243, 77 Fed. (2d) 366 43–412, 43–704
Washington-Southern Nav. Co. v. Baltimore & P Steamboat Co., 263 U. S. 629 11–1508
Washington Terminal Co. v. Hoage, 65 App. D. C. 33, 79 Fed. (2d) 158 36–501
Washington Terminal Co. v. Sampson, 53 App. D. C. 179, 289 Fed. 577 44–401
Waters v. Taylor, 52 App. D. C. 135, 284 Fed. 639 15–107
Wathen v. Ugast, 143 F. 2d 160, 79 U. S. App. D. C. 162 13–108, 16–201, 16–203
Watkins v. District of Columbia, 60 A. 2d 227 45–1607, 45–1610
Watkins v. Rives, 125 F. 2d 33, 75 U. S. App. D. C. 109 11–312, 11–503, 11–504, 11–516, 16–806, 20–404, 20–503, 20–504, 49–301
Watkins-Whitney v. Thyson, 65 App. D. C. 404, 78 Fed. (2d) 1022 12–304
Watrous v. District of Columbia, 135 F. 2d 654, 77 U. S. App. D. C. 295 47–2402, 47–2405
Watson v. Carver, 27 App. D. C. 555 7–307
Watts v. Splain, 50 App. D. C. 31, 267 Fed. 333 23–401
Watts v. Splain, 51 App. D. C. 129, 277 Fed. 335 23–401
Watwood v. Bradford, 72 A. 2d 41 11–772
Watwood v. Credit Bureau, Inc., 68 A. 2d 905 11–755
Watwood v. Potomac Chemical Co., 42 A. 2d 728 11–772, 11–774
Wayne v. Burke, 61 A. 2d 714 45–1609
Wayne v. Burke, 63 A. 2d 669 45–1604
W. C. & A. N. Miller Development Co. v. Emig Properties Corporation, 134 F. 2d 36, 77 U. S. App. D. C. 205 47–701, 47–1001, 47–1003, 47–1011, 47–1014
Weaver v. Koester, 54 App. D. C. 80, 294 Fed. 1011 45–820, 45–904
Weaver v. United States, 55 App. D. C. 26, 299 Fed. 893 22–2801
Webb v. Lohnes, 68 App. D. C. 310, 96 Fed. (2d) 582 17–104, 18–717
Webb v. Sharp, 13 Wall. (80 U. S.) 14 45–915
Webster v. Clodfelter, 130 F. 2d 434, 76 U. S. App. D. C. 171 16–1201, 16–1202, 36–501
Webster v. Splain, 45 App. D. C. 567 23–401
Wedderburn v. Wedderburn, 54 App. D. C. 193, 295 Fed. 1014 16–415
Weeks v. Behrend, 135 F. 2d 258, 77 U. S. App. D. C. 341 36–501
Weeks v. United States ex rel. Creary, 51 App. D. C. 195, 277 Fed. 594 16–1001
Weigand v. District of Columbia, 22 App. D. C. 559 33–301
Weimann v. Sheppard, 37 A. 2d 847 11–772
Weiner v. McMahon, 67 A. 2d 525 45–1602, 45–1609
Weinstein v. Julius Lansburgh Furn. & Carpet Co., 51 App. D. C. 271, 278 Fed. 580 16–102
Weisberg v. United States, 49 App. D. C. 28, 258 Fed. 284 22–105, 22–2201, 22–2205
Weiss v. Young, 64 A. 2d 309 11–772
Welch v. Cook, 97 U. S. 541 47–801
Welch v. Lynch, 30 App. D. C. 122 12–102, 14–201, 18–101, 18–215
Welch v. U. S., 135 F. 2d 465, 77 U. S. App. D. C. 317 22–2705
Welch v. Welch, 57 App. D. C. 212, 19 Fed. (2d) 686 20–216
Wells v. Alropa Corp., 65 App. D. C. 281, 82 Fed. (2d) 887 12–201, 28–107
Wells v. Wells, 11 App. D. C. 392 16–410
Werber v. Wallop, 46 A. 2d 110 35–715
Werner v. Frederick, 68 App. D. C. 158, 94 Fed. (2d) 627 19–309
Werth v. Nolan, 31 A. 2d 679, 32 A. 386, 79 U. S. App. D. C. 33 11–722, 11–756, 11–774
West v. McLaughlin, 57 App. D. C. 163, 18 Fed. (2d) 813 11–504, 18–612,
West v. Smith, 8 How. (49 U. S.) 402 11–501
West Coast Hotel Co. v. Parrish, 300 U. S. 379 36–401, 36–403
Westchester Apartments v. Keroes, 32 A. 2d 869 45–820, 45–904, 45–1605
Western Union Tel. Co. v. Lipscomb, 22 App. D. C. 104 16–1201, 20–505
Wetzel v. Britton, 170 F. 2d 285 36–501
Wham v. United States, 81 F. Supp. 126; rev'd, 180 F. 2d 38, 86 U. S. App. D. C. 128 4–503, 4–505, 4–506
Wheeler v. McBlair, 5 App. D. C. 375 45–603
Wheeler v. Palmer, 42 App. D. C. 395 23–401
Wheeler v. Reid, 175 F. 2d 829, 84 U. S. App. D. C. 180 23–114, 23–703
Wheeler v. Thomas (D. C. D. C.), 31 Fed. Supp. 702 16–308, 16–312
Wheeler v. U. S., 165 F. 2d 225 22–2401, 24–301
Whelan v. Welch, 50 App. D. C. 173, 269 Fed. 699 12–102
Whelpley v. Ross, 25 App. D. C. 207 26–406, 28–2701, 28–2702
Whipp v. Glueck, 61 App. D. C. 118, 58 Fed. (2d) 523 28–407, 28–2705
Whitaker v. Hitt, 52 App. D. C. 149, 285 Fed. 797 23–401
Whitaker v. Macfadden Publications, 70 App. D. C. 165, 105 Fed. (2d) 44 13–103
White v. Allen, 70 A. 2d 252; see also 71 A. 2d 613 45–1602, 45–1605, 45–1611
White v. Central Dispensary & Emergency Hosp., 69 App. D. C. 122, 99 Fed. (2d) 355 29–201, 29–601

White v. Connecticut General Life Ins. Co., 34 App. D. C. 460 14–302, 16–901
White v. District of Columbia, 55 App. D. C. 197, 4 Fed. (2d) 163 1–224, 1–226, 40–301, 40–603
White v. O. R. Evans & Bros., 157 F. 2d 857 13–108
White v. White, 150 F. 2d 157, 80 U. S. App. D. C. 156 11–205, 16–415
Whitfield v. Hoage, 63 App. D. C. 237, 71 Fed. (2d) 690 36–501
Whitman v. Noel, 53 A. 2d 280 11–772, 12–201
Whittaker v. Brannan, 252 Fed. 556 24–403
Whitwell v. United States ex rel. Selden, 61 App. D. C. 169, 58 Fed. (2d) 895 31–102
Wielar v. Garner, 4 App. D. C. 329 16–301
Wiggins v. Mayer, 57 App. D. C. 293, 22 Fed. (2d) 869 18–607, 20–505
Wiggins Ferry Co. v. Ohio & M. R. Co., 142 U. S. 396 13–301
Wight v. Davidson, 181 U. S. 371 43–1501, 43–1511
Wilkerson v. Montgomery, 47 A. 2d 102 45–1602, 45–1610
Wilkes v. Wilkes, 18 App. D. C. 90 18–202
Wilkins v. Woodruff, 74 A. 2d 59 11–772, 18–703
Wilkins & Co. v. Hillman, 8 App. D. C. 469 16–301
Wilkinson v. Dougherty, 58 App. D. C. 81, 24 Fed. (2d) 1007 7–108, 7–122, 7–204, 7–208, 7–209
Wilkinson v. McKimmie, 36 App. D. C. 336 13–401
Willard v. Crook, 21 App. D. C. 237 28–123, 28–507
Willard v. Wood, 1 App. D. C. 44 12–201
William v. U. S., 131 F. 2d 21, 76 U. S. App. D. C. 299 22–2801
Williams v. Amann, 33 A. 2d 633 11–907, 11–943, 11–946
Williams v. American Employers Ins. Co., 71 App. D. C. 153, 107 Fed. (2d) 953 36–501
Williams v. District of Columbia, 65 A. 2d 924 22–3302, 22–3303
Williams v. Huff, 142 F. 2d 91, 79 U. S. App. D. C. 31, 146 F. 2d 867, 79 U. S. App. D. C. 326 11–205, 11–914, 16–806
Williams v. John S. Donohoe & Sons, Inc., 68 A. 2d 239 45–820, 45–901
Williams v. Overholser, 137 F. 2d 545, 78 U. S. App. D. C. 95, 151 F. 2d 457 16–806, 21–317
Williams v. Paine, 169 U. S. 55, 42 L. Ed. 658, 18 Sup. Ct. 279 45–408—45–410
Williams v. Paine, 7 App. D. C. 116 45–401
Williams v. Pearson, 49 A. 2d 663 45–1605
Williams v. United States, 3 App. D. C. 335 22–2201
Williams v. United States, 55 App. D. C. 239, 4 Fed. (2d) 432 22–105
Williams v. United States, 71 App. D. C. 377, 110 Fed. (2d) 554 22–2701
Williams v. U. S., 138 F. 2d 81, 140 F. 2d 351, 78 U. S. App. D. C. 147, 78 U. S. App. D. C. 322 17–101, 22–301, 22–2201
Williams v. Williams (D. C. D. C.), 33 Fed. Supp. 612 16–403, 16–410
Williams v. Williams, 24 App. D. C. 214 11–504, 20–504
Willis v. District of Columbia, 54 App. D. C. 191, 295 Fed. 1012 40–617
Willis v. Eastern Trust & B. Co., 169 U. S. 295 11–735, 45–603
Willis v. United States, 69 App. D. C. 129, 99 Fed. (2d) 362 7–209, 16–601, 16–607, 16–634
Willner v. Hazen, 71 App. D. C. 373, 111 Fed. (2d) 511 7–308, 47–1101
Wills v. Jones, 13 App. D. C. 482 30–208
Wills v. Maddox, 45 App. D. C. 128 45–102
Wilner v. Vartanian, 55 A. 2d 88 45–1610, 45–1611
Wilson v. Aderhold, 84 Fed. (2d) 806 24–402
Wilson v. Charlent, 81 F. Supp. 690 18–107, 18–709, 18–710, 18–716
Wilson v. District of Columbia, 65 A. 2d 214 14–101, 22–3302
Wilson, In re, 79 F. Supp. 816 11–907, 22–903
Wilson v. Newburgh, 42 App. D. C. 407 16–501
Windell v. Holland American Line, 40 App. D. C. 1 13–103
Winfree v. Northern P. R. Co., 164 Fed. 698 44–401
Winfree v. Northern Pac. R. Co., 173 Fed. 65 44–401, 44–404
Winkler v. Ballard, 63 A. 2d 669 11–772, 45–1604, 45–1608
Winslow v. Baltimore & O. R. Co., 208 U. S. 59 7–1212
Winslow v. Baltimore & O. R. Co., 28 App. D. C. 126 17–101
Winston v. Winston, 50 App. D. C. 321, 271 Fed. 551 16–401
Winter v. Hazen-Latimer Co., 42 App. D. C. 469 38–103, 38–106, 38–107
Wirt v. Stubblefield, 17 App. D. C. 283 16–701, 28–203, 28–407
Wirth v. Corning, 75 F. Supp. 817 31–301
Wise v. Herzog, 72 App. D. C. 335, 114 Fed. (2d) 486 11–805
Wittek v. U. S., 54 A. 2d 747 11–755, 45–902, 45–1605
Witters v. United States, 70 App. D. C. 316, 106 Fed. (2d) 837 22–2205
Wogan Bros., Inc. v. American Sugar Ref. Co., 215 Fed. 273 11–305
Wohlstetter v. Capital Transit Co., 62 A. 2d 797 11–722, 11–756, 11–772
Wolf, In re, 27 Fed. 606 11–316
Wolfe v. Snyder, 48 F. Supp. 227 19–103, 19–110
Wolff v. Capital Transit Co., 35 A. 2d 454 11–772, 14–301, 14–405
Wolpe v. Poretsky, 144 F. 2d 505, 154 F. 2d 330, 79 U. S. App. D. C. 141 5–413, 5–414, 5–422
Wood v. District of Columbia, 39 A. 2d 67 5–414, 5–419
Wood v. U. S., 128 F. 2d 265, 75 U. S. App. D. C. 274 22–2901
Wood v. White, 68 App. D. C. 341, 97 Fed. (2d) 646 40–403
Woodbury v. District of Columbia, 67 App. D. C. 278, 92 Fed. (2d) 202 7–401, 7–406
Woodruff v. Woodruff, 60 A. 2d 538 16–411, 16–413
Woodward v. Union Trust Co., 49 App. D. C. 173, 262 Fed. 627 38–110, 38–118
Woodward v. United States, 38 App. D. C. 323 22–1202, 22–2201
Woodward & Lothrop v. Heed, 44 A. 2d 369 11–772, 28–1115
Woodward & Lothrop v. Union Trust Co., 49 App. D. C. 173, 262 Fed. 627 38–103
Woolard v. District of Columbia, 62 A. 2d 640 11–772, 14–101, 40–609

Woolen v. Lorenz, 68 App. D. C. 389, 98 Fed. (2d) 261 12–101
Wright v. Pitts, 62 App. D. C. 217, 66 Fed. (2d) 197 45–614
Wright v. United States, 183 F. 2d 821 11–1420, 22–2705, 22–2707
Wrobel v. Overholser, 145 F. 2d 859, 79 U. S. App. D. C. 293 21–312
Wueger v. Braun, 132 F. 2d 25, 77 U. S. App. D. C. 50 18–101
Wulzen, In re, 235 Fed. 362 39–401
Wynn v. Washington, 53 A. 2d 275 11–735, 45–902, 45–1605

Y

Yeager v. District of Columbia, 33 A. 2d 629 11–772
Yeager v. United States, 16 App. D. C. 356 22–105, 22–2801
Yeager v. United States, 59 App. D. C. 11, 32 Fed. (2d) 402 22–1202, 22–1401
Yellow Cab Co. v. Dreslin, 181 F. 2d 926, 86 U. S. App. D. C. 327 30–208
Yellow Cab Co. of D. C. v. Griffith, 40 A. 2d 340 11–772
Yellow Cab Co. of D. C. v. Rogers, 34 A. 2d 36 11–756
Yellow Cab Co. of D. C. v. Sutton, 37 A. 2d 655 11–772
Young v. Bank of Alexandria, 4 Cranch. (8 U. S.) 384 49–301
Young v. Bank of Alexandria, 5 Cranch. (9 U. S.) 45 11–316
Young v. Baugh, 35 A. 2d 242 45–902
Young v. Clarendon Tp., 132 U. S. 340 45–501
Young v. DeVito, 56 A. 2d 558 11–772
Young v. Gill, 149 F. 2d 843 16–801
Young v. Hesse, 58 App. D. C. 362, 30 Fed. (2d) 986 11–905, 11–907
Young v. Hoage, 67 App. D. C. 150, 90 Fed. (2d) 395 36–501
Young v. Howard, 120 F. 2d 712, 73 App. D. C. 340 45–501
Young v. Munsey Trust Co., 72 App. D. C. 73, 111 Fed. (2d) 514 45–802
Young v. Nicholson, 70 App. D. C. 351, 107 Fed. (2d) 177 15–304, 15–308, 15–309
Young v. Norris Peters Co., 27 App. D. C. 140 11–503, 19–313, 45–802
Young v. United States, 184 F. 2d 587 16–1202
Young v. Warner, 6 App. D. C. 433 13–401
Young Women's Christian Association v. French, 187 U. S. 401 18–701

Z

Zellan v. Cole, 183 F. 2d 139 12–201
Zerbst v. Kidwell, 92 Fed. (2d) 756 24–402
Zerega v. United States, 59 App. D. C. 67, 32 Fed. (2d) 963 11–622, 22–1504, 22–1508
Zeust v. Staffan, 16 App. D. C. 141 18–215
Zibell v. Meacham & Babcock Shipbldg. Co., 56 App. D. C. 385, 16 Fed. (2d) 330 13–103
Ziegler v. District of Columbia, 71 A. 2d 618 11–772, 24–101, 40–603
Zier v. Eastern Acceptance Corp., 61 A. 2d 106 28–402, 28–407, 28–409
Zikos v. Oregon R. & Nav. Co., 179 Fed. 893 44–401
Zindler v. Buchanon, 61 A. 2d 616 11–735, 11–772, 45–908, 45–1609, 45–1610
Zinkhan v. District of Columbia, 50 App. D. C. 312, 271 Fed. 542 24–415
Zirkle v. Daly, 60 App. D. C. 344, 54 Fed. (2d) 455 26–601, 28–2701, 28–2703
Zis v. Herman, 39 A. 2d 65 11–772
Zoby v. Kosmadakes, 61 A. 2d 618 11–735, 45–902, 45–908
Zweig v. Schwartz, 31 A. 2d 857 11–774, 42–103

REVERSE TABLE OF CASES

A

Aaronson; Harding v.
Abramson; Abramson v.
Acacia Mut. Life Ins. Co.; Duehay v.
Ace Wrecking Co.; Stern v.
Acker; Acker v.
Acker; H. Herfurth, Jr., Inc. v.
Adams; Creel v.
Adams; Metropolitan Life Ins. Co. v.
Adams; Morgan v.
Adams; Uhler v.
Aderhold; Gambill v.
Aderhold; Johnson v.
Aderhold; Reid v.
Aderhold; Wilson v.
Adkins; Children's Hosp. v.
Adkins; Costigan v.
Adkins Furniture Co.; Barrett v.
Adoption of a Minor, In re
Aetna Casualty & Surety Co.; United States ex rel. Goodenow v.
Aiello; Niosi v.
Ainsworth; United States v.
Alaska; Walsh v.
Alaska S. S. Co.; Cook v.
Alexander; Alexander v.
Alexander; Craighead v.
Alexander; Mare v.
Alexander; Munsey Trust Co. v.
Alexander; Sorrels v.
Alexander Milburn Co.; Mueller Brass Co. v.
Allan E. Walker, Inc.; Bailey v.
Allan E. Walker & Co.; Brown v.
Allen; Allen v.
Allen; Cush v.
Allen; Frey v.
Allen; Reed v.
Allen; Sanders v.
Allen; Seaside Nat. Bank v.
Allen; White v.
Allison; Henderson v.
Allman; Washington Loan & Trust Co. v.
Alropa Corp.; Wells v.
Alsop; Fedarwisch v.
Alsop; Pascucci v.
Alton; Colonna v.
Alvey; United States ex rel. Queen v.
Amann; Williams v.
Ambrogi; Baldi v.
Ambrose; Miller v.
Ameli; Suydam v.
American Automobile Assn.; Merrick v.
American Bonding & Trust Co.; Smith v.
American Eagle Fire Ins. Co.; Jordan v.
American Employers Ins. Co.; Williams v.
American Excavation Co.; District of Columbia v.
American Fruit Product Co.; United Surety Co. v.
American Oil Co.; District of Columbia v.
Amer. Pharmaceutical Ass'n; District of Columbia v.
American R. Exp. Co.; Harris v.
American Security & Trust Co.; Biscayne Trust Co. v.
American Security & Trust Co.; Bunten v.
American Security & Trust Co.; Dougherty v.
American Security & Trust Co.; Gracie v.
American Security & Trust Co.; Huffines v.
American Security & Trust Co.; Hurdle v.
American Security & Trust Co.; Jordan v.
American Security & Trust Co.; Lewis v.
American Security & Trust Co.; Mayer v.
Amer. Security & Trust Co.; Reeves v.
American Security & Trust Co.; Stafford v.
American Security & Trust Co.; Turner v.
American Sugar Ref. Co.; Wogan Bros., Inc. v.
Anchor Line; Lancer v.
Andelman; Stamates v.
Anderson; Cooper v.
Anderson; De Grazia v.
Anderson; Fabrizio v.
Anderson; Reid v.
Anderson; Thurston v.
Andre; Etelson v.
Andros; Strong v.
Angle; Arsenault v.
Antikamnia Chemical Co.; United States v.
Apostolic Works; Hoffman v.
Archer; Ambler v.
Archer; Drazich v.
Argerakis; District Hauling & Construction Co. v.
Arsenault; Levy v.
Ashley; Armstrong v.
Ashley; Bradshaw v.
Associated Retail Credit Men; Clark v.
Associates Discount Corp.; Palmer v.
Associates Inv. Co.; Minick v.
Atchison, T. & S. F. R. Co.; McCabe v.
Athanas; Isquith v.
Atkins; Champ v.
Atkinson; Alfred Richards Brick Co. v.
Atkinson; Atkinson v.
Atlantic Life Ins. Co.; Thornhill v.
Atwell; Tracy v.
Augusta; Marshall v.
Aukam; Security Savings & Commercial Bank v.
Austin; Atlas Van Lines v.
Auth; G. G. Loehler Constr. Co. v.
Auto City Parking Co.; Lucas v.
Automobile Finance Co.; Mason v.
Avignone; Castleman v.

B

Babcock; Hoover v.
Bachrach; Barnett v.
Bachrach; Palm v.
Bacon; Bacon v.
Baetjer; Colbert v.
Bailey; District of Columbia v.
Bailey; Philips v.
Baker; Middle States Loan v.
Baker; Newman v.
Baldwin; Kiess v.
Ball; Danenhower v.
Ball; District of Columbia v.
Ballard; Winkler v.
Ballinger; United States ex rel. Phillips v.
Ballou; Cavanaugh v.
Baltimore & O. R. Co.; Brown v.
Baltimore and Ohio Railway Company; Endy v.

Baltimore & O. R. Co.; Stewart v.
Baltimore & O. R. Co.; United States v.
Baltimore & O. R. Co.; Winslow v.
Baltimore & P. R. Co.; Beasley v.
Baltimore & P. R. Co.; Commissioners of District of Columbia v.
Baltimore & P. Steamboat Co.; Washington-Southern Nav. Co. v.
Bankers Trust Co.; National City Bank v.
Bank of Alexandria; Young v.
Bank of Commerce & Savings; Laughlin v.
Bank of Discount; Lyons v.
Bank of New York Nat. Banking Assn.; United States v.
Bank of Potomac; McLaughlin v.
Barker Painting Co.; Local Union No. 368 v.
Barnard; United States ex rel. Holmead v.
Barnard; United States ex rel. Robertson v.
Barnes; Addison v.
Barnum; Nashville Interurban R. Co. v.
Barry; Parsons v.
Bartlett; Loring v.
Basiliko; Bowers v.
Basiliko; District of Columbia v.
Basiliko; U. S. v.
Basinger; Shu v.
Baskin; Kass v.
Baskin; Noel v.
Batavia (N. Y.) Veterans' Administration Emp. Federal Credit Union No. 189, Inc.; Frye v.
Bateman; Bateman v.
Bateman; Plumb v.
Bates; Bates v.
Baugh; Young v.
Baum; Bellmore v.
Beach; U. S. v.
Beasley; Sedgwick v.
Beavans; Ruppert v.
Beazley; Tucker v.
Bechtel Hotel; Beck v.
Beckner; Hodgkins v.
Behrend; Hicks v.
Behrend; Weeks v.
Bell; Galloway v.
Bell; Larrabee v.
Bell; Rhodes v.
Bellevue, Inc.; Sulzer v.
Belt; Magruder v.
Belt; U. S. v.
Bennett; Beard v.
Bennett; Bennett v.
Bennett; Sanders v.
Benton; Drum v.
Berberich; J. R. Beaton Co. v.
Berens; Laughlin v.
Berger; Perkins v.
Bergheimer; Bergheimer v.
Bergling; Hamilton v.
Berkow; Heitmuller v.
Berlin; Ohio Nat. Bank v.
Berman; Labofish v.
Bernard; Supreme Commandery of United Order of Golden Cross v.
Bernsdorff; Bernsdorff v.
Bernstein; Lynch v.
Berry; Keith v.
Besser Mfg. Co.; Summar v.
Best; Atkins v.
Betts; Lonas v.
Beyer; International Seal Co. v.
B. F. Goodrich Rubber Co.; Splain v.
B. F. Saul Co., Inc.; Connolly v.
B. H. Stinemetz & Son Co.; Saks v.
Bidder; Blethyn v.
Biddle; Borak v.
Bigelow; James B. Lambie Co. v.
Bigger; Barrett v.
Billow, To the Use of American Automobile Insurance Company; Firestone Tire and Rubber Company v.
Bill's Auto Rental, Inc.; Bonded Taxi Company v.
Bilsborough; Bilsborough v.
Bippus; Richards v.
Bishop; Carow v.
Blandy; Blandy v.
Bledsoe; Bledsoe v.
Blessing; Hazard v.
Bliss; Bliss v.
Block; Hirsh v.
Block; Kreis v.
Bloedorn; Bloedorn v.
Board of Comrs.; La Forest v.
Board of Com'rs of District of Columbia; Maghan v.
Board of Dental Examiners; Johnston v.
Board of Education; Cooke v.
Board of Governors of Federal Reserve System; Agnew v.
Board of Tax Appeals; United States ex rel. Dascomb v.
Boarman; Sis v.
Boddie; Overholser v.
Boeckmann; United States v.
Boggan; Pumphrey v.
Bombardier; Shapiro v.
Bond; Pinchot v.
Bonded Taxi Company; Bill's Auto Rental Inc. v.
Boone; Boone v.
Borden; United States ex rel. Eure v.
Bornstein & Son; Premier Poultry Co. v.
Bostwick; Vestry of St. John's Parish v.
Botkin; Brosius v.
Botkin; Noble v.
Botkin; Pelley v.
Bovee; Simm v.
Bowers; Bowers v.
Bowers; Del Vecchio v.
Bowes; Shaffer v.
Bowles; Ockstadt v.
Bowling Green White Stone Co.; Rhodes v.
Bowman; Turner v.
Boyce; Boyce v.
Boyd; Camp v.
Boyd; United States v.
Boyer; U. S. v.
Boyle Brothers; Davis v.
Bradford; Watwood v.
Bradley; McKay v.
Bradley; Pace v.
Brainerd; J. and J. Slater, Inc. v.
Brainerd; Morse v.
Brainerd; Ross v.
Brainerd; Thayer v.
Bralove; Abbot v.
Bralove; Bralove v.
Brandenburg; Brandenburg v.
Brandt; Cohen v.
Brannan; Whittaker v.
Braun; Wueger v.
Brawner; Tate v.
Breaker; Morris v.
Bricklayers, Masons & Plasterers Intern. Union of America; Munday v.
Bridgeport Broadcasting Station; General Broadcasting System v.
Briggs; American Storage Co. v.
Briggs; U. S. v.
Bright; Fifth Congregational Church v.
Britton; B. F. Goodrich Co. v.
Britton; London Guarantee & Accident Co. v.
Britton; National Homeopathic Hospital Ass'n of Dist. of Col. v.
Britton; Smoot Sand & Gravel Corp. v.
Britton; Wetzel v.
Brook; Simmons v.
Brooke; District of Columbia v.
Brooks; Dickinson v.
Brooks; Simpkins v.
Brooks; Spruill v.
Brophy; Green v.
Brosnan; Brosnan v.
Brotherhood of Locomotive Firemen and Enginemen; Graham v.
Brown; Ambrose v.
Brown; Bradford v.
Brown; Brown v.
Brown; Dengel v.

Brown; Electrical Workers Ben. Assn. v.
Brown; Gwin v.
Brown; Hutchison v.
Brown; McMurray v.
Brown; Montgomery v.
Brown; Schwartz v.
Brown; Shima v.
Browning; Richardson v.
Brownlow; Beyer v.
Brownlow; Briggs v.
Brownlow; Edwards v.
Brownlow; Schwartz v.
Brownlow; United States ex rel. Schwerdtfeger v.
Bruce; Ray v.
Bruno; Davis v.
Bryan; Cahill v.
Bryan; National Capital Bank v.
Bryan; Ofenstein v.
Bryant; Manogue v.
Bryant; Secrist v.
Bryce; Levy v.
B. Simon Hardware Co; Nelson v.
Buchanan; Mayer v.
Buchanon; Zindler v.
Buck; Snyder v.
Buckley; District of Columbia v.
Buckley; Dowling v.
Buck's Stove & Range Co.; Gompers v.
Buford; Buford v.
Bullis Schools, Inc.; Lichtenberg v.
Burch; Metropolitan Life Ins. Co. v.
Burdette; Burdette v.
Burdick; Burdick v.
Burdick; Gertman v.
Burg; Arms v.
Burke; Fitzgan v.
Burke; Wayne v.
Burns; District of Columbia v.
Burns; Hayes v.
Burnstine; Page v.
Burr; Leach v.
Burris; Fidelity & Casualty Co. v.
Burroughs; Burroughs v.
Burroughs; United States v.
Burrowes; Burrowes v.
Bursey; Lyon v.
Burton; Cooper v.
Burton; Washington Fidelity Nat. Ins. Co. v.
Butler; Butler v.
Butler; Glennon v.
Butler; Gould v.
Butler; Smith v.
Byrnes; Washington Gas Light Co. v.

C

Cadarr; United States v.
Cadick; Balster v.
Caffo; Sambataro v.
Caffrey; Caffrey v.
Cafritz; Corporation Audit Co. v.
Cahill; District of Columbia v.
Cake; Richmond v.
Calhoun; Palais Royal v.
Calhoun; Peak v.
California Co-op. Canneries; United States v.
Callahan; Smithson v.
Callahan; United States ex rel. Denney v.
Callahan; Washington Coin Mach. Ass'n v.
Camden Iron Works; District of Columbia v.
Campbell; Biggs v.
Campbell; Campbell v.
Campbell; Commercial Credit Co. v.
Campbell; Emack v.
Campbell; Oregon R. & N. Co. v.
Campbell; Redman v.
Campbell; United States v.
Canelacos; Camp v.
Canfield; Burke v.
Canfield; Mullen v.
Capital Investment & Guaranty Co.; Phillips v.
Capital Mortg. & Title Co.; District of Columbia v.
Capital Trac. Co.; Carmody v.
Capital Trac. Co.; Fleming v.
Capital Trac. Co.; George v.
Capital Trac. Co.; Mangum v.
Capital Trac. Co.; Public Utilities Comm. v.
Capital Trac. Co.; Rockwell v.
Capital Trac. Co.; United States v.
Capital Transit Co.; Crusade v.
Capital Transit Co.; Ferranti v.
Capital Transit Co.; Gardner v.
Capital Transit Co.; Keffer v.
Capital Transit Co.; Lyons v.
Capital Transit Co.; MacDonald, to Use of Emmco Ins. Co. v.
Capital Transit Co.; Wohlstetter v.
Capital Transit Co.; Wolff v.
Capital Wall Paper Co.; Kurtz v.
Caprio; Jillson v.
Cardillo; Ackerman v.
Cardillo; Associated General Contractors v.
Cardillo; Carson v.
Cardillo; Davison v.
Cardillo; Fazio v.
Cardillo; Great American Indemnity Co. v.
Cardillo; Great Atlantic & Pacific Tea Co. v.
Cardillo; Groom v.
Cardillo; Gudmundson v.
Cardillo; Liberty Mut. Ins. Co. v.
Cardillo; Maryland Casualty Co. v.
Cardillo; Moyer v.
Cardillo; New Amsterdam Casualty Co. v.
Cardillo; Penker Const. Co. v.
Cardillo; Potomac Elec. Power Co. v.
Cardillo; Travelers Ins. Co. v.
Cardillo; Ward v.
Carey; Boardman v.
Carl; C. I. T. Corp. v.
Carmody; U. S. ex rel. Noel v.
Carpenter; Carpenter v.
Carpenter; Hauptman v.
Carroll; Goldwyn Distributing Corp. v.
Carter Hdw. Co.; Bond v.
Carter, In re
Carusi; Gillem v.
Carusi; United States ex rel. Gillem v.
Caruthers; Roller v.
Carver; Watson v.
Case; Operative Plasterers and Cement Finishers International Assn. v.
Cassell; Howard University v.
Castle; Missouri Pac. R. Co. v.
Cella; United States v.
Central Amusement Co.; Silverman v.
Central Cigar Co.; Higgins v.
Central Constr. Co.; Ohio Bank v.
Central Dispensary & Emergency Hosp.; White v.
Central Georgia R. Co.; Snead v.
Chaconas' Estate, In re
Chafitz; Gersing v.
Chaifetz, In re
Chal-Bro., Inc.; Perlman v.
Chaltis; Hall v.
Chamberlain; Keane v.
Chambers; Hazen v.
Charlent; Wilson v.
Charles C. Koones & Co.; Goldberg v.
Chas. C. Schulman; Franklin v.
Charles H. Thompkins Co.; Flanaghan v.
Charles H. Tompkins Co.; Secor v.
Charles H. Tompkins Co.; United States ex rel. Turnover v.
Charles Levine, Inc.; Snyder v.
Charles L. Heinle Specialty; United States v.
Chesapeake & Ohio Canal Co.; Mackall v.
Chesapeake & O. R. Co.; Howard v.
Chicago Daily News; Bilbrey v.
Chicago, M. & P. S. R. Co.; United States v.

Chicago, R. I. & P. R. Co.; Hall v.
Children's Hosp.; Atkins v.
Childress; Manning v.
Chipman; Sarfert Co. v.
Christian Heurich Brewing Co.; Turner v.
Christman; Brown v.
Christman; Luchs v.
Chudnow; Coleman v.
Church; Church v.
Cissel; Smith v.
Cissell; Cissell v.
Citron; Rosenschein v.
City & S. R. Co.; Bernhardt v.
City & S. R. Co.; Chunn v.
City & Suburban Co.; United States ex rel. Newman v.
Civil Aeronautics Bd; Braniff Airways v.
Clabaugh; Goldsmith v.
Clabaugh; Mulvihill v.
Clabaugh; United States ex rel. Mulvihill v.
Clack; Arnett v.
Clarendon Tp.; Young v.
Clark; Andreas v.
Clark; Clark v.
Clark; Dancy v.
Clark; Dewey v.
Clark; District of Columbia v.
Clark; Lansburgh & Bro. v.
Clark; McMurtrey v.
Clark; Thompson v.
Clarke; Roller v.
Clawans; District of Columbia v.
Clayton; Contella v.
Cleckley; Clarke v.
Clemens; Clemens v.
Clemmer; Council v.
Clemmer; Griffin v.
Clemmer; Jones v.
Clemmer; Jordon v.
Clemmer; Solis v.
Clemmer; Washington v.
Clephane; Carver v.
Clephane; Laughlin v.
Clifford; Jackson v.
Clodfelter; Webster v.
Coal & Coke R. Co.; Ferguson Contracting Co. v.
Coates; Moore v.
Cobb; Moran v.
Coblens; Davis v.
Cockrell; Lewis v.
Coe; Ethyl Gasoline Corporation v.
Coe; Thorne, Neal & Co. v.
Cogswell; Cogswell v.
Cogswell; Cox v.
Cogswell; Hearn v.
Cogswell; Kern v.
Cohen, Halperin v.
Cohen; Orndorff v.
Colbert; Speer v.
Colby; Washington Loan & Trust Co. v.
Cole; Cole v.
Cole; Zellan v.
Coleman; France v.
Colonial-American Nat. Bank of Roanoke; Mergardt v.
Colpoys; Herzog v.
Colpoys; Rapeer v.
Colpoys; Reed v.
Colpoys; Rowe v.
Colts; District of Columbia v.
Columbia Graphophone Co.; Randolph & Co. v.
Columbus; Flaherty v.
Commercial Credit Co.; Barrett v.
Commercial Nat. Bank; Howell v.
Com. Int. Rev.; Garden City Feeder Co. v.
Com. Int. Rev.; Gould v.
Com. Int. Rev.; Vanderbilt v.
Commissioners of District of Columbia; American Security & Trust Co. v.
Commissioners of District of Columbia; Hart v.
Committee on Admissions and Grievances of the District Court; Halpern v.
Committee on Admissions and Grievances; Tulman v.
Concord Club; Storrow v.
Conger; Hayes v.
Conley; St. Louis, I. M. & S. R. Co. v.
Connecticut General Life Ins. Co.; White v.
Conner; Barnes v.
Consumers Brew. Co.; Commercial Bank v.
Continental Life Ins. Co.; Fowel v.
Convention of Protestant Episcopal Church; Washington Loan & Trust Co. v.
Cook; Cook v.
Cook; Welch v.
Coomes; Fletcher v.
Cooper; Cooper v.
Cooper; Mann v.
Cooper; Walsh v.
Coppedge; De Bobula v.
Corbin; Continental Trust Co. v.
Corning; Wirth v.
Corporation Audit Co.; Cafritz v.
Costello; Costello v.
Costello; Palmer v.
Cottone; Lee Won Sing v.
Cowan, W. T., Inc.; Krupsaw v.
Cowgill; Washington Loan & Trust Co. v.
Cox; Rogers v.
Craig; Consumers Credit Service v.
Cramer; Germaine v.
Cramton; Purcell v.
Crandol; United States v.
Crawford; Boosalis v.
Crawford Paving Co.; District of Columbia v.
Creamer; Rudolph v.
Credit Bureau, Inc.; Watwood v.
Creel; Creel v.
Crim; Bateman v.
Crivella, B. J., Inc.; Belfiore v.
Cromelin; Universal Dealers Co. v.
Crook; Willard v.
Cropper; McLane v.
Cross Transp. Co.; Terminal Warehouse & Refrigeration Co. v.
Crounse; Fraser v.
Crouse; Mackenzie v.
Crowley; Kresge v.
Crusade; Capital Transit Co. v.
Culley; Berkeley v.
Cullinane; Reilly v.
Cumberland; Baltimore & P. R. Co. v.
Cumberland; Brennan Constr. Co. v.
Cummings; Amos v.
Cummings; Consaul v.
Cummings; United States ex rel. Ordmann v.
Cunningham; Cunningham v.
Cunningham; Harper v.
Curro; Mason v.
Curry; Moncure v.
Curtin; King v.
Curtis; Brice v.
Curtis; Bryan v.
Curtis; Ramsey v.
Cushman; Reed v.
Custis; United States ex rel. Hammond v.
Custis; United States ex rel. Thomson v.
Cutting; Carter v.

D

Dade; Cunningham v.
Daggett; Richardson v.
Dahlgren; Dahlgren v.
Daine; Price v.
Dail; Higgins v.
Dalton; Eclov v.
Daly; Zirkle v.
Danford; Perper v.
Daniels; Persing v.
Dann; Washington Gas Light Co. v.
Dante; Berry & Whitmore Co. v.
Dante; Brandenburg v.
Dante; Hutchins v.
Dante; Tait v.
Dante; Velati v.

Darling; Washington Loan & Trust Co. v.
D'Audigne; Langley v.
David; Kennedy v.
David; Mitchell v.
Davidson; Wight v.
Davis; Adams v.
Davis; Burrows Motor Company v.
Davis; Davis v.
Davison; Shlopak v.
Davis; Sincell v.
Davis; U. S. v.
Davison; Richards v.
Dean; Von Rosen v.
Decatur Corporation; Friedman v.
Deep; Kashouty v.
Defense Homes Corp.; Hood v.
De Hart; District of Columbia v.
Delafield & Baxter Cement Co.; Brown v.
Delaney; Gross v.
Delaware; Pedersen v.
De Leon; Garcia v.
Delsnider; Gould v.
De Marcos; Overholser v.
Deming; Turner v.
Deming; United States ex rel. Stowell v.
De Mitkiewicz; Wall v.
Denahan; United Retail Cleaners and Tailors Ass'n of D. C. v.
Denison; Lewis v.
Dennert; Lillie v.
Dennett; Dennett v.
Dent; Combined Congregations of District of Columbia v.
Dent; Ferguson v.
Denver & R. G. R. Co.; Equitable Trust Co. v.
De Ruiz; De Ruiz v.
Dettmers; Ionescue v.
De Vito; Young v.
Dewalt; District of Columbia v.
Dickerson; Hoskins v.
Dickinson; McCloskey & Co. v.
Dieterich; Dieterich v.
Diller; Binford v.
Dilling; Little v.
Dimas-Aruti; Heindrich v.
Dimmick; Schooley v.
Direction Der Disconto Gesellschaft; Sprunt v.
Dismer; Chapman v.
District Court; Johnson v.
District Nat. Bank; McKee v.
District of Columbia; American Security & Trust Co. v.
District of Columbia; Anderson v.
District of Columbia; Arbaugh v.
District of Columbia; Bailey v.
District of Columbia; Baker v.
District of Columbia; Bale v.
District of Columbia; Beach v.
District of Columbia; Bealle v.
District of Columbia; Beedy v.
District of Columbia; Bell v.
District of Columbia; Boss v.
District of Columbia; Bowles v.
District of Columbia; Brandenberg v.
District of Columbia; Brooks v.
District of Columbia; Brown v.
District of Columbia; Burns v.
District of Columbia; Busey v.
District of Columbia; Butler v.
District of Columbia; Byrd v.
District of Columbia; Calvary Baptist Church Extension Ass'n v.
District of Columbia; Campbell v.
District of Columbia; Capital Transit Co. v.
District of Columbia; Carpenter v.
District of Columbia; Carranzo v.
District of Columbia; Catholic Home for Aged Ladies v.
District of Columbia; Cave v.
District of Columbia; Chesapeake & Potomac Tel. Co. v.
District of Columbia; Chesevoir v.
District of Columbia; Chewning v.
District of Columbia; Clark v.
District of Columbia; Clawans v.
District of Columbia; Coleman v.
District of Columbia; Collier v.
District of Columbia; Colts v.
District of Columbia; Columbia Brick Co. v.
District of Columbia; Connecticut Ave. Cafe v.
District of Columbia; Crane v.
District of Columbia; Croson v.
District of Columbia; Davenport v.
District of Columbia; Davis v.
District of Columbia; Dawson v.
District of Columbia; DePue v.
District of Columbia; Dibble v.
District of Columbia; D. J. Dunigan, Inc. v.
District of Columbia; Doing v.
District of Columbia; Eastman Kodak Co. v.
District of Columbia; Eckloff v.
District of Columbia; Edwards v.
District of Columbia; Electric Storage Battery Co. v.
District of Columbia; Fellowship Foundation v.
District of Columbia; Ferguson v.
District of Columbia; Filippone v.
District of Columbia; Fisher v.
District of Columbia; Fitzhugh v.
District of Columbia; Frankfurt v.
District of Columbia; Garrett v.
District of Columbia; Garrity v.
District of Columbia; Gassenheimer v.
District of Columbia; General Elec. Co. v.
District of Columbia; Golf, Inc. v.
District of Columbia; Goodman v.
District of Columbia; Gray v.
District of Columbia; Great A. & P. Tea Co. v.
District of Columbia; Hainsworth v.
District of Columbia; Hall v.
District of Columbia; Hamilton National Bank v.
District of Columbia; Hanback v.
District of Columbia; Hayes v.
District of Columbia; Heald v.
District of Columbia; Hecht Co. v.
District of Columbia; Hendrick v.
District of Columbia; Henry J. Robb, Inc. v.
District of Columbia; Hoover v.
District of Columbia; Horning v.
District of Columbia; Howard University v.
District of Columbia; Howerton v.
District of Columbia; Huffman v.
District of Columbia; Hunt v.
District of Columbia; J. E. Dyer & Co. v.
District of Columbia; Jefferson v.
District of Columbia; Jones v.
District of Columbia; Karika v.
District of Columbia; Keep v.
District of Columbia; King v.
District of Columbia; Klopfer v.
District of Columbia; Lake for Use of Peyser v.
District of Columbia; Lane v.
District of Columbia; Lappin v.
District of Columbia; Leaman v.
District of Columbia; Leventhal v.
District of Columbia; Lewis v.
District of Columbia; Lindner v.
District of Columbia; Little v.
District of Columbia; Lohman v.
District of Columbia; Loube v.
District of Columbia; Maryland & Virginia Milk Producers' Assn. v.
District of Columbia; McGraw v.
District of Columbia; Mercury Press v.
District of Columbia; Metropolitan R. Co. v.
District of Columbia; Moore's Victoria Theatre Co. v.
District of Columbia; Morris v.
District of Columbia; Nash v.
District of Columbia; Nation v.
District of Columbia; National Bank of Washington v.
District of Columbia; Neild v.
District of Columbia; Novak v.
District of Columbia; Nusbaum v.

District of Columbia; O'Connor v.
District of Columbia; Oden v.
District of Columbia; O'Hara v.
District of Columbia; O'Neil v.
District of Columbia; Pace v.
District of Columbia; Panitz v.
District of Columbia; Parker v.
District of Columbia; Parsons v.
District of Columbia; Peeples v.
District of Columbia; Penwell v.
District of Columbia; Price v.
District of Columbia; Queen City Brewing Co. v.
District of Columbia; Quick v.
District of Columbia; Real Estate Mortgage & Guaranty Corporation v.
District of Columbia; Real Estate Title Ins. Co. v.
District of Columbia; Reamy v.
District of Columbia; Riggs Development Co. v.
District of Columbia; Rogers v.
District of Columbia; Rose v.
District of Columbia; Rosenberg v.
District of Columbia; Rynex v.
District of Columbia; Savage v.
District of Columbia; Scott v.
District of Columbia; Seaboard Realty v.
District of Columbia; Security Sav. & Commercial Bank v.
District of Columbia; Seher v.
District of Columbia; Seidenberg v.
District of Columbia; Sherwood Bros., Inc. v.
District of Columbia; Simmons v.
District of Columbia; Sinclair v.
District of Columbia; Slaughter v.
District of Columbia; Smallwood v.
District of Columbia; Smith v.
District of Columbia; Smoot Sand & Gravel Corp. v.
District of Columbia; Stewart v.
District of Columbia; Stover v.
District of Columbia; Suburban Title & Investment Corp. v.
District of Columbia; Sullivan v.
District of Columbia; Sweeney v.
District of Columbia; Talty v.
District of Columbia; Tendler v.
District of Columbia; Thomas v.
District of Columbia; Tipp v.
District of Columbia; Trometer v.
District of Columbia; Tubins v.
District of Columbia; Tumulty v.
District of Columbia; United Cigar-Whalen Stores Corp. v.
District of Columbia; United States Casualty Co. v.
District of Columbia; United States ex rel. Connor v.
District of Columbia; United States ex rel. Russell v.
District of Columbia; Wardman Real Estate Inv. Corp. v.
District of Columbia; Warner Bros. Pictures v.
District of Columbia; Washington R. & Elec. Co. v.
District of Columbia; Watkins v.
District of Columbia; Watrous v.
District of Columbia; White v.
District of Columbia; Williams v.
District of Columbia; Willis v.
District of Columbia; Wilson v.
District of Columbia; Wood v.
District of Columbia; Woodbury v.
District of Columbia; Woolard v.
District of Columbia; Yeager v.
District of Columbia; Ziegler v.
District of Columbia; Zinkhan v.
District Unemployment Compensation Board; Better Business Bureau of Washington, D. C. v.
District Unemployment Compensation Board; Cohen v.
District Unemployment Compensation Board; International Reform Federation v.
District Unemployment Compensation Bd.; Schlosberg v.
Dixson; Tyler v.
Dodge; Crosby v.
Dodge; Strasburger v.
Doheny; United States v.
Doherty; Stoner v.
Doing; Fraser v.
Dollar; Land v.
Donovan; Herrell v.
Dorsey; Hill v.
Dottellis; Eesley v.
Dougherty; O'Brien v.
Dougherty; Quinn v.
Dougherty; Wilkinson v.
Douglas; Holtzman v.
Douglas; Rubin v.
Downey; Washington A. & Mt. V. R. Co. v.
Doyle; Notes v.
Doyle; Smith v.
Doyle; United States ex rel. Corbin v.
Doyle; United States ex rel. Cromwell v.
Drake; American Home Life Ins. Co. v.
Dreslin; Yellow Cab Co. v.
Drew; Stern v.
Driscoll; National Trucking and Storage Co. v.
Droze; Gray v.
Drummond; Michigan Tool Co. v.
Drury; Daniel v.
Drury; H. L. Rust Co. v.
Drury; Taylor v.
Duane; McHugh v.
Duckett; Duckett v.
Dudley; Massachusetts Mut. Acc. Assn. v.
Duehay; McCoy v.
Dulany; Berl v.
Dulany; Waggaman v.
Dunbar; Lee v.
Duncan; Bliss v.
Duncanson; Manson v.
Duncan Townsite Co.; Lane v.
Dunlap; Jones v.
Dunn; Washington Gas Light Co. v.
Dunnington; Dunnington v.
Du Pont Nat. Bank; Chase v.
Dutch Baker Boy, Inc.; Hanback v.
Duvall; Claudy v.
Duvall; Robinson v.

E

Earl; Searl v.
Early; Early v.
Easterhazy; Brown v.
Eastern Acceptance Corp.; Zier v.
Eastern Airlines; State of Maryland v.
Eastern Trust & Banking Co.; American Ice Co. v.
Eastern Trust & Banking Co.; Willis v.
Eaton; Soffos v.
Eberly; Cahill v.
Ebert; Ebert v.
Edes; Karrick v.
Edmonds; U. S. v.
Ed. L. Stock Inc.; Mazo v.
Edwards; Aderhold v.
Edwards; Jerman v.
Edwards; Metzler v.
E. F. Brooks Co.; Davidson v.
Efron; Messall v.
E. Heidenheimer, Inc.; Carroll v.
Eicher; Laughlin v.
Eicher; Noble v.
Eicher; U. S. ex rel. Laughlin v.
Eisinger Mill & Lbr. Co.; Roth v.
Eisminger; American Sav. Bank v.
Elbert; Green v.
Electric Utilities Emp. Union; Busby v.
Elgen; United States ex rel. Arlington & F. Auto R. Co. v.
Eliason; United States v.
Eliot; Forster v.
Elite Laundry Co.; National Cafes v.
Elkins; Carroll v.
Elkins; Elkins v.
Ellis; Coates v.
Ellis; Ellis v.

Ellis; Radinsky v.
E. L. Murphy Co.; Eisinger v.
Elroy; McGowan v.
Elverson; Macfarland v.
Elwood; Mustard v.
Embrey; Harris v.
Emergency Hosp.; Leitch v.
Emery; Emery v.
Emig; Mitchell Min. Co. v.
Emig Properties Corporation; W. C. & A. N. Miller Development Co. v.
Emmons; Jackson v.
Empire State Realty Co.; Croissant v.
Eng; Holland v.
Equitable Life Assur. Soc.; Kavakos v.
Equitable Life Insurance Society; Mercer v.
Esher; Devlin v.
Eslin; Cashell v.
Estep; Trammell v.
E Street Theatre Corporation; Henderson v.
Etchison; Rosslyn Steel & Cement Co. v.
Evans; Evans v.
Evans; Schlein v.
Evans, O. R. & Bro.; White v.
Evans; United States v.
Evening Star; Huysman v.
Evening Star Newspaper Co.; Balinovic v.
Evening Star Newspaper Co.; Fletcher. v.
Everson; Beall v.
Eyster; Cropley v.

F

Fair; United States v.
Faircloth; United States ex rel. W. A. Pierce Co. v.
Fall; United States v.
Falvey Granite Co.; Bovello v.
Fanelli; Rizzi v.
Fant; Abbott v.
Farmer; Buchanan v.
Farmer; Light v.
Farr; United Services Life Ins. Co. v.
Farrow; Eclipse Bicycle Co. v.
Fawcett; Fidelity Sav. Co. v.
Fechheimer; Bieber v.
Fedarwisch; Alsop v.
Federal Communications Commission; National Broadcasting Co. v.
Federal Communications Commission; Scripps-Howard Radio v.
Federal Consulting Service; Etty v.
Fendall; Turner v.
Ferrante; Orrison v.
F. G. Arwood and Co.; Lang v.
F. G. Smith Piano Co.; Minton v.
F. H. Duehay, Inc.; Hoffman v.
Fickenscher; Manos v.
Fickling; Ross v.
Fidelity & Deposit Co.; Davis v.
Fidelity & Deposit Co.; District of Columbia ex rel. Langellotti v.
Fidelity & Deposit Co.; Morganthau v.
Field; Billings v.
Fields; Klein v.
Fifth Baptist Church; Baltimore & P. R. Co. v.
Filippone; Hayden v.
Finance Corp.; Jackson v.
First Federal Savings & Loan Ass'n; Cockrell v.
First Nat. Bank; Morsell v.
Fishbien; Barbagollo v.
Fisher; Bradley v.
Fisher; United States ex rel. McKenzie v.
Fiske; Washington Nat. Bldg. & Loan Assn. v.
Fitch; Graham v.
Fitzgerald; Corey v.
Fitzpatrick; United States v.
Fitzwater's Guardianship, In re
Flanagan; Byrnes v.
Fleming; Peden v.
Fletcher; McCartney v.
Flick, In re
Flook; Armour v.
Floyd E. Davis Company; Holmes v.
Flynn; Mutual Benefit Life Ins. Co. v.
Follansbee; Follansbee v.
Forbes; United States ex rel. Norris v.
Ford; Ford v.
Ford; Lyon v.
Foreman; Colpoys v.
Forrest; Fairclaw v.
Forsberg; Lefler v.
Foster; Morris v.
Foundry M. E. Church; Maloney v.
Fox; Atlas Portland Cement Co. v.
Fox; Brosnan v.
Fox; Dawson v.
Fox; Edwards v.
Fox; First Nat. Bank. v.
Francis; Norwood v.
Franklin; Chalaire v.
Franklin; Franklin v.
Franklin Nat. Bank; Thompson v.
Fraser; Henry v.
Fraser; Tepper v.
Frazer; District of Columbia v.
Fred; District of Columbia v.
Frederick; Werner v.
Freed; Barrett v.
Freedman's Sav. & Trust Co.; Dodge v.
Freed-Wisemann Radio Corp.; Carroll Elec. Co. v.
French; Little v.
French; Young Women's Christian Association v.
Frey; Frey v.
Friday; Santa Fe Cent. R. Co. v.
Friedenwald; Friedenwald v.
Friedman; Decatur Corpn. v.
Friedman; Singer v.
Frigidaire Sales Corp.; Marks v.
Frye; Mallery v.
Fuhrman; Livingston v.
Fuller; McMillan v.

G

Gabbard; Tamamian v.
Gaines; Gaines v.
Galliher; Dougherty v.
Galliher; Harper v.
Games; Brady v.
Gannon; Manning v.
Gans; Bieber v.
Gant; District of Columbia v.
Gardner; District of Columbia v.
Garner; Wielar v.
Garrett; Garrett v.
Garrison; District of Columbia v.
Gates; Block v.
Gawler's, Joseph, Sons; National Metropolitan Bank of Washington v.
Geare; United States v.
Geiger; Spilman v.
General Credit; Fogle v.
General Electric Credit Corp; Clark v.
General Motors Acceptance Corp.; International Finance Corp. v.
General Realties Co.; Jay v.
George; Schwaner v.
Georgetown & T. R. Co.; District of Columbia v.
Georgetown Gas Light Co.; District of Columbia v.
George Washington University; Hornblower v.
Gerstein; Herb v.
Gerstley; McGuire v.
Gibson; Gibson v.
Gibson; Riddle v.
Gilbertson; Jennings v.
Giles; Crisp v.
Giles; Knott v.
Gill; Dorsey v.
Gill; Fowler v.
Gill; Gill v.
Gill; Young v.
Gillarde, L., Co.; Mancuso v.
Gillet & Co.; Pierce v.

Gilmore; Smith v.
Gish; Walker v.
Glekas; Diamantopoulos v.
Glenn; Mindell v.
Glennan; Glennan v.
Glover; Patten v.
Glueck; Whipp v.
Goetze; Pyramid National Van Lines, Inc. v.
Goldberg; Atlantic Coast Line R. Co. v.
Goldberg; Ellerbe v.
Goldberg; Manhattan Co. v.
Goldberg; Roumel v.
Goldman; Sullivan v.
Goldsoll; Foster v.
Goldstein; Givens v.
Goldstein; Saunders v.
Goldwyn; Sharpe v.
Golway; Baltimore & P. R. Co. v.
Gompers; Brumbaugh v.
Gongwer; United States ex rel. Todd v.
Goode; Jackson v.
Gordon; Green v.
Gordon; Hall v.
Gordon; Overby v.
Gordon; Stevens v.
Gott; Mut. Life Ins. Co. v.
Gottwals; Bugher v.
Gotwals; Dorsey v.
Gotwals; Smith v.
Gould; Delsnider v.
Gould; Murphy v.
Grand Fountain; Brown v.
Grand Lodge K. of P.; Creswill v.
Grant; Holzbeierlein v.
Grant; Lincoln v.
Grant; Provident Life Ins. Co. v.
Graver; Glassman v.
Gray; Eureka-Maryland Assur. Co. v.
Gray; McNeil v.
Gray; National Safe Deposit, Sav. & Trust Co. v.
Gray; Thompson v.
Great Northern R. Co.; Kelley v.
Green; Gould v.
Greenwald; United States Shipping Bd. v.
Griffin; Griffin v.
Griffith; Jarcy v.
Griffith; United States v.
Griffith; Yellow Cab Co. of D. C. v.
Griffith-Consumers Co.; Chapman v.
Grimshaw; Hopkins v.
Groff; Angell v.
Groff; Groff v.
Groome; United States v.
Group Health Assn.; Jordan v.
Groves; Brotherhood of Railroad Trainmen v.
Gruner; Sheriger v.
Guice; Jones v.
Guiffrida; Ginder v.
Gumenick; Spigel v.
Gunn; Halpern v.
Gutierrez; El Paso & N. E. R. Co. v.
Guy; Moore v.
Gwynn; Fields v.

H

Haas; Brown v.
Hackett; Chicago, I. & L. R. Co. v.
Hagan; Boss v.
Haliday; Haliday v.
Hall; Barry v.
Hall; Carver v.
Hamilton; Dennis v.
Hamilton; Hardebeck v.
Hamilton Nat. Bank; City Bank v.
Hamilton National Bank; District of Columbia v.
Hamilton Realty Corp.; Lucas v.
Hammond; Resnick v.
Hammond; Washington Loan & Trust Co. v.
Hanlon; Tuohy v.
Hardee; Boss v.
Hardee; Hannan v.
Hardee; Hazen v.
Hardesty; Associates Discount Corporation v.
Hardy; Lehmer v.
Harlan; Bell v.
Harlowe; Totten v.
Harmer; Clark v.
Harper; Berkley v.
Harr; McCaul Co. v.
Harrah; Dunning v.
Harrington; King v.
Harris; Baltimore & O. R. Co. v.
Harris; Harris v.
Harris; Phoenix Mut. Life Ins. Co. v.
Harrison; Moran v.
Harrison; Securities and Exchange Commission v.
Harrison; Steele v.
Harrison Granite Co.; Guilford Granite Co. v.
Harriss; Haviland v.
Harry Kaufman; New Negro Alliance v.
Hart; Fabianich v.
Hart; Pascucci v.
Hartford Acc. & Indem. Co.; Cardillo v.
Hartford Acc. & Indem. Co.; Hoage v.
Hartman; Ross v.
Harvey; Koehne v.
Hawes; Hill v.
Hawfield; Irwin v.
Hawfield; Pollard v.
Hawk; Goodloe v.
Hawkins; Metropolitan Life Ins. Co. v.
Hawkins; Seymour v.
Hawkins; Shields v.
Hawkins; Smith's Transfer & Storage Co. v.
Hawkins; Southern R. Co. v.
Hawley; Hawley v.
Hawley; Hazen v.
Hawley; United States ex rel. McDuffie v.
Hayes; Moses v.
Hazen; Blanks v.
Hazen; Cafritz v.
Hazen; Capital Transit Co. v.
Hazen; Cogger v.
Hazen; Fleischhauer v.
Hazen; Hutchins Mut. Ins. Co. v.
Hazen; Johnson v.
Hazen; Nealy v.
Hazen; Phila. B. & W. R. R. Co. v.
Hazen; Potomac Elec. Power Co. v.
Hazen; Ralph v.
Hazen; Walker v.
Hazen; Willner v.
Hazen-Latimer Co.; Winter v.
Hechinger; Moore v.
Hechinger; Reichelderfer v.
Heckman; Heckman v.
Hedges; Parish v.
Heed; Woodward & Lothrop v.
Heiberger; National Safe Deposit, Sav. & Trust Co. v.
Heil; Craig v.
Heilbroner; Manogue v.
Heiskell; Adriance, Platt & Co. v.
Helfgott; Helfgott v.
Helvestine; Helvestine v.
Helwig, Case v.
Henderson; U. S. v.
Hengesbach; Hengesbach v.
Henkel; Benson v.
Hennick; Stoutenburgh v.
Henning; Hornor v.
Henning; Turner v.
Henry; Dingman v.
Henry; Eastern Acceptance Corp. v.
Henry J. Robb, Inc.; Hall v.
Herbert; Johns v.
Herdman; Breneman v.
Herman; Mars v.
Herman; Zis v.
Herrell; Herrell v.
Herrell; Manogue v.
Herrell; Scott v.
Herrell; Smith v.
Herring-Hall-Marvin Safe Co.; Halls Safe Co. v.
Herrmann; Life Ins. Co. of Virginia v.
Heron; Allen v.
Herzog; Wise v.
Hesse; Young v.

Heurich; Peck v.
Heyl; Smoot v.
H. G. Smithy Co.; Scott v.
Hiatt; Stoneburg v.
Hibbs; National Safe Deposit Sav. & Trust Co. v.
Hickey; Barbour v.
Hicks; Hicks v.
Higeyoshi Nagayama; Shokuwan Shimabukuro v.
Higgin Mfg. Co.; Green v.
Higgins; Macafee v.
Hill; Bracey v.
Hill; Halback v.
Hill; Maktos v.
Hill; Talbott v.
Hill; United States ex rel. Bracey v.
Hillman; Robinson v.
Hillman; Wilkins & Co. v.
Hilton; Klein v.
Hinden; Stokes v.
Hines; Hart v.
Hirsch; Mellen v.
Hirsch Lbr. Co.; United States Shipping Board Merchant Fleet Corp. v.
Hitchcock; Degge v.
Hitchcock; Hitchcock v.
Hitchens; Hitchens v.
Hitt; Whitaker v.
H. L. Rust Co.; Myers v.
H. L. Rust Company; Newberry v.
Hoage; Aetna Life Ins. Co. v.
Hoage; Anderson v.
Hoage; Ayers v.
Hoage; Capital Transit Co. v.
Hoage; Chapman v.
Hoage; Commercial Casualty Ins. Co. v.
Hoage; Employers Liability Assur. Corp. v.
Hoage; Fulton v.
Hoage; Georgia Casualty Co. v.
Hoage; Harris v.
Hoage; Hartford Acc. & Indem. Co. v.
Hoage; Liberty Mut. Ins. Co. v.
Hoage; London Guarantee & Acc. Co. v.
Hoage; Lumbermen's Mut. Casualty Co. v.
Hoage; Malone v.
Hoage; Massachusetts Bonding & Ins. Co. v.
Hoage; Metropolitan Casualty Ins. Co. v.
Hoage; Monahan v.
Hoage; Morgan v.
Hoage; National Casualty v.
Hoage; New Amsterdam Casualty Co. v.
Hoage; Powell v.
Hoage; Proctor v.
Hoage; Scott v.
Hoage; Shugard v.
Hoage; Speaks v.
Hoage; United States Casualty Co. v.
Hoage; Washington Terminal Co. v.
Hoage; Whitfield v.
Hoage; Young v.
Hodge; Hodge v.
Hodges; Nicholls v.
Hof; Capital Traction Co. v.
Hoffman; Washington Market Co. v.
Holcer; Dick Murphy, Inc. v.
Holland American Line; Windell v.
Holliday; Chicago, R. I. & P. R. v.
Hollway; Canelacos v.
Hollywood Credit Clothing Co.; Shpetner v.
Holmes; Holmes v.
Holmquist; McCartney v.
Holt; Holt v.
Holt; Throckmorton v.
Holtman; McCarthy v.
Holzbeierlein; Nash v.
Holzworth, In re
Home Indem. Co.; Rieffer v.
Homestead Fire Ins. Co. of Baltimore; Unkelsbee v.
Home Life Ins. Co.; Hayes v.
Hoover; Geracy, Inc., v.
Hoover; Kosters v.
Horigan; Madden v.
Horning, Inc.; Ostrow v.
Horton, Myers & Raymond; Batista v.
Hot Shoppes; Parker v.
Hough; Lipscomb v.
Houston; Huyler's v.
Howard; Bradbury v.
Howard; Cammack v.
Howard; Howard v.
Howard; Morgan v.
Howard; Young v.
Howe; Stroup v.
Howenstein; Bowen v.
Howland; MacKie v.
Huchins; V. G. Fisher Art Co. v.
Huddleston; Saks v.
Hudson; Aderhold v.
Huff; Blount v.
Huff; Clarke v.
Huff; Eury v.
Huff; Hammerer v.
Huff; Jones v.
Huff; Monroe v.
Huff; Pope v.
Huff; Rookard v.
Huff; Sheehan v.
Huff; Strong v.
Huff; Thompson v.
Huff; Warring v.
Huff; Williams v.
Huffman; Guardian Management Corp. v.
Hufty; Lynham v.
Hughes; Lisner v.
Hull; Hammond v.
Hull; Hull v.
Humphrey; Duvall v.
Humphrey; Lindberg v.
Humphrey; Lipphard v.
Humphreys; Evans v.
Humphries; District of Columbia v.
Hunt; District of Columbia v.
Hunt; Rudolph v.
Hurd; Hurd v.
Hurlbert; Poole v.
Hurley; Fidelity & Deposit Co. v.
Hurley; United States ex rel. Greathouse v.
Hurwitz; Hurwitz v.
Hutchins; Dante v.
Hutchins; Hutchins v.
Hutchins; Miniggio v.
Hutchinson; Desio v.
Hutson; Cain v.
Hutton; District of Columbia v.
Hygrade Sylvania Corp.; General Elec. Co. v.

I

Ichcovitz; Rosenberg v.
Iglehart; Iglehart v.
Ihrie; Reichelderfer v.
Illinois Cent. R. Co.; Howard v.
Indemnity Ins. Co.; Voehl v.
Industrial Bank of Washington; Gibson v.
Ingram; United States ex rel. Kreh v.
Insurance Bldg.; Klein v.
International Bank; Roberts v.
International Banking Corp.; Hayden v.
Interstate Properties; U. S. v.
Iowa State Traveling Men's Assn.; Sasnett v.
International Trust Co.; Crook v.
Interstate Commerce Comm.; Baltimore & O. R. Co. v.
Irvin; Joerns v.

J

Jackson; Carson v.
Jackson; Hiscox v.
Jackson; Knott v.
Jackson; Smith v.
Jackstone Co.; Jay's Restaurant v.
Jacobi; Jacobi v.
Jacobs; Calhoun v.
Jacobsen; Jacobsen v.
Jaffe; Jaffe v.
Jameson; American Nat. Red Cross v.
Janes; Janes v.

Jaques; Fidelity Storage Co. v.
Jardin; 1425 F St. Corp. v.
Jaselli; Simmons v.
Jawish; International Finance Corp. v.
Jeffe; Jeffe v.
Jenks; Hitz v.
Jenny Wren Co.; Sykes v.
Jensen; Brooks v.
Jerman; Forrester v.
Jerome; Maghan v.
Jewish War Veterans of United States; Glover v.
John S. Donohoe & Sons, Inc.; Williams v.
Johnson; Branham v.
Johnson; Fox v.
Johnson; Plummer v.
Johnson; Staves v.
Johnson; United States v.
Johnson & Wimsatt; District of Columbia v.
Johnston; Chiswell v.
Johnston; Cissell v.
Johnston; Johnston v.
Johnston; McDonald v.
Johnston; Stewart v.
Jones; Allen v.
Jones; Bunker v.
Jones; Davidson v.
Jones; Jones v.
Jones; Wills v.
Jordan; American Eagle Fire Ins. Co. v.
Jordan; Briel v.
Jordan; Landram v.
Jordan; National Hospital Service Soc. v.
Joseph Gawler's Sons; National Metropolitan Bank of Washington v.
Judge; National Metropolitan Bank of Washington v.
Judson; Judson v.
Julius Lansburgh Furn. & Carpet Co.; Weinstein v.
Junghans; Junghans v.

K

Kahan; Kaplowitz Bros. v.
Kahl-Holt Co.; Gill v.
Kalinoglu; Lely v.
Kalmbach; Doherty v.
Kane Transfer Co.; Mead v.
Karr; New York Continental Filtration Co. v.
Karrick; Chamberlain Metal Weather Strip Co. v.
Karsh; Downs v.
Kass Realty Co.; Crescent Cafe Co. v.
Kass Realty Co.; Sandler v.
Katz; Fink v.
Kauffman; Todd v.
Kaufman; Kaufman v.
Kay; Merritt v.
Kay Gyroplanes; Autogiro Co. of America v.
Keesee; Atlantic Greyhound Lines, Inc. v.
Kelcher; Kelcher v.
Keller; Feucht v.
Kelley; Kelly v.
Kellogg; Fletcher v.
Kelly; Continental Casualty Co. v.
Kelly; Metzger v.
Kelly; Snider v.
Kelly; Washington Coca Cola Bottling Works v.
Kemp; Ballou v.
Kenaday; Sinnott v.
Kendall; District of Columbia v.
Kennedy; Friedman v.
Kennedy; Interstate Bankers Corporation v.
Kenyon; Marsh v.
Kernan; Kernan v.
Keroes; Westchester Apartments v.
Kertz; De Marco v.
Kettler; Columbia Operating Corp. v.
Key; Chesapeake & Ohio Canal Co. v.
Kidwell; Zerbst v.
Killing; Little v.
Kimmell; Kimmell v.
King; Capital Trac. Co. v.
King; Jones v.
King; Palmer v.
King; Washington v.
Kingsbury; Fidelity Storage Co. v.
Kingsland; Edgerton v.
Kinyoun; Sachs v.
Kirk; Kirk v.
Kitching; Marvin's Credit v.
Kite; Fishel v.
Kjaer; Tayloe v.
Klecka; MacAboy v.
Klein; Anacostia & P. R. R. Co. v.
Klein; United States Fidelity & Guar. Co. v.
Klesner; Federal Trade Comm. v.
Kline; Hillyard v.
Kloeb; Armour & Co. v.
Kloman; United States v.
Klune; Prince v.
Knabe Mfg. Co.; Baum v.
Knickerbocker Theatre Co.; Lyman v.
Knox; Aquino v.
Knox; Mine Safety Appliance Co. v.
Knox; Rudolph v.
Koehler; Fowler v.
Koehne; Columbia Cat Fanciers v.
Koester; Weaver v.
Koppel Industrial Car Equipment Co.; Orenstein & Koppel, Aktiengesellschaft v.
Koslow; Cafritz v.
Kosmadakes; Zoby v.
Kountakis; Chaparas v.
Kraak; Marshall v.
Kraft; Huff v.
Kraft; Morgan v.
Krause; Columbia v.
Kreisch; Sutherland v.
Krous; Krous v.
Kuffner; Saunders System Washington Co. v.
Kupper; Johnson v.
Kurtz; Hogan v.
Kutz; Frazier v.
Kutz; Hollis v.
Kutz; Terminal Taxicab Co. v.

L

Labofish; Moses v.
Lacey; Hoover v.
Lackey; Crowder v.
Laks; Fowler v.
Lamas; Warthen v.
Lambert; Craighill v.
Lamphere; Union Storage & Transfer Co. v.
Lamson; O'Toole v.
Landon; Karrick v.
Landram; Jordon v.
Lane; Ewald v.
Lane; Handel v.
Lane; Hoglund v.
Lane; Marshall v.
Lane; United States ex rel. Arant v.
Lane; United States ex rel. Bowlegs v.
Lane; United States ex rel. Coal Co. v.
Lane; United States ex rel. McDonald v.
Lane; United States ex rel. Reynolds v.
Lang; Harris v.
Langan; Langan v.
Lange; Royal Glue Co. v.
Langley; Hutchins v.
Lansburgh; Silver v.
Lansburgh & Bro.; Deffebach v.
Larner; Survivors of Seventh Georgia Regiment v.
La Salle Extension University; Read v.
Laughlin; Bank of Commerce & Savings v.
Lawson; Thompson v.
L. C. Smith Bros. Typewriter Co.; Minnix Co. v.
Lear; Prudential Ins. Co. v.
Lee; Aderhold v.
Lee; Lee v.
Lee; Selden v.
Lee D. Butler, Inc.; Anderson v.
Lee, H. D. Co.; District of Columbia v.

Lee's Estate, In re
Leesnitzer; Taylor v.
Le Fevre; Beyer v.
L. E. Massey, Inc.; Tendler v.
Lenkin Const. Co.; Burman v.
Lenoir; Lenoir v.
Lenovitz; Palmer v.
Leoffler; Moyers v.
Leonardo; Leonardo v.
Leonhardt; Harris v.
Lesh; Lesh v.
Letts; Hurd v.
Levine; Doleman v.
Libbey; Mathews v.
Liberty Mut. Ins. Co.; Cardillo v.
Liberty Mut. Ins. Co.; Hoage v.
Lichliter; Dexter v.
Liff; Owens v.
Lightbown; Breuninger v.
Lilly; McNeill v.
Lincoln Inv. Corp.; Glennan v.
Lincoln Nat. Bank of Wash.; Kindleberger v.
Lindsay; Horning v.
Lipscomb; Western Union Tel. Co. v.
Liss; Klein v.
Litho-Marble Decorating Co.; Albaugh v.
Littleton; Moss v.
Lloyd; Dekelbaum v.
Lloyd; District of Columbia v.
Lockwood; District of Columbia v.
Lockwood; Lockwood v.
Lockwood; Moses v.
Lockwood; Rudolph v.
Lockwood Dental Co.; Suter v.
Loeb; Sonnemann v.
Lohnes; Webb v.
Lonas; Betts v.
Longo; Klein v.
Lorenz; Woolen v.
Loughran; Loughran v.
Louisvile Cement Co.; Frene v.
Louisville & N. R. Co.; Hall v.
Lowe; Hurley v.
Lubar; Hartman v.
Luckett; Lewis v.
Lusby; Capital Trac. Co. v.
Lust; Phillips v.
Lynch; Crandall v.
Lynch; McManus v.
Lynch; Neubeck v.
Lynch; Welch v.
Lynchburg Inv. Corp.; Newman v.
Lynham; District of Columbia v.
Lyon; Bursey v.
Lyon; Walker v.
Lyons; D'Elia & Marks Co. v.

M

MacDonald; Graves v.
Mace; United States v.
Macfadden Publications; Whitaker v.
Macfarland; Brown v.
Macfarland; Fay v.
Macfarland; Seufferle v.
Macfarland; United States ex rel. Daly v.
Mackey; Washington Asphalt Block & Tile Co. v.
Mackubin; Matson v.
Maddox; Wills v.
Maddux; Street v.
Madison; Marbury v.
Madison; Slaughter v.
Madsen; Keyes v.
Magruder; Barker v.
Magruder; Magruder v.
Maine Red Granite Co.; Flannery v.
Major; Shipley v.
Mallan; Condon v.
Mallos; Murphy v.
Malone; Frank v.
Maloney; United States v.
Mangan; Kennedy v.
Manhattan Life Ins. Co.; Kaplan v.
Mann; Green v.
Mann; Henderson v.
Manning; Chesapeake & Potomac Tel. Co. v.
Manning; Gannon v.
Mannix; Simpson v.
Manset; Lalekos v.
Manson; Duncanson v.
Maple; Bailey v.
Marschalk; Marschalk v.
Marcum; Marcum v.
Markham; Roberds v.
Markham; Uebersee Finanz-Korporation, A. G., v.
Marlyn Apartment Co.; Mee v.
Maroney; Healey v.
Marosy; Cooper v.
Marr; Prudent Patricians of Pompeii v.
Martin; Lemon v.
Martin; Martin v.
Marvins Credit; Phillips v.
Marvins Credit, Inc.; Schoon v.
Marvins Credit, Inc.; Thomas v.
Maryland; Macalester v.
Maschaur; Maschaur v.
Mason; Samaha v.
Mason; Smith v.
Mason; Stanberger v.
Massachusetts Bonding & Ins. Co.; Eberman v.
Massey, L. E., Inc.; Tendler v.
Masson; Howison v.
Masters; Hartman v.
Masters; Mollohan v.
Mathewson; Clark v.
Mathues; United States ex rel. Smith v.
Matteson; Holden v.
Matthews; Bradford v.
Matthews; Hevner v.
Matthews; Koehne v.
Matthews; Matthews v.
Mattingly; Cleveland v.
Maxfield; Barclay, Inc. v.
Maxwell; McDonald v.
Mayer; Wiggins v.
Mayhew; Myers v.
McAdoo; LeCrone v.
McAdoo; Ryan v.
McBlair; Collins v.
McBlair; Wheeler v.
McCallum-Sauber Co.; James E. Colliflower & Co. v.
McCandish; Commercial Nat. Bank v.
McCarl; United States ex rel. Skinner & Eddy Corp. v.
McCarthy; United States ex rel. Vause v.
McClintic; National Bondholders Corp. v.
McConnell; Cox. v.
McCormick; Crenshaw v.
McCoy; Hight v.
McCrea; Modern Engineering & Service Corp. v.
McCurdy; Marfield v.
McCutcheon; Brooks Transp. Co. v.
McDermott; Simpkins v.
McDonald; Mann v.
McFerran; National City Development Co. v.
McGinn; Mutual Benefit Health and Accident Association v.
McGinnis; Southern Pac. Co. v.
McGowan; Parish v.
McGrath; Freid v.
McGrath; Miles v.
McGreal; Utermehle v.
McGrew; McGrew v.
McHugh; Alaska S. S. Co. v.
McIntire; Green v.
McIntire; McIntire v.
McIver; Universal Jewelry Company, Inc. v.
McKibben; Philadelphia & Reading R. Co. v.
McKimmie; Wilkinson v.
McKitrick; McKitrick v.
McKnight; King v.
McLane; Cropper v.
McLarren; McLarren v.
McLaughlin; West v.
McMahon; Fletcher v.
McMahon; Weiner v.
McMillan; United States v.
McNeal; Ostrow v.
McNeil; Emrich v.
McQuade; Fidelity & Deposit Co. of Maryland v.

McReynolds; Commercial Credit Co. v.
McWilliams; U. S. v.
Meacham & Babcock Shipbldg. Co.; Zibell v.
Mealy; Naylor v.
Means; Block v.
Mearns; Tuckerman v.
Mebane; Breckenridge v.
Mebane; Calvert Fire Insurance Company v.
Medical Supervisors; Kemp v.
Medina; Conrad v.
Mehlman; Eberhard v.
Mellon; Doerschuck v.
Melovich; Landvoight v.
Melvin; Melvin v.
Menna; Menna v.
Mercer; Holtsclaw v.
Merchants & Miners Transp. Co.; Butts v.
Merrick; American Automobile Assn. v.
Mertz; Mellon v.
Metropolitan Club; United States Elec. Lighting Co. v.
Metropolitan Life Ins. Co.; Griffin v.
Metropolitan Life Ins. Co.; Jemison v.
Metropolitan Life Ins. Co.; Jones v.
Metropolitan Life Insurance Co.; Kaitlin v.
Metropolitan R. Co.; District of Columbia v.
Metz; Turner v.
Metzger; Metzger v.
Meyers; U. S. v.
Michael Del Balso, Inc.; Rogge v.
Michalowicz; Michalowicz v.
Michaux; Ancient Egyptian Arabic Order v.
Michigan Gypsum Co.; H. G. Christman Co. v.
Middle States Loan Bldg. & Constr. Co.; Lawrence v.
Middleton; Curriden v.
Middleton; Etty v.
Miles; Klein v.
Miller; Everett v.
Miller; Fay v.
Miller; Gotwals v.
Miller; Groff v.
Miller; Mades v.
Miller; Miller v.
Miller; Proctor v.
Miller; Thorn v.
Miller; Toledo Computing Scales Co. v.
Miller; Vincennes Steel Corp. v.
Millers Nat. Federation; Federal Trade Comm. v.
Millis; Reilly v.
Mills; United States v.
Milner, to Use of Hartford Fire Ins. Co.; Quinn v.
Mindell; Glenn v.
Mindell; Greene v.
Miniggio; Dante v.
Minnix; Simpson v.
Mitcham; Lee v.
Mitchell; Federal Intermediate Credit Bank v.
Mitchell; U. S. v.
M. J. Uline Co.; Johnson v.
Mockabee; Cardillo v.
Moderns Restaurant; Russell v.
Moebs; Crosby v.
Moncure; Moncure v.
Montague Mfg. Co.; Jett v.
Montgomery; Montgomery v.
Montgomery; Wilkerson v.
Montgomery County Nat. Bank; Darby v.
Monumental Motor Tours; District of Columbia v.
Moody; McGowan v.
Moor; Group Health Assn. v.
Moore; Barbour v.
Moore; Keely v.
Moore; Kelly v.
Moore; Loving v.
Moore; Metropolitan R. Co. v.
Moore; Moore v.
Moore; Mutual Comm. & Stock Co. v.
Moran; Capitol Dress Mfg. Co. v.
Moran; Harper v.
Moran; Moran v.
Morehouse; Bullock v.
Moreland; United States v.
Morgan; Baltimore & O. R. Co. v.
Morgan; Barksdale v.
Morgan; Ellis v.
Morgan; Morgan v.
Morgan; Myers v.
Morgenthau; American-Mexican Claims Bureau, Inc. v.
Morgenthau; United States Sav. Bank v.
Moritz; Moritz v.
Morley Construction Co.; United States ex rel. Johnson v.
Morris; District of Columbia v.
Morris; National Exp. Co. v.
Morris; Rhees v.
Morrison; Byrne v.
Morrison; Robinson v.
Morrison; Simmons v.
Morse; Dulany v.
Morse; United States ex rel. Hine v.
Mortgage Security Corp.; Maiatico v.
Moses; Aetna Life Ins. Co. v.
Mosher; Knowles v.
Moshewvel; Rudolph v.
Mott Motors; Hampton v.
Mount Vernon Sav. Bank; Bowen v.
Mt. Vernon Seminary; District of Columbia v.
Mowatt; Mullowny v.
Moyer; District of Columbia v.
Moyer; Harrison v.
Moyer; Price v.
Mozie; Heiskell v.
Mullowny; Hartranft v.
Munn; Hutchins v.
Munsey Trust Co.; Fischer v.
Munsey Trust Co.; McGrady v.
Munsey Trust Co. Young v.
Munson S. S. Line; Chase Bag Co. v.
Muratori; Frene v.
Murch Bros. Constr. Co.; Hoage v.
Murchison; Long v.
Murdock; Durant v.
Murphy; District of Columbia v.
Murphy; Frizell v.
Murphy; Schwartz v.
Murphy; Thomas v.
Murphy; United States ex rel. Boucher v.
Murray; Rosenberg v.
Myer; United States ex rel. Moser v.
Myers; Myers v.
Myers; Soper v.
Myles; Potomac Small Loan Co. v.

N

Nash; District of Columbia v.
Nash; Rowlett v.
National City Bank; Hieston v.
National Cotton Impr. Co.; Doremus v.
National Hospitalization; Turner v.
National Labor Relations Board; American Federation of Labor v.
National Met. Bank; Central Nat. Bank v.
National Metropolitan Bank; Hitz v.
National Metropolitan Bank of Wash.; Magruder v.
National Metropolitan Bank of Washington; Stoner v.
National Mtg. & Inv. Co.; Quinn v.
National Rifle Assn.; Hazen v.
National Safe Deposit, Sav. & Trust Co.; Sterrett v.
National Sav. & Trust Co.; Buchanan v.
National Sav. & Trust Co.; Dahlgren v.
National Sav. & Trust Co.; Hightstown Rug Co. v.

National Sav. & Trust Co.; McCurley v.
National Sav. & Trust Co.; Orlove v.
National Saving & Trust Co.; Rossiter v.
National Sav. Bank; Huntington v.
National Woodworking Co.; McReynolds v.
Neal; Vaughn v.
Nee; Hildebrand v.
Needle; Reynolds v.
Neely; U. S. v.
Negley; Phillips v.
Nelson; Nelson v.
Nelson; Tate v.
Nemerofsky; David v.
Neufield; U. S. v.
Neumann; Evans v.
New Amsterdam Cas. Co.; Mays v.
Newburgh; Wilson v.
Newcomb; McManus v.
Newman; District of Columbia v.
Newman; United States ex rel. Crupper v.
Newton; Johnson v.
New York ex rel. Tipaldo; Morehead v.
New York Life Ins. & Trust Co.; Conkling v.
New York Life Ins. Co.; Stinson v.
Nicholls; Swenk v.
Nicholson; Young v.
Nickoloff; Johnson v.
Nixon; Harris v.
Nixon; Nixon v.
Noel; Whitman v.
Noffsinger; Noffsinger v.
Nolan; McLean v.
Nolan; Werth v.
Nolan Finance Co.; Rowe v.
Noonan; Griffith - Consumers Co. v.
Noorbolm; James v.
Norman; Groo v.
Normandy; American Elementary Elec. Co. v.
Norment; Utermehle v.
Norris Peters Co.; Young v.
North American Cement Corp.; Continental Casualty Co. v.
Northcutt; Dugan v.
Northern Pac. R. Co.; Malloy v.
Northern Pac. R. Co.; Plummer v.
Northern Pac. R. Co.; Winfree v.
Norton; Ocumpaugh v.
Nuckols; Nuckols v.
Nutting's Estate, In re

O

Ober; Nash v.
O'Brien; Chappell v.
O'Brien; Jordan v.
O'Bryant; Huff v.
O'Connor; Dunn v.
O'Connor; Smith v.
O'Connor; Uricolo v.
O'Daniel; Brauer v.
O'Donnell; Murphy v.
O'Donoghue; Brownlow v.
O'Donoghue; Metzger v.
O'Donoghue; Sheehy v.
Offutt; Hamilton v.
Ogilby; Thomas v.
O'Hearne; Rives v.
Ohio & M. R. Co.; Wiggins Ferry Co. v.
Okely; Bank of Columbia v.
Olcott; Cooper v.
Olds; Noel v.
Olmsted; Eastern Bldg. & Loan Assn. v.
Olverson; Olverson v.
O'Neal; O'Neal v.
O'Neal; Tribby v.
O'Neil; O'Neil v.
Oregon R. & Nav. Co.; Zikos v.
Ormes; Houston v.
Osbourn; Olessoff v.
Osgood; Sackett, Chapman, Brown & Cross v.
Ostmann; Horne v.
Otis; United States ex rel. Estabrook v.
O'Toole; Spruill v.
Overholser; Anders v.
Overholser; Appel v.
Overholser; Cassel v.
Overholser; De Marcos v.
Overholser; Howard v.
Overholser; Knighton v.
Overholser; Orencia v.
Overholser; Williams v.
Overholser; Wrobel v.
Owen; Cruit v.
Owen; Peyser v.
Owens; New Arcade Co. v.
Oxley; Oxley v.
Oyster; Nalle v.

P

Paanakker; Barnes v.
Pace; District of Columbia v.
Pacific S. S. Co.; Sandstrom v.
Page; Greenwood v.
Pagenstecher; Trans-Atlantic Trust Co. v.
Paige Hotel Co.; Barbour v.
Paine; Grafton v.
Paine; Williams v.
Palmer; Costello v.
Palmer; DePoilly v.
Palmer; Farr v.
Palmer; Hayes v.
Palmer; Wheeler v.
Paregol; Hines v.
Paregol; Quick v.
Paris; Murphy v.
Parish; Dutton v.
Parke; Middleton v.
Parker; Dunn v.
Parker; Noyes v.
Parker; Sager v.
Parks; Parks v.
Parks; Peay v.
Park Sav. Bank; Thompson v.
Parrella; Parrella v.
Parrish; West Coast Hotel Co. v.
Parry; Carroll v.
Patch; Otterback v.
Patouiliet; Palmer Const. Co. v.
Patten; Glover v.
Patterson; Bean v.
Paul; Kane v.
Payne; Caine v.
Payne; Chicago Business College v.
Payne; Clore Restaurant v.
Payne; Miller v.
Peacock; Hutchinson v.
Peak; Dodd v.
Peak; Dorsey v.
Peak; Green v.
Peak; Pitts v.
Pearson; Connecticut Inv. Corp. v.
Pearson; Williams v.
Pedersen; Pedersen v.
Pence; Melvin v.
Penfield's Estate, In re
Penicks; Richardson v.
Pennsylvania Iron Works Co.; Finney v.
Penny; District-Florida Corp. v.
Peoples Bank; International Finance Corp. v.
Peoples Rapid Transit Co.; Kinchlow v.
Pepper; Shepherd v.
Perin; Perin v.
Perkins; Bata Shoe Co. v.
Perpetual Building Association; Bridgett v.
Perrine; Slack v.
Person; Bischoff v.
Person; Okie v.
Peters; Cummings v.
Peters; Mackey v.
Peters; Peters v.
Peters; Rudolph v.
Petersen; Brown v.
Petrie; Wardman-Justice Motors v.
Petty; Bardwell v.
Petty; District of Columbia v.
Pew; Freeman v.
Philadelphia Inquirer Co.; Neely v.
Phillips; Astin v.
Phillips; Dreslin v.
Phillips; Mead v.
Phillips; National Homeopathic Hospital v.

Philpot; Neudecker v.
Pifer; Washington Nat. Bldg. & Loan Assn. v.
Pilkerton; Walker v.
Pilson; Fowler v.
Pilson; Salvoni v.
Pinchot; Bond v.
Pine; Connors v.
Pitts; Wright v.
Pitzer; Counselman v.
Plant; Plant v.
Plisco; United States v.
Plymouth Rock Squab Co.; Kinney v.
Pneumatic Scale Corp.; Automatic Weighing Mach. Co. v.
Poates; National Surety Co. v.
Pollitzer; Berrien v.
Pond; Corbett v.
Poole; Martin v.
Poretsky; Wolpe v.
Porter; Campbell v.
Porter; Henderson v.
Porto Rico R. Light & Power Co.; Munoz v.
Potomac Chemical Co.; Watwood v.
Potomac Elec. Power Co.; Flynn v.
Potomac Elec. Power Co.; Keller v.
Potomac Elec. Power Co.; Lewis v.
Potomac Elec. Power Co.; Rudolph v.
Potts; Ecker v.
Pottsville Broadcasting Co.; Federal Communications Commission v.
Powell; Scott v.
Powers; Rosen v.
Prall; Prall v.
Presbrey; Thomas v.
President and Directors of Georgetown College; Hughes v.
Price; Chebithes v.
Price; Daine v.
Price; Koehne v.
Prophet; Miller v.
Prospect Hill Cemetery; German Soc. v.
Provident Ins. Co.; Carter v.
Provident Relief Assn.; Vernon v.
Prudential Ins. Co.; La Raw v.
Public Utilities Comm.; Potomac Elec. Power Co. v.
Public Utilities Comm.; Riegel v.
Public Utilities Commission of District of Columbia; Potomac Elec. Power Co. v.
Public Utilities Commission of District of Columbia; U. S. v.
Public Utilities Commission of District of Columbia; Washington Gas Light Co. v.
Pullo; International Exch. Bank v.
Pumphrey; United States v.
Purcell; Jenkins v.
Purcell; Raimonde v.
Putnam; Buck v.
Pyne; Pyne v.
Pywell; Moore v.

Q

Quarles; Quarles v.
Quick; Simmons v.
Quill; Price v.
Quinn; Reichelderfer v.

R

Rael; Norris v.
Railey; Railey v.
Railway Terminal Warehouse Co.; Taliaferro v.
Ramsey; Peake v.
Randall; Kengla v.
Randall Hagner Co.; Dunning v.
Randall H. Hagner & Co.; Shay v.
Randle & Garvin; Brown v.
Rapley; Fowler v.
Rapley; Friedlander v.
Rarosky; Delpan v.
Rathbone; Hamilton v.
Rawlett; Nash v.
Rawlings; Campbell v.
Raymond; Hill v.
Read; Clark v.
Reading Co.; Continental Ins. Co. v.
Real Estate Exchange, Inc.; Surratt v.
Realest Corp.; Stokes v.
Realty Associates; McConchie v.
Reconstruction Finance Corp.; Lewis v.
Reed, In re
Reed; Peak v.
Reed; Reed v.
Reeve; Perry v.
Reeves; Green v.
Reichelderfer; Branson v.
Reichelderfer; Concord Imp. Co. v.
Reichelderfer; Johnson v.
Reichelderfer; Mitchell v.
Reichelderfer; National Savings & Trust Co. v.
Reichelderfer; Shannon & Luchs Constr. Co. v.
Reid; Anderson v.
Reid; Wheeler v.
Reidy; Carroll v.
Reilly; Reilly v.
Reilly; Roberts v.
Reing; U. S. v.
Reliable Stores Corp.; Fidelity Storage Co. v.
Reliable Stores Corp.; Smiths Transfer & Storage Co. v.
Repetti; Soresi v.
Rexine Co.; Bost v.
Reynolds; Bean v.
Rhodes; Klepinger v.
Rhodes; Rhodes v.
Rice, In re.
Rich; Slack v.
Richards; United States ex rel. Stevens v.
Richardson; Harriman v.
Richardson; Howenstein Realty Corporation v.
Richardson; Richardson v.
Richardson; Rose Campbell Mission v.
Richardson; Scharfeld v.
Richmond Park Imp. Co.; Hight v.
Rick; U. S. v.
Ricketts; Case v.
Rickman; Steever v.
Ridenour; Droop v.
Ridgeway; Ridgeway v.
Ridout; Crosby v.
Rieffer; Hollingsworth v.
Riggs; Hume v.
Riggs Nat. Bank; Colby v.
Riggs Nat. Bank; District of Columbia v.
Riggs Nat. Bank; George Washington University v.
Riggs Nat. Bank.; Jaselli v.
Riggs Nat. Bank of Washington, D. C.; Cameron v.
Riggs Nat. Bank of Washington, D. C.; Ober v.
Ring Management Company; Dysert v.
Ring Management Company; Hall v.
Ringgold; Levy Court v.
Ringgold; United States v.
Ritchie; Thaw v.
Rives; Anderson v.
Rives; Curtis v.
Rives; Evans v.
Rives; Sims v.
Rives; Story v.
Rives; Watkins v.
Roach; Booger v.
Robbins; Fontano v.
Robert A. Grahame, Inc.; Heslop v.
Roberts; Bradfield v.
Roberts; Fairmac Corp. v.
Roberts; Millard v.
Roberts; Stewart v.
Robertson; United States ex rel. Baldwin v.
Robie; Rhodes v.
Robinson; District of Columbia v.
Robinson; Gittleson v.
Robinson; Payne v.
Robinson; Robinson v.
Rockwell; Capital Trac. Co. v.
Rodgers; Cunningham v.
Rodman; Pothier v.
Rogers; Rogers v.

Rogers; Yellow Cab Co. of D. C. v.
Rollings; Rollings v.
Rone; Rone v.
Roper; Spang v.
Roper; United States ex rel. Ashley v.
Rosen; Baker v.
Rosenberg; Alvarado v.
Rosenberg; Stern Co. v.
Ross; Bauman v.
Ross; Ramsey v.
Ross; Syndicated Construction Corp. v.
Ross; United States v.
Ross; Whelpley v.
Roth; District of Columbia v.
Rothberg; Senator Cab Co. v.
Rothstein Dental Laboratories; Rowlette v.
Roumel; Goldberg v.
Rowland; Craig v.
Royal Indem. Co.; Hoage v.
R. P. Andrews Paper Co.; District of Columbia v.
Rucker; Lockwood v.
Rudolph; Brown v.
Rudolph; Cave v.
Rudolph; Columbia Heights Realty Co. v.
Rudolph; Compton v.
Rudolph; Griffith v.
Rudolph; Johnson v.
Rudolph; Lynchburg Inv. Corp. v.
Rudolph; Potomac Elec. Power Co. v.
Ruppert; Ruppert v.
Rushenberger; Emack v.
Russell; Mazza v.
Russell; Russell v.
Rutherford; Jones v.
R. W. Claxton, Inc.; Schaff, v.
Ryan; Block v.
Ryan; National Sav. & Trust Co. v.
Ryan; Panama Ref. Co. v.

S

Sabin; Reilly v.
Sachs; Urciolo v.
Sacks; Daly v.
Sacks; Sacks v.
Sacks; Schwartz v.
Safe Deposit & Trust Co. of Baltimore; District of Columbia v.
Safeway Stores; Munsey v.
Sager; Parker v.
Saidman; Gasque v.
St. Louis & S. F. R. Co.; Smeltzer v.
St. Louis & S. F. R. Co.; Spain v.
St. Louis, S. W. R. Co.; United States v.
Samaha; Morimura v.
Samaha; Samaha v.
Sammond; Feltman v.
Sampson; Washington Terminal Co. v.
Sandidge; Schwartz v.
Sanford; Beard v.
Sandford; Northeast Auto Wreckers v.
Sanford; Sanford v.
Santucci; Mancuso v.
Saul; Saul v.
Saunders; Capital City Life Insurance Company v.
Saunders; Central Dispensary and Emergency Hospital v.
Savary; Carusi v.
Saville; Peoples Nat. Bank v.
Savings Bank; Brown v.
Sawyer; National Union v.
Saxe; Prudential Ins. Co. of America v.
Scala; Daly v.
Scarlett; Hall v.
Schacklett; Columbia Nat. Bank v.
Schafer; Metropolitan Loan & Trust Co. v.
Schafer; Walsh v.
Schaff; Claxton, R. W., Inc. v.
Schlaefer; Schlaefer v.
Schlein; Evans v.
Schlein; Martin v.
Schlein; Smith v.
Schlosberg; Moran v.
Schneider; McAleer v.
Schneider; Schneider v.
Schoenfeld; Schrot v.
Scholl; Scholl v.
Schooler; Schooler v.
Schram; Fulton R. Gordon, Inc., v.
Schram; Strasburger v.
Schrider; Faulks v.
Schubert; Philadelphia, B. & W. R. Co. v.
Schulz; Schulz v.
Schurz; United States ex rel. Mcbride v.
Schwartz; Coleman v.
Schwartz; Lanston v.
Schwartz; Zweig v.
Schwitzer-Cummins Co.; Schilling v.
Scott; Bailey v.
Seaboard A. L. R. Co.; Cancelmo v.
Seaboard A. L. R. Co.; Knobel v.
Sears; Sears v.
Securities and Exchange Commission; Koppers United Co. v.
Securities Corp. General; United States v.
Security Sav. & Commercial Bank; Fidelity Sav. Co. v.
Security Sav. & Commercial Bank; Ryan v.
Seeley; Seeley v.
Seigel; U. S. v.
Seitz; Seitz v.
Sellers; Brown v.
Semerjian; Students Book Company v.
Settle; Settle v.
Seven Corners Realty; Plitt v.
Seymoure; Mellon v.
Shamwell; Shipley v.
Shannon; Encyclopaedia Britannica v.
Shannon & Luch Co., Schlosberg v.
Shannon & Luchs Co.; Stewart v.
Shannon & Luchs Constr. Co.; Commissioners of District of Columbia v.
Shapiro; Christopher v.
Shapiro; Smith v.
Sharp; Webb v.
Shaver; Major v.
Shaw-Walker Co.; National Ben. Life Ins. Co. v.
Sheahin; Hoffman v.
Shedd; Riggs Fire Ins. Co. v.
Sheehy; Minar v.
Sheetz; Clawans v.
Shehee; Resler v.
Shellman; Shellman v.
Shepard; Pointer v.
Shepherd; Fidelity & Deposit Co. v.
Shepherd; Group Health Ass'n v.
Sheppard; Weimann v.
Sheriff Motor Co.; U. S. v.
Sherman; Friedman v.
Shields; Shields v.
Shiffers; Lewis v.
Shillington; Hamilton v.
Shima; Shima v.
Shine; Hyde v.
Shoemaker; Cosby v.
Shoemaker; Moore v.
Shore; Cobb v.
Shoreham Hotel; Elmhurst v.
Shoreham Hotel Corp.; Wallace v.
Shreve; Hockman v.
Shroyer Loan & Finance Co.; Bonuso v.
Shull; Astor Pictures Corp. v.
Shulmier; Goodacre v.
Siddons; Kalbfus v.
Simmons; Johnson v.
Simmons; Rice v.
Simmons; Simmons v.
Simms; United States v.
Simon; Simon v.
Simon; United States ex rel. Anderson v.
Simpson; District of Columbia v.
Sims; Behrman v.
Sing Tuck; United States v.
Singer; Schachter v.

Sixty-eight Cases of Syrup; United States v.
Skolnick; Globe Clothing Shop v.
Slater; Brown v.
Slaughter; Slaughter v.
Slaybaugh; Griffith v.
Sloan; Sloan v.
Slocum; Brown v.
Small; Pearson v.
Smalley; Holley v.
Smallwood; Capital Transit Co. v.
Smith; Beyer v.
Smith; Bonds v.
Smith; Boyle v.
Smith; Columbian Fraternal Assn. v.
Smith; District of Columbia v.
Smith; Hopper v.
Smith; Jackson v.
Smith; Patrick v.
Smith; Thompson v.
Smith; West v.
Smither & Mayton, Inc.; Hillyard v.
Smith's Estate, In re
Smoot; Indemnity Ins. Co. of North America v.
Smoot; London & Lancashire Indem. Co. v.
Smoot Sand & Gravel Corp., Beddoo v.
Snow; Snow v.
Snyder; Jackson v.
Snyder; Moore v.
Snyder; Notes v.
Snyder; Wolfe v.
Soileau; Aderhold v.
Solomon; Paley v.
Sothoron; Glenn v.
Southern Builders, Inc.; Goldberg v.
Southern Municipal Corp.; Duvall v.
Southern Pac. Co.; Brooks v.
Southern R. Co.; Hyde v.
Southern R. Co.; Taylor v.
Southern R. Co.; United States v.
Southern Realty Corp.; Tryson v.
Southern Soda Fountain Co.; R. P. Andrews Co. v.
Spanos; Mars v.
Sparks; Sparks v.
Speare; Cook v.
Spiller; Burns v.
Splain; Ellison v.
Splain; Goodale v.
Splain; Hard v.
Splain; John v.
Splain; Lamar v.
Splain; Levy v.
Splain; Shore v.
Splain; Stallings v.
Splain; Watts v.
Splain; Webster v.
Staffan; Zeust v.
Stafford; Parll v.
Stamps; Sager v.
Standard Oil Co.; Public Motor Service v.
Standard Steel Car Co.; Tri-State Motor Corp. v.
Stanley; Edmonston v.
Stanton; Washington Nat. Ins. Co. v.
Staples; Martin v.
Stapleton; Anglo-Colombian Dev. Co. v.
State Council; National Council Junior Order United American Mechanics v.
Staub; Staub v.
Stea; Stea v.
Steele; Lindquist v.
Steele; Steele v.
Stein; Stein v.
Stephens; Fletcher v.
Stern; Stern v.
Sterrett Operating Services, Inc.; Jaffe v.
Stewart; Griffith v.
Stewart; Stewart v.
Stickel; Stickel v.
Stone; Georgetown College v.
Stone; Standard Sav. Bank v.
Stonebraker; Bowles v.
Stonebraker; Colwell v.
Stoner; Doherty v.
Stones; Spriggs v.
Storey; Storey v.
Stouck; Goldberg v.
Strange; Harper v.
Strauss; Rector v.
Street; Richards v.
Stubblefield; Street v.
Stubblefield; Wirt v.
Sturgeon; Miller-Shoemaker Co. v.
Sugrue; Merriam v.
Sullivan; American Sec. & Trust Co. v.
Sullivan; Banville v.
Sullivan; Mearns v.
Sullivan; Settlemier v.
Sullivan; United States Elec. Lighting Co. v.
Sumpter; Martin Co. v.
Sun Indemnity Co.; Bruckner-Mitchell v.
Sun Life Ins. Co. of Amer.; Pullen v.
Sun Printing & Pub. Co.; Rickets v.
Superintendent of Washington Asylum & Jail; Prioleau v.
Superior Life Ins. Co.; Walker v.
Susquehanna Coal Co.; Washington Loan & Trust Co. v.
Sutherland; Pilger v.
Sutton; Yellow Cab Co. of District of Columbia v.
Swagart; Rubenstein v.
Swagart; Skolnick v.
Sweeney; National Safe Deposit, Sav. & Trust Co. v.
Symons; Eichelberger v.
Symons; Symons v.

T

Tabet; Byrne v.
Taendler; Schupp v.
Taliaferro; United States v.
Talty; Talty v.
Tamamian; Black v.
Tamamian; De Bobula v.
Tanner; Thompson v.
Tanner; Towles v.
Tate; Fleming v.
Taylor; Atchison & Keller v.
Taylor; Baltimore & P. R. Co. v.
Taylor; Columbia University v.
Taylor; Davis v.
Taylor; Dawson v.
Taylor; Johnson v.
Taylor; New York Life Ins. Co. v.
Taylor; Slater v.
Taylor; Southern R. Co. v.
Taylor; Taylor v.
Taylor; Tenney v.
Taylor; Waters v.
Tenants; Block v.
Tendler; Tendler v.
Tennessee Val. Authority; Fehlhaber Pile Co. v.
Tennessee Valley Authority; Posey v.
Terminal Refrigerating & Warehousing Co.; Hoage v.
Terminal Taxicab Co.; Calvert v.
Terranova; United States v.
Thecker; Orenberg v.
Thirty-Six Bottles of London Dry Gin; United States v.
Thom; Mondell v.
Thomas; Baltimore & O. R. Co. v.
Thomas; Dobbins v.
Thomas; Edward Thompson Co. v.
Thomas; Johnson v.
Thomas; Presbrey v.
Thomas; Wheeler v.
Thomas Circle Cafe; Klingstein v.
Thomas J. Fisher & Co.; Union Provision & Distributing Corp. v.
Thompson; District of Columbia v.
Thompson; Maltby v.
Thompson; Merritt v.
Thompson; Schwartzbach v.
Thompson; Thompson v.
Thorniley; Snyder v.
Thorwarth; Banks v.
Thurston; Diggs v.
Thyson; Watkins-Whitney v.
Tibbs; Scholl v.

Tierney; Reed v.
Tilghman; Tilghman v.
Tillinghast; Tillinghast v.
Tino; Gordon v.
Tipping; Tipping v.
Title Guar. & S. Co.; Pavarini v.
Tobriner; Washington & G. R. Co. v.
Todd; Galt v.
Tolman; Tolman v.
Tolty; Tolty v.
Tompkins; Trost v.
Toomey; Toomey v.
Topham; Topham v.
Torre; Banks v.
Townsend; Tatum v.
Towson; Towson v.
Trail; Tuohy v.
Trans-Lux Radio City Corp.; Service Parking Corp. v.
Traten; Eide v.
Treibly; Overholser v.
Tribune Co.; Layne v.
Trice; Trice v.
Trigg; Brooks v.
Trimble; District Nat. Bank v.
Triplex Shoe Company; Bradley v.
Trott; Alfred Richards Brick Co. v.
Trumbull; Davis v.
Trussed Concrete Steel Co.; Fidelity Storage Corp. v.
Trust Co.; Howard v.
Trustees of the Sixth Presbyterian Church; Baltimore & P. R. Co. v.
Tschiffely; Tschiffely v.
Tunison's Estate, In re
Turner; Deming v.
Turover; Krevait v.
Tyrrell; District of Columbia v.

U

Ugast; Wathen v.
Underwood; Underwood v.
Union Storage & Transfer Co.; Wade v.
Union Trust Co.; Woodward v.
United Broadcasting Co.; Taylor v.
United States; Accarino v.
United States; Akowskey v.
United States; Alderman v.
United States; Aldridge v.
United States; Alexander v.
United States; Ambrose v.
United States; Arbuckle v.
United States; Arnstein v.
United States; Atkinson v.
United States; Automobile Brokerage Corp. v.
United States; Baer v.
United States; Bailey v.
United States; Barrett v.
United States; Basile v.
United States; Beach v.
United States; Beard v.
United States; Beausoliel v.
United States; Beck v.
United States; Bedell v.
United States; Behrle v.
United States; Bell v.
United States; Benjamin v.
United States; Benson v.
United States; Biddle v.
United States; Billeci v.
United States; Bishop v.
United States; Blackburn v.
United States; Blok v.
United States; Blount v.
United States; Bolt v.
United States; Bord v.
United States; Bostic v.
United States; Boyer v.
United States; Boykin v.
United States; Bracey v.
United States; Bray v.
United States; Brown v.
United States; Buckner v.
United States; Bullock v.
United States; Burge v.
United States; Burns v.
United States; Burton v.
United States; Byas v.
United States; Cadarr v.
United States; Cady v.
United States; California Co-op. Canneries v.
United States; Campbell v.
United States; Capital Trac. Co. v.
United States; Capital Transit Co. v.
United States; Carpenter v.
United States; Catoe v.
United States; Chanock v.
United States; Chaplin v.
United States; Chapman v.
United States; Charles v.
United States; Chase v.
United States; Christoffel v.
United States; Clagett v.
United States; Claiborne-Annapolis Ferry Co. v.
United States; Clark v.
United States; Clifton v.
United States; Clinton v.
United States; Cobb v.
United States; Cohen v.
United States; Colbert v.
United States; Collins v.
United States; Cooper v.
United States; Copeland v.
United States; Coratola v.
United States; Coupe v.
United States; Crawford v.
United States; Crichton v.
United States; Cromer v.
United States; Cross v.
United States; Curran v.
United States; Dane v.
United States; Darnall v.
United States; Davenport v.
United States; Davis v.
United States; De Benque v.
United States; De Forest v.
United States; Dennis v.
United States; Dickhart v.
United States; Dicks v.
United States; Dilling v.
United States; Dobbins v.
United States; Donald v.
United States; Donnelley v.
United States; Dowling v.
United States; Downey v.
United States; Dyker Bldg. Co. v.
United States; Eagles v.
United States; Easterday v.
United States; Edwards v.
United States; Egan v.
United States; Elliott v.
United States; Engle v.
United States; Epps v.
United States; Ercoli v.
United States; Evans v.
United States; Ewing v.
United States; Fall v.
United States; Fearson v.
United States; Felton v.
United States; Fields v.
United States; Fillipone v.
United States; First Nat. Bank v.
United States; Fisher v.
United States; Fletcher v.
United States; Forte v.
United States; Frazier v.
United States; Frend v.
United States; Fretz v.
United States; Frisby v.
United States; Frizzell v.
United States; Frye v.
United States; Fuller v.
United States; Fulton v.
United States; Furqueron v.
United States; Furr v.
United States; Garnett v.
United States; Gassenheimer v.
United States; Gaston v.
United States; Geist v.
United States; Gillars v.
United States; Globe Indemnity Co. v.
United States; Goff v.
United States; Gompers v.
United States; Gonzales v.
United States; Goodall v.
United States; Goode v.
United States; Gordon v.
United States; Grant v.
United States; Green v.
United States; Griffin v.
United States; Haislip v.
United States; Hale v.
United States; Hall v.
United States; Hamilton v.

United States; Hammond v.
United States; Hannan v.
United States; Harris v.
United States; Harrod v.
United States; Hart v.
United States; Hawkins v.
United States; Henderson v.
United States; Henry v.
United States; Herald v.
United States; Herson v.
United States; H. Herfurth, Jr., Inc., v.
United States; Hill v.
United States; Hodge v.
United States; Holden v.
United States; Holloway v.
United States; Holmes v.
United States; Hopkins v.
United States; Horton v.
United States; Howard v.
United States; Howe v.
United States; Howgate v.
United States; Humphries v.
United States; Hyde v.
United States; Hysler v.
United States; Irwin v.
United States; Ishkanian v.
United States; Jackson v.
United States; Jarman v.
United States; Johnson v.
United States; Jones v.
United States; Jordon v.
United States; Josey v.
United States; Keehn v.
United States; Kelleher v.
United States; Kelly v.
United States; Kemp v.
United States; Kendall v.
United States; Kenney v.
United States; Keyes v.
United States; Kidwell v.
United States; Kleindienst v.
United States; Ladrey v.
United States; Lanckton v.
United States; Laney v.
United States; Latney v.
United States; Ledrick v.
United States; Lee v.
United States; Lem Moon Sing v.
United States; Lindsey v.
United States; Lomax v.
United States; Lorenz v.
United States; Loughran v.
United States; Lyles v.
United States; MacDonald v.
United States; Marcus v.
United States; Marine R. & Coal Co. v.
United States; Marshall v.
United States; Martin v.
United States; Mas v.
United States; Masters v.
United States; Matz v.
United States; Maxey v.
United States; McAfee v.
United States; McBoyle v.
United States; McDonald v.
United States; McFarland v.
United States; McHenry v.
United States; McKenzie v.
United States; McUin v.
United States; Means v.
United States; Mears v.
United States; Medley v.
United States; Mergner v.
United States; Meyers v.
United States; Milano v.
United States; Miller v.
United States; Milton v.
United States; Mitchell v.
United States; Moder v.
United States; Moens v.
United States; Moffatt v.
United States; Monalokos v.
United States; Monday v.
United States; Monroe v.
United States; Moreland v.
United States; Morris v.
United States; Morton v.
United States; Moses v.
United States; Moss v.
United States; Mostyn v.
United States; Mumforde v.
United States; Murray v.
United States; Myers v.
United States; National Assn. of C. P. A. v.
United States; National Metropolitan Bank v.
United States; Neely v.
United States; Nelson v.
United States; Nestlerode v.
United States; Neufield v.
United States; Newyahr v.
United States; Nordlinger v.
United States; Norman v.
United States; Nuckols v.
United States; O'Brien v.
United States; O'Donoghue v.
United States; Ormsby v.
United States; Paolucci v.
United States; Parker v.
United States; Parlton v.
United States; Partridge v.
United States; Patten v.
United States; Patterson v.
United States; Paylor v.
United States; Penn Bridge Co. v.
United States; Persham v.
United States; Pierce v.
United States; Polen v.
United States; Posey v.
United States; Potomac Elec. Power Co. v.
United States; Powers v.
United States; Prezzi v.
United States; Price v.
United States; Proctor v.
United States; Pyle v.
United States; Randle v.
United States; Raymond v.
United States; Read v.
United States; Reeves v.
United States; Rice v.
United States; Rick v.
United States; Ridgley v.
United States; Robinson v.
United States; Rohde v.
United States; Romney v.
United States; Roney v.
United States; Rubenstein v.
United States; Rubin v.
United States; Ryan v.
United States; Sabens v.
United States; Sacks v.
United States; Sacrini v.
United States; Sanford v.
United States; Sanselo v.
United States; Scaffidi v.
United States; Scheve v.
United States; Semmes v.
United States; Sesso v.
United States; Shelton v.
United States; Sherman v .
United States; Shettel v.
United States; Shick v.
United States; Shoemaker v.
United States; Siegal v.
United States; Simon v.
United States; Sinclair v.
United States; Slaughter v.
United States; Smith v.
United States; Snell v.
United States; Snowden v.
United States; Spencer v.
United States; Starr v.
United States; Stitely v.
United States; Story v.
United States; Swan v.
United States; Sykes v.
United States; Talbert v.
United States; Tatum v.
United States; Taylor v.
United States; Thomas v.
United States; Thompson v.
United States; Tomlin v.
United States; Tomlinson v.
United States; Towles v.
United States; Tractenberg v.
United States; Travers v.
United States; Turner v.
United States; Tyner v.
United States; Upshaw v.
United States; Varrella v.
United States; Vinci v.
United States; Wade v.
United States; Wallace v.
United States; Warde v.
United States; Washington Loan & Trust Co. v.
United States; Weaver v.
United States; Weisberg v.
United States; Welch v.
United States; Wham v.
United States; Wheeler v.

United States; Williams v.
United States; Willis v.
United States; Wittek v.
United States; Witters v.
United States; Wood v.
United States; Woodward v.
United States; Wright v.
United States; Yeager v.
United States; Young v.
United States; Zerega v.
United States Bldg. & Loan Assn; Armstrong v.
United States ex rel. Baff; Robertson v.
United States ex rel. Bates; Drake v.
United States ex rel. Browning; Dougherty v.
United States ex rel. Creary; Weeks v.
United States ex rel. Fowler Car. Co.; Ewing v.
United States ex rel. Frizzell; Newman v.
United States ex rel. Gladman; Hurley v.
United States ex rel. Hellman; Blair v.
United States ex rel. Hine; Morse v.
United States ex rel. Keppler; Bunch v.
United States ex rel. Lane; Palmer v.
United States ex rel. McMillan; Equitable Surety Co. v.
United States ex rel. Paynter; Bonding Co. v.
United States ex rel. Preinkert; Bladgen v.
United States ex rel. Roberts; Dougherty v.
United States ex rel. Rock; Rudolph v.
United States ex rel. Selden; Whitwell v.
United States ex rel. Selis; Coombe v.
United States ex rel. Societa Ligure di Armamento; McCarl v.
U. S. Fidelity & Guaranty Co.; Anacostia Bank v.
U. S. Fidelity & Guaranty Co.; Lloyd v.
United States Fidelity & Guar. Co.; United States Shipping Bd. Merchant Fleet Corp. v.
U. S. Gypsum Co.; National War Labor Board v.
U. S. Marshal; Pelley v.
United States Shipping Bd.; Eichberg v.
United States Shipping Board; Sloan Shipyards Corp. v.
United States Ship. Board Emergency Fleet Corp.; Buffalo Union Furnace Co. v.
United States Shipping Bd. Emergency Fleet Corp.; Harwood v.
United States Shipping Bd. Emergency Fleet Corp.; Ingram Day Lbr. Co. v.
United States Shipping Bd. Emergency Fleet Corp.; Southern Bridge Co. v.
United States Shipping Bd. Emergency Fleet Corp.; Union Timber Products Co. v.
Universal Credit Co.; General Credit v.
Upper Potomac Steamboat Co.; Potomac Steamboat Co. v.
Urciolo; Corbett v.
Utilities Engineering Institute; Gross v.
Utterback; Utterback v.

V

Valentine; Goldsmith v.
Vallapiano; Sardo v.
Van Auken; Richardson v.
Vanderhuff; Vanderhuff v.
Van Ness; Van Ness v.
Van Senden; Hazen v.
Varner; Henkel v.
Vartanian; Wilner v.
Vassos; Capital Apartment Corp. v.
Vaughn; Eggleton v.
Vautier; Shapiro v.
Vernon; Provident Relief Assn. v.
Vertner; Vertner v.
Vestry of St. James Parish; District of Columbia v.
Vinson; Thomas v.
Virginia; Atlantic Ref. Co. v.
Virginia Portland Cement Co.; Lincoln v.
Vogt; Vogt v.
Vollbehr; Stanfield v.
Von Jenny; United States v.

W

Waggaman; Catholic University v.
Waggaman; Dawson v.
Wagner; Deland v.
Wah; Kincade v.
Walker; American Security & Trust Co. v.
Walker; Bailey v.
Walker; Imhoff v.
Wall; Kahn v.
Wall & Beaver Street Corporation; King v.
Wallop; Werber v.
Waltenberg; Waltenberg v.
Waple & James; McDevitt v.
Ward; Farrell v.
Ward; Gray v.
Wardell; Ragan v.
Wardell; Serkowich v.
Wardman; Mount Vernon Savings Bank v.
Wardman Constr. Co.; Deming v.
Waring; Brown v.
Warner; Baker v.
Warner; Sawyer v.
Warner; Walker v.
Warner; Warner v.
Warner; Young v.
Warren; Staples v.
Warwick; Rudolph v.
Washington; Kennedy v.
Washington; Wynn v.
Washington, A. & Mt. V. R. Co.; Macfarland v.
Washington & R. G. Co.; Ferguson v.
Washington Ben. Endowment Assn.; Gilbert v.
Washington Gas Light Co.; Vinson v.
Washington Hosp. for Foundlings; Ould v.
Washington Housing Corp; Hariston v.
Washington Loan & Trust Co.; District Nat. Bank v.
Washington Loan & Trust Co.; Fardon v.
Washington Loan & Trust Co.; Johnson v.
Washington Loan & Trust Co.; U. S. v.
Washington Market Co.; District of Columbia v.
Washington, F. & C. R. Co.; Chesapeake Beach R. Co. v.
Washington R. & E. Co.; Hazen v.
Washington Section; Consolidated Radio Artists v.
Washington Technical School; Diatz v.
Washington Terminal Co.; District of Columbia v.
Washington Terminal Co.; Poff v.
Washington Terminal Co.; Richards v.
Washington Times Co.; Bloedorn v.
Washington Times Co.; Rose v.
Washington-Virginia - Maryland Coach Company; Phucas v.
Washington-Virginia R. Co.; Hoffman v.
Waters; United States v.
Watkins; United States v.
Wayland; Eggleston v.
Wayne; Robinson v.
Wayne; Viette v.
W. C. & A. N. Miller Development Co.; Coldicott v.
Weaver; Shipp v.
Weaver Brothers; Newlin v.

Webb; Ormsby v.
Wedderburn; Wedderburn v.
Weil; Ochs v.
Weiner; McMahon v.
Weinsoff; Simmons v.
Weisman; Spector v.
Welch; Burns v.
Welch; Diggs v.
Welch; Guthrie v.
Welch; Jones v.
Welch; Krupsaw v.
Welch; Morton v.
Welch; Rawley v.
Welch; Rowley v.
Welch; Welch v.
Welch; Whelan v.
Wells; Reese v.
Wells; Wells v.
Werth; Nolan v.
Wertlieb; Sandler v.
West; United States v.
Westbrook; Bell v.
Westbrook; Schwartz v.
Westby; Chicago, M. & St. P. R. Co. v.
Westchester Apartments; Keroes v.
Westcott; Shelley v.
Western Union Telegraph Co.; Commercial Telegraphers' Union, A. F. L. v.
Western Union Tel. Co.; United States Shipping Bd. Emergency Fleet Corp. v.
Wetmore; Karrick v.
Wheat; Fletcher v.
Wheat; Laughlin v.
Wheatley; Bean v.
Wheeler; District of Columbia v.
Whidden; Penn v.
White; Anderson v.
White; Barry v.
White; Beall v.
White; Dalton v.
White; Madison v.
White; National Life Ins. Co. v.
White; Savage v.
White; Shell Eastern Petroleum Products v.
White; Wagner v.
White; White v.
White; Wood v.
Whiteford; Curtis v.
Whiteford; Rosinski v.
Wickard; Stark v.
Wilcox; District of Columbia v.
Wilcox; McKenna v.
Wiley; Fitzgerald v.
Wilkes; Wilkes v.
Williams; Bader v.
Williams; Dangerfield v.
Williams; Hasler v.
Williams; Lustine v.
Williams; Parker v.
Williams; Sommerville v.
Williams; Williams v.
Willis; Campbell v.
Willis; U. S. v.
Wills; Cundiff v.
Wills; Martin v.
Wilson; Block v.
Wilson; Callan v.
Wilson, In re
Wilson; McSweeney v.
Wilson; Perry v.
Wilson; Union Tool Co. v.
Wineland; Wagenhurst v.
Winslow; Amalgamated Casualty Ins. Co. v.
Winston; De Bobula v.
Winston; Winston v.
Winthrop; Acuino v.
Wire; Haje's, Inc., v.
Wisconsin Cent. R. Co.; Powell v.
Witbeck; United States v.
Wittek; United States v.
Wolf; Alpert v.
Wolf; Atlantic Life Ins. Co. of Richmond, Va. v.
Wolf & Cohen; Resnick v.
Wolfe; Lingo v.
Wong Kok Chung; Bedrosian v.
Wood; Crowley v.
Wood; Fowel v.
Wood; United States v.
Wood; Willard v.
Woodbury; District of Columbia v.
Woodin; Copper v.
Woodrough; O'Malley v.
Woodruff; Wilkins v.
Woodruff; Woodruff v.
Woods; Faunce v.
Woodward; Levy Court v.
Woody; Billings v.
World Fire and Marine Insurance Co.; District of Columbia v.
Wray; Pegues v.
Wren; Goodman v.
Wrenn; United States Fidelity & Guar. Co. v.
W. S. Barstow & Co.; United States ex rel. Wylie v.
W. T. Walker Brick Co.; Knight v.
West Virginia Pulp & Paper Co.; Central of Georgia R. Co. v.
Wynne; Fitzgerald v.

Y

Yandon; Second Natl. Bank v.
Yellow Cab Co. of D. C.; Taylor v.
Young; Bailey v.
Young; Baugh v.
Young; Brodie v.
Young; Lambros v.
Young; National Rifle Ass'n of America v.
Young; Thomas v.
Young; Thompson v.
Young; Weiss v.
Youngman; Kenyon v.

Z

Zellan; Cole v.
Zentz; Lee v.
Zerbst; Bracey v.
Zerbst; Farnsworth v.
Zeust; Staffan v.
Zimzoris; Mike's Mfg. Company v.
Zlotnick; Bailey v.

GENERAL INDEX

ABANDONMENT

See STREETS AND OTHER WAYS
Animals, cruelty 22–802, 22–812
Children, penalty 22–901, 22–903
Desertion of spouse, separation from bed and board 16–403
Property clerk, abandoned property, custody
Property not claimed within year 4–167
Record 4–152, 4–153
Prosecution of criminal charge, acts constituting 23–104
Street-car line, removal of tracks 44–211
Wife desertion, penalty, support money 22–903—22–906

ABATEMENT

Accumulations of abandoned vehicles and other junk 5–504
Buildings erected or altered in violation of law, nuisances 5–408
Prostitution, houses of 22–2714
Steam boilers, unauthorized use 1–713
Taxes on exempt realty 47–801d
Unsafe structures and premises 5–504

ABATEMENT AND REVIVOR

Common-law actions 12–102
Death of defendant 12–102
Death of plaintiff 12–103
Death of substituted parties 12–104
Death of joint defendant 12–107
Death of party
Bill of revivor 12–116
Notice necessary, procedure 12–116
Publication to representative, effect 12–114
Representative 12–115
Evasion of process, effect 12–115
Leaving District prior to service of process, effect 12–115
Summons to representative, effect 12–114
Supplemental bill in nature of revivor 12–116
Death of party after final decree 12–113
Rights of representatives 12–113
Equity 12–108
Bill of revivor unnecessary 12–109
Death of defendant after interlocutory decree 12–111
Effect 12–111
Death of defendant after right to interlocutory decree 12–111
Suggestion of death 12–110
Publication to representative 12–110
Subpena to representative 12–110
Survival where rights survive 12–108
Marriage of party 12–112
Amendment of pleadings 12–112
Effect 12–112

ABATEMENT AND REVIVOR—Continued

New parties 12–105
Liability for costs 12–106
New parties defendant, limit to liability 12–106
Survival, exceptions 12–101
Survival of actions 12–101

ABATTOIRS

License 47–2316
Approval of health officer 47–2316
Fee 47–2316
Location laws, compliance with 47–2316

ABBREVIATIONS

Certified Public Accountant 2–901
D. D. S. dentistry law 2–315
Dentistry, falsely assuming title, penalty 2–320
D. M. D., dentistry law 2–315
Pleadings 13–203
Practitioners of veterinary medicine 2–808

A. B. C.

Gaming, keeping game or device or inducing play, penalty 22–1504

ABDUCTION

See KIDNAPPING; PANDERING
Enticing boys or girls from National Training Schools 32–818, 32–907
Female under 16 for immoral purposes 22–2704

ABETTOR

See KIDNAPING; PANDERING

ABORTION

Advertising drugs or instruments, penalty 22–2001
Definition and penalty 22–201

ABSCONDERS

See ABSENTEES' AND ABSCONDERS' ESTATES; EXTRADITION

ABSENTEES

Absence for seven years, presumption of death 14–501
Estates 20–701
Service of process by publication 13–108

ABSENTEES' AND ABSCONDERS' ESTATES

Distribution after 14 years' absence 20–713
Fees of marshall 20–702
Interest of absentee to cease after 14 years 20–712
Notice of hearing 20–703
Publication and posting 20–704
Return date 20–704
Petition for receiver 20–701
Presumption of death not affected 20–715
Receiver 20–705
Adjusting claims 20–711
Appointment 20–705

ABSENTEES' AND ABSCONDERS' ESTATES—Continued
Receiver—Continued
Appointment to receive only debts due estate 20–708
Bond 20–705
Care, custody and leasing of property 20–709
Compensation 20–712
Delivery of property to executors, assignees, trustees 20–712
Failure to appoint within 13 years, time of distribution 20–714
Possession of additional property 20–707
Schedule of property received 20–706
Support of deserted wife and children 20–710
United States attorney to be party 20–701
Warrant to Marshal 20–702

ABUTTING OWNERS
Alley closed by dedication of new way, reversion of land 7–303
Alley not an original alley closed reversion of land 7–302
Alleys less than ten feet wide, closing, ownership of land 7–304
Apportionment of certain closed streets among 7–124
Assessments for curbs and gutters 7–612a—7–612d
Closing and readjusting streets, reversion of title 7–401
Closing of alleys on petition of property-owners, future ownership of closed alleys 7–306
Closing of certain streets and highways authorized, reversion of title 7–123
Closing or changing of alleyways on petition of property-owners, future ownership of property 7–307
Curbing, assessment against property 7–606
Michigan Avenue, abandonment in part, reversion of title 7–129
Sale of lands by Secretary of Interior 9–305
Sidewalks, assessments against property 7–606
Snow and ice, removal from sidewalk 7–801—7–806
Street improvement assessment 7–624, 7–625
Front-foot rule 7–611, 7–612
Streets and highways abandoned under Permanent Highway Plan, reversion of land 7–118

ACCEPTANCE
See NEGOTIABLE INSTRUMENTS
Definition
Negotiable instrument law 28–101
Statute of frauds under Uniform Sales Act 28–1104
Streets dedicated by landowners, conditions 7–117

ACCESSORIES
See CRIMINAL OFFENSES
Accessory after the fact 22–106
Accessory before the fact 22–105

ACCIDENT AND HEALTH INSURANCE
See INSURANCE AND INSURANCE COMPANIES

ACCOMMODATION PARTIES
See NEGOTIABLE INSTRUMENTS
Definition, negotiable instrument law 28–206
Liability to holder for value 28–206

ACCOUNTANTS
Board of Accountancy 2–903
Annual report 2–908
Appointment 2–903
Compensation 2–908
Numbers of members 2–903
President 2–903
Qualifications of members 2–903
Quorum 2–903
Removal of member for cause 2–903
Secretary 2–903
Surplus funds, payment into United States Treasury 2–908
Term of office 2–903
Treasurer 2–903
Certification without examination, practitioners from other States, reciprocity 2–906
Certified Public Accountant 2–901
Corporations prohibited from assuming title 2–901
Partnerships 2–901
Requirements 2–904
Waiver of requirement for certificate 2–904
C. P. A., right to use abbreviation 2–901
Examinations and certification fee 2–908
Examination for title of C. P. A. 2–905
Publication of notice 2–905
Time of holding 2–905
Penalty for practicing without certificate 2–909
"Public accountant" defined 2–902
Revocation of certificate 2–907
Hearing 2–907
Notice given 2–907

ACCOUNTS AND ACCOUNTING
See PROBATE COURT TERM
Actions on account 16–101—16–106
Audit of accounts of parties 16–102
Certificate of counsel and affidavit of exceptant to report of auditor 16–102
Executors and administrators, right of action against 16–101
Fiduciaries, action against 16–101
Frivolous exceptions to auditor's report, overruling 16–105
Joint tenants, action by or against 16–101
Judgment, frivolous exceptions to report of auditor 16–105
Judgment on auditor's report 16–102
Judgment on findings of jury 16–106
Jury trial of exceptions to auditor's report 16–104
Numerous exceptions to report of auditor, separate trial 16–104
Parties plaintiff and defendant 16–101
Reference to auditor 16–102
Report of auditor 16–102, 16–103
Tenants in common, action by or against 16–101
Trial of exceptions to auditor's report 16–103, 16–104, 16–106
Assignment of accounts 28–2503
Board of Public Welfare 3–109
Clerk of Court of Appeals, accounting for fees 11–204
Police Court, audit 11–627

ACIDS
Poisonous compounds, sale, restrictions 2–612

ACKNOWLEDGMENTS
Authority to take
District Court clerk 45–402
Judges of courts of district 45–402
Notaries public 45–402
Recorder of deeds 45–402
Bill of sale 42–101, 42–102
Bonds and contracts relating to land 45–505
Chattel mortgage 42–101, 42–102
Commissioners of deeds 1–401
Conditional sales 42–103
Deeds and other instruments
Certain defective acknowledgments validated 45–408
Certain irregular acknowledgments validated 45–407
Defective acknowledgments, married woman's power of attorney 45–410
Defective acknowledgments of married women 45–409
Deeds of conveyance 45–401—45–412
Absence of certain acknowledgments remedied 45–411
Attorney, acknowledgment by, valid 45–401
Attorney not to acknowledge 45–401
Before District Court clerk 45–402
Before notaries public 45–402
Before recorder of deeds 45–402
Certificate of officer taking, form 45–402
Deeds prior to 1902 45–412
In foreign country 45–404
In Guam, Samoa, and Canal Zone 45–405
In Philippine Islands and Puerto Rico 45–406
Within District 45–402
Deeds of corporations 45–302
In the District, form 45–402
Married women 1–511
Mortgages 45–601
Notary's power to take 1–511
Exception 1–501
Fee 1–514
Restriction 1–501
Outside District 45–403
Trust deeds 45–601

ACONITE
Poison, sale, restrictions 2–612

ACTIONS
See ABATEMENT AND REVIVOR; BONDS AND UNDERTAKINGS; JURISDICTION; LIMITATION OF ACTIONS
Accounts, actions on 16–101—16–106
Adoption proceedings 16–201—16–207
Assignment of dower 16–1305, 16–1306
Attachment and garnishment 16–301—16–335
Change of name 16–1101—16–1103
Commencement, Small Claims and Conciliation Branch, Municipal Court 11–805
Compromise by Commissioners 1–902
Damage actions for causing wrongful death 16–1201—16–1203

ACTIONS—Continued
Definition
Negotiable instruments law 28–101
Uniform Sales Act 28–1606
Disposal, Small Claims and Conciliation Branch, Municipal Court 11–808
District's power to sue and be sued 1–102
District sued, service of process on Commissioners 1–901
Divorce and separation 16–401—16–421
Ejectment 16–501—16–534
Eminent domain 16–601—16–644
Gaming transactions, actions to recover losses 16–701—16–707
Habeas corpus 16–801—16–808
Joint contracts, actions on 16–901—16–906
Lien for unpaid contributions to unemployment fund 46–304
Mandamus 16–1001—16–1010
Negligence causing death 16–1201—16–1203
On bonds in penal sum, with avoidance condition 28–2405
Partition proceedings 16–1301—16–1304
Public contractors, action on bonds, procedure, interveners 1–804
Quieting title obtained by adverse possession 16–1501
Reference of questions of law and fact by court 16–1701
Replevin 16–1801—16–1814
Set-off 16–1901—16–1909
Suits by or against married women 30–208
Superintendent of insurance, contest of validity of order or ruling 35–1403
Sureties, action for release 16–2001—16–2005
Survival 12–101
Tender of funds into court 16–1401, 16–1402
Unemployment Compensation Act, actions against nonresident employer 46–305

ADDING MACHINES
Trading in old machines 1–819

ADEMPTION
Legacy by advancement or other gift 19–109

ADJOINING OWNERS
See ABUTTING OWNERS

ADMINISTRATIVE DECISION
Definition, Zoning Law 5–425

ADMINISTRATIVE OFFICER OR BODY
Construction of terms, Zoning Law 5–425

ADMINISTRATORS
See EXECUTORS AND ADMINISTRATORS

ADMIRALTY
Bonds and undertakings 28–2403
Principles, effect of Code 49–301
Reference of questions of law and fact 16–1701—16–1719

ADMISSION TO BAR
See ATTORNEYS

ADMISSIONS
Judgment for part of cause admitted 13–216
Not sufficient proof in divorce 16–419

ADOPTION
See CHILDREN; PARENT AND CHILD
Children under care of Board of Public Welfare 3–117
Compensation of Child-Placing Agency or person adopting child 32–785
Consent, Child-Placing Agency 32–786
Consent, when necessary 16–202
Decree 16–203
Interlocutory 16–203
Name of adoptee 16–205
Notice to Bureau of Vital Statistics 16–204
Prerequisites 16–203
Rights of inheritance and succession 16–205
Decree of adoption occurring outside District 16–204
Docket, inspection on order of court only 16–206
Jurisdiction 16–201
Notice of petition 16–201
Notice to Vital Statistics Bureau 16–204
Persons entitled to arrange for 32–785
Petition 16–201
Content 16–201
Investigation 16–201
Joinder by petitioner's spouse required 16–201
Qualifications of petitioner 16–201
Prior proceedings valid 16–207
Records, inspection on court order only 16–206

ADULTERATION
See FOOD AND DRUGS
Candy, expenditures for detecting 33–111
Candy, penalty 33–201, 33–202
Definition, food and drug law 33–103
Food and drugs 33–101—33–110, 33–201
Milk, expenditures for detecting 33–111

ADULTERY
Definition and penalty 22–301
Ground for divorce or legal separation 16–403

ADULTS
Jurisdiction of juvenile court 11–907

ADVANCEMENTS
See DECEDENTS' ESTATES
Considered in allotment of shares 18–707
Equalization of shares in personalty 18–707
Equalization of shares in real property 18–707
Heir electing to share in partition, bringing advancement into hotchpot 18–108
Maintenance or education not considered advancement 18–707
Money given without view to portion or settlement 18–707
Satisfaction of devise or bequest 19–109
Widow's share not increased 18–707

ADVERSE POSSESSION
See EJECTMENT; QUIETING TITLE OBTAINED BY ADVERSE POSSESSION; REAL PROPERTY
Conveyance of land adversely held 45–105
Defenses in action in ejectment 16–515

ADVERSE POSSESSION—Continued
Periods of limitation 12–201
Quieting title obtained adversely 16–1501

ADVERTISEMENT
See NOTICES; PUBLICATION; PUBLICATION OF NOTICE
Dentists 2–330
Definition 2–330
Revocation or suspension of license 2–311
False 22–1411—22–1413
Definition 22–1411
Penalty 22–1413
Prosecution 22–1412
False, food, purchase authorized for investigation 10–124a
Institutions of learning, degrees, right to issue 29–418
Lewd or indecent publications or articles, penalty 22–2001
Life insurance companies 35–409, 35–410
Notice of sales on execution 15–214
Outdoor signs in general, power to regulate and license 1–231—1–233
Podiatrists, "advertising" defined 2–718
Podiatry, unprofessional conduct 2–707
Public contracts, proposals for bids 1–808, 1–809
Printers' rates 1–809
Real estate sale or rental signs, restrictions 7–1001
United States flag or colors, use prohibited 22–3414
Warehouseman's lien, sale of goods to satisfy 28–1927

ADVISORY COUNCIL
See ZONING REGULATIONS

AERONAUTICS
See AIRPORT

AFFIDAVITS
Architect 2–1016
Attachment and garnishment 16–301
Complaint for inspection of plumbing 1–727
Materialmen and laborers as to completion of work on public contract 1–804
Notary public, power to take 1–511
Restriction 1–501
Supplemental affidavits in pleadings 13–301

AFFIRMATIONS
See OATHS
Use in place of oath 49–206

AFFRAY
Definition, penalty 22–1101
Jurisdiction of Police Court 11–604

AGE LIMITS
Appointments to police department, determination 4–107
Fire department, original appointments, power to determine 4–403

AGED AND INFIRM PERSONS
See OLD-AGE ASSISTANCE; SOCIAL SECURITY

AGENT
See REAL ESTATE BROKERS AND AGENTS; SALES, UNIFORM ACT
Attachment proceedings, execution of affidavit 16–301
Defined 35–1401
Embezzlement of property, penalty 22–1202
Indorsing negotiable instrument, negativing personal liability 28–315
Negotiable instrument dishonored in hands of 28–706
Negotiating negotiable instruments, liability 28–510
Notice of dishonor
Right to give 28–703
Right to receive 28–709
Notice of real estate taxes mailed to 47–1001a
Representing unlicensed insurance company, penalty 35–201
Signing negotiable instrument 28–120, 28–121
Authority to sign, proof 28–120
Liability 28–121
Signature by procuration, effect 28–122
Sites for buildings, purchase for commissioners of District 1–812
Stock certificates, law of agency relating to transfer 28–2918
Unemployment compensation benefit claimant 46–318

AGREEMENTS
See CONTRACTS

AGRICULTURAL ORGANIZATION
Unemployment Compensation Act excluding employees of 46–301

AGRICULTURE AND HORTICULTURE
See DEPARTMENT OF AGRICULTURE; PLANTS
Federal laws applicable to District, reference 28–2803 note
Insect pests, control measures 6–904, 6–905
Weed Control 6–901, 6–903

AID
Defined 32–752

AID TO DEPENDENT CHILDREN ACT
Generally 32–751—32–765

AIRPORT
National airport 7–1301, 7–1303
Administrator, powers and duties 7–1301, 7–1302
Description of boundaries 7–1301
Leasing of space or property within or upon airport 7–1303
Public airport 7–1401—7–1412
Agreements for municipal services 7–1409
Appropriations 7–1412
Arrests 7–1408
Park Police 7–1408
Construction 7–1401—7–1403
Contracts for supplies and services 7–1406
Definitions 7–1411
Lease of property 7–1405
Maintenance and operation 7–1404
Penalties 7–1410

ALARM GONGS
Failure to install after notice, penalty 5–308
Fire protection 5–317—5–323
Installing in buildings, when required 5–303

ALCOHOL
Definition 25–103

ALCOHOLIC BEVERAGES
Alcohol for nonbeverage purposes 25–108
Alcoholic Beverage Control Board 25–104
Appointment 25–104
Duties 25–106
Employees 25–104
Licenses, jurisdiction over 25–106
Members, employees barred from liquor business 25–105
Perjury before 25–126
Salaries 25–104
Term 25–104
Testimony, power to compel 25–126
Witness fees 25–126
Beer tax 25–138
Beverage tax and stamps 25–124
Citation of law relating to 25–102
Commissioners of the District 25–107
May forbid imports by retailers 25–112
May issue permits to retailers for importations 25–112
Powers 25–107
Containers to be labeled, content 25–134
Counterfeiting or forging stamps, penalty 25–124
Definitions 25–103
Alcohol 25–103
Alcoholic beverages 25–103
Beer 25–103
Beverage 25–103
Board 25–103
Club 25–103
Commissioners 25–103
District 25–103
Hotel 25–103
Manufacture 25–103
Meals 25–103
Person 25–103
Restaurants 25–103
Sale 25–103
Sell 25–103
Spirits 25–103
Table 25–103
Tavern 25–103
Wine 25–103
Delivery outside District not authorized 25–102
Drinking prohibited in streets, parks, unlicensed public places, penalty 25–128
Federal laws applicable to District, reference 28–2803 note
Intoxicated persons not to be in public places, penalty 25–128
Intoxicated persons not to operate certain vehicles, penalty 25–127
Liability of licensees for refusing sale where prohibited 25–121
Licensees not to permit sale by minors, convicts 25–125

ALCOHOLIC BEVERAGES—Continued
Licenses 25–107
Annual, expiration 25–114
Applications 25–110
Contents 25–115
Notice to be published 25–115
Remonstrances, hearing 25–115
Classifications 25–111
Forfeiture for becoming bail for violator 25–122
Monthly, expiration 25–114
Premises for lawful sale to be stated 25–114
Records required 25–110
Restrictions on holding more than one 25–113
Restrictions on location of licensees 25–116
Revocation 25–118
Causes 25–118
Hearing 25–118
Manufacturer interested in wholesaling, retailing 25–119
Wholesaler interested in retailing 25–120
To whom granted 25–110
Transfer 25–117
Under prior law 25–131
Manufacturers to report sales monthly 25–123
Minors misrepresenting age to obtain, penalty 25–130
National Prohibition Act, partial repeal of 25–101
Penalties 25–132
Regulations, promulgation and publication of 25–107
Retailers
Reporting purchases monthly 25–123
Selling on credit 25–133
Sale without license prohibited, exceptions 25–109
Sales to intoxicated persons 25–121
Sales to minors 25–121
Sales to notoriously intemperate persons 25–121
Saving clause
For prior law 25–135
On invalidity 25–136
Search warrants for illegal beverages 25–129
Grounds for, issuance 25–129
Resisting officer, serving, penalty 25–129
Seizure of unstamped beverages 25–124
Unlawful transportation, penalty 25–137
Wholesalers to report purchases monthly 25–123

ALCOHOLICS
Advisory committee 24–514
Alcoholic clinic 24–503
"Chronic alcoholic" defined 24–502
Commitment to clinic 24–504
Director of clinic 24–512
Discharge from commitment 24–507
Hearings 24–504, 24–507
Personnel of clinic 24–512
Probation officer, supervision by 24–508
Publication of data 24–513
Recommendations of director of clinic 24–513
Treatment, contract for 24–511
Voluntary submission for treatment 24–510

ALIAS WRITS
See Executions

ALIENATION
Chattels real 45–103
Freehold estates 45–104
Future estates 45–102
Real property, restraints against alienation 45–102

ALIENS
Dentistry, right to practice 2–307
Descent of property through alien ancestor 18–110
Descent through alien 18–110
Disqualified from acting as executor or administrator 20–101
Ownership of real property in District 45–1501—45–1505
Podiatry, licensing to practice, restriction 2–705
Real property, right to acquire and hold 45–1501—45–1505

ALIMONY
See Divorce
Alimony pendente lite 16–410
Permanent alimony 16–411
Where husband obtains divorce 16–412

ALKALOIDS
Poison, sale, restrictions 2–612

ALLEY DWELLINGS
See Eminent Domain
Acquisition of lands and buildings, purpose 5–103
"Alley" defined 5–101, 5–109
Alley required to connect with streets bordering square 5–101
Alley required to run straight 5–101
Alteration or conversion of building into dwelling, prohibition against, penalty 5–106
Annual report of Authority 5–106
Appropriation of funds for slum-clearance projects 5–105
Amount dedicated to low-cost housing and slum clearance 5–105
President making available from National Industrial Recovery Act appropriations 5–105
Authority, powers and duties 5–113
Borrowing of funds authorized 5–105, 5–114
Considered public housing agency 5–114
Delegation of powers to 5–103
Federal aid, acceptance authorized 5–114
Gifts, acceptance authorized 5–105
Housing projects, execution 5–113
Purpose and intent of act 5–114
Sites, power to acquire 5–113
Taking over and operating federal housing projects 5–114
Borrowing of funds authorized 5–105
Completion of work, submission of report to Congress 5–107
Condemnation, depreciation, or damage exceeding one-half original value 5–101
Constitutionality of act, provisions separable 5–110
Construction of sewers and watermains 5–103
Conversion of building into dwelling, when prohibited 5–101
Declaration of policy 5–103
Definition 5–109

ALLEY DWELLINGS—Continued
Demolition, removal or vacation, notice 5–108
"Development" defined 5–112
"Dwelling" defined 5–109
Electric lights 5–101
Eminent domain proceedings 5–103, 5–104
Gas connections required 5–101
Housing project
Definition 5–112
Powers of Authority 5–113
"Inhabited alley" defined 5–109
Installation of street lights 5–103
Leases, receipts covered into treasury 5–105a
Loans
First lien on property 5–103
Minimum interest rate 5–103
Minimum width of alley 5–101
Name of act 5–111
Notice to owners of intention to demolish, remove, or have vacated 5–108
Occupancy after certain time prohibited 5–106
Occupancy after July 1, 1955 prohibited, penalty 5–106
Paving or repaving of streets and alleys 5–103
Powers vested in President 5–103
Delegation of authority 5–104
Prohibition against construction 5–106
Purchase of lands, maximum price 5–105
Rebuilding and reconstruction work, limitation on dividends 5–103
Repair or reconstruction 5–101
Alley less than 30 feet wide 5–101
Alley without utility connections 5–101
Cases in which permit refused 5–101
Depreciation or damage exceeding one-half original value 5–101
Rooms for grooms or stablemen 5–101
Sewer connections wanting 5–101
Replatting and improvement of property 5–103
Replatting of lands, approval 5–104
Report of Authority to President 5–107
Sole of buildings and property acquired by Government 5–103
Sales, receipts covered into treasury 5–105a
Set-back line 5–101
Sewer connections required 5–101
Sidewalk space 5–101
Slum-clearance and improvement work 5–103, 5–104
Accomplishment of objects of act 5–106
Agreements between District and Authority 5–115
Architectural and engineering services, power to secure 5–105
Completion of work before July 1, 1944, loans excepted 5–107
Contributions by District of Columbia authorized 5–115
Dedication of property by District 5–115
Laying out and improving of streets and ways 5–115
Loans by District authorized 5–116
Parks or recreational center, laying out by District 5–115
Providing of utilities by District 5–115

ALLEY DWELLINGS—Continued
Slum-clearance and improvement work—Con.
Purchase of reference books, directories, and periodicals authorized 5–105
Services and purchases not aggregating more than $100, advertisement for bids unnecessary 5–105
Stables and other buildings, location 5–101
Tax exemption of property of Authority 5–114
Use after certain time, unlawful 5–106
Use after June, 1923, declared unlawful 5–101
Violation of law, general penal clause 5–102
Water connections required 5–101
Width of roadway 5–101

ALLEYS
See Abutting Owners; Dedication; Eminent Domain; Streets and Other Ways
Abutting owners 7–302, 7–304, 7–306, 7–307
Dedication by plat 1–614
Definition, Alley Dwelling Law 5–101, 5–109
Laying out in building lots subdivisions 1–620
Police regulations, powers of Commissioners 1–623

ALTERATION
Negotiable instrument, effect 28–806
Material alterations enumerated 28–807
Stock certificate 28–2916
Warehouse receipts, liability of warehouseman 28–1906

ALTERNATIVE FUTURE ESTATES
Two or more future estates created 45–813

AMBULANCES
See Motor Vehicles

AMENDMENTS
See Pleadings
Alleys or minor streets, condemnation proceedings, description of property 7–321
Eminent domain proceedings, land for streets 7–212
Pleadings 13–301
As basis for continuance 13–302
Petty errors by clerk 13–304
Zoning regulations 5–415, 5–416
Submission to Advisory Council 5–417

AMERICAN CHEMICAL SOCIETY
Exemption from taxation 47–801a

AMERICAN FORESTRY ASSOCIATION
Exemption from taxation 47–801a

AMERICAN LEGION
Property exempted from taxation 47–828

AMERICAN PHARMACEUTICAL ASSOCIATION
Exemption of buildings from taxation 47–801a

AMERICAN RED CROSS
Tax exemption of property used 47–801b–1

AMERICAN TREE ASSOCIATION
Exemption from taxation 47–801a

AMMONIA
Household ammonia, sale, regulation 2–601

AMOUNT IN CONTROVERSY
Municipal Court for District of Columbia 11–755

AMUSEMENT PARKS
Grounds for, license 47–2323
Prerequisites to license 47–2302

ANACOSTIA
Engine house, used authorized 4–412
Formerly Uniontown 1–108

ANACOSTIA BRIDGE
Maintenance and repair, payment of cost 7–505

ANACOSTIA PARK
Reclaimed land made part of park system 8–161

ANACOSTIA RIVER
Construction of structures in 43–1304
Drawbridges, submarine cables, use 7–1231
Lands along, clearing title of United States 8–104

ANATOMICAL BOARD
Creation 2–201
Dead human body requiring burial at public expense, delivery to board on notice 2–202
Delivery of bodies to medical schools and boards 2–204
Bond required of schools 2–204
Expense of delivery of bodies paid by schools and boards receiving same 2–207
Purposes for which used 2–205
Use of bodies within District required 2–205
Grave robbery prohibited 2–206
Health officer of District a member 2–201
Human body requiring burial at public expense 2–202
Relatives claiming body and requesting burial 2–202
Request before death for burial or cremation, effect 2–202
Members 2–201
Prosecution of violations of law 2–209
Purchase or sale of bodies prohibited 2–206
Records of transaction 2–201
Open to inspection 2–201
Transmission of bodies out of District, prohibited 2–206
Wilful neglect to perform duties, penalty 2–208

ANATOMY
Dentist, examination for license 2–308
Healing arts, examination of applicants for license 2–108
Podiatry license examinations 2–705

ANCILLARY
Executors and administrators 20–505
Guardians 21–115, 21–116

ANESTHETIC
Dentist, examination for license 2–308

ANIMALS
See Bull Fights; Cock Fighting; Cruelty to Animals; Dogs
Bull fights 22–809, 22–810
Cock fighting 22–809, 22–810

ANIMALS—Continued
Cruelty to animals
As criminal offense 22–801
Police Court Jurisdiction 11–603
Dead animals, contracts for collection and disposal 6–502
Dogs 1–224, 1–230, 22–1111
Criminal offenses 22–1110, 22–1111
Muzzling 1–230
Power to make regulations 1–224
Domestic animals, power to provide for impounding 1–230
Driving, riding, leading animals on footways, penalty 22–1118
Driving through streets, power to regulate 1–224
Federal laws applicable to District, reference 28–2803 note
Fights with, penalty 22–1105
Property clerk, sale of unclaimed animals 4–161
Rabies, commissioners authorized to prevent spread 1–230
Right of unlicensed person to doctor free of charge 2–808
Targets, use as, prohibited 47–2343

ANNUITIES
Exemption from judicial process 15–403

ANNULMENT
See Divorce; Marriage
Child as plaintiff 30–104
Grounds 16–403, 30–103
Parties plaintiff 30–104

ANSWERS
See Pleadings

ANTECEDENT DEBT
Consideration for negotiable instrument 28–202

ANTEDATED NEGOTIABLE INSTRUMENT
Title acquired as of date of delivery 28–113
Validity 28–113

ANTENUPTIAL DEBTS
Continued liability of wife 30–210

ANTIDEFICIENCY ACT
Applicable to District of Columbia 47–105

ANTI-FREEZE MIXTURE
Theft from vehicle 22–2204a

ANTIMERGER LAW
See Public Utilities

ANTIMONY
Poisonous compound, sale, restrictions 2–612

ANTITRUST ACT
Applicable to District, reference 28–2803 note

APARTMENT HOUSES
See Fire Escapes and Safety Provisions; Hotels and Lodginghouses
"Apartment house" defined 47–2329
Definition 5–312
Fire escapes and safety provisions 5–301—5–315
Fireproof construction, when required 5–403

APARTMENT HOUSES—Continued
License and fees 47–2329
Prerequisites 47–2329
Nonfireproof buildings
Limitations 5–401

APOTHECARY
Definition 33–401
License 47–2308

APPEALS
See CRIMINAL PROCEDURE; MUNICIPAL COURT OF APPEALS FOR DISTRICT OF COLUMBIA
Alleys or minor streets, condemnation proceedings and awards 7–323
Architects, certificate of registration revoked 2–1028
Barber, refusal of registration certificate 2–1110
Board of Cosmetology, appeal from taken to commissioners 2–1305
Board of Examiners in veterinary medicine, appeal from to commissioners 2–806
Board of Pharmacy hearings, review by Court of Appeals 2–606
Board of Zoning Adjustment, appeals to 5–420
Court of appeals
From Juvenile Court 11–772
From Municipal Court 11–772
From Municipal Court of Appeals for District of Columbia 11–772, 11–773
Dentist's license to practice, appeal from revocation or suspension 2–312
Dependent children, applications for assistance 32–760
Disbarment 11–1303
District Court
From Public Utilities Commission 43–705
Eminent-domain proceedings, land for streets 7–214
Healing arts, refusal of license to practice 2–129
Juvenile Court to United States Court of Appeals for District of Columbia 11–772
License to practice healing suspended or revoked 2–123
Municipal Court for District of Columbia to United States Court of Appeals 11–772
Municipal Court to Court of Appeals 11–772
Nurses certificate revoked or suspended 2–407
Nurses, denial of registration or reregistration 2–406
Podiatrists, revocation or suspension of license 2–708
Police department trial boards, appeals to Commissioners of District 4–122
Proceedings not stayed, Probate Court 11–511
Security for cost, exemption of Recreation Board member 8–203
Superintendent of insurance, order or ruling 35–1403
Tax appeals 47–2401—47–2412
Tax appeals, person claiming exemption 47–801e
Unemployment compensation benefits, appeal from determination of claim 46–311
Veterinarians, revocation or suspension of license, appeal to Court of Appeals 2–810

APPLES
Standard box, dimensions 10–115

APPORTIONMENT
Closed streets and ways among abutting owners 7–124
Exess or deficiency in number of feet in plats of lots 1–624

APPRAISAL
Decedent's estates 18–402
Land for District uses 16–606
Property levied upon in execution 15–214

APPRENTICES
See CHILD LABOR; COSMETOLOGISTS; LABOR; VOLUNTARY APPRENTICES
Barbers, registration, eligibility requirements 2–1105
Cosmetologists, limitation on number in beauty shop 2–1314
Cosmetology 2–1301

APPROPRIATIONS
Alley dwellings, slum-clearance projects 5–105
Alleys or minor streets, condemnation proceedings
Damages exceeding benefits 7–324
Failure, payment of costs 7–331
Annual lump-sum appropriation by federal government to District 47–134
Apportionment for contingent and miscellaneous expenses 47–106, 47–107
Budget estimates in general 47–201—47–212
Building lines, establishment 5–206
Care of persons in District less than one year 32–321
Charitable and reformatory institutions, lien on property 32–1003
Civil officers or employees, payment of compensation 1–310
Commissioners settling claims against District 1–904
Congressional tags 40–603b
Dependent children 32–763
Eminent domain proceedings, land for streets, payment of costs and damages 7–220
Eminent domain, streets through unsubdivided part of plot 7–217
Exceeding prohibited 47–105
Fire department for clothing 4–406
Highway funds 40–809
Horses and vehicles 7–1238
Increases in salaries of officers and employees 1–310a
Insanitary buildings, enforcement of act concerning 5–615
Institutions supported by, visitorial powers of Board of Public Welfare 3–111
Meridian Hill Park 8–112
Montrose Park 8–113
Municipal Court of District of Columbia 11–777
Park lands, acquisition 8–106
Permanent appropriations continued 47–110
Permanent appropriations repealed or abolished 47–108, 47–109
Playground employees, payment of salaries 47–133
Police and fire department meritorious service medals 4–704

APPROPRIATIONS—Continued
Police and Firemen's Relief Fund 4–503
Police and firemen's retirement allowance, apportionment 4–516
Police department uniforms 4–131
Premiums for fire insurance 1–816a
Printing or binding list of supplies where contract awarded for furnishing 1–242
Public contracts, condition precedent 1–808
Purchase of equipment 1–518
Reallocation of positions of officers and employees by civil service commission 1–310a
Recreation Board 8–208, 8–212
Appropriations transferred to 8–214
Rent, limitations on rentals to be paid by District 1–243
Salaries 1–518
Sectarian institutions, lien on property 32–1003
Smoke Prevention Law, enforcement 6–804
Street improvements, contract in excess of appropriations prohibited 7–620
Surplus articles of government, purchase 1–241
Takoma Park branch library 37–108
Teachers' retirement fund 31–716a
Unemployment Compensation contributions by District as employer 46–303a
White House police force 4–306
Working capital for workhouse and reformatory 47–131
Zoning Commission, budget estimate, salaries and expenses 5–426

AQUEDUCT BRIDGE
Exception from control by Commissioners 7–501

ARBITRATION
See REFERENCE OF QUESTIONS OF LAW AND FACT
Federal law applicable to District, reference 28–2803 note
Municipal Court, small claims and conciliation branch 11–804
Probate Court 11–520

ARCHITECT OF CAPITOL
Zoning Commission member 5–412

ARCHITECTS
Act performed under prior law, saving clause 2–1031
Alley-dwelling and slum-clearance projects 5–105
Applicants for registration, qualifications 2–1020
Board of Examiners and Registrars 2–1001—2–1009
Annual report to Commissioner, content 2–1010
Appointment 2–1002
Books and papers, power to compel production 2–1029
By-laws governing meetings and organizations, power to adopt 2–1006
Clerical assistance, right to employ 2–1008
Compensation, maximum amount 2–1012
Disobedient witnesses, punishment for contempt 2–1029
Duty to enforce law 2–1009
Expenditure of funds 2–1011
Expense of enforcing law, payment 2–1009
Meetings 2–1006
Number of members 2–1001
Oath of office 2–1004

ARCHITECTS—Continued
Board of Examiners and Registrars—Con.
President 2–1005
Qualifications of members 2–1002
Quorum 2–1007
Record of proceeding 2–1008, 2–1024
Reimbursement for expenses 2–1013
Rules and regulations, power to adopt 2–1001, 2–1006
Secretary 2–1005
Term of office 2–1003
Three votes in accord required to adopt proposals 2–1007
Treasurer 2–1005
Vacancy filled for unexpired term 2–1003
Witnesses, power to call and examine 2–1029
"Building" defined 2–1018
Certificate of qualification 2–1014, 2–1015
Duty to obtain 2–1014
Holder entitled to use title of architect 2–1015, 2–1016
Partnership 2–1016
Practicing architect, affidavit 2–1019
Certificate of registration
Annual renewal 2–1025
Record kept 2–1024
Clerks of work, right to employ 2–1017
Corporations
Cancelation of certificate, grounds 2–1027
Certificate of registration 2–1025
Definition 2–1014
Draftsmen, right to employ 2–1017
Drawings and specifications to be signed 2–1018
Examination for certificate of registration 2–1020—2–1022
Acceptance of evidence of qualification in lieu of examination 2–1021
Examination and other papers preserved 2–1024
Practical examination, architects with ten years experience 2–1022
Proof of qualifications to practice 2–1020, 2–1021
Exemption from Registration Law 2–1026
Fees under Registration Law 2–1023
Paid to treasurer of Board of Examiners 2–1011
Purposes for which used 2–1011
Renewal of certificate, maximum amount 2–1023
Restoration of expired certificate, maximum amount 2–1023
Minimum age 2–1020
Municipal architect 1–306
Name of regulatory act 2–1031
Penalty, unregistered architects using title 2–1030
Practice of architecture, definition 2–1014
Practicing architects, right to continue practice after enactment of laws 2–1019
Register, contents 2–1024
Registration without examination 2–1019, 2–1022
Registration in another jurisdiction 2–1021
Revocation of certificate 2–1027, 2–1028
Appeal to Court of Appeals 2–1028
Grounds for revocation 2–1027
Hearing 2–1028
Notice required 2–1027
Procedure 2–1028
Right to use title restricted 2–1014, 2–1016

ARCHITECTS—Continued
Roster of registered architects 2–1010
Students, right to employ 2–1017
Superintendents of construction, right to employ 2–1017

ARLINGTON COUNTY SANITARY DISTRICT
Contract for District water diversion 43–1531

ARLINGTON COUNTY, VIRGINIA
Garbage incinerators of District, use, terms, and conditions 6–511

ARMED FORCES
See MILITIA

ARMY
Chief of Engineers
Member of National Capital Park and Planning Commission 8–101
Washington Aqueduct, authorizing use as playground 8–130
Children of officers and men stationed outside District, admission to schools without tuition 31–305
Free tuition for children of men in military service 31–305

ARMY RELIEF ASSOCIATIONS
Exemption from insurance company taxes 47–1808

ARRAY
Challenge to, civil cases, right preserved, United States District Court 11–319

ARREST
Bribe, accepting from person subject to arrest, penalty 4–175
Cruelty to animals, arrest without warrant 22–804
Disturbing religious meeting, power of church authorities to make arrest 22–1114
Police department members, civil arrest, exemption 4–128
Policeman making 4–133, 4–140—4–143
Felony suspected, right of entry 4–141
Making without warrant, circumstances authorizing 4–140
Neglect to make arrest, penalty 4–143
Notice given lieutenant, time limit 4–142
Warrants for, execution 4–138
Sergeant at Arms, House and Senate 9–105
Superintendent of Weights and Measures and his assistants, powers of arrest 10–126
Unnecessary force in making, assault and battery 4–176
Warrants for, execution by police 4–138

ARSENIC
Sale, restrictions 2–612

ARSON
Burning another's movable property, penalty 22–403
Burning fences, woods, crops, penalty 22–404
Burning own property with intent to defraud, penalty 22–402
Definition and penalty 22–401
Killing while perpetrating, murder in first degree 22–2401

ART
Corporations for the promotion of art 29–601

ART GALLERY BUILDINGS
Exemption from taxation 47–801a

ARTISANS
Liens 38–124—38–126
Sewer work etc., employment 7–1235

ASHES
Accumulation prohibited 6–801
Contracts for collection and disposal 6–502
Placing on icy sidewalk 7–802, 7–804

ASPHALT
Inspector, restriction on rendering of services to others 1–307

ASPHALT PLANT
Acquisition by municipality authorized 7–618
Portable plant, use in improving streets authorized 7–618

ASSAULT
Duelling, assault for refusal to accept challenge 22–1103
Gaming transactions, on account of money won by 16–705
Jurisdiction of Police Court 11–605
On police officer 22–505
Resulting from gambling 16–705
Threatening 22–504
Bodily harm 22–507
With dangerous weapon, penalty 22–502
With intent to commit felony 22–503
With intent to commit mayhem, penalty 22–502
With intent to kill, rob, rape, poison, penalty 22–501

ASSAULT AND BATTERY
Police, unnecessary force in making arrest 4–176

ASSEMBLAGES
Capitol grounds 9–124
Unlawful, penalty 22–1107

ASSESSMENT
See ASSESSOR; TAXATION AND FISCAL AFFAIRS
Collection and disbursement 47–301—47–311
Designation of property for 47–401—47–408
Expenses to be included in budget estimates 47–209
Motor vehicles 47–1210
Personal property 47–1201—47–1214
Real property 47–701—47–723
Registered stockholder, liability for 28–2903
Service sewers 43–1510—43–1515
Special assessments 47–1101—47–1107
Statement of total assessment and total taxes 47–601
Water-mains 43–1510—43–1515

ASSESSMENT OF BENEFITS
See EMINENT DOMAIN; STREETS AND OTHER WAYS
Gutters and curbs 7–612a—7–612d
Refunds by Commissioners of District 1–903

ASSESSOR
See ASSESSMENT; TAXATION AND FISCAL AFFAIRS
Administering oaths 47–606

ASSESSOR—Continued
Annual tabulated report of property assessed, return 47–706
Board of assistant assessors 47–604
Assigning members 47–605
Deposit of maps, books, surveys, and plats 47–704
Bond 47–602
Certifying taxes and assessments due 47–306
Effect on person liable when tax was assessed 47–306
Effect on subsequent purchaser 47–306
Certifying want of information for preparation of personal property tax return 47–1209
Chairman of Board of Assistant Assessors 47–605
Chairman of Board of Equalization and Review 47–605
Chairman of Board of Personal Tax Appeals 47–605
Chairman of Real Estate Commission 45–1403
Competency as witness in condemnation suits 14–309
Compromise of estate taxes by 47–1630
Designation of property for assessment and taxation, duties 47–401—47–408
Determines inheritance and estate taxes 47–1618
Directing assessment of personal property 47–1201
Duties regarding estate tax 47–1608—47–1629
Duties regarding inheritance tax 47–1601—47–1607, 14–1616—47–1629
Duty to obtain income tax returns 47–1564
Estate tax, duties 47–1608—47–1629
Family dwellings occupied by owner 47–901—47–905
Affidavits of domicile and ownership, preparing 47–905
Sending statement of taxes 47–901
Furnishing income tax return blanks 47–1564
Furnishing information on taxes, special assessments and valuations 47–1009
Income tax, duties regarding 47–1551—47–1595
Inheritance tax, duties 47–1601—47–1607, 47–1616—47–1629
Keeping records and accounts, relating to taxation 47–603
Mailing notice of amount of real estate tax 47–1001a
Maps, books, surveys, and plats to be deposited with 47–704
Militia, listing persons liable to enrollment 39–103
Motor fuel importers
Inspecting records of 47–1907
Issuing license to 47–1903
Personal property, assessment of 47–1201
Personal property tax accounts preparation 47–603
Preparation of tax accounts, date for 47–603
Preparing affidavit of domicile and ownership on family dwellings 47–905
Preparing and keeping list of property sold for taxes 47–1010
Preparing personal property schedule blanks 47–1203
Preparing real property delinquent tax list 47–1001
Preserving income tax returns 47–1564c
Property sold for taxes, preparation of list 47–603
Property taxes in arrears on July 1, preparation of list 47–603
Real property tax accounts, preparation 47–603
Records and accounts 47–603

ASSESSOR—Continued
Release of liens for inheritance or estate taxes 47–1623
Requiring inventories for income tax return 47–1561d
Revoking motor fuel importer's license 47–1903
Sending tax statement for family dwellings 47–901
Service sewers 43–1510—43–1515
Special taxes, preparation of bills for 47–603
Statement of total assessment and total taxes 47–601
Tax accounts 47–603
Contents 47–603
Dates for preparation 47–603
Personal property 47–603
Real property 47–603
To prepare and retain 47–603
Tax bills, preparation 47–601, 47–603
Water mains 43–1510—43–1515

ASSETS
Appraisal, decedents' estates 18–402
Decedents' estates 18–301
Inventory, decedents' estates 18–401

ASSIGNATION
See Houses of Prostitution; Lewdness; Pandering; Prostitution
Penalty for arranging 22–2707
Premises occupied for 22–2713—22–2722
Nuisance 22–2713—22–2721
Abatement of 22–2713—22–2719
Bond for abatement 22–2719
Costs in action to abate 22–2715
Declared such 22–2713
Delivery of premises, order for 22–2719
Injunction 22–2714, 22–2717
Order for abatement 22–2717
Sale of property 22–2717, 22–2718
Tax for maintaining 22–2720
Witnesses, granting immunity to 22–2721

ASSIGNEES
Suits to vacate fraudulent conveyances 12–403

ASSIGNMENTS
Attachment and garnishment of fraudulent assignments 16–326
Choses in action 28–2501—28–2504
Claim secured by stock certificate 28–2911
Contracts of apprenticeship 36–128
Dower, assignment in partition 16–1302
Drivers' licenses 47–2331
General assignments of choses in action 28–2504
Set-off of assignment 16–1904
Stock certificate 28–2901, 28–2902, 28–2904, 28–2920
Wages and salaries 28–2505

ASSIGNMENTS FOR BENEFIT OF CREDITORS
Acknowledgement of assignment 28–2602
Assignee 28–2602
Assent in writing required 28–2602
Bond 28–2603
Corporate income tax returns 47–1564a
Duties 28–2605

ASSIGNMENTS FOR BENEFIT OF CREDITORS—Continued
Assignee—Continued
Failure to comply with requirements 28–2604
Must be resident of District 28–2602
Removal or resignation 28–2604
Vested of all except exempt property 28–2601
Assignment to defraud or delay creditors 28–2608
Creditors to receive notice 28–2609
Distribution to be pro rata 28–2606
Employing unit under Unemployment Compensation Act 46–304
Examination of assignor 28–2605
Exclusion of exempt property 28–2610
Inventory of estate 28–2601
Not conclusive of amount of debtor's estate 28–2601
List of creditors 28–2601
Annexation to assignment required 28–2601
Contents 28–2601
Notices to creditors 28–2609
Preferences in assignment to be void 28–2606
Recording of assignment 28–2602
Suits by creditors to be representative 28–2607
Trustee to replace assignee 28–2604

ASSISTANCE
Defined 32–752

ASSISTANT ENGINEERS
Sewers, etc., employment 7–1235

ASSISTANT PROBATION OFFICERS
Municipal Court for District of Columbia 11–754

ASSISTANT SUPERINTENDENT OF MACHINERY, FIRE DEPARTMENT
Salary 4–405

ASSISTANT SUPERINTENDENTS
See Police Department

ASSISTANT SURVEYOR
See Surveyors

ASSOCIATE JUSTICES
United States District Court 11–301

ASSOCIATION FOR WORKS OF MERCY
Appointment as guardian by Probate Court 32–103
Commitment to of girls under 18 convicted of crime 32–102
Custody and control of girls under 18 32–101
Custody and discharge of inmates 32–103

ASSOCIATIONS
Inheritance tax rates on transfers to 47–1601

ASSUMED NAME
Dentistry
Penalty for practicing under false name 2–320
Unprofessional conduct 2–311
Use in practicing prohibited, penalty 2–316
Podiatry practitioners
Practicing under false name, penalty 2–715
Unprofessional conduct 2–707
Signature to negotiable instrument, liability 28–119

ATHLETIC EXHIBITIONS
Grounds for, license 47–2323

ATTACHMENT
Municipal Court for District of Columbia, attachment of witnesses 11–756
Person of defendant in equity cases to enforce decree 11–326
Probate Court 11–510
Quashing on ground attached property is exempt 15–403
Stock certificate 28–2913
Stock certificate, remedy of creditors 28–2914
Wages paid in advance to prevent 16–312

ATTACHMENT AND GARNISHMENT
Additional attachments 16–304
Affidavit 16–301
Traversing 16–307
Appeal from dissolution to Municipal Court of Appeals for District of Columbia 11–772
Appointment of receivers 16–314
Attachment before judgment 16–301
Bill in equity not excluded 16-332
Bond 16–301
Sufficiency 16–305
Claimant to attached property, right of 16–318
Code on attachments applies to Municipal Court 16–335
Debts not due 16–306
Docket for real property attachments 16–334
Exemptions 15–401
Fraudulent assignment 16–326
Garnishee as bona fide purchaser 16–328
Issue 16–328
Judgment for garnishee, attorney's fees 16–329
Judgment for plaintiff, condemnation 16–330
Trial 16–328
Goods in warehouse 28–1919
Negotiable receipts outstanding 28–1919
Transferred nonnegotiable receipts outstanding 28–2006
Grounds 16–301
Interrogatories to garnishee 16–303
Issues 16–316
Joint credits 16–333
Judgment against garnishee 16–319
Decrease by attorney's fee 16–323
Default of garnishee 16–323
Execution in undertaking 16–324
In bar to action by defendant 16–325
Satisfaction by delivery of property 16–324
Judgment of condemnation of attached property 16–320
Levy on credits 16–312
Retention by garnishee 16–312
Service on garnishee 16–312
Service on partner 16–312
Levy on judgment or decree 16–313
Levy on money, property, in hands of executor, administrator 16–313
Levy on money, property in hands of marshal, coroner 16–313
Levy on personal chattels 16–310
Possession and custody 16–310

ATTACHMENT AND GARNISHMENT—Con.
Levy on personal chattels—Continued
Taking of undertaking of defendant, form 16–310
Levy on real property 16–309
Indorsement of attachment, form 16–309
Service of indorsed copy and notice 16–309
Municipal Court 11–733, 11–744—11–747
Notice 16–302
Personal service 16–302
Publication, form 16–302
Oral examination of garnishee 16–303
Orders of Probate Court, enforcement by attachment 11–512
Pleas by garnishee 16–315
Proceedings supplementary to execution 15–301
Proceeds of sale 16–322
Property subject, liens 16–308
Preservation of attached property 16–314
Quashing 16–307
Release from attachment 16–311
Judgment after release 16–311
Undertaking 16–311
Release of garnishee 16–319
Replevin actions 16–321
Sale of condemned property 16–322
Sale of perishables 16–314
Traverse of garnishee's answers 16–317
Costs and counsel fee 16–317
Trial 16–317
Trial by jury 16–316
Trial of issues on pleas to attachment 16–331
Warehouse receipts by creditors 28–1920
Who may defend 16–316

ATTEMPT
Arson, attempt to commit, penalty 22–401
Robbery, attempt to commit 22–2902
To commit crime, penalty 22–103

ATTESTATION
Police Court process 11–613

ATTORNEY GENERAL
See Prisons and Prisoners
Chief judge of Municipal Court for District of Columbia to report to 11–754
Park lands, clearing title, approval of settlement 8–104
Quo warranto, proceedings 16–1602, 16–1603
United States District Court Building, control over 11–329

ATTORNEYS
See Power of Attorney
Acknowledgment, deeds of conveyance, invalid 45–401
Admission to bar 11–1301, 11–1302
General term of District Court 11–1301
Revocation 11–1302
Rules governing, power of District Court to adopt 11–1301
Appointment to represent infant defendants 13–105
Censure, general term of District Court 11–1302

ATTORNEYS—Continued
Disbarment by general term of District Court 11–1302—11–1304
Authority 11–1301
Grounds 11–1302
Disbarment by Municipal Court for District of Columbia and Municipal Court of Appeals for District of Columbia 11–775
Disbarment, conviction of crime 11–1303
Appeal 11–1303
Procedure 11–1303
Divorce
Discretionary assignment in 16–418
Pendency of action, suit money 16–410
Uncontested cases, appointment for defendant, compensation 16–418
Embezzlement by, definition, penalty 22–1202
Expulsion, by District Court 11–1302
Fees and costs 11–1501
Agreements with clients not prohibited 11–1501
Note provided for, negotiability 28–103
Taxed as costs, when 11–1501
Unemployment compensation cases, limited 47–318
Funds of estate, receipt from fiduciary, release of bond 28–2407
Injunction or restraining order bond, action on, recovery of fees 28–2404
Jury service, exemption from 11–1420
Not to be given information on proposed police raids 23–609
Notaries public, right to act as 1–501
Oath 11–1301
Paying court attachés to secure clients prohibited 23–604
Paying professional bondsmen to secure clients prohibited 23–604
Receiving pay from professional bondsmen prohibited 23–603
Register of wills not to practice law 19–410
Revocation of admission 11–1302
Suspension by general term of District Court 11–1302
Suspension by Municipal Court for District of Columbia and Municipal Court of Appeals for District of Columbia 11–775
Unemployment compensation benefit claimant 46–318

ATTORNMENT
See Landlord and Tenant
Fraudulent 45–934
Unnecessary 45–933

AUCTIONEERS
Embezzlement 22–1208
License 47–2309
Approval by major and superintendent of police 47–2309
Fee 47–2309
Watches and jewelry, Police Department, powers and duties 4–147, 4–148, 4–150
Examination of books and premises 4–148
Penalty for interfering with officer 4–150
Supervision and inspection 4–147

AUCTIONS
See SALES, UNIFORM ACT
Conduct without permit, when prohibited 47–2201
Hours when sale of jewelry or plated ware is prohibited 47–2205
Permits for public auctions 47–2201—47–2208
Aquittal on permit law charge lifts suspension 47–2204
Application for permit, contents 47–2202
Commissioners of District to issue 47–2201
Construction of permit law 47–2208
False advertising law not affected 47–2208
Prosecutions for fraud, deceit or larceny by trick not prevented 47–2208
Remedies at law and in equity not estopped 47–2208
Conviction of violating permit law voids permit 47–2204
Grounds for denial 47–2201
Maximum period 47–2202
Permit fee 47–2202
Property salable without permit at owner's residence 47–2203
Suspension for violation of permit law 47–2204
Property clerk, unclaimed property 4–160, 4–161
Property salable without permit at owner's residence 47–2203
Representations to be considered warranties, breach is punishable 47–2206
Sales under authority of law, exemption from permit law 47–2201
Statuary, bric-a-brac, sales at night prohibited 47–2205
Violations of permit law, penalty 47–2207

AUDITOR OF DISTRICT
Auditing of accounts, exceptions 47–123
Bond 47–120
Chief clerk of auditor's office 47–122
Bond 47–122
Countersigning checks 47–121
Disbursement vouchers, auditing 47–309
Duties 47–120
Juvenile Court, audit of accounts 11–940
"Miscellaneous trust-fund deposits," auditing 47–311
Nurses' Examining Board, audit of accounts 2–408
"Outstanding liabilities" account, claims against 47–125
Police Court clerk, audit of accounts 11–627
Real Estate Commission annual audit 47–1403
Recreation Board's trust fund audited by 8–211
Separate accounts of deposits and payments of "Miscellaneous trust-fund deposits" 47–311
Unemployment Compensation Act
Approval of compromises under 46–304
Audits under 46–322

AUDITORS
See ACCOUNTS AND ACCOUNTING
District Court, appointment for, at general term 11–312
Reference to of actions on account 16–102
Report 16–102—16–105
Unemployment compensation
Audit of administrative expenses 46–314

AUTHORITY
See ALLEY DWELLINGS

AUTOMATIC VENDING DEVICES
Placard on machine, contents 10–109
Regulations and requirements concerning use 10–109

AUTOMOBILES
See MOTOR VEHICLES
Inspection 40–201—40–207
Liens 40–701—40–715
Operators' permits 40–301—40–303
Owners' financial responsibility act 40–401—40–416
Public-owned vehicles 40–501—40–504
Registration 40–101—40–105
Rental agency, license 47–2332
Traffic regulations 40–601—40–617

AVENUES
See STREETS AND OTHER WAYS

AVIATION
Federal laws applicable to District, reference 28–2803 note

AVIATION EDUCATION IN HIGH SCHOOLS
Course optional 31–1201
Textbooks to be furnished free 31–1203

AWARDS
See EMINENT DOMAIN
Referee making, on questions of law and fact 16–1705

BACTERIOLOGY
Dentist, examination for license 2–308
Healing arts, examination of applicants for license 2–108
Podiatry license examinations 2–705

BAD CHECKS
Issuing checks, insufficient funds in bank 22–1410

BAGGAGE
Hotel keeper's liability for stolen baggage 34–102
Hotels and lodging houses, defrauding by removal of baggage 22–1301
Lien of hotels, restaurants, and lodging houses 34–103
Enforcement of lien 34–104, 34–105

BAIL
Forfeiture, powers of Police Court 11–607
Habeas corpus proceedings 16–806
Police Court 11–602

BAILIFFS
Police Court 11–623

BAKERIES
License 47–2327

BALLOONS
Flying, penalty 22–1117

BALLS
Ballroom, buildings for, licenses 47–2320

BALTIMORE AND OHIO RAILROAD COMPANY
Acquisition of land for track 7–1212
Assessment of real property 47–718, 47–719
Construction of sidings and switches authorized 7–1212
Elevation of tracks 7–1212
Grade crossings, prohibitions against 7–1212
Terminal stations, construction of 7–1212

BALTIMORE AND POTOMAC RAILROAD COMPANY
Assessment of real property 47–720
Property-owners applying for construction of branch tracks or sidings 7–1211
Sidings and switches, authority to construct 7–1210, 7–1211

BANKRUPTCY
Acceptor of bill of exchange insolvent 28–934
Protest for better security 28–934
Drawee of bill of exchange bankrupt, presentment 28–921
Employing unit under Unemployment Compensation Act 46–301
Notice of dishonor of negotiable instruments 28–713
Stock transfer, laws relating to bankruptcy applicable to 28–2918
Surety on bond of plumber, electrician, etc. 1–244
Trustee as employing unit within Unemployment Compensation Act 46–301
Trustees
Corporate income tax returns 47–1564a

BANKS AND OTHER FINANCIAL INSTITUTIONS
See Building Association; Credit Unions; Petty Loans
Adverse claims to deposits 26–203
Fiduciaries of claimants 26–203
Indemnifying bond 26–203
Notice effectual 26–203
Restraining order or injunction 26–203
"Bank" defined, Negotiable Instrument Law 28–101
Building associations 26–401—26–416
Cashier made payee of instrument 28–313
Bank's right to indorse 28–313
Checks
Liability for nonpayment in error 28–1009
Liability of bank 28–1007
Refusal to pay after one year 28–1004
Common trust funds 26–701—26–704
Consent of Comptroller of Currency 26–103
Credit Unions 26–501—26–518
Dissolution of solvent institutions 26–103
"Entered into or incurred" defined 26–104
Establishment of branch banks 26–103
Excise and license taxes 47–1701—47–1709
National and incorporated banks 47–1701
Private banks 47–1706—47–1709
Savings banks 47–1703
Exempted institutions 26–103
False statements against, penalty, defense 26–108
Federal Home Loan Bank shares 26–415
Fiduciaries making deposits 28–2307—28–2310
Deposits in fiiduciary's personal account, checks, liabilities 28–2309

BANKS AND OTHER FINANCIAL INSTITUTIONS—Continued
Fiduciaries making deposits—Continued
Deposits in name of principal, checks, liabilities 28–2308
Deposits in name of two or more trustees, checks, liability 28–2310
Fiduciary depositing as such, checks on accounts, liabilities of parties 28–2307
Home Owners Loan Corporation bonds 26–415
Homestead associations 26–401
Income tax, when exempted 47–1554
Institutions subject to chapter 26–103
Joint accounts 26–201
Deposits 26–201
Liabilities of institution 26–201
Safety deposit boxes 26–202
Liability of institutions 26–202
Shares of stock 26–201
Liability of Bank
Altered or forged checks 28–1008
Nonpayment of check in error 28–1009
Liability of forwarding bank where payor bank fails to account 28–1010
Liability of stockholders 26–104
On new stock issues 26–104
Stockholders on March 4, 1933 26–104
Additional liabilities terminated, conditions 26–105
Loan Shark Law 26–601—26–611
Money lending 26–601—26–611
Mortgage loan companies 26–301
Mutual savings banks
Excise tax 47–1703
Negotiable instruments payable at bank, right to charge to account of principal debtor 28–618
Non-payment of check in error, liability 28–1009
Notaries public 26–110
Payment of trust accounts on death of trustee 26–204
Penalties 26–103
Petty loans 26–601—26–611
Private banks
Definition 47–1706
Taxation 47–1706
Provisions of United States Codes not applying 26–104
Restriction on use of "bank," "trust company," penalty 26–107
Restrictions on Federal Reserve members extended to non-members 26–109
Safety deposit boxes 26–202
Savings banks, savings companies, trust companies 26–101
Application of certain sections of United States Code 26–101
Dividends, payment and restrictions 26–106
Examination by Comptroller of Currency 26–102
Excise tax, savings bank 47–1703
Excise tax, trust companies 47–1701
Reserves 26–102
Subject to supervision of Comptroller of Currency 26–101
Small loans 26–601—26–611

BANKS AND OTHER FINANCIAL INSTITUTIONS—Continued
Suspected private banking-houses, Police Department, supervisory powers 4–147, 4–148, 4–150
Trust, title and indemnity companies 26–301—26–336
Annual reports to Comptroller of Currency 26–318
Appointment as trustee, fiduciary 26–310
By-laws 26–326
Capital stock 26–316
As personal property of holder 26–321
Calls and sale on failure to pay call 26–317
Deposited with Comptroller of Currency 26–316
Face to show par value, amount paid 26–321
Increase or decrease 26–331
Money payment required, exception 26–323
Par value of shares 26–317
Transfer 26–321
Certificate from Comptroller of Currency 26–307
Certificate of incorporation as evidence 26–332
Charter to be recorded 26–307
Compliance by firms organized under state laws 26–335
Directors or trustees 26–324
Duration of charters 26–315
Grant or refusal of charter 26–305
Liability as trustee 26–309
Liability of directors or trustees, exceptions 26–319
Liability of fiduciaries holding stock 26–330
Liability of stockholders 26–322
Liability when liabilities exceed assets 26–329
Liability where dividends render insolvent 26–327
Misappropriation of funds as larceny 26–320
Notice of intention to apply for charter, publication 26–306
Oath as fiduciary, by whom made 26–311
Objection to irregular dividends 26–328
Officers, bonds 26–325
Organization 26–301
Organization certificate, content 26–304
Perjury 26–320
Powers, general 26–309
Powers of Comptroller of Currency 26–308
Preexisting concerns 26–313
Purposes 26–301
Realty which may be owned 26–314
Reports to Comptroller of Currency 26–308
Right to amend or repeal law reserved by Congress 26–336
Security as fiduciary 26–333
Court may require bond 26–334
Stock and property security, as fiduciary 26–312
Storage business, requirement 26–301
Title companies may become perpetual 26–302
Trust companies to have perpetual succession 26–303
Washington Stock Exchange, taxation 47–1707

BARBED-WIRE FENCES
Construction or maintenance along streets or ways
Outside fire limit, permit 7–1102
Within fire limit prohibited 7–1101
Notice to remove 7–1103, 7–1105
Removal by owner after notice 7–1103
Penalty for violating law 7–1104
Removal by Building Inspector, assessment of costs 7–1105

BARBER SHOPS
License 47–2310

BARBERS
Barber colleges, course of study and other requirements 2–1113
Board of Examiners 2–1103
Annual report to Commissioners 2–1103
Appointment 2–1103
Clerks, power to appoint 2–1112
Expenses, payment 2–1112
Inspector, power to appoint, qualifications 2–1112
Nominations for membership 2–1103
Number of members 2–1103
Per diem 2–1112
President 2–1103
Qualifications 2–1103
Removal of members, grounds 2–1103
Rules and regulations, power to adopt 2–1103
Secretary-treasurer 2–1103
Surplus funds, payment into United States Treasury 2–1112
Term of office 2–1103
Vacancies, filling for unexpired term 2–1103
Vice president 2–1103
Certificates of registration 2–1104, 2–1105, 2–1108, 2–1110, 2–1113
Annual renewal 2–1109
Apprentices 2–1105
Eligibility requirements 2–1104
Refusal, grounds for, appeal 2–1110
Constitutionality of Registration Act, separability of provision 2–1116
Definitions of terms used 2–1102
Examinations for certificate 2–1106, 2–1107, 2–1112
Apprentices 2–1106
Exceptions from act 2–1107
Quarters for holding 2–1112
Registered barber 2–1106
Exemptions from act 2–1107, 2–1115
Health certificate 2–1104, 2–1107
Name of act 2–1101
Purpose of act 2–1118
Registered apprentices, requirements 2–1105
Registered barbers, eligibility requirement 2–1104
Repeal of inconsistent laws 2–1117
Unlawful practices enumerated, penalty 2–1114

BARGAIN AND SELL
"Bargin and sell" in conveyance passes whole estate in absence of contrary showing 45–202

BARIUM
Poisonous compounds, sale restrictions 2–612

BARRELS
Specifications, power of commissioners of District to establish 10–127
Standard size for fruits, vegetables, and dry commodities 10–115
Use of other than standard containers prohibited 10–116

BASEBALL
Grounds for, license 47–2323

BASIC SCIENCES
See HEALING ARTS PRACTICE ACT
Applicants for license, examination, subjects 2–108
Board of Examiners 2–106—2–108
Certification of applicants to other boards 2–108
Chairman of board 2–106
Educational qualifications 2–107
Examinations, power to conduct 2–106
Federal or District officers or employees, appointment authorized 2–106
Number of members 2–106
Qualifications of members 2–106, 2–107
Reference of applicant for license to board 2–108
Reports 2–106, 2–108
Secretary 2–106
Serving as teacher while on board prohibited 2–107
Term of office 2–106
Issuance of license to practice 2–108
Time for holding examination 2–114

BASKETS
Fruit and vegetable containers, standard sizes 10–115
Use of other than standard containers prohibited 10–116

BASS
See GAME AND FISH LAWS

BASTARDS
Birth report, disclosure of names of parents unnecessary 6–301
Inheritance from 18–107, 18–716
Inheritance of real property from mother 18–107
Issue of marriage dissolved by divorce, contesting legitimacy 16–408
Issue of voidable marriages declared legitimate 16–406, 16–407
Legitimation by marriage of parents, inheritance of property 18–106
Mother's right to inherit real estate 18–107
Paternity proceedings, jury trials 11–907

BATHING POOLS AND BEACHES
Bathing beach and dressing-room, tidal reservoir 8–168
Construction authorized, limitations 8–169
Fee for use and enjoyment 8–170
Management and control 8–170
Operation through welfare and recreational association, special fund 8–171

BATHS
Medicated 47–2311
Public bath houses 47–2312
Russian 47–2311
Turkish 47–2311

BATTALION CHIEF ENGINEERS
Fire Department 4–404
Salary 4–405

BATTERIES
Theft from vehicle 22–2204a

BATTERY COVE
Retrocession to Virginia 1–101 note

BAWDY HOUSES
See ASSIGNATION; HOUSES OF PROSTITUTION; PANDERING; PROSTITUTION
Keeping, penalty 22–2722

BEACH PARKWAY
Dedication and transfer of exchanged lands 8–122
Exchange of lands between Federal Government and private property-owners 8–121, 8–122
Extension north, purposes 8–121
Secretary of Interior, exchange of lands 8–121, 8–123

BEACHES
See BATHING POOLS AND BEACHES

BEANS
Shelled, standard container 10–115

BEARER
Definition, Negotiable Instruments Law 28–101

BEATTY AND HAWKINS' ADDITION
Inclusion in Permanent Highway Plan authorized 7–116

BEAUTY SHOPS, SALONS, AND PARLORS
See COSMETOLOGISTS
License 47–2310

BEDS AND BEDDING
See MATTRESSES

BEER
See ALCOHOLIC BEVERAGES

BEETS
Sale by bunch authorized 10–115

BEGGARS
Capitol grounds, begging prohibited 9–121

BELLADONNA
Poison, sale, restrictions 2–612

BELT RAILROAD
Construction and use of facilities by other roads 7–1216—7–1224

BELT ROAD
Closing in part authorized, consent of property-owners 7–123

BENEFITS
See EMINENT DOMAIN

BENEVOLENCE
Corporations for 29–601

BENEVOLENT INSTITUTIONS
Personal property exempted from taxation 47–1208

BENNING BRIDGE
Construction cost, share of street railway 7–514

BERRIES
Standard container 10–115

BEVERAGES
See ALCOHOLIC BEVERAGES; MILK AND MILK PRODUCTS
Bottles for, registration 48–101
Milk beverage containers, registration 48–301—48–307
Milk containers, registration 48–201—48–211
Unauthorized use of registered bottles, penalty 48–102

BICARBONATE OF SODA
Sale by other than pharmacist 2–601

BIDS
District quarry, operation 1–811
Public contracts, advertisement for bids 1–808, 1–809
Aggregate amount involved not exceeding $100 1–808
Printers' rates 1–809
Readvertisement 1–808

BIGAMY
Annulment of marriage 16–403
Definition 22–601
Issue of bigamous marriage, legitimacy 16–406
Penalty 22–601

BILL
Definition, Negotiable Instrument Law 28–101

BILLIARD PARLORS
Hours when operation is prohibited 47–2321
License 47–2321

BILLS AND NOTES
See NEGOTIABLE INSTRUMENTS; NOTARIES PUBLIC; PROTEST; WAREHOUSE RECEIPTS
Instruments payable on contingency, nonnegotiable 28–105
Sealing by justice 11–321

BILLS OF EXCHANGE
See NEGOTIABLE INSTRUMENTS
Interest rate 28–2702
Lost bills 28–410
Presentment for payment, reasonable time 28–602

BILLS OF REVIVOR
See ABATEMENT AND REVIVOR
Abatement and revivor 12–116

BILLS OF SALE
Recordation 42–101, 42–102

BINDING
Appropriations for binding list of supplies where contract awarded for furnishing 1–242

BIRDS
See GAME AND FISH LAWS

BIRTHS
Acknowledgement of receipt of report 6–301
Altering or falsifying reports prohibited 6–302
Contents of reports 6–301
Copies of records, fee 6–103
Illegitimate children, identity of parents, disclosure unnecessary 6–301
Inspection of records 6–303
Midwives, duty to report 6–301
Name of child, reporting 6–301
Penalties for violating law requiring reports 6–304
Information filed by corporation counsel 6–304
Physicians, duty to report 6–301
Reports filed with health officer 6–303
Part of public records 6–303
Publication of abstracts and analysis of data 6–303
Stillbirths, when unnecessary to report 6–301
Time limit for making reports 6–301

BITTER ALMONDS
Poison, sale, restrictions 2–612

BITUMINOUS MACADAM
Use in improving sheets and highways, authorized 7–617

BLACKMAIL
Definition, penalty 22–2305

BLACK-OUTS IN WARTIME
Borrowing money from Federal Government 6–1009
Civilian defense 6–1009
Commissioners authorized to order 6–1001
Commissioner's powers 6–1009
Compensation for property taken 6–1009
Cooperation with Maryland and Virginia 6–1002
Crimes committed during 6–1005
Damages, municipality not liable for 6–1004
Equipment and supplies, acquisition 6–1009
Expenditures 6–1014
Federal supplies and aid 6–1009
Injuries while enforcing act 6–1012
Military or naval authorities' powers not affected by act 6–1013
Penalty for violation 6–1010
Property, power to take possession 6–1009
Secretary of War, cooperation of 6–1003
Veterans, services to, by District 6–1015

BLANK INDORSEMENT
See NEGOTIABLE INSTRUMENTS

BLANKS
Endorsement of stock certificate in blank for purpose of transfer 28–2901

BLANKS IN NEGOTIABLE INSTRUMENTS
Delivery essential to render valid 28–116
Extent of authority to complete 28–115
Holder's right to complete 28–115
Negotiation after completion, effect 28–115
Undated instrument, right of holder to fill in 28–114

BLASPHEMY
Definition and penalty 22–1107

BLIND PERSONS
See SOCIAL SECURITY
Aid pending appeal from discontinuance or reduction 46–106
Aid recipients not to solicit alms 46–107
Amount of aid 46–105
Appeal from agency 46–105
Appeal from reduction or discontinuance of benefits 46–106
Appeal to Commissioners of the District 46–105
Application for aid 46–102
Affidavit 46–104
Contents 46–104
Appointment to stand in loco parentis for blind minor 46–114
Appropriation for instruction of indigent blind 31–1020
Appropriations and estimates 46–114
Authority of Commissioners of the District 46–101
Benefits not to be granted when work or treatment is refused 46–109
Cessation of aid on removal from District 46–108
Cooperation with Federal Social Security Board 46–115
Discontinuance of aid 46–106
Eligibility for aid 46–103
Evidence of blindness required 46–105
Extent of aid 46–105
Fraud in obtaining aid, penalty 46–113
Ineligibility for benefits 46–109
Intentional destruction of eyesight 46–110
Loss of eyesight through crime 46–110
Loss of eyesight through vicious habits 46–110
Refusal of treatment or operation 46–109
Refusal of vocational training 46–109
Refusal to work 46–109
Inmate of institution may apply for aid 46–102
Investigating qualification of recipients at least annually 46–106
Liability of recipients' estates for amount of aid 46–112
Liability of relatives for aid 46–111
Relatives liable, suit to recover from 46–111
Liberal construction required 46–116
"Needy blind person" defined 46–102
Provision for education of indigent blind 31–1019
Relief for 46–101
Saving clause 46–116
Transfer of mismanaged property of aid recipients to Board of Commissioners or its agency 46–112

BLINDNESS IN INFANTS
Inflammation of eyes 6–202, 6–203
Information given health officer 6–202
Orders by health officer for treatment 6–202
Penalty for violating law 6–204
Placing of indigent child in hospital 6–202
Treatment by other than registered physician prohibited 6–203
Preventative treatment 6–201—6–204
Duty of health officer to provide prophylactic 6–201
Duty of physician or midwife to give 6–201

BLINDNESS IN INFANTS—Continued
Preventative treatment—Continued
Midwives, duty to secure prophylactic from health officer 6–201
Penalty for violating law 6–204

BOARD OF ASSISTANT ASSESSORS
See TAXATION AND FISCAL AFFAIRS
Appointment 47–604
Duties 47–605

BOARD OF CHARITIES
Abolition 3–101
Transfer of powers and duties to Board of Public Welfare 3–110

BOARD OF CHILDREN'S GUARDIANS
Abolition 3–101
Powers and duties transferred to Board of Public Welfare 3–114

BOARD OF COMMISSIONERS
See COMMISSIONERS OF DISTRICT OF COLUMBIA

BOARD OF EDUCATION
See EDUCATION
Head of department of military science and tactics 31–622a

BOARD OF EQUALIZATION AND REVIEW
See TAXATION AND FISCAL AFFAIRS
Assessor as chairman 47–605
Duty to review real property assessment 47–605
Membership 47–605

BOARD OF INDETERMINATE SENTENCE AND PAROLE
See PRISONERS

BOARD OF OPTOMETRY
See OPTOMETRY

BOARD OF PAROLE
See PRISONERS

BOARD OF PERSONAL TAX APPEALS
See TAXATION AND FISCAL AFFAIRS
Assessor as chairman 47–605
Duties 47–1213
Membership 47–605
Reviewing personal property assessments 47–605
Sessions 47–1213

BOARD OF PERSONAL TAX APPRAISERS
See TAXATION AND FISCAL AFFAIRS
Duties 47–1213
Employees 47–1213

BOARD OF PHARMACY
Narcotic drugs 33–403
Employees to carry out provisions 33–422
Forfeited drugs 33–417
Licensing manufacturers 33–404
Licensing wholesalers 33–403
Rules and regulations 33–405
Suspension and revocation of licenses 33–404

BOARD OF PUBLIC WELFARE
Annual Report to Commissioners, contents 3–123
Antecedents of children, investigation 3–118

BOARD OF PUBLIC WELFARE—Continued
Appointment made without regard to sex, race, or religion 3–103
Assisting child to leave home, misdemeanor 3–127
Budget 3–123
Chairman 3–104
Child-Placing Agencies
Consultation to appoint committee to adopt rules and regulations 32–783
Investigation of applicant for license 32–784
Investigations 32–789
Member of board as member of committee for formulation of rules 32–783
Children committed by courts, care and legal guardianship 3–114
Children to be cared for 3–117
Children under 17 3–120, 3–121
Commitment to board by Juvenile Court 3–120, 3–121
Placing in suitable homes or institutions by board 3–120, 3–121
Contracts for care of dependent children 3–115
Contracts not invalidated 24–445
Creation 3–102
Dependent children, See DEPENDENT AND NEGLECTED CHILDREN
Director of public welfare 3–105
Appointment by Commissioner 3–105
Compensation 3–105
Nomination by board 3–105
Qualifications 3–105
Removal from office 3–105
Discharge of child from guardianship 3–125
District Training School, control and management 3–106
Duties 3–117
Employees 3–105
Appointment and removal, compensation 3–105
Environment of children, investigation 3–118
Feeble-minded children, provision for care and maintenance 3–114
Gallinger Municipal Hospital, control and management 3–106
Home for the Aged and Infirm, control and management 3–106
Indigent persons, medical care and treatment, contracts 3–110
Industrial Home School, control and management 3–106, 32–501
Industrial Home School for Colored Children, control and management 3–106
Insane persons, hospitalization 3–110
Institutions placed under control of board 3–106—3–111
Appointment and discharge of personnel 3–107
Supervision over employees 3–107
Visitorial powers and powers of inspection 3–111
Institutions supported by congressional appropriations visitorial powers 3–111
Investigating adoption petitions 16–201
Investigation of antecedents 3–118
Investigation of institutions on order of commission 3–112

BOARD OF PUBLIC WELFARE—Continued
Legal residents, indigent persons, return to district 3–110
Legal successor of other boards 3–102
Members, requirements, compensation and removal 3–103
Municipal Lodging House, control and management 3–106
National Training School for Boys, contracts for maintenance of boys 3–110
National Training School for Girls, board of trustees, powers transferred 3–122
National Training School for Girls, control and management 3–106
New institutions, plans submitted to board 3–112
Nonpartisan board 3–103
Nonresident indigent persons, return to place of residence 3–110
Number of members 3–103
Old-age assistance, powers and duties 3–110
Placement of children in suitable homes or institutions 3–123
Religious faith considered 3–123
Placing children in family homes or private institutions 3–114
Religious faith not the same, reasons for action given 3–114
Power over National Training School for girls 32–902
Powers transferred to Department of Corrections 24–443
Public contracts, personal interest in prohibited 3–113
Records to be confidential 3–118
Reformatory, control and management 3–106, 24–411
Regular meeting 3–104
Rules and regulations, power to adopt 3–104
Secretary 3–104
Social study 3–123
Special meeting 3–104
Superintendents of institutions under control of board 3–107
System of accounts 3–109
Temporary provision for care of children 3–116, 3–117
Term of office 3–103
To supervise District Training School 32–602
Transfer of powers and duties to board 3–102
Tuberculosis Hospital, control and management 3–106
Vacancies filled for unexpired term 3–103
Vice-chairman 3–104
Visitation of child wards 3–114
Visitation of children under guardianship of board 3–117
Visitation of wards of board 3–124
Wards placed outside district, Virginia or Mayland 3–124
Voluntary aid, right to accept 3–119
Washington Asylum and Jail, control and management 3–106
Workhouse, control and management 3–106, 24–411

BOARD OF REVIEW
Board of Examiners in veterinary medicine, refusal to grant license 2–806

BOARD OF TAX APPEALS

Appeal of income tax deficiency assessments 47–1593
Appeal of income tax refund claims 47–1593
Appeals to, of personal assessments 47–2403
Assessments voided, appeal of reassessment 47–2405
Board of Assistant Assessors, appeal from 47–2405
Board of Equalization and Review, appeal from 47–2405
Business-privilege tax assessments, appeals 47–2403
Certiorari from Supreme Court to Court of Appeals in review of decisions 47–2404
Decisions final, when 47–2404
Decisions, review by Court of Appeals, procedure 47–2404
Determination of erroneous tax payments 47–2407
Equalization of assessments, appeal 47–2405
Establishment 47–2402
Estate tax assessments, appeal 47–2403
Examination of witnesses and records 47–2409
Fees on review 47–2404
General assessments, appeal 47–2405
Gross-earnings assessment, appeal 47–2403
Gross-receipts assessment, appeal 47–2403
Imposition of tax involuntarily paid, appeal 47–2406
Income tax assessment, appeal 47–2403
Inheritance tax assessments, appeal 47–2403
Insurance premium assessments, appeal 47–2403
Manner of serving notices 47–2411
Motor-vehicle fuel tax assessment, appeal 47–2403
New buildings erected or roofed prior to January 1, assessment, appeals 47–2405
New structure and improvement assessments, appeal 47–2405
Omitted property, appeal of assessments 47–2405
Personal-property tax assessments, appeal 47–2403
Qualifications for 47–2402
Real estate assessments, appeal 47–2405
Review of decisions by court 47–2404
Rules of procedure 47–2408
Salary 47–2402
Subdivisions, appeal of reassessment and redistribution 47–2405
Taxation questions, reference by Commissioners of the District 47–2412
Valuations for assessment, appeal 47–2405

BOARD OF ZONING ADJUSTMENT

See ZONING REGULATIONS

BOARDING HOUSES

See HOTELS AND LODGINGHOUSES

BOARDS AND COMMISSIONS

See ACCOUNTANTS; ANATOMICAL BOARD; ARCHITECTS; BARBERS; BASIC SCIENCES; BOARD OF PUBLIC WELFARE; BOXING EXHIBITIONS; COMMISSIONERS OF DISTRICT OF COLUMBIA; COMMISSION OF FINE ARTS; COSMETOLOGISTS; DENTISTRY; HEALING ARTS PRACTICE ACT; INSANITARY BUILDINGS; NATIONAL CAPITAL PARK AND PLANNING COMMISSION; NURSES; OPTOMETRY; PARKS AND PLAYGROUNDS; PHARMACY; PLUMBING; PODIATRY; POLICE AND FIREMEN'S RELIEF FUND; POLICE DEPARTMENT; RECREATION BOARD; STEAM AND OTHER OPERATING ENGINEERS; VETERINARIANS

BOARDS OF TAXATION

See TAXATION, BOARDS OF

BOARDS OF TRADE

Business to be carried on 29–308
By-laws 29–306
Dissolution 29–701—29–729
Fines, imposition and collection of 29–307
General powers 29–301
General provisions 29–101—29–105
Income tax, when exempted 47–1554
Incorporation 29–301
Officers 29–303—29–305
  Election 29–304
  Failure to elect, effect 29–304
  Tenure 29–305
Power to hold property 29–302

BOATHOUSES

Potomac Park 8–157

BOATS

Purchase by Commissioners, exchange of similar equipment 1–250

BODILY HARM

See ASSAULT
Threatening, penalty 22–507

BOILER INSPECTION

Abatement of unauthorized use of boiler 1–713
Act to regulate steam engineering not repealed 1–716
Annual inspection 1–707
Application of law 1–705, 1–706
Boiler inspector 1–703, 1–704, 2–1502
  Appointment by Commissioners 1–703
  Bond, amount 1–704
  Member of Board of Examiners of Steam and Other Operating Engineers 2–1502
  Oath of office 1–704
Boilers, testing 2–1502
Cancelation of insurance, notice given to inspector 1–707
Certificate of inspection 1–707, 1–708, 1–710, 1–712
  Cessation of insurance, certificate invalidated 1–710
  Insured boilers 1–707
    Fee 1–710
  Issuance 1–707
  Record kept 1–712
  Revocation and suspension 1–708
Constitutionality of act, provision separable 1–717
Criminal offenses 1–714
  Information filed by corporation counsel 1–714
  Penalty for violating regulations, effective date 1–718
  Police Court, jurisdiction 1–714
Effective date of act 1–718
Exemptions 1–705, 1–709
  Commissioner's power to grant 1–705
Feed pumps not in proper working order, operation of boiler prohibited 1–706
Fees 1–710, 1–715, 1–718
  Commissioners empowered to fix 1–715
  Effective date of fee schedule 1–718
  Fixed by Commissioners 1–710

BOILER INSPECTION—Continued

Gauges not in proper working order, operation of boiler prohibited 1–706
Insurance companies, report of inspection 1–707
Insured boilers 1–710
Name of act 1–701
Nuisances, unauthorized use of boiler 1–713
Officials and employees of service, appointment 1–703
Operating boiler at pressure greater than permitted by certificate, prohibited 1–706
Operating pressure in excess of 15 pounds per square inch 1–705
Operation of boiler prohibited, ground 1–705, 1–706
"Person," definition to include "individuals, firms, and corporations" 1–702
Records 1–712
Regulations, Commissioners empowered to adopt 1–715
  Amendments 1–718
  Promulgation, effective date 1–718
Repeal of conflicting laws, saving clause 1–716
Right of entry of inspector and assistants 1–711
Safety devices not in proper order, operation of boiler prohibited 1–706
Service created, personnel 1–703
Testing of conditions 1–707
Unauthorized use of boiler prohibited 1–713
Underfired pressure boiler 1–705, 1–706
Valves not in proper working order, operation of boiler prohibited 1–706

BOILER INSURANCE

Application to act relating to rates 35–1402

BONA FIDE PURCHASER

Stock certificate 28–2907

BONDING COMPANIES

Excise tax 47–1702
Income tax, when exempted 47–1554

BONDS

Boxing promoter 2–1217

BONDS AND OTHER SECURITIES

See NEGOTIABLE INSTRUMENTS
Federal laws applicable to District, reference 28–2803 note
Issuance by District for loans and advances made by Government 9–213
Issuance by public utilities 43–801—43–808

BONDS AND UNDERTAKINGS

See CRIMINAL PROCEDURE
Additional bond of executors, administrators selling realty 20–104
Assessor's bond 47–602
Assignment 28–2502
Attachment and garnishment 16–301
Auditor 47–120
Board of Dental Examiners, bond of secretary-treasurer 2–302
Board of Examiners in veterinary medicine, right to require of officers 2–802
Board of Optometry, secretary-treasurer 2–506
Board of Pharmacy, treasurer 2–607

BONDS AND UNDERTAKINGS—Continued

Board of Podiatry Examiners, treasurer 2–702
Boiler inspector 1–704
Bond
  Definition 28–2401
  Fiduciary's, in District Court 28–2403
Bonds in penal sum, with avoidance condition 28–2405
Bonds to United States 28–2406
Business-chance brokers and salesmen 45–1405
Cashier of collector of taxes 47–304
Chief clerk of auditor's office 47–122
Collector of taxes 47–302
Collectors 20–402
Committee for drug addict or drunkard 21–401
Conveyances in fraud of creditors 12–401
Coroner 11–1202
Dead human body, medical schools giving bond 2–204
Definitions
  Bond 28–2401
  Undertaking 28–2402
Deputy collector of taxes 47–303
Deputy disbursing officer 47–113
Disbursing officer of the District 47–112
Exceptions 11–1507
  District of Columbia and its officials 11–1507
  United States and its officials 11–1507
Executors and administrators 12–201, 20–117
Fiduciary's bond
  Payment to self in another capacity, effect 28–2407
Fiduciary's bond, in District Court 28–2403
  Form 28–2403
  Undertaking in lieu of bond 28–2403
Fiduciary's undertaking, in District Court 28–2403
  Actions 28–2403
  Form 28–2403
  In lieu of fiduciary's bond 28–2403
  Judgments on 28–2403
  Proceedings 28–2403
  Remedies 28–2403
Fire, casualty, and marine insurance brokers 35–1336
Incorporators of domestic life insurance companies 35–502
Injunction
  Pendente lite, counsel fees allowed 28–2404
  Preliminary, counsel fees allowed 28–2404
Insurance Broker 35–1336
Interest rate 28–2702
Judgments on as liens 15–103
Lost instruments, pleading 13–204
Marine brokers' dealing with unlicensed insurers 35–1126
Municipal Court clerks 11–709
Notaries public 1–504
Nurses' Examining Board, treasurer 2–403
Officers and employees of District 1–213
  Premiums on bonds, payment 1–213
Passenger motor vehicles for hire 44–301
Plumbers, amount of bond, terms and conditions 2–1404
Plural breaches, pleading 13–205
Police Department officers, when required 4–109
Private detectives 4–169—4–171

BONDS AND UNDERTAKINGS—Continued
Private employment agencies 47–2102
Probate Court 28–2403
Professional bondsmen 23–601—23–612
Property clerk returning property to owner pending trial 4–163—4–165
Public contractor's bond 1–804—1–806
Action on bond 1–804
Amount 1–804
Contract involving sum not exceeding $1,000, waiver of bond 1–805, 1–806
Interveners 1–804
Terms and conditions 1–804
Purchasing officer of District 1–304
Deputies 1–305
Real estate brokers and salesmen 45–1405
Register of Wills 19–402
Release from attachment 16–311
Replevin 11–725, 16–1804
Municipal Court 11–725
Restraining order, counsel fees allowed 28–2404
Sequestration, Probate Court, defendant's bond 11–508
Solicitors, house to house 47–2337
Staying collection of jeopardy assessment under income tax law 47–1586e
Street improvement contracts, bond of contractor 7–603
Superintendent of National Training School for Boys 32–810
Superintendent of weights, measures and markets 10–102
Sureties 28–2403
Treasurer of Board of Cosmetology 2–1302
Treasurer of National Training School for Boys 32–809
Undertaking
Definition 28–2402
Fiduciary's, in District Court 28–2403
Unemployment compensation, undertaking to secure payment of lien for unpaid contributions 46–304
United States District Court 28–2403
Water registrar 43–1506

BONFIRES
Kindling, penalty 22–1113

BOOK-MAKING
Criminal offense 22–1508

BOOKS
Property of District 1–106
Stealing or injuring, penalty 22–3106

BORAX
Sale by other than pharmacist 2–601

BOTTLES
Beverage bottles, registration 48–101
Milk-beverage bottles, registration 48–301—48–307
Milk bottles, registration 48–201—48–211
Use or sale of registered bottles without owner's permission 48–102

BOTTLING PLANTS
License 47–2327
Registration of beverage bottles 48–101
Unauthorized use or sale of registered bottles 48–102

BOUNDARIES
Certificates of surveyor 1–619
City of Washington 1–107
Destroying boundary trees, stones, penalty 22–3109
District of Columbia 1–101
Highways, markers 7–105
Marking by surveyor 1–619
Metropolitan Police district 4–102
Party-walls 1–625, 1–628

BOWLING ALLEYS
Hours when operation is prohibited 47–2321
License 47–2321

BOXES
Apple box, standard dimension 10–115
Pears, standard box, dimensions 10–115
Small fruits and vegetables, standard container 10–115
Use of other than standard containers prohibited 10–116

BOXING EXHIBITIONS
See PRIZE FIGHTS
Amateur boxing 2–1212
Audit of accounts of District Boxing Commission 2–1220
Bond of promoter 2–1217
Boxing commission,
Abolished 2–1210
Transfer of property and books 2–1210
Colleges and schools 2–1212, 2–1213
Definition of terms used 2–1225
District Boxing Commission 2–1210—2–1223
Employees of District Boxing Commission 2–1211
Fees for licenses and permits 2–1216, 2–1217
Funds 2–1219
Gate tax 2–1218
Jurisdiction of offenses 2–1224
Licenses 2–1214—2–1217, 2–1223
Notice of holding 2–1218
Offenses 2–1223, 2–1224
Permit 2–1213, 2–1215, 2–1216, 2–1223
Powers of District Boxing Commission 2–1212, 2–1221
Prize fights 22–1105, 22–1106
Penalty 22–1105
"Pugilistic encounter" defined 22–1106
Report by District Boxing Commission 2–1210
Rules of boxing commission 2–1210
Secretary of District Boxing Commission 2–1211
Tickets 2–1218
Trust funds 2–1219

BRANDS
Forging or imitating, penalty 22–1402
Horse meat or horse-meat products 33–501—33–503

BRANDY
See ALCOHOLIC BEVERAGES
Definition of "spirits" includes 25–103

BREAD
Bun and roll, exception from weighing and sale regulation 10–113
Crackers, exception from weighing regulation 10–113
Label attached to loaf, content 10–113
Pretzels, exception from weighing regulation 10–113
Scones, exception from weight regulations 10–113
Stale bread, sale 10–113
Standard loaf 10–113

BRIBERY
Conviction of, disqualification from holding office 1–316
Definition 22–701
Penalty 22–701
To procure District office 22–702

BRIDGES
Anacostia Bridge 7–505
Cost of maintenance and repairs 7–505
Appropriations for construction and repair 7–502
Use for constructing viaducts over railways and canals 7–502
Benning Bridge 7–514
Lien of share of cost on property of street railway 7–514
Calvert Street Bridge 7–524
Paving between tracks by street railway 7–524
System of street car propulsion, installation by street car company 7–524
Cedar Street Underpass 7–519
Use by street railway company, payment of share of cost 7–519
Chestnut Street Underpass 7–523
Division of cost between District and Baltimore and Ohio Railroad 7–523
Commissioners of District, control over 7–102
Connecticut Avenue Bridge over Klingle Valley 7–513
Paving between tracks, payment of cost 7–513
System of car propulsion, installation by street railway 7–513
Eastern Avenue Viaduct 7–515
Use by street railway, conditions 7–515
Fern Street Viaduct 7–515
Use by street railway, conditions 7–515
Francis Scott Key Bridge 7–511
Commissioners given control of 7–511
Electrical propulsion to be used by railroads 7–511
Paving between tracks, payment of cost 7–511
Power, telegraph and telephone wires or cables 7–511
Used for highway traffic 7–511
Washington and Old Dominion Railway, use of bridge 7–511
Highway Bridge 7–507
Abutment and roadway maintained and controlled by Commissioners 7–103
Control by Commissioners 7–507
Horses and vehicles, purchase for construction and repair 7–1237
Inspectors etc., employment 7–1235
John Philip Sousa Bridge over Anacostia River 7–506

BRIDGES—Continued
Long Bridge 7–508
Baltimore and Potomac Railroad Company, duty 7–508
Tugboats, passage under bridge without using draw, construction 7–509
Maintenance and employee costs to be included in budget estimates 47–207
Pavement between tracks by street railways 7–507
Street railways, right to use bridge 7–507
Tugboats passing under without use of draw, construction, approval by Secretary of War 7–509
Use for highway traffic 7–507
Michigan Avenue Viaduct 7–520
Division of cost between District and Baltimore and Ohio Railroad 7–520
Grade crossing closed 7–522
Use by street railways, payment of share of cost 7–521
Monroe Street Viaduct 7–510
Use by street railway, payment of share of cost 7–510
Names, power of commissioners 1–244
National Zoological Park, supervision of plans 8–134
Pennsylvania Avenue Bridge 7–504
Maintenance and repair, apportionment of cost 7–504
Railroads occupying, payment for lighting 7–709
Regulations for control and lighting 7–501
Retention of percentage of final payment due contractor 1–807
Interest, retent in excess of $100 1–807
Investment of funds 1–807
Rock Creek bridges, maintenance and repair, apportionment of cost 7–503
South Dakota Avenue Bridge 7–512
Street railways using, payment of share of cost 7–512
Street railways, excess cost of construction and maintenance, payment 7–604
Temporary employees, commissioners authorized to employ 7–1238
Van Buren Street Underpass 7–517
Use by street railway, payment of share of cost 7–517
Varnum Street Viaduct 7–515
Viaducts, construction over railroad and canal rights of way 7–502

BRIDLE PATHS
Rock Creek Park 8–148

BRIEFS
Municipal Court of Appeals for District of Columbia 11–772

BRITISH STATUTES
In force in Maryland on February 27, 1801, effect of Code 49–301

BROAD BRANCH ROAD
Closing in part authorized, consent of property-owners 7–123

BROKERS
See BUSINESS-CHANCE BROKER; INSURANCE AND INSURANCE COMPANIES; REAL ESTATE BROKERS AND AGENTS
Defined 35–1401
Negotiation negotiable instruments, liability 28–510
Note broker 47–1708

BROOKINGS INSTITUTION
Exemption from taxation 47–801a

BUCKET SHOPS
Bucketing, penalty 22–1510
Communications, displaying quotations 22–1511
Corporations 22–1510
Definitions 22–1509
Demand for statement on purchases, sales 22–1512

BUDGETS
See TAXATION AND FISCAL AFFAIRS
As nearly as possible to be within aggregate appropriations 47–503
Assessment of real estate, expenses 47–209
Board of Public Welfare 3–123
Compensation of injured District employees 1–311
Expenses for witnesses and evidence in claims against District 47–208
Expenses of District Court 47–204
Highway bridge maintenance and employees 47–207
Injured employees, compensation payment 1–311
Judiciary Square, buildings on, loans for construction, amortization 9–210
National Capital Park and Planning Commission 8–107
Not restricted to needs of District 47–503
Not to be published before submission to Congress 47–212
Order of arrangement 47–211
Recreation Board to prepare 8–211
Salaries for care and protection of courthouse 47–201
School estimates to accord with 5-year-building program 47–203
Sewer maintenance and employees 47–206
Smoke Prevention Law, expenses of enforcement 6–804
Submission to Bureau of the Budget 47–503
Superintendent of Washington Asylum and Jail, salary 47–201
Water department expenses 47–210
Zoning commission, salary and expenses 5–426

BUILDERS
Right to make plans and specifications, signing required 2–1017

BUILDING ASSOCIATIONS
See BANKS AND OTHER FINANCIAL INSTITUTIONS
Advancements 26–406
  Foreclosure 26–413
  Premiums not usurious 26–406
  Repayment 26–411
  Security, mortgage and pledge of shares 26–407
Bonus payable by late subscribers 26–403
Certificate, recording 26–401
Direct-reduction loans to veterans 45–1702
Dividends on profits 26–408
Exchanging assets for H. O. L. C. bonds 26–416

BUILDING ASSOCIATIONS—Continued
Excise tax 47–1704
Foreign associations 26–405
Forfeitures by shareholders 26–412
Income tax, when exempted 47–1554
Incorporation 26–401
Insolvency 26–404
  Abatement of personal property tax 47–1705
Investment in veterans' loans 45–1701
Misappropriation as larceny 26–404
Object 26–404
Perjury 26–404
Power of Comptroller of Currency 26–404
Powers 26–401, 26–402
Purchase of H. O. L. C. bonds 26–415
Purchasing shares in Federal Home Loan Bank 26–415
Realty investments 26–414
Redemption of shares 26–409
Withdrawal by shareholder 26–410

BUILDING INSPECTOR
Assistant inspector, inspection of elevators and fire escapes 1–729
Barbed-wire fences, removal, assessment of cost against property 7–1105
Certificate of compliance, fire escape and safety regulations for buildings 27–2302
Certifying safety precautions for shooting galleries 47–2322
Duties vested in Director of Inspection 1–246
Fees for permits, certificates, and transcripts 5–429
Member of Board for Condemnation of Insanitary Buildings 5–601
  Principal assistant acting as member 5–602
Principal assistant inspector, discharge of duties of inspector 1–728
Unsafe structures and excavations 5–501—5–503
  Notice given owner or interested party 5–501
  Remedying of conditions by building inspector 5–503

BUILDING LINES
Alley dwellings 5–101
Appropriations for establishment 5–206
Buildings existing at time of establishment, exception 5–205
Commissioners of District, powers 5–201
Dedication of streets by landowners 7–117
Eminent domain proceedings 5–202, 5–203
  Assessment of any and all lands benefited 7–319
Houses, adjustment of line of front to line of street by surveyor 1–628
Permits for extension of buildings beyond line 5–204
Petition for establishment 5–201
Plats 5–201, 5–202
Street parking, control of Commissioners over 5–205
Streets less than 90 feet wide 5–201
Streets more than block in length 5–201

BUILDING MATERIALS
Testing by Bureau of Standards 1–813

BUILDING REGULATIONS

Amendment of existing regulations 5–415, 5–416
Building or altering in violation of, penalty 5–408
Certificates of occupancy 5–422
Height of building 5–418
Punishment for violating 1–224a
Sale and exchange of copies 49–110

BUILDINGS

See ALLEY DWELLINGS; BUILDING INSPECTOR; BUILDING LINES; CAPITOL GROUNDS; FIRE ESCAPES AND SAFETY PROVISIONS; INSANITARY BUILDINGS; PUBLIC BUILDINGS AND WORKS; SMOKE PREVENTION; UNSAFE STRUCTURES; ZONING REGULATIONS
Annoying odors prohibited 6–801
Assistant inspector 1–729
Bulk and size, zoning regulations 5–413
Capitol Buildings and Grounds, protection 9–105, 9–118—9–132
Combustible or nonfireproof building 5–401—5–409
  Addition, fireproof construction, when required 5–404
  Apartment and lodging-houses, number of stories, maximum height 5–401
  Buildings occupied for business purposes, maximum height 5–402
  Churches 5–403
  Dormitories, number of stories, maximum height 5–401
  Frame building for use as human habitation, maximum number of stories 5–406
  Hospitals, number of stories, maximum height 5–401
Definition, Architects Licensing Law 2–1018
Elevators, regulations for construction and operation, penalty 1–229
Enjoining construction 5–422
Exemption from taxation 47–801a
Fees for permits, certificates or transcripts issued by building inspector 5–429
  Cancelation of permits for nonuse, refund of fees 5–430
Fire escapes, and safety provisions 5–301—5–323
Fireproof construction required 5–403
  Additions to nonfireproof buildings 5–404
  Apartment houses more than three stories in height 5–403
  Buildings more than 60 feet in height 5–403
  Churches 5–403
  Hotel, three stories or more in height 5–403
  Seating capacity of more than 300 5–403
  Theaters 5–404
  Towers, spires, and domes 5–404
Fronting certain Government property, approval of plans by Commission of Fine Arts 5–410
Height
  Governed by width and character of street 5–405
    Basis of measurement 5–407
    Buildings fronting public place or reservation 5–405
    Business street or avenue, exception 5–405
    Chimneys 5–405
    Corner lot 5–405

BUILDINGS—Continued

Height—Continued
  Governed by width and character of street—Continued
    Exceptions as to certain locations and buildings 5–405
    Parapet 5–407
    Penthouses over elevator shaft 5–405
    Public buildings 5–405
    Residence Street 5–405
    Spires, towers, domes, and similar structures 5–405
    Sprinkler tanks 5–405
    Union Station Plaza 5–405
    Ventilator shaft 5–405
    Width as governing height 5–405
    Maximum fixed by law 5–401—5–409, 5–418
  Power of Zoning Commission to regulate 5–413
Horses and vehicles, purchase for construction and repair 7–1237
Insanitary buildings 5–601—5–615
Inspectors, draftsmen, etc., employment 7–1235
National Zoological Park, supervision of plans 8–134
Nuisances, erection or alteration in violation of law 5–408
Number of stories, zoning regulations 5–413
Permits for construction or alteration 5–422
Plats, areas requiring submission of plans to Commission of Fine Arts 5–411
  Preparation by Commissioners and National Capital Park and Planning Commission 5–411
Playgrounds, temporary structures, licensing 8–129
Principal assistant inspector 1–728
Regulations, adoption and authority of 1–228
Reservation of right to alter, amend, or repeal law 5–409
Sewer connections 6–401, 6–404
Smoke prevention 6–801—6–804
Temporary employees, Commissioners authorized to employ for construction, etc. 7–1236
Unsafe structures 5–501—5–505
Violation of zoning laws and regulations prohibited 5–422
Water-main connections, drainage into sewers 6–401
Zoning District 5–413
Zoning regulations 5–412—5–428
  Existing regulations, continued in effect 5–415

BULK SALES

Application 28–1701
Compliance, effect 28–1702
Creditors, notice of intended purchase 28–1702
Creditors, statement regarding 28–1701
Definition 28–1703
Evidence, rules of not affected 28–1705
Exemptions 28–1704
Payment of sales tax, notice to assessor 47–2619
Presumptions not affected 28–1705
Vendee
  Failure to demand statement, effect 28–1702
  Failure to notify creditors, effect 28–1702

BULK SALES—Continued
When presumed fraudulent 28–1702

BULL FIGHTS
See CRUELTY TO ANIMALS
Keeping or using place 22–809
Penalty 22–810

BURDEN OF PROOF
Cancelation of negotiable instrument through mistake 28–805
Holding in due course, title of transferor defective 28–409
Vagrancy cases 22–3303
Wages paid to prevent levy of process 16–312

BUREAU OF INTERNAL REVENUE
Divulging information obtained from, penalty 47–2504
Furnishing income tax data to District 47–1564c
Supplying data for inheritance and estate taxation 47–1625

BUREAU OF STANDARDS
Testing of building material 1–813

BUREAU OF VITAL STATISTICS
See VITAL STATISTICS
Adoption, notice to be given 16–204

BURGLARY
Definition and penalty 22–1801

BURLESQUE HOUSES
See THEATERS AND SHOWS
License fee 47–2320
Prerequisites to license 47–2302
Revocation of license for violation of decency regulations 47–2303

BUS LINES
Authority of Commissioners of District 47–2331
Authority of Public Utilities Commission 47–2331
License 47–2331
Application for extension of service 47–2331
In general 47–2331

BUSHEL
Dimension fruit and vegetable boxes 10–115
Hampers, dimensions 10–115

BUSINESS
Married woman's right to engage in 30–208

BUSINESS-CHANCE BROKER
Definition 45–1402
Licensing act 45–1401—45–1418

BUSINESS CORPORATIONS
See CORPORATIONS FOR PROFIT

BUSINESS HOUSES
Carrying concealed pistols, exception 22–3204
Combustible or nonfireproof building, maximum height 5–402
Right to dispose of own refuse 6–507

BUSINESS LEAGUES
Income tax, exemption 47–1554

BUSINESS LICENSE FEES
See LICENSES

BUSINESS STREETS
Designation by Commissioners 8–108
Power of Commissioners to designate 7–1205

BUSSES
See MOTOR VEHICLES

BUTTER
See FOOD AND DRUGS
Sale by weight required 10–120
Swill milk, made from, not to be sold 33–313

BUZZARDS POINT
Railroad facilities 7–1216

BY-LAWS
Transfer of shares restricted by 28–2915

CADAVERS
See DEAD HUMAN BODIES

CALENDAR
See COMPUTATION OF TIME

CALVERT STREET BRIDGE
Paving between tracks by street-car company 7–524

CANAL STREET
Building fronting, approval of plan by Fine Arts Commission 7–1219

CANALS
Viaducts, construction over, lien of cost 7–502

CANCELLATION
Negotiable instruments, mistake, effect, burden of proof 28–805

CANDY
Adulterated candy, manufacture or sale prohibited, penalty 33–201, 33–202
Adulteration, expenditure for detecting 33–111
Barytes, use in candy prohibited 33–201
Poisonous colors or flavors, use prohibited 33–201
Prosecution of violations of anti-adulteration act 33–203
Talc, use in candy prohibited 33–201
Terra alba, use in candy prohibited 33–201

CANNABIS
See NARCOTIC DRUGS
Definition 33–401
Records kept of receipts or production 33–411

CANTHARIDES
Sale, restrictions 2–612

CAPITAL PARKS AND PLANNING COMMISSION
See NATIONAL CAPITAL PARK AND PLANNING COMMISSION

CAPITOL GROUNDS
Abusive language, use prohibited 9–123
Advertisements prohibited 9–121
Area 9–118
Arrest of offenders 9–126
Authority to suspend regulation 9–128, 9–129

CAPITOL GROUNDS—Continued
Begging and sale of goods prohibited 9–121
Buildings fronting, plans, approval by Commission of Fine Arts 5–410
"Capitol Buildings" defined 9–132
Concerts 9–130
Criminal offenses, punishment 9–125
Display of banners and flags, restrictions 9–124
Employees to assist authorities 9–127
Explosives or combustible material, setting off prohibited 9–123
Firearms and fireworks forbidden 9–123
Injuries to grounds, statues, walls, or other structures prohibited 9–122
Obstruction or improper use of roads 9–120
Offenses, prosecution for 9–125
Offering or exposing articles for sale prohibited 9–121
Parades and assemblages, prohibition 9–124
Plants and shrubbery, injury prohibited 9–122
Policing of 9–126
Public use 9–119
Regulation for protection 9–105
Roads, obstruction of 9–120
Sergeant at Arms, powers of arrest 9–105
Soap box orators prohibited 9–123
Traffic regulations 9–131
Trespassing prohibited 9–119
Use, suspension of prohibition against use 9–128, 9–129

CAPITOL POLICE
Capitol grounds, authority of commissioners to suspend regulation 9–129

CAPTAINS
Fire department 4–404
Salary 4–405
Police department 4–106, 4–108, 4–109
Bond 4–109
Command police precincts 4–106
Duties 4–106
Number 4–106
Salary 4–108

CARBOLIC ACID
Poison, sale, restrictions 2–612

CARNEGIE INSTITUTION OF WASHINGTON
Exemption from taxation 47–801a

CARNIVALS
Carnival building license 47–2320
Outdoor, license 47–2326

CAR-RENTING COMPANIES
Taxation of rolling stock 47–1215

CARRIERS
See Common Carriers

CARRIERS OF DISEASES
See Diseases

CASHIER
Negotiable instrument made payable to 28–313

CASUAL LABOR
Unemployment Compensation Act excluding 46–301

CASUALTY INSURANCE
See Insurance and Insurance Companies

CAUSTIC SUBSTANCES
Poisonous combinations and compounds, sale, restrictions 2–612

CAVEAT
See Wills
Wills not to be probated while pending 19–307

CEDAR STREET UNDERPASS
Use by street railway company, payment of share of cost 7–519

CEMENT
Inspector, restriction on services rendered others 1–307

CEMETERIES AND CREMATORIES
Cemeteries
Dedication, title vesting in perpetuity 27–112
Duty to inclose and underdrain 27–105
Exemption from taxation 47–801a
Lots to be marked 27–115
Mode of burial 27–122
Plats to be recorded 27–115
Register 27–116
Reopening graves, restrictions 27–123
Restrictions on location 27–114
Size and depth of graves 27–115
Superintendent to register at health department 27–117
Cemetery associations 27–101
Acquiring realty 27–102
By-laws 27–110
Certain cemetery associations exempt from income tax 47–1554
Exemption from sale on execution 27–111
Grants and bequests for care of lots 27–113
Inclosing, ornamenting, equipping 27–104
Incorporations 27–101
Lot owners to be members, voting 27–109
Officers and directors 27–107
Election 27–108
Platting and surveying burial grounds 27–103
Proceeds of sale of lots 27–106
Containers for ashes of indigent persons, duties of health officers 6–115
Crematories 27–124
Locations 27–124
Permit to cremate required 27–125
Preexisting 27–124
Public crematory 27–130
Fees 27–130
Location 27–130
Rules and regulations 27–130
Grave robbery, penalty 2–206, 22–3103
Penalty for violations 27–126
Promotion of anatomical science 27–131
Property of, destroying, penalty 22–3114
Prosecutions 27–127
Reservation number 13, use as burial ground, indigent dead 8–141

CEMETERIES AND CREMATORIES—Con.
Streets and public ways, rights of way through cemeteries 1–615

CENSURE
See ATTORNEYS

CENTRAL HEATING PLANT
District buildings on certain squares and reservations, heating, charges, connections with main 9–104
Judiciary Square, heat furnished 9–103

CERTIFICATES
See BOILER INSPECTION
Sight-seeing vehicle 47–2331

CERTIFIED CHECKS
Certification equivalent to acceptance 28–1005

CERTIFIED COPIES
Board of Dental Examiners, records 2–303
Board of Optometry, records 2–508
Board of Podiatry Examiners, record 2–702
False certification of recordable instruments, penalty 22–1308
Notary of official act 1–512
Notary public of records 1–512, 1–513
Optometry, license to practice 2–513
Surveyor's records, prima facie evidence 1–611
Veterans' discharge certificates 45–711

CERTIFIED PUBLIC ACCOUNTANTS
See ACCOUNTANTS

CHALLENGES
See CRIMINAL PROCEDURE
Cause for, not ground for setting aside verdict, exceptions 23–108
Jurors, array or poll, United States District Court 11–319

CHAMBER OF COMMERCE
Income tax, when exempted 47–1554

CHAMPAGNE
See ALCOHOLIC BEVERAGES
Definition of "wine" includes 25–103

CHANGE OF NAME
See NAMES

CHARCOAL
Delivery ticket 10–111
Surrender of original to superintendent or inspector upon demand 10–111
Name of seller displayed on vehicle making delivery 10–111
Sale by weight required 10–111
Sale in quantities of less than ton, regulation 10–111
Verification of weight of load 10–111
Weighing required while on way for delivery 10–111
Wetting before weighing prohibited 10–111

CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS
See RELIGIOUS SOCIETIES AND INSTITUTIONS
Certificate of incorporation 29–601, 29–602
Recording with recorder of deeds 29–601

CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS—Continued
Change of name 29–604
Dissolution 29–701—29–729
Extension of corporate existence 29–604
General powers 29–602
General provisions 29–101—29–105
Incorporation 29–602
Name, limitation 29–606
Property 29–605
Leasing 29–605
Mortgaging 29–605
Selling 29–605
Purposes of formation 29–601
Reincorporation 29–604
Taxation of property 29–602
Trustees 29–603
Election 29–603
Quorum 29–603
To manage and control corporation 29–603
Unemployment Compensation Act excluding employees 46–301

CHARITABLE INSTITUTIONS
Appointment and discharge of personnel 3–107
Appropriations for real estate by Congress 32–1003
To be lien on property 32–1003
Board of Public Welfare
Supervisory powers 3–106, 3–107
Buildings exempted from taxation 47–801a
Child-Placing Agencies, representative of institution as member of committee to formulate rules 32–783
Home for the Aged and Infirm, control and management by Board of Public Welfare 3–106
Income tax exemption 47–1554
Investigation by Board of Public Welfare 3–112
Powers and duties 3–112
Investigations by Commissioners of the District when appropriations are received 32–1001
Jury service, exemption of keepers 11–1420
Liability of District for care and treatment of inmates 3–110, 3–111
Members of Congress as trustees, terms 32–1004
Municipal lodging-house, control and management by Board of Public Welfare 3–106
New institutions, submission of plans to Board of Public Welfare 3–112
Personal property exempted from taxation 47–1208
Potomac water supplied 43–1533
Receiving Congressional appropriations 32–1007
Trustees not to traffic with for gain 32–1007
Visitorial power of Commissioners of the District 32–1002
Receiving District money 32–1001
Investigation by Commissioners of the District 32–1001
Visitation by Commissioners of the District 32–1001
Registration records 3–109
Regulations of admission 3–108
Rules and regulations concerning admission and administration 3–108
Superintendent 3–107
System of accounts 3–109

CHARITABLE INSTITUTIONS—Continued
Under sectarian control 32–1008
District charitable funds not to be given 32–1008
Policy of government not to appropriate for 32–1008
Visitation by Commissioners of the District when appropriations are received 32–1001
Visitorial powers of Commissioners of the District 32–1002
Voluntary medical service, acceptance by Commissioners of the District 32–1006

CHARITY
Corporations for 29–601
Devises or gifts to charitable uses, rule against perpetuities inapplicable 45–102

CHARTS
Preservation by surveyor 1–606

CHATTEL INTERESTS
Estates at will 45–804
Estates by sufferance 45–804

CHATTEL MORTGAGES
Instruments secured by, negotiable 28–106
Recordation 42–101, 42–102

CHATTELS
See CHATTEL INTERESTS; CHATTEL MORTGAGES
Execution on pledged chattels 15–212
Levy on in attachment and garnishment 16–310
Real
Alienation 45–103
Estate pur autre vie after death of grantee or devisee 45–805
Estates for years 45–804
Perpetuities, rule against applicable 45–103

CHECKS
See NEGOTIABLE INSTRUMENTS; PROTEST
Altered, liability of bank 28–1008
Application of law concerning bills of exchange 28–1002
Bank deposits of fiduciaries 28–2307—28–2310
Bank not liable until acceptance or certification 28–1007
Certification equivalent to acceptance 28–1005
Definition 28–1002
Drawers and indorsers discharged by certification 28–1006
Fiduciary drawing 28–2305, 28–2306
Check payable to third person, rights and liabilities 28–2305
Creditor of fiduciary taking check, liabilities 28–2305
Made payable to and cashed by fiduciaries, liabilities 28–2306
Forged, liability of bank 28–1008
Funds not assigned 28–1007
Liability of bank
Altered or forged check 28–1008
Making, drawing, uttering with insufficient funds 22–1410
Nonpayment in error, liability of bank 28–1009
Presentation for payment by notary public 1–509
Presentation within reasonable time required 28–1003

CHECKS—Continued
Presentment for payment after one year 28–1004
Protest by notary public 1–509
Raised, liability of bank 28–1008
Stop-payment orders 28–1011
Requirements 28–1011
Validity 28–1011
Unemployment Compensation Act, administrative expenses paid by 46–314
Unemployment compensation benefits paid by 46–308

CHEESE
Sale by weight required 10–120

CHEMISTRY
Dentist, examination for license 2–308
Healing arts, examination of applicants for license 2–108
Podiatry license examination 2–705

CHERRIES
Standard container 10–115

CHESAPEAKE AND OHIO CANAL
Exemption from taxation 47–807

CHESTNUT STREET UNDERPASS
Closing of grade crossing 7–523
Division of cost between railway company and District 7–523
Maintenance of right of way after construction by railroad company 7–523

CHICKENS
See POULTRY

CHIEF ENGINEER
Delegation of powers of Director of Inspection to chief engineer of Department of Inspection 1–246
Fire department 4–402, 4–404
Salary 4–405

CHIEF ENGINEER OF ARMY
Potomac River bank, partial control 9–101

CHIEF JUDGE
Municipal Court for District of Columbia 11–752—11–754
Municipal Court of Appeals for District of Columbia 11–754
United States District Court 11–301

CHIEF OF ENGINEERS
See WATER DEPARTMENT
Control of water supply 43–1501—43–1538

CHIEF OF SECRET SERVICE DIVISION
Supervising officer of White House Police 4–301

CHILD CARE
Adoption 3–117
Board of Public Welfare 3–117
Study of physical and mental conditions 3–118

CHILD LABOR
See LABOR

CHILD LABOR—Continued
Board of Education
Appointment of inspectors 36–225
Dangerous places of employment, issuance of orders on 36–203
Supervision of its child labor agents 36–227
Dangerous employment prohibited 36–203
Employer
Age of employee, proof of on demand 36–214
Notice of commencement and termination of employment 36–213
Securing work or vacation permit 36–208
Enforcing agency 36–216
Inspection of places employing minors 36–216
Inspectors, appointment of 36–225
Messengers, minors 18 to 21 employed as 36–206
Minors 14 to 18 36–208
Minors over 10 36–201
Minors under 14 36–201
Minors under 16 36–204, 36–207
Employment as performer prohibited 36–207
Exhibition 36–207
Prohibited occupations 36–204
Minors under 18 36–202
List of minors employed, keeping 36–202
Prohibited occupations 36–205
Newspapers
Badges, minors employed to have 36–219
Hours of employment 36–218
Loitering around salesrooms, minors during school hours 36–224
Selling 36–201
Selling in streets 36–217
Stuffing 36–217
Penalties for violating regulation 36–215
Prohibited occupations 36–203—36–205
Minors under 16 36–204
Minors under 18 36–205
Selling merchandise to minors for public resale, penalty 36–223
Separability provision 36–226
Street trades 36–217—36–224
Badges
Contents 36–221
Issuance 36–220
Penalties 36–222
Vacation permits, issuance 36–212
Work or vacation permits 36–208—36–227
Application, contents 36–210
Application for 36–210
Board of Education to issue 36–207a
Contents 36–209
Evidence of age 36–211
Issuance by department of school attendance and work permits 36–209

CHILD-PLACING AGENCIES
Adoption of child, right to arrange for 32–785
Assignment or transfer of parental rights 32–786
Care, trust, and control of child 32–785
Committee to formulate rules and regulations 32–783
Compensation, person adopting child 32–785
Consent to adoption of child 32–786
Defined 32–782
Investigations by Board of Public Welfare 32–789

CHILD-PLACING AGENCIES—Continued
License 32–782
Application 32–784
Conduct of agency without a license 32–788
Provisional license 32–784
Reissuance, revocation or suspension 32–787
Renewal 32–784
Notice of suspension or revocation of license 32–787
Parental rights 32–786
Records 32–785
Assignment or transfer of parental rights 32–786
Rules and regulations 32–783
Records 32–785
Visitation of family home 32–785
Witnesses, assignment or transfer of parental rights 32–786

CHILDREN
See ADOPTION; APPRENTICES; ASSOCIATION FOR WORKS OF MERCY; BLINDNESS IN INFANTS; BOARD OF PUBLIC WELFARE; CHILD LABOR; CHILD-PLACING AGENCIES, CRUELTY TO CHILDREN; DEPENDENT AND NEGLECTED CHILDREN; FAMILY HOMES; GUARDIAN AND WARD; JUVENILE COURT; JUVENILE OFFENDERS; MINORS; PARENT AND CHILD
Abandoned infants needing immediate care, liability of District 3–111
Absent parties, service of process by publication 13–111
Abused, commitment by Juvenile Court 32–209
Annulment, child as plaintiff in 31–104
Antenuptial children 18–106
Birth returns 6–301—6–304
Blindness in infants, prevention 6–201—6–204
Board of Public Welfare, supervision by 3–106, 3–114—3–118; 3–120—3–123, 3–125
Antecedents of, investigation 3–118
Children committed by courts 3–114
Children under 17 3–120, 3–121
Contracts for care of dependent children 3–115
Dependent and neglected children 3–116
Discharge of child from guardianship 3–125
Environment of, investigation 3–118
Feeble-minded children 3–114
Industrial home schools 3–106
Inmates of National Training School for Boys 3–116
Inmates of National Training School for Girls 3–122
Juvenile offenders 3–116
Placement of children in homes or institutions 3–114, 3–123
Temporary provision for care of children 3–116, 3–117
Visitation of children under guardianship of board 3–117
Boys under 17, commitment to National Training School for Boys 32–815
Child labor 36–201—36–227
Committing to private institution 11–915
Compulsory school attendance cases, Juvenile Court 31–213
Consent of child in adoption 16–202
Contributing to delinquency 11–907

CHILDREN—Continued
Cruelty to
Penalty 22–901
Police Court, jurisdiction 11–603
Custodians of children 11–918
Custody
By Juvenile Court 11–912
In Juvenile Court actions 11–907
Pending divorce 16–410
Examination in Juvenile Court
By physician 11–926
By psychiatrist 11–926
By psychologist 11–926
Failure to provide for, penalty 22–902
Feeble-minded 32–607, 32–608, 32–620
Admission to District Training School 32–607, 32–608
Convicted of crime, admission to District Training School 32–621
Juvenile Court jurisdiction 32–620
Felonies by children of 16 or over 11–914
Female under 16, prostitution 22–2704
Girls under 18, custody of Association for Works of Mercy 32–101
Guardianship, in Juvenile Court 11–907
House of ill fame, found in, commitment 32–209
Illegitimate 18–107
Distributee in intestate's estate 18–716
Jurisdiction of Juvenile Court 11–907
Lost or abandoned, police matron, duties 4–117
Marriage, when consent of parent or guardian required 30–111
National Training School, commitment of girls 32–908
New promise to pay on reaching majority, effect of statute of frauds 12–306
Nonresident party, service of process by publication 13–111
Not to suffer civil disabilities 11–915
Of Army, Navy, Marine Corps officers and men stationed outside District, admission to District schools without tuition 31–305
Paternity, jurisdiction of Juvenile Court 11–907
Placement in schools 31–1111
Places of detention 11–927
Placing in detention home 11–912
Posthumous children
Birth defeats future estate dependent on parents' death without heirs, issue, or children 45–204
Distribution of intestate's estate 18–714
Take as though living at ancestor's death where future estates are limited to heirs, issue, or children 45–204
Prostitution 22–2704
Ratification on reaching majority, effect of statute of frauds 12–306
Religious faith considered in placements 11–918
Seduction by teacher, penalty 22–3002
Separate hearings in Juvenile Court 11–915
Service of process 13–105
Taking into custody, Juvenile Court orders 11–912
Washington Humane Society 32–209
Work or vacation permits 36–208—36–227

CHILDREN'S PLAYGROUND
See Glover Parkway and Children's Playground

CHILDREN'S TUBERCULOSIS SANATORIUM
See Hospitals and Asylums

CHIMNEYS
Height, construction regulation 5–405

CHIPMUNKS
See Game and Fish Laws

CHIROPODY
See Podiatry

CHIROPRACTORS
See Healing Arts Practice Act
Board of Examiners, examination of applicants for license 2–106, 2–114—2–117
Reciprocity as basis for issuing license to practice 2–121
Relicensing of licensees under prior law 2–120

CHLORAL HYDRATE
Sale, prescription 2–610, 2–611

CHLOROFORM
Sale, restrictions 2–612

CHOSES IN ACTION
Assignment 28–2501—28–2504
Bonds and undertakings 28–2502
Judgments and decrees for money 28–2501
Assignee may sue in own name 28–2501
Filing in clerk's office 28–2501
Nonnegotiable contracts for payment of money 28–2503
Obligations 28–2502
Conveyances in fraud of creditors 12–401
General assignments 28–2504
Nonassignable 28–2503
Claims against United States 28–2503
Salaries of public officers 28–2503

CHRISTIAN SCIENCE
Exemption of practitioners from Healing Arts Practice Act 2–134

CHROMIUM
Poisonous compounds, sale, restrictions 2–612

CHURCHES
See Clergy
Buildings and grounds exempted from taxation 47–801a
Disturbing religious congregations, penalty 22–1114
Exemption from taxation 47–801a
Fireproof construction, when required 5–403
Income tax exemption 47–1554
Potomac water supplied 43–1533
Residence streets, height 5–405
Saint Mark's Protestant Episcopal Church, property exempted from taxation 47–813

CIGARETTE TAX
See Taxation and Fiscal Affairs

CINDERS
Accumulation prohibited 6–801

CIRCUSES
Transported by railroad, license fee 47–2325
Transported by truck or wagon, license fee 47–2325

CISTERNS
Uncovered and dangerous, abatement as nuisance 5–504

CITIZENS' ASSOCIATIONS
Income tax, when exempted 47–1554

CITIZENSHIP
Civilian Commissioners of District 1–206

CIVIL BRANCH
Municipal Court for District of Columbia 11–755

CIVIL DEFENSE
Definitions 6–1201
Office of Civil Defense 6–1202—6–1206
Director 6–1202
Limitation of Liability 6–1204
Personnel 6–1202
Powers and duties 6–1203
Reports 6–1206

CIVIL DISABILITIES
Not to be imposed on children 11–915

CIVIL PROCEDURE
See Evidence; Venue; Witnesses
Abatement and revivor 12–101—12–116
Actions 16–101—16–2005
Appeals 11–771—11–772
Bills of exception 11–321
Executions 15–201, 15–218
Fees and costs 11–1501—11–1521
Judgments and decrees 15–101—15–111
Limitation of actions 12–201—12–208
Pleading 13–201—13–222
Process 13–101—13–116
To be in English language 13–202

CIVIL SERVICE
Application to District employees, school officers and teachers excepted 1–217
Board of Welfare employees 3–105
Fire Department, appointments and promotions 4–402
Police Department personnel 4–103
Exceptions 4–103
Salary increases by reason of allocations by positions etc. 1–310a

CIVILIAN COMMISSIONERS OF DISTRICT
Appointment by President 1–201
Qualifications 1–206
Term of Office 1–209

CIVILIAN DEFENSE
Established and powers and duties of members 6–1009
Liability for acts 6–1011

CLAIMS AGAINST DISTRICT
Actions on, service of process 1–901
Settlement by Commissioners 1–902, 1–904, 1–905
Appropriation for payment 1–904
Cases subject to 1–902
Effective date of act 1–905

CLAIMS AGAINST DISTRICT—Continued
Pending claims, right to settle 1–905
Report to Congress 1–904
Tax refunds, payment by Commissioners 1–903
Tort action, compromise and settlement 1–902

CLAIRVOYANTS
See Fortune Tellers

CLEANING AND DYEING
Motor fuel used for, refund of tax 47–1910

CLERGY
Impersonation 22–1304
Jury service, exemption 11–1420
Marriages, authority to celebrate 30–106
Rental value of dwelling exempted from income tax 47–1557a

CLERK
See Court of Appeals
Court of Appeals 11–204
Health officer 6–107, 6–108
Juvenile Court 11–922
Municipal Court 11–701, 11–708—11–714
Municipal Court for District of Columbia 11–754, 11–756
Charges against attorneys filed with 11–775
Fee for copying judgment 11–755
Municipal Court of Appeals for District of Columbia 11–771, 11–772
Police Court 11–620
Appointment 11–312
Deputy clerks 11–401
Appointment and compensation 11–312, 11–401
Powers and duties 11–401
Signing of documents, form 11–401
Fees, apportionment between District and United States 11–330
Fines collected, apportionment between District and United States 11–330
Notaries public, custody of records and papers on vacation of office 1–516
Optometry licenses, recording 2–513
Parental rights, recording and filing of relinquishment 32–786
Signature and seal of notary filed with 1–506

CLINICAL SERVICES
Rates for services to persons not indigent 32–322

COAL
See Coke
Delivery ticket 10–111
Original and duplicate required 10–111
Surrender of original to superintendent or inspector upon demand 10–111
Name of seller displayed on vehicle making delivery 10–111
Requiring weighing while on way for delivery 10–111
Sale by weight, long ton used 10–108
Sale by weight required 10–111
Sale in quantities of less than ton, regulation 10–111
Verification of weight of load 10–111
Wetting before weighing prohibited 10–111

COCA LEAVES
See NARCOTIC DRUGS
Includes cocaine or ecgonine 33–401
Record kept of leaves received or produced 33–411

COCAINE
See NARCOTIC DRUGS
Coca leaves derivatives 33–401
Record kept of receipts and sales 33–411
Sale, prescription 2–610, 2–611

COCK FIGHTING
See CRUELTY TO ANIMALS
Keeping or using place 22–809
Penalty 22–810

CODE OF THE DISTRICT OF COLUMBIA
Cited as "D. C. Code" 49–102
Compilation and distribution 49–101—49–111
- Additional quotas for Congress 49–105
- Consolidation and codification of general and permanent laws 49–101
- Copies as conclusive evidence of originals 49–103
- Curtailment of number of printed copies 49–108
- Dispensing with printed supplements 49–108
- Distribution by Superintendent of Documents 49–104
- Establishes prima facie the laws of the District 49–102
- Form and style of Code and ancillaries 49–107
  - Committee on Revision of the Laws to prescribe 49–107
  - Librarian of Congress to cooperate in preparing 49–107
- Functions of Committee on Revision of the Laws may be vested in another agency 49–109
- Laws excepted 49–101
- Manner of citing 49–102
- New editions 49–101
  - Distributed in same manner as supplements 49–101
  - Not oftener than once in 5 years 49–101
  - Supplements to, contents 49–101
- Preparation under supervision of Committee on Revision of the Laws, House of Representatives 49–101
- Printing, binding, and distribution under direction of Joint Committee on Printing 49–109
- Publication of Code and supplements as separate parts of Statutes at Large 49–104
- Quota for personal use of members of Congress, limitation 49–106
- Sale of surplus of compilations 49–111
- Slip and pamphlet copies need not be distributed 49–104
- Supplements for each session of Congress 49–101
- Supplements, manner of citing 49–102

Construction 49–201—49–207
- "Administrator" includes executor 49–205
- "Any officer" includes any person authorized by law, exception 49–204

CODE OF THE DISTRICT OF COLUMBIA—Continued
Construction—Continued
- "Insane person" includes every idiot, non compos and lunatic 49–207
- Masculine gender includes all genders, exceptions 49–203
- Oath, affirmation may be substituted 49–206
- "Persons" includes partnerships and corporations, exception 49–204
- Rule stated 49–201
- Words importing singular number include plural 49–202

Effect on British Statutes in force in Maryland in 1801 49–301
Effect on common law 49–301
Effect on general acts of Congress 49–301
Effect on principles of equity and admiralty 49–301
Establishes prima facie the laws of the District 49–102
Prior laws remaining in force 49–301—49–304
- Acts of Congress applicable to District and other federal jurisdictions 49–301
- Acts relating to organization and power of vestries and governing bodies of religious organizations 49–303
- Certain British statutes 49–301
- Common law, not inconsistent and unreplaced 49–301
- Equity and admiralty principles 49–301
- Laws and ordinances of the city of Washington, when 49–302
- Laws and ordinances of the District Levy Court, when 49–302

Repeal provisions of 1901 Code 49–304

CODEINE
See NARCOTIC DRUGS
Exempted medical preparations 33–410
Included in term "opium" 33–401
Sale by manufacturer or wholesaler, written orders 33–405

CODES
Health Code, preparation and publication authorized 4–177
Police Code, preparation and publication authorized 4–177, 4–178

COERCION
Procuring marriage by, as ground for annulment 16–403

COIN-IN-SLOT MACHINE
See SLOT MACHINES

COKE
See COAL
Delivery ticket 10–111
- Original and duplicate required 10–111
- Surrender of original to superintendent or inspector upon demand 10–111

Name of seller displayed on vehicle making delivery 10–111
Sale by weight required 10–111
Sale in quantities of less than ton, regulation 10–111
Verification of weight of load 10–111

COKE—Continued
Weighing required while on way for delivery 10–111
Wetting before weighing prohibited 10–111

COLFAX STREET
Closing in part authorized, consent of property-owner 7–123

COLLATERAL SECURITY
Sale authorized, negotiability of instrument secured 28–106

COLLECTOR OF TAXES
Account books 47–305
Inspection by officers authorized by Board of Commissioners 47–305
Bond 47–302
Cashier in collector's office 47–304
Duties 47–304
Collection of all taxes required 47–301
Daily deposit of collections in Treasury 47–301
Deposits to "miscellaneous trust-fund deposits" 47–311
Deputy Collector 47–303
Disposition of surplus proceeds of tax sales 47–1006
Duties in sale of chattels to collect personal taxes 47–1402
Extending time for payment of taxes on owner occupied family dwellings 47–902
Income tax, duties regarding 47–1551—47–1595
Income tax payable to 47–1586n
Inspecting motor fuel importer's records 47–1907
Purchasing real property at tax sale for District 47–1002
Receipts for income tax payments 47–1586n
Record of assets of District 47–308
Commissioners of the District, authorizing omission of uncollectible items 47–308
Omission of uncollectible taxes and assessments 47–308
Taxes and assessments omitted, taxpayers still liable 47–308
Refunding motor fuel tax 47–1910
Refunding payments for licenses refused 47–1017
Report of tax sales 47–1006
Sale of chattels distrained for personal taxes 47–1301, 47–1302
Sale of land levied upon for personal taxes 47–1301—47–1305
Service sewer assessments, collections to be credited to appropriations 43–1516
Settlement of accounts 47–309
Statement of total assessments and total taxes
Receipt in triplicate 47–601
Responsibility on bond for taxes included 47–601
Water-main assessments, collections to be credited to appropriations 43–1516

COLLECTORS
See EXECUTORS AND ADMINISTRATORS

COLLEGES AND UNIVERSITIES
See EDUCATION; FIRE ESCAPES AND SAFETY PROVISIONS
Boxing contests 2–1212, 2–1213
Exemption of realty from taxation 47–801a
Fire escapes and safety provisions 5–301—5–315

COLORED SCHOOLS
Chief examiner, designation 31–671

COLUMBIA ENGINE HOUSE
Engine house, use authorized 4–412

COLUMBIA HOSPITAL FOR WOMEN AND LYING-IN ASYLUM
See HOSPITALS AND ASYLUMS

COLUMBIA INSTITUTION FOR THE DEAF
See EDUCATION
Accounts, settling with General Accounting Office 31–1007
Admission of deaf mutes from District 31–1008
Alienation of property 31–1004
Constitution, alteration 31–1005
Control of disbursements 31–1007
Corporate powers, general 31–1001
Degrees, power to confer 31–1002
Establishment 31–1001
Expenses of students from District 31–1010
Government directors 31–1006, 31–1007
Appointment 31–1006
Tenure 31–1006, 31–1007
Indigent blind to be reported 31–1019
Itemized report of expenses 31–1018
Management 31–1005
Municipal Court judges to report deaf and dumb persons 31–1015
Not an institution of charity 31–1008
Number and compensation of employees to be included in annual budget 31–1014
Obligation of deed of transfer of property of Male Orphan Asylum Society 31–1003
Obligation of deed of transfer of property of Washington's Manual Labor School 31–1003
President and directors to report annually to Secretary of Interior 31–1017
Purchase of supplies 31–1023
Real property, limitation on holding 31–1001
Report of Convention of American Instructors of the Deaf 31–1024
Secretary of Interior to supervise 31–1022
Students from states and territories 31–1012
Number from one state or territory limited 31–1013
United States not to pay for support 31–1012
Title to real property 31–1021
Transfer of colored deaf-mute children 31–1011
Transfer of feeble-minded mutes to state institution 31–1009
Use of property 31–1004

COMFORT STATIONS
District property, injuring, penalty 22–3111
Establishment authorized 8–139
Jurisdiction over reservation in which located, transfer 8–139
Location 8–139
Number authorized 8–139
Reservation number 8, public convenience station 8–138
Rules and regulations for management, power to adopt 8–140

COMMERCIAL INSTRUMENTS AND TRANSACTIONS
See ASSIGNMENTS; ASSIGNMENTS FOR BENEFIT OF CREDITORS; BONDS AND UNDERTAKINGS; BULK SALES; COMPUTATION OF TIME; FIDUCIARIES; INTEREST AND USURY; NEGOTIABLE INSTRUMENTS; SALES, UNIFORM ACT; WAREHOUSE RECEIPTS

COMMISSION
Issuance to appointive officers 1–220

COMMISSIONER OF EDUCATION
Ex officio member of Healing Arts Licensure Commission 2–103

COMMISSIONER OF DEEDS
Acknowledgment of deeds, power to take 1–401
Appointment by President 1–401
Deposition, power to take 1–401
Full faith and credit given act 1–401
Oaths, power to administer 1–401
Removal from office 1–402
Term of office 1–402

COMMISSIONERS OF DISTRICT OF COLUMBIA
See ALCOHOLIC BEVERAGES; EMINENT DOMAIN; HIGHWAYS; STREETS AND OTHER WAYS; WEIGHTS, MEASURES, AND MARKETS
Abolition of offices, power vested in Commission 1–216
Acquisition of lands for District uses 16–601
Acquisition of lands in excess of needs 16–612
Alley dwellings, slum-clearance plans and plats, approval 5–104
Annual report to Congress 1–238
Illustration prohibited 1–239
Printing discontinued, original copy kept on file 1–240
Appeals to by health, accident and life insurance companies 35–202
Appointment by President 1–201
Appointments to office by Commissioners 1–216
Appropriations, expenditures by 1–241
Approval of valuations by board of equalization and review 47–709
Assistant assessors, board of 47–604
Appointment 47–604
Clerk, appointment 47–604
Conveyance to view property for assessment to be furnished 47–704
Maps, books, surveys and plats to be furnished 47–704
Assistant to Engineer Commissioner
Detailed from Engineer Corps by President 1–212
Duties 1–212
Junior in rank to Engineer Commissioner 1–212
Number 1–212
Authority over public libraries 37–101
Authority over Real Estate Commission 45–1403
Authorizing omission of uncollectible items from record of assets of District 47–308
Becoming surety for contractors prohibited 1–210
Black-outs, powers 6–1009, 6–1010
Blind persons appeal to 46–105

COMMISSIONERS OF DISTRICT OF COLUMBIA—Continued
Board of Accountancy, appointment 2–903
Board of Barber Examiners, appointment 2–1103
Board of Cosmetology
Appeal to Commission from action of Board 2–1305
Appointment 2–1302
Board of Dental Examiners, appointment 2–301
Board of Examiners and Registrars of Architects, appointment 2–1001
Board of Examiners in Veterinary Medicine
Appeal from to Commission 2–806
Appointment 2–801
Board of Examiners of Steam and Other Operating Engineers, appointment 2–1502
Board of Pharmacy, appointment 2–607
Board of Podiatry Examiners, appointment 2–701
Board of Public Welfare, appointment 3–103
Board of Zoning Adjustment, appointment 5–420
Boiler inspector and assistant, employment 1–703
Exemption from inspection 1–705
Inspection fees, power to fix 1–710
Bonding of officers and employees 1–213
Bonds, power to require 1–213
Boxing Commission 2–1201—2–1223
Bridges, control over 7–102
Regulations 7–501
Bridges, employment of labor etc. for construction and repair 7–1235—7–1238
Building inspectors' fees, determination by commissioner 5–429
Building lines, establishment 5–201
Building regulations 1–228
Force and effect 1–228
Punishment for violating 1–224a
Sale and exchange of copies 49–110
Buildings, employment of labor etc. for construction and repair 7–1235—7–1238
Business streets, designation 8–108
Certificates issued by, signing 1–517
Child-Placing Agencies
Appointment of committee for adoption of rules and regulations 32–783
License 32–782
Recommendations for issuance of license 32–784
Reissuance, revocation or suspension of license 32–787
Civilian commissioners 1–201, 1–206
Qualifications 1–206
Term of office 1–209
Commissioning of officers appointed 1–220
Consolidation of offices 1–216
Constables, Commissioners to have powers of, exception 4–136
Contracting officers, power to appoint 1–245
Contracts 1–801—1–803
Approval by 1–245
Consideration and approval 1–214
Limitation on powers 1–801
Personal interest in contracts, contracts declared void 1–802
Cooperation with States for black-outs 6–1002
Deeds, consideration and approval 1–214
Department of Insurance, supervision 35–101

COMMISSIONERS OF DISTRICT OF COLUMBIA—Continued
Designation of property for assessment and taxation, authority 47–401—47–408
Director of Public Welfare, appointed by 3–105
Disposition of proceeds of sales of building, police, plumbing and municipal regulations copies 49–110
District boxing commission, appointment by 2–1210
Dogs, power to control 1–224, 1–230
Domestic animals, power to provide for impounding 1–230
Droves of animals in streets, power to prohibit 1–224
Duties as police department head 4–119
Duties in retirement of public school teachers 31–701—31–720
Electrical wiring regulations 1–719
Elevator, regulation for construction and operation, penalty 1–229
Employees of board of personal tax appraisers, appointment 47–1214
Employees, power to reduce 1–216
Employees, power to suspend 1–244
Employing personnel in excess of legal authority prohibited, exception 1–215
Engineer Commissioner 1–201—1–205
Absence, performance of duties by senior or junior officer of Engineer Corps. 1–211
Appointed from Corps of Engineers of United States Army 1–201
Compensation 1–204
Detailed by President to commission 1–203
Not considered to hold civil office 1–205
Qualifications 1–202
Estimates to include library maintenance and buildings 37–106
Evacuation of District during war may be ordered by 6–1008
Exchanges of old equipment in purchase of new articles 1–250, 1–819
Execution of laws 1–220
Executive officers of District 1–103, 1–218
Executive power vested in 1–218
Explosives, control of 1–224, 1–227
Feeble minded persons, petition to require relatives to pay for maintenance at District Training School 32–616
Fees for copies of orders, etc., power to fix 1–244
Filing mandamus action to compel filing of personal property tax return 47–1209
Fire department, construction of fire fighting apparatus in department repair shop authorized 4–413
Fire Department, jurisdiction over 4–401, 4–402
Fire-plugs and hydrants, power to erect 43–1501
Fixing date for real property tax sales 47–1001
Garbage regulations, enforcement 4–119
Regulations for collection and disposal 6–501
Hack stands, power to locate 1–221
Establishment and regulation of charges 1–223
Health officer, appointment 6–101
Health regulations
Power to adopt 6–114

COMMISSIONERS OF DISTRICT OF COLUMBIA—Continued
Health regulations—Continued
Power to make, prevention and control of diseases 6–118
Hearings for protests on special assessments 47–1101
Highways, control over 7–102
Highways, employment of labor etc. for construction and repair 7–1235—7–1238
Hypothecation of taxes prohibited 1–219
Improvements of streets, duties 7–605, 7–608
Income tax, authority over 47–1551—47–1595
Inspectors for law regarding employment of women, appointment 36–306
Insurance of District property 1–816
Interest and penalties on taxes and assessments, authority to waive 47–307
Investigating charitable institutions receiving District funds 32–1001
Investigation of municipal matters 1–237
Junk shops, power to provide for inspection 1–224
Leases, power to execute 1–244
License fees, power to waive payment by person in military service 1–244
Licenses 47–2344
Abolition, power 47–2344
Changing fees, power 47–2344
Control over 47–2301—47–2350
Creation, power 47–2344
Power to require 1–244
Regulating power 47–2345
Revocation, power 47–2345
Licensing private employment agencies 47–2101—47–2111
Lights, power to maintain outside city limits 1–234
Liquidated damages, power to remit 1–245
Markets, regulations 10–130
Medical and dental college supervision 31–901—31–905
Minimum Wage and Industrial Safety Board, office space and supplies furnished by 36–439
Minor offenses, jurisdiction over 1–224
Motor vehicle parking agency, member designated by 40–805
Municipal regulations, sale and exchange of copies 49–110
Name, power to name highways and places 1–244
Noises, power to regulate and prohibit 1–224
Notaries public, appointment by 1–501
Number 1–201
Nurses Examining Board, appointment 2–402
Nurses, petition for revocation or suspension of certificate 2–407
Oath of members 1–208
Old-age assistance, authority over 46–203
Optometry Board, appointment 2–503
Optometry, educational standards, power to change 2–512
Ordering refund of erroneous payment of taxes 47–1016
Ordinances, rules and regulations of Board of Health, power to repeal 6–114
Outdoor signs, licensing and regulations 1–231—1–233

COMMISSIONERS OF DISTRICT OF COLUMBIA—Continued
Owners' financial responsibility rules and regulations 40–414
Papers and other documents, consideration and approval 1–214
Pardons, power to grant 1–220
Parking meters, authority for 40–616
Parking meters, power to regulate 40–804
Parking, power to regulate 40–804
Pawn shops, power to provide for inspection 1–224
Penalties, power to fix 1–244
Penalties, power to prescribe for violation of regulations 1–224
Permit fees, waiver of payment by person in military service 1–244
Permit, power to issue 1–244
Plats and surveys, recording, order for required 1–613, 1–621
Pleadings, consideration and approval 1–214
Plumbing Board, appointment 2–1401
Plumbing regulations
Power to adopt 1–725
Sale and exchange of copies 49–110
Police and firemen's pension relief, determination of amount 4–505
Police and firemen's retiring and relief board 4–510
Police Department 4–123
Oaths, power to administer 4–123
Personnel, appointments
Age limits, determination 4–107
Assignment to duty 4–103
Rules and regulations for government, power to adopt 4–121
Trial boards, review of findings 4–122
Police regulations
Effective date of penalty 1–225
Power to adopt and enforce 1–224
Protection of life, health, and property 1–226
Publication 1–225
Punishment for violating 1–224a
Poultry, power to regulate keeping and running at large 1–224
Powers and duties 1–244—1–249
Power to appoint executioner, assistant 23–702
Power to provide death chamber, apparatus 23–702
President of Board
Ex officio member of Healing Arts Licensure Commission 2–103
Selection of 1–207
Private hospitals and asylums, rules and regulations 32–304
Projectiles, regulations relative to 1–227
Promotion of officers and employees, approval 1–310a
Property tax rates, authority to fix 47–501
Public auctions, control over 47–2201—47–2208
Public contractors becoming surety for District officers prohibited 1–210
Public off-street parking facilities, powers 40–804
Public scales, location and licensing 10–128
Purchase of
Supplies 1–241
Vehicles, tractors, etc. 1–250

COMMISSIONERS OF DISTRICT OF COLUMBIA—Continued
Quarry, operation, limitation on period of time 1–811
Quorum 1–211
Rabies, prevention of spread 1–230
Reallocation of positions of officers and employees, approval 1–310a
Reassessing real property when assessments are voided by court 47–721
Recording of action taken on contracts, deeds, and other documents and papers 1–214
Recreation Board
Act not to abridge powers 8–216
Agreement with for maintenance and improvement of facilities 8–217
Members appointed by 8–202
Registration of motor vehicles 40–102
Regulation of platting of grounds and lands in District 1–613
Removal of officers and employees 1–216
Report of exempt realty 47–801c
Reporting assignments to markets with annual budget estimates 47–205
Requesting income tax data from Bureau of Internal Revenue 47–1564c
Requisitioning advance of funds from the Treasury 47–2501
Rewards for police services, acceptance prohibited 4–129
Rubbish and litter, deposit in streets or on sidewalks, power to prohibit 1–224
Rule-making power, general provisions 1–224—1–231
Rules and regulations
Inheritance and estate taxes 47–1618
Motor fuel tax law 47–1916
Taxation and fiscal affairs 47–2502
Traffic 40–603
Salaries of officers and employees, approval 1–310a
Sale of property unfit for service, proceeds credited to appropriation 1–818
Sale of real property belonging to District 9–301—9–306
Sanitary inspectors, appointments 6–104
Second-hand clothing stores, power to provide for inspection 1–224
Secretary of Board
Powers of 1–214
Signing certificates 1–517
Service of process on 1–901
Settlement of accounts 47–309
Settlement of claims and suits 1–902
Effective date of act 1–905
Limitation on amount payable 1–904
Pending claims, right to settle 1–905
Report to Congress 1–904
Tax refund 1–903
Settlement with owners of realty acquired through title companies 1–248
Sewers, control over 7–101
Sewers, employment of labor etc. for construction and repair 7–1235—7–1238
Smallpox hospitals, rules and regulations 32–306
Smoke nuisance, control regulations 6–802

COMMISSIONERS OF DISTRICT OF COLUMBIA—Continued
Special assessments, abating, reducing or adjusting 47–1102
Special police, appointment by 6–1006
Special reports, printing discontinued, original copy kept on file 1–240
Specifications for weights and measures, right to establish 10–127
Street lighting, hours, power to regulate 7–707
Street parkings, control of 5–205
Streets and other ways
Cleaning and sweeping 7–1235—7–1238
Control over 7–101
Employment of labor, etc. for contraction and repair 7–1235—7–1238
Streets, cleaning and sweeping 1–235
Sale of street sweepings 1–236
Street vendors, power concerning 1–224
Subdivisions, regulatory powers 1–613
Superintendent of Insurance, appointment 35–101
Superintendent of weights, measures, and markets, appointment 10–101
Supervising enforcement of inheritance and estate taxes 47–1618
Surplus articles of government, purchase 1–241
Surplus goods of United States, purchase of 1–241
Surveyor, appointment 1–601
Surveyor's fees, power to prescribe 1–629
Suspension of employees by 1–244
Taxation questions, reference to board of tax appeals 47–2412
Taxes, anticipation prohibited 1–219
Taxicab stands, location 1–221—1–223
Rates and charges, power to determine 1–222, 1–223
Teachers' Retirement Fund, expenditures authorized 31–716a
Tolerances, right to establish with reference to weights and measures 10–127
Transfers of jurisdiction to Director of National Park Service 8–135
Tunnels, powers relating to 1–244
Unwholesome food regulation by 22–3419
Visiting charitable institutions receiving District funds 32–1001
Visitorial power over eleemosynary institutions 32–1002
Children's Hospital 32–1002
Columbia Hospital for Women and Lying-in Asylum 32–1002
German Orphan Asylum 32–1002
Little Sisters of the Poor 32–1002
National Association for Colored Women and Children 32–1002
Saint Ann's Infant Asylum 32–1002
Women's Chrisitian Association 32–1002
Volunteer medical services, power to accept 1–215 note
Volunteer services accepted during war 6–1007
Water-mains and pipes, power to lay 43–1501
Water-rates, authority to collect in advance 43–1521
Water supply, rules and regulations 43–1503
Waterworks, employment of labor, etc. for construction and repair 7–1235—7–1238

COMMISSIONERS OF DISTRICT OF COLUMBIA—Continued
Weapons, regulations relative to, power to adopt 1–227
Weighmasters, licensing, fees, determination 10–128
Wharf property, control over 9–101, 9–102
Zoning Advisory Council, designation of members 5–417
Zoning Commission, ex officio members of 5–412
Zoning regulations
Enforcement 5–423
Nonconflicting municipal regulations, power to adopt 5–423

COMMISSION OF FINE ARTS
Approval or disapproval of plans, buildings fronting certain Government property 5–410
Canal Street, building fronting, approval of plan 7–1219
Park purposes, acquisition of land, advice requested 8–102

COMMISSION MERCHANTS
Dealing in food or food products, license 47–2327

COMMISSION ON LICENSURE
See HEALING ARTS PRACTICE ACT

COMMISSION ON MENTAL HEALTH
See INSANE PERSONS

COMMITTEE ON REVISION OF THE LAWS, HOUSE OF REPRESENTATIVES
Prescribing form and style of Code 49–107
Supervising compilation of Code 49–101

COMMITTEES ON THE DISTRICT OF COLUMBIA
Chairmen, member of National Capital Park and Planning Commission 8–101

COMMON CARRIERS
See PUBLIC UTILITIES; RAILROADS; STREET RAILWAYS; TAXICABS; TAXICAB STANDS
Definition 43–111
Employers' Liability Act 44–401—44–405
Accepting indemnity not to bar recovery 44–403
Accepting relief benefits not to bar recovery 44–403
Contributory negligence as defense 44–402
Employment contracts not bar to recovery 44–403
Insurance contracts not bar to recovery 44–403
Liability for defective equipment 44–401
Liability of carrier for negligence of agents 44–401
Negligence question for jury 44–402
Railroad safety-appliance law not affected 44–405
Set-off of employers contribution to insurance, relief benefits or indemnity 44–403
Suits to be brought within one year 44–404
Liability under plant disease and insect pests control law limited 6–905
Sale of unclaimed freight 44–101—44–103

COMMON LAW
See ABATEMENT AND REVIVOR
Actions on accounts 16–101—16–106
Offenses against, penalty 22–107

COMMON TRUST FUNDS
Accountings 26–702
Establishment 26–701—26–704
Taxability 26–703

COMMUNICABLE AND PREVENTABLE DISEASES
Regulations for control 6–118, 6–119

COMMUNITY CENTER AND PLAYGROUNDS DEPARTMENT
Employees to continue to function under Recreation Board 8–209
Equipment and supplies transferred to Recreation Board 8–219
Functions transferred to Recreation Board 8–214
Trust fund transferred to Recreation Board 8–214

COMMUNITY CHEST
Unemployment Compensation Act inapplicable to employees 46–301

COMMUNITY CHEST OR FUND
Contributions to, deductible on income tax 47–1557b
Exemption from income tax 47–1554

COMPENSATION
See COMMON CARRIERS; LABOR; OFFICERS AND EMPLOYEES OF DISTRICT; SALARIES; WORKMEN'S COMPENSATION
Child-Placing Agency or person adopting child 32–785
Injured employees of District, budget estimates 1–311
Sewer, road work etc., temporary employees 7–1236
Workmen's compensation 36–501, 36–502

COMPETENCY
See EXECUTORS AND ADMINISTRATORS

COMPLAINT-BOOKS
Contents, name and residence of complainant, Police Department 4–134
Open to public inspection 4–135

COMPLAINTS
See PLEADINGS

COMPOUNDING FELONY
Police and private detectives 4–175

COMPROMISE
Claims against District 1–902
Estate taxes 47–1630
Unemployment Compensation Act, action arising under 46–304

COMPTROLLER OF THE CURRENCY
See BANKS AND OTHER FINANCIAL INSTITUTIONS
Unemployment compensation return, examination by 46–313

COMPULSORY EDUCATION
Children of school age 31–201—31–213

COMPUTATION OF TIME
Calendar established 28–2801
Leap year 28–2802, 28–2803

COMPUTERS
Sewers etc. employment 7–1236

CONCILIATION
See MUNICIPAL COURT

CONCORD AVENUE
Eminent domain, assessment of benefits and damages 7–219
Dismissal of proceedings, discretion, damages exceeding benefits 7–219

CONDEMNATION
See ALLEY DWELLINGS; EMINENT DOMAIN; INSANITARY BUILDINGS
Alley dwellings 5–103
Depreciation or damage exceeding one-half original value 5–101
False weights and measures 10–103
Special assessments, payment 47–1104

COMDEMNATION PROCEEDINGS
See EMINENT DOMAIN

CONDITIONAL INDORSEMENT
See NEGOTIABLE INSTRUMENTS

CONDITIONAL SALE
Recordation 42–103

CONDUIT ROAD
Assessment of property for public improvement 7–1201
Jurisdiction and control vested in Commissioners 7–1201
Municipal laws and regulations, application, 7–1201

CONFESSION OF JUDGMENT
Negotiability of instruments authorizing 28–1106

CONFISCATION
Unapproved weighing and measuring devices 10–103

CONGRESS
Parking zones for members 40–604

CONGRESSMEN
Tags for motor vehicles, appropriations for expenses 40–603b

CONNECTICUT AVENUE BRIDGE OVER KLINGLE VALLEY
Paving between tracks, payment of cost 7–513
System for propelling street cars, installation by company 7–513

CONSENT
Adoption, consents required 16–202
To reference of questions of law and fact 16–1701

CONSERVATORS
Fiduciaries under income tax law 47–1551c

CONSIDERATION
Endorsement or delivery of stock certificate 28–2906
Illegal, causing defective title to negotiable instrument 28–405

CONSIDERATION—Continued
Negotiable instruments 28–201—28–206
Antecedent debt 28–202
Issuance for value presumed 28–201
Partial failure when a defense 28–205
"Value" defined 28–202

CONSOLIDATION
Employing unit under Unemployment Compensation Act 46–303
Joint obligations 13–401

CONSPIRACIES
Feeble-minded, to have person adjudged 32–619
Firemen conspiring to interfere with efficiency of department, penalty 4–407
Jurisdiction
Police Court 11–602
Police Department, interference with operation of 4–125

CONSTABLES
Commissioners to have powers of, exception 4–136
Police Department members possess powers of, exception 4–136

CONSTITUTIONALITY
Fire and Casualty Act 35–1350
Life Insurance Act 35–803
Saving clause of Motor Vehicle Owners' Financial Responsibility Act 40–416

CONSTRUCTION OF INSTRUMENTS
Real property conveyances 45–201—45–205

CONTAGIOUS AND INFECTIOUS DISEASES
See Hospitals and Asylums
Dairies reporting 33–312
Mattresses, renovation, restrictions 6–602

CONTAINERS
Beverage bottles, registration 48–101, 48–102
Milk beverage containers, registration 48–301—48–307
Milk containers, registration 48–201—48–211

CONTEMPT OF COURT
Board of Dental Examiners calling witnesses 2–304
Board of Examiners and Registrars of Architects, witnesses 2–1029
Board of Pharmacy, witnesses 2–606
Board of Podiatry Examiners, disobedient witnesses 2–703
Buildings erected or altered in violation of law, injunction 5–408
Equity, enforcement of decrees 11–326
Feeble minded persons, failure of relative to provide for maintenance 32–616
Healing arts, hearing on refusal to issue license 2–129
Juvenile Court 11–911, 11–933
Penalty 11–933
Municipal Court 11–740
Municipal Court for District of Columbia 11–756
Municipal Court of Appeals for District of Columbia 11–774
Police Court 11–606

CONTEMPT OF COURT—Continued
Subpoena, disobedience of subpoena issued by Minimum Wage and Industrial Safety Board 36–435

CONTINUANCE
Amendment of pleadings as basis for 13–302

CONTRABAND
Introducing into penal institutions 22–2603

CONTRACTING OFFICERS
Appointment, powers and duties 1–245

CONTRACTORS
Liens 38–101—38–126
Laborer's 38–103—38–122
Materialmen's 38–103—38–122
Subcontractor's 38–103—38–122

CONTRACTS
See Commissioners of District of Columbia; Joint Contracts; Public Buildings and Works
Auction sales, under Uniform Sales Act 28–1205
Breach of contract, attachment and garnishment 16–301
Bucket shop, definition of contract in 22–1509
Capacity to buy and sell 28–1102
Commissioners' contracts required to be in writing 1–803
District entering into, execution, procedure 1–214
District's power to make 1–102
Gambling and gaming 16–701, 16–703, 16–706, 16–707
Recovery of losses 16–702, 16–706, 16–707
Joinder of counts with tort counts 13–208
Lien on negotiable instrument, effect 28–204
Limitation of actions 12–201
Limitation on powers of Commissioners 1–801
Made outside District, interest rate on judgments 28–2709
Married women making, deemed separate 30–209
Money contracts, interest rate 28–2702
Nonnegotiable, assignment 28–2503
Prostitute, contract of for debt contracted in disorderly house 22–2709
Sales, formation under Uniform Sales Act 28–1101—28–1116
Sewers of District, use by Maryland 1–817
Statute of frauds 12–302, 12–304, 12–305
Delivery of subject matter 12–304
Joint contractor, new promise 12–305
New promise to pay 12–305
Performance in year 12–302
Wife's separate, husband not liable 30–208

CONTRIBUTING TO DELINQUENCY
Cases of adults, jurisdiction of juvenile court 11–907

CONTRIBUTORY NEGLIGENCE
Common Carrier Employers' Liability Act 44–402

CONVENIENCE STATIONS
See Comfort Stations

CONVERSION
Assets of decedent's estate 22–1404
Conditional vendee guilty of, penalty 22–1406

CONVERTED RECEIPTS
Negotiation, effect 28–2011

CONVEYANCES
See DEEDS; FRAUDULENT CONVEYANCES; REAL PROPERTY; WILLS
Acknowledgment of deeds 45–401—45–412
"Bargain and sell" pass whole estate in absence of contrary showing 45–202
Conveyable estates and methods of conveyance 45–101—45–106
Corporation deeds 45–302
"Covenant," effect when used in deeds 45–303
Covenant of quiet enjoyment 45–306
Decree for conveyance, effect as conveyance 15–110
Deeds
  Effective date 45–501
  Priority 45–502
  Record as evidence 45–504
Deeds of corporations, acknowledgment and requisites of 45–302
"Grant" passes whole estate in absence of contrary showing 45–202
Interpretation of instruments 45–201—45–205
Mortgages, convey qualified fee simple 45–603
Rule against perpetuities 45–102
Rule in Shelley's case abolished 45–203
Trust deeds, convey qualified fee simple 45–603

CONVICTS
See INDETERMINATE SENTENCE AND PAROLE; PRISONS AND PRISONERS
Dentists, revocation of license 2–311
Optometrists, revocation or suspension of license 2–516
Police and firemen receiving relief benefits, conviction of crime, reduction or discontinuance of allowance 4–513

COOPERATIVE ASSOCIATIONS
See CORPORATIONS IN GENERAL; CORPORATIONS FOR PROFIT; QUO WARRANTO
Annual report, contents and filing 29–834
  Mandamus to obtain filing 29–835
  Notice of delinquent report by recorder of deeds 29–835
Articles of incorporation, amendment 29–807
Articles of incorporation, contents 29–805
  Minimum shares required for membership 29–805
  Name, to include word "cooperative" 29–805
  Term of existence, may be perpetual 29–805
Attachment of shares 29–828
Audit of books, annual 29–833
Books of account 29–833
By-laws, adoption and contents 29–808, 29–809
Certificate of incorporation, issuance of 29–806
  Corporate existence begins on issuance 29–806
Constructive notice of filing and recording 29–806
Corporation laws, when inapplicable 29–843
Definitions 29–801
  Association 29–801
  Cooperative basis 29–801
  Member 29–801
  Net savings 29–801
  Savings returns 29–801

COOPERATIVE ASSOCIATIONS—Continued
Directors 29–818
  Election 29–818
  Removal 29–820
Dissolution 29–836
  Involuntary 29–719—29–724, 29–726—29–729
  Voluntary, procedure in 29–836
Expulsion of members, repurchase of shares 29–830
False reports concerning management or finances 29–839
Federal law applicable to District, reference 28–2803 note
Filing articles of incorporation, fee 29–806
Foreign cooperatives, admission to District 29–841
Foreign corporations, license fee 29–844
General provisions 29–101—29–105
Legal operation not deemed illegal monopoly, price fixing or restraint of trade 29–842
Liability of members 29–829
Maximum return of 8 per centum 29–801
Meetings of members 29–810—29–812
  Notice 29–811
Membership certificates 29–825
Membership, eligibility and admission 29–823
Member to have one vote, exception 29–801
Net savings, allocation and distribution 29–831
Officers 29–819
  Bonds 29–832
  Election and apportionment 29–818
  Removal 29–820
Officers and employees to be bonded 29–832
One member, one vote 29–813
Powers generally 29–804
Promotion expenses, limitations and penalty 29–838
Proxy voting prohibited 29–814
Purposes for which incorporated 29–803
Quo warranto proceedings 16–1601—16–1611
Recall of shares, effect 29–827
Recording articles of incorporation, fee 29–806
Referendum 29–821
Reorganization of prior cooperatives 29–840
Reservation of right to amend or repeal chapter 29–846
Return on capital, limitations 29–822
Separability when parts unconstitutional 29–845
Share, certificates 29–825
Short title 29–847
Subscribers 29–824
Transfer of shares 29–826
Use of name "cooperative," where authorized 29–837
Voting by delegates 29–817
Voting by mail 29–815, 29–816
Who may incorporate 29–802
Withdrawal from membership 29–826

COPPER
Poisonous compounds, sale, restrictions 2–612

CORCORAN GALLERY OF ART
Property exempted from taxation 47–801, 47–809, 47–810

CORD
Cord of wood, dimension 10–118

CORDIALS
See ALCOHOLIC BEVERAGES
Definition of "spirits" includes 25–103

CO-RESPONDENTS
See DIVORCE

CORN
Corn on cob, standard weight of barrel 10–121
Shelled corn, standard weight of barrel 10–121

CORONER
Appointment by Commissioners 11–1201
Bond 11–1202
Dating writs of execution 15–207
Deputies 11–1207
  Appointment and number 11–1207
  Bond 11–1207
  Compensation 11–1207
  Disability of coroner 11–1207
Duties 11–1203, 11–1204
Jury 11–1206
Levy on property held by coroner 16–313
Process, serving in lieu of marshal 11–1208
Testimony reduced to writing 11–1205
Witnesses
  Recognizances 11–1205
  Summons to 11–1205

CORPORATION
Stock, transfer of 28–2901—28–2923
Unemployment Compensation Act, employing unit within 46–301

CORPORATION COUNSEL
See CRIMINAL PROCEDURE
As general counsel of public utilities commission 43–204
  Additional compensation 43–204
  Duties 43–204
Assistants 1–302, 1–303
  Duties 1–302
Attorney for Commissioners 1–301
Attorney for District to be known as 23–101
Birth returns, failure to file, signing of information 6–304
Black-out regulations, prosecution of violations of 6–1010
Boiler Inspection Act violations, prosecution 1–714
Buildings, proceedings to enjoin construction or alteration 5–422
Certified public accountant, revocation of certificate, duties 2–907
Cosmetologists licensing and registration law, violation, prosecution 2–1327
Dentistry law, duties 2–305
Duties 1–301
Healing Arts Practice Act, duties 2–137
Insanitary buildings, condemnation proceedings 5–608, 5–609
  Owner or part owner under legal disability, duties 5–609
  Title to property in litigation, duties 5–608
Juvenile Court, duties in 11–932

CORPORATION COUNSEL—Continued
Mattress law violations, filing of information 6–605
Oaths, power to administer 1–303
Pharmacy law, duty to enforce 2–617
Podiatry law, duties 2–704
Police and firemen's retiring and relief board member 4–510
Steam boiler, unauthorized use, abatement 1–713
Unemployment Compensation Act, approval of compromises under 46–304
Unwholesome food, prosecution for sale of 22–3420
Veterinarians' licensing law, prosecution of violations 2–812
Weeds, failure to cut after notice, filing of information 6–903
Weights and measures regulatory law, prosecution of violation 10–134
Zoning regulations, injunction proceedings 5–422

CORPORATIONS FOR PROFIT
See CORPORATIONS IN GENERAL
Amendment of charter 29–238
Annual report 29–213
  Failure to publish, mandamus 29–214
  Publication 29–213
  Verification 29–213
Authority to do business, prerequisites 29–209
By-laws 29–208
Capital stock 29–209
  Certificate of amount paid in, recording 29–212
  Common stock, classes authorized 29–239
  Decrease 29–229
  Increase 29–229
  Loans on prohibited, penalty 29–217
  Personalty 29–210
  Pledge, effect of stock book record 29–225
  Preferred stock authorized 29–239
  Prerequisites to diminution 29–230
  Restrictions to appear on face 29–239
  Sale, effect of stock book record 29–225
  Transfer 29–210
Certificate of incorporation 29–201
  Acknowledgement required 29–201
  Contents 29–202
  Effect of filing 29–203
  Recording required 29–201
Certificate of organization, recording, prerequisite 29–104
"Charter" defined 29–239
Creditor's right to inspect stock book 29–224
Dissolution 29–701—29–729
  Failure to elect trustees does not effect 29–206
Dividends 29–218
  Exemption of trustees objecting to impairing dividends 29–219
  Not to be declared if they render corporation insolvent or decrease capital stock 29–218
Election of trustees 29–204—29–206
Executors, administrators exempt from personal liability when holding stock 29–220
Executors, administrators, may vote stock 29–221
Extension to other businesses 29–229
False reports, penalty 29–215

CORPORATIONS FOR PROFIT—Continued
Fire insurance companies may become perpetual 29–237
Formation 29–201
Banks excepted 29–201
Business included in other incorporation acts excepted 29–201
Illegal purpose excepted 29–201
Number of incorporators necessary 29–201
Railroads excepted 29–201
Real property dealers excepted 29–201
General provisions 29–101—29–105
Guardians exempt from personal liability when holding stock 29–220
Guardians may vote stock 29–221
Income tax returns 47–1564a
Liability of stockholders 29–211
Mortgage of realty only on vote of stockholders 29–203
Officers 29–207
Bonds may be required 29–207
Criminal responsibility for violating Unemployment Compensation Act 46–319
Minor, selection of 29–207
President to be a trustee 29–207
Pledged stock 29–222
Pledgee not personally liable 29–222
Pledgor may vote 29–222
Powers 29–203
Sale of entire property 29–240
Effect of disposal 29–240
Resolution of trustees 29–240
Rights of dissenting stockholder
Demand for payment 29–240
Petition for accounting in District Court 29–240
Stock book 29–223
Effect of record 29–225
Failure to make entries, penalty 29–227
Keeping 29–223
Liability to United States for failure to keep open 29–228
Open for inspection of stockholders, creditors 29–224
Presumptive evidence of entries 29–226
Stockholder's liability 29–211
Stockholders meetings 29–231
Certificate of chairman 29–233
Chairman's certificate, copy as evidence 29–236
Filing chairman's certificate 29–234
To extend corporate business, notice 29–231
To increase or decrease capital stock, notice 29–231
Two-thirds rule 29–232
Stock in other corporations, purchase prohibited 29–216
Subscribers 29–209
Calls 29–209
Forfeiture on failure to pay 29–209
Notice 29–209
Subscriptions
Complete before recording of certificate of organization 29–104
Payment of 10% before recording certificate of organization 29–104
CORPORATIONS FOR PROFIT—Continued
Trustees 29–204—29–206
Election of 29–205
Failure to elect does not effect dissolution 29–206
Elective after first year 29–204
Empowered to manage corporation 29–204
Qualifications 29–204
Trustees of estates exempt from personal liability when holding stock 29–220
Trustees of estates may vote stock 29–221
CORPORATIONS IN GENERAL
See Boards of Trade; Charitable, Educational and Religious Associations; Cooperative Associations; Corporations for Profit; Corporations not for Profit; Institutions of Learning; Insurance and Insurance Companies; Religious Societies and Institutions
Architecture, right to practice
Certificate of registration 2–1016
Revocation of certificate, grounds 2–1027
Boards of trade 29–301—29–308
Certified Public Accountant, assuming title prohibited 2–901
Change of name 29–103
Corporate franchise, usurpation, ouster 16–1609
Corporate office, usurpation, ouster 16–1610
Corporations exempted from income tax 47–1554
Corporations for profit 29–201—29–240
Deeds, formal requisites 45–302
Dentistry, use of corporate name in practicing prohibited, penalty 2–316
Dentists practicing under corporate name, unprofessional conduct 2–311
Dissolution 29–701—29–729
Actions not to abate 29–716
Assignees, trustees, receivers may be served with process after dissolution 29–718
Involuntary 29–719—29–729
Judgments continue in force in corporate name 29–716
Proceedings after dissolution for use of others authorized 29–717
Quo warranto 29–719—29–724
Service of process on dissolved corporation 29–718
Voluntary 29–701—29–715
Duty of recorder of deeds in recording certificates of incorporation 45–708
Fire protection, service on corporation of notice requiring 5–321
Fiscal officer, instrument made payable to 28–313
Indorsement by corporation 28–313
Foreign
Licenses 47–1591
Service of notice requiring fire protection 5–321
Service of process 13–103
General provisions 29–101—29–105
Charter alteration, publication of notice 29–102
Charter extension, publication of notice 29–102
Name change, procedure in 29–103
Publication of financial statements of foreign corporations 29–105

CORPORATIONS IN GENERAL—Continued
General provisions—Continued
Recording certificate, prerequisites 29–104
Reorganization of corporations existing before Jan. 1, 1902 29–101
Special charter, publication of application 29–102
Income tax
Corporations exempted 47–1554
Gross income deductions 47–1557b
Returns 47–1564a
Income tax rates 47–1571a
Inheritance tax rates on transfer to 47–1601
Injunctions to restrain ultra vires acts 29–725
Insanitary buildings, proceedings for condemnation, notice, service 5–610
Involuntary dissolution 29–719—29–729
Action by District Attorney 29–725, 29–726
Appointment of receiver 29–727
Creditor's bill to dissolve, grounds 29–726
Distribution 29–729
Injunction against transferring assets 29–727
Insolvency for one year as grounds 29–726
Neglect to discharge debts for one year as grounds 29–726
Quo warranto 29–719—29–724
Answer to be verified 29–720
Appointment of receiver 29–722
District Attorney to bring 29–719
Final decree 29–724
Petition 29–719
Pleadings 29–721
Remedy of grievance 29–724
Trial, by jury if requested 29–722
Receiver's duties 29–727
Refusal to discharge debts for one year as grounds 29–726
Restraining ultra vires acts 29–725
Licenses 47–1591
Negotiable instrument, indorsement, effect 28–123
Podiatry, practicing prohibited 2–707
Revocation of corporation's license 47–1591d
Service by publication 13–104
Ultra vires acts 29–719, 29–725
Voluntary dissolution 29–701—29–715
Application, procedure in 29–701, 29–702
Before capital stock is paid in 29–714
By expiration of charter, last trustees or directors to settle affairs unless others are appointed 29–715
Decree of dissolution 29–705
Order to appear, publication of notice 29–703
Receiver 29–706
Acting under court's direction 29–713
Appointment 29–706
Arbitration of disputes 29–710
Creditors to file claims with 29–708
Dividends to stockholders 29–712
Surplus assets, distribution to creditors 29–711
To be vested with all corporate property 29–707
To collect assets 29–708
To give notice of appointment 29–708

CORPORATIONS IN GENERAL—Continued
Voluntary dissolution—Continued
Reference to auditor 29–704
Transactions after petition void as against receiver 29–709

CORPORATIONS NOT FOR PROFIT
See Boards of Trade; Charitable, Educational, and Religious Associations; Corporations in General; Institutions of Learning; Religious Societies and Institutions
Dissolution 29–701—29–729
Exemption of realty from taxation 47–801a
Income tax, certain corporations exempted 47–1554

CORRECTIONAL INSTITUTIONS
Buildings and grounds exempted from taxation 47–801a

CORRECTIONS
See Department of Corrections

COSMETOLOGISTS
Appeal from action of Board, taken to Commissioners of District 2–1305
Application for registration 2–1307, 2–1313
Proof of qualification 2–1307
Apprentices 2–1301, 2–1314
Application for examination 2–1314
Definition 2–1301
Limitation on number in beauty shop 2–1314
Barbers, exemption from act 2–1324
Beauty shop 2–1312
Annual license fee 47–2310
Manager 2–1312
Board of Cosmetology 2–1302—2–1305, 2–1319, 2–1320, 2–1322
Appointment 2–1302
Books and records prima facie evidence 2–1302
Employment of aid, qualifications, compensation 2–1320
Expenses not to exceed receipts 2–1319
Inspection of books and records 2–1302
Investigations, inquiries, or hearings by single member 2–1322
Meeting 2–1302
Oath of office 2–1302
Per diem of members 2–1319
Powers and duties in general 2–1304
President 2–1302
Qualifications of members 2–1302
Quorum 2–1302
Record of proceedings 2–1302
Removal of members, hearing 2–1302
Rules and regulations, power to adopt 2–1303
Seal 2–1302
Secretary 2–1302
Surplus funds paid into United States Treasury 2–1319
Term of office 2–1302
Treasurer 2–1302
Vacancy filled for unexpired term 2–1302
Certificates of registration 2–1316, 2–1317, 2–1325
Applicant from other States, reciprocity 2–1316
Display 2–1317

COSMETOLOGISTS—Continued
Certificates of registration—Continued
Issuance, condition 2–1317
Renewal 2–1325
Restoration of expired certificate 2–1325
Constitutionality of regulatory law, provisions separable 2–1328
"Cosmetology" defined 2–1301
Definition of terms used 2–1301
"Demonstrator" defined 2–1301
Demonstrator of cosmetological products and equipment 2–1315
Charging for materials or services prohibited 2–1315
Permit 2–1315
Educational requirement 2–1308, 2–1310
Eligibility requirements for examination 2–1308
Determination of sufficiency 2–1308
Operator 2–1308
Practicing cosmetologists 2–1308
Teachers 2–1308
Emergency treatment in home 2–1312
Examination for license 2–1309, 2–1313, 2–1318
Credit for attending school of cosmetology 2–1313
Exception from requirement 2–1313
Held quarterly in each year 2–1318
Limited certificate 2–1309
Subject-matter of examination 2–1318
Exemption from provisions of act 2–1324
Fees for certificates or licenses 2–1319, 2–1323
Annual renewal fee 2–1319
Expenses incurred in administering act, payment 2–1319
Manicurist 2–1319
Operator 2–1319
Owners, managers, and instructors 2–1319
Sales demonstrator or lecturer 2–1319
Schools of cosmetology 2–1319
Temporary certificate for student or apprentice 2–1319
Temporary licenses 2–1323
Healing arts practitioners, exemption from act 2–1324
Health certificate 2–1307, 2–1313
"Instructor" defined 2–1301
Investigations and hearings, single board member 2–1322
"Managing cosmetologist" defined 2–1301
Manicurist 2–1301, 2–1309
Definition 2–1301
Limited certificate 2–1309
Minimum age 2–1308
"Operator cosmetologist" defined 2–1301
Penalties for violating law 2–1326
Prosecution by corporation counsel 2–1327
Place in which business conducted restricted 2–1321
"Place" in which cosmetology practiced" defined 2–1301
Practicing in place other than beauty shop prohibited, exception 2–1312
Practicing without license prohibited 2–1306
Practitioners suffering from contagious or infectious diseases continuing practice, penalty 2–1326
COSMETOLOGISTS—Continued
Refusal of license, powers of board 2–1304
Registered apprentices, temporary permit to practice as operator 2–1314
Register of applicants for certificates or licenses 2–1302
Residential purposes, use of beauty shop or school of cosmetology prohibited 2–1321
Revocation or suspension of licenses or certificates, procedure on 2–1304
Reissuance after expiration of 90 days 2–1304
Sanitation 2–1321
Schools of cosmetology 2–1310
Course of study, requirements concerning 2–1310
Instructor, requirements concerning 2–1310
Record of attendance, keeping required 2–1310
Secretary of board, salary 2–1302
Sleeping room, use as beauty parlor or school of cosmetology prohibited 2–1321
"Students" defined 2–1301
Students practicing upon public for pay prohibited 2–1311
Temporary licenses pending examination 2–1323
Temporary permit 2–1313

COSTS
See EMINENT DOMAIN; FEES AND COSTS
Alleys or minor streets
Condemnation proceedings, failure of, payment of costs 7–331
Opening, widening, or straightening, new jury called 7–317
District Boxing Commission, liability for 2–1222
District or officer not required to pay 11–1519

COUNTERCLAIM
Municipal Court for District of Columbia 11–755
Small Claims and Conciliation Branch, Municipal Court 11–809

COUNTERFEITING
Alcoholic beverage stamps, penalty 25–124
Seal of Commission on Licensure to Practice Healing Art 2–126

COURT OF APPEALS
Appeals from
Juvenile Court 11–772
Municipal Court for District of Columbia 11–772
Municipal Court of Appeals for District of Columbia 11–773
Public Utilities Commission orders 43–705
Unemployment Compensation contribution rate determination 46–303
Appeals in unemployment compensation cases 46–312
Board of Pharmacy, hearings, review, procedure 2–606
Building, construction authorized 11–103
Appropriation authorized 11–105
Cost limitation 11–103
Maintenance 11–104
Repayment to U. S. 11–103
Clerk 11–204
Custodian of Court of Appeals Building 11–211

COURT OF APPEALS—Continued
Clerk, petition for appeal from Municipal Court of Appeals for District of Columbia filed with 11–773
Dentist's license to practice, appeal from revocation or suspension 2–312
Deputy clerk 11–204
Powers and duties 11–204
Signing of documents, form 11–204
Form of petition for appeal from Municipal Court of Appeals for District of Columbia prescribed by 11–773
Healing arts
Refusal of license to practice, appeal 2–129
Unlawful practice, injunction, appeal 2–132
Jurisdiction
Decisions of Board of Tax Appeals 47–2404
Exclusive jurisdiction to review 47–2404
Rules for Review 47–2404
Juvenile Court, appeal from 11–772
Library of Congress, withdrawal of books from 11–102
Municipal Court for District of Columbia, appeal from 11–772
Nurses
Denial of registration or reregistration, appeal 2–406
License, appeal from revocation or suspension 2–407
Opinions 11–206, 11–207
Cost of copies of report 11–207
Distribution of copies of volume by reporter 11–206
Filed as part of record 11–206
Podiatrists, revocation or suspension of licenses, review 2–708
Reporter 11–206
Appointment and removal 11–206
Editing and publishing of opinions 11–206
Review of Board of Tax Appeals decisions 47–2404
Superior Court of District 11–101
Veterinarians, revocation or suspension of license, review 2–810
Writs of error, from Small Claims and Conciliation Branch, Municipal Court 11–817

COURTS
See COURT OF APPEALS; JUVENILE COURT; MUNICIPAL COURT; MUNICIPAL COURT FOR DISTRICT OF COLUMBIA; MUNICIPAL COURT OF APPEALS FOR DISTRICT OF COLUMBIA; POLICE COURT; UNITED STATES DISTRICT COURT
Deposits on demands for jury trials, to be earned 11–722a
False personation before 22–1303
Inferior courts enumerated 11–101
Juvenile 11–901—11–950
Municipal 11–701—11–749
Order for survey, execution by surveyor 1–617
Police 11–601—11–627
Small Claims and Conciliation Branch of Municipal Court 11–801—11–820
Superior courts enumerated 11–101
United States District Court 11–301—11–330
Probate Court term 11–501—11–520

COURTS—Continued
Witness fees, advances to clerk by disbursing officer 11–1521

COURTS OF RECORD
Inquiry in commitment of convicted persons to District Training School 32–621
Judges may celebrate marriages 30–106
Municipal Court of Appeals for District of Columbia 11–771

COVENANTS
Against having encumbered 45–307
Effect when term is used in deeds 45–303
For further assurances 45–308
General warranty 45–304
Quiet enjoyment 45–306
Running with land, married woman's power to execute 30–202
Special warranty 45–305

CRACKERS
Exception from weight regulations concerning bread 10–113

CRANBERRIES
Standard barrel, dimensions 10–115

CRATES
Onion crate, standard dimensions 10–115
Use of other than standard containers prohibited 10–116

CREAM
See MILK AND MILK PRODUCTS
Bottles or other containers, regulations and requirements concerning 10–114
Production and sale, regulatory law 33–301—33–322

CREAM OF TARTAR
Sale by other than pharmacist 2–601

CREAMERIES
See MILK AND MILK PRODUCTS
Regulation 33–301—33–322

CREDIT UNIONS
See BANKS AND OTHER FINANCIAL INSTITUTIONS
Approval, investigation by Comptroller of Currency 26–504
By-laws 26–508
Certificates of incorporation, contents 26–503
Credit committee 26–511
Directors 26–511
District licenses, revocation 26–506
Dividends 26–513
Incorporation 26–503
Management 26–511
Membership 26–509
Expulsion and withdrawal 26–514
Meetings 26–510
Voting 26–510
Officers 26–511
Powers 26–507
Recording certificate 26–505
Reserves 26–512
Restrictions on use of "credit union" 26–517
Rights to amend, repeal reserved 26–518

CREDIT UNIONS—Continued
Shares issued to minors 26–515
Short title of chapter 26–501
Supervision by Comptroller of Currency 26–506
Supervisory committee 26–511
Taxation 26–516

CREDITORS
See DECEDENTS' ESTATES; FRAUDULENT CONVEYANCES
Assignments for benefit of creditors 28–2601—28–2610
Bulk sales 28–1701
Claims against decedents' estates 18–501—18–530
Corporations
Bills to dissolve, grounds 29–726
Rights in voluntary dissolution 29–711
Right to inspect stock book 29–224
Fraudulent conveyances 12–401—12–403
Rights under life insurance policies of debtor 35–716
Right to notice of assignments for benefit of creditors 28–2609
Stock certificate, remedy to reach 28–2914

CREDITS
Levy on credits in attachment and garnishment 16–312

CREMATORIES
See CEMETERIES AND CREMATORIES

CREOSOTE
Sale, restrictions 2–612

CRIMINAL BRANCH
Municipal Court for District of Columbia 11–755

CRIMINAL COURT TERM
See UNITED STATES DISTRICT COURT
Attachés prohibited from receiving pay from professional bondsmen 23–603
Bail after regular hours, person authorized to take 23–610
Bonds and undertakings 28–2403

CRIMINAL LAW AND PROCEDURE
See CRIMINAL OFFENSES; CRIMINAL PROCEDURE

CRIMINAL OFFENSES
See ALCOHOLIC BEVERAGES; BANKS AND OTHER FINANCIAL INSTITUTIONS; INSANE CRIMINALS
Abortion 22–201
Accessories after the fact 22–106
Accessories before the fact 22–105
Accountants, practicing as certified public accountants without certificate 2–909
Adulteration of food or drugs 33–109
Adultery 22–301
Advertisement, false 22–1411—22–1413
Use of flag for 22–3414
Affray, penalty 22–1101
Agents of Public Utilities Commission divulging information 43–601
Alcoholic beverages
Intoxicated persons, sales to 25–121
Minors misrepresenting age to obtain 25–130

CRIMINAL OFFENSES—Continued
Alcoholic beverages—Continued
Minors, sales to 25–121
Sales to notoriously intemperate persons 25–121
Unlawful transportation, penalty 25–137
Alley dwelling law, general penal clause 5–106
Alley-dwelling slum-clearance projects 5–106
Occupying or converting building into dwelling after July 1, 1944, penalty 5–106
Anatomical Board law 2–206, 2–208
Animals, driving, riding, or leading on footways, penalty 22–1118
Architects, unregistered, misuse of title 2–1030
Arson 22–401—22–404
Assault 22–501—22–505
Assignment of wages and salaries 28–2505
Attempts to commit crime, penalty 22–103
Balloons, flying, penalty 22–1117
Barbed-wire fences, penalty 7–1104
Barber's registration law, unlawful acts enumerated, penalty 2–1114
Bawdy-houses, keeping, penalty 22–2722
Bigamy 22–601
Birth-returns law, violations 6–304
Blackmail, penalty 22–2305
Bodily harm, threatening 22–507
Boiler Inspection Act, violation 1–714, 1–718
Bonfires, kindling, penalty 22–1113
Bookmaking 22–1508
Books, stealing or injuring 22–3106
Boundary trees, stones, destroying 22–3109
Boxing exhibitions, violations of law, penalty 2–1223
Bribery 22–701, 22–702
Bucket shops 22–1509—22–1512
Building or street materials, injuring 22–3113
Bull fights, penalty 22–810
"Burglary" defined, penalty 22–1801
Capitol Grounds, punishment 9–125
Cemeteries and crematories
Penalties 27–126
Prosecutions 27–126
Cemetery property, destroying 22–3114
Check, draft, or order, making, drawing, uttering with insufficient funds 22–1410
Child labor
Regulations, penalty for violation 36–215
Selling merchandise to minors for public resale 36–223
Street trades 36–222
Child-Placing Agencies, conduct without a license 32–788
Children
Cruelty to 22–901
Failure to provide for, penalty 22–902
Under 17, commitment 3–120, 3–121
Under 18 11–907
Cock fighting 22–810
Coin machines, operating with slug 22–1407
Common-law offenses, penalty 22–107
Compounding felony, police and private detectives 4–175
Concealing assets in compromise or closing agreement under income tax law 47–1586*l*

CRIMINAL OFFENSES—Continued
Conditional sale, removing property subject to 22–1406
Confidence games 22–1506
Connivance in evasion of assessments by assistant assessor 47–707
Conspiracy
District Training School, procuring improper commitment 32–619
Firemen conspiring to interfere with efficiency of department 4–407
Jurisdiction 11–602
Police Department, interference with operation of 4–125
Conspiracy to have person adjudged feeble-minded unlawfully 32–619
Conversion by conditional vendee 22–1406
Conviction of, when disqualified from holding office 1–316
Corporation conducting business without license 47–1591f
Cosmetologists Licensing and Registration Law, violation, penalty 2–1326
Counterfeiting alcoholic beverage stamps 25–124
Criminal insane 24–301—24–303
Criminals, procuring enlistment of 22–3413
Cruelty to animals 22–801—22–814
Cruelty to children, penalty 22–901
Damaging or defacing water pipes 43–1536
Dead bodies
Deceased indigents, delivery to medical schools and boards, violation 2–208
Removing without permit 2–206
Selling, penalty 22–3103
Decedents' estates 22–1404, 22–1405
Concealing writings 22–1405
Converting assets 22–1404
Misusing property 22–1404
Deeds, maliciously recording, intent to extort 22–1302
Defaming life insurance companies 35–411
Definitions
Abortion 22–201
Adultery 22–301
Anything of value 22–102
Arson 22–401
Bigamy 22–601
Bribery 22–701
Bucket shop 22–1509
Burglary 22–1801
Cruelty to animals 22–801
Gaming table 22–1507
Gift enterprise 22–3401
Housebreaking 22–1801
Incest 22–1901
Kidnaping 22–2101
Paper 22–101
Rape 22–2801
Robbery 22–2901
Vagrancy 22–3302
Weapons 22–3201
Writing 22–101
Defrauding innkeepers, penalty 22–1301
Deleterious matter, depositing in Rock Creek, Potomac River, penalty 22–1703

CRIMINAL OFFENSES—Continued
Dentistry
False name, use in practicing 2–320
False representation as to qualifications, penalty 2–320
Forgery or fraudulent use of diploma, certificate for license 2–319
License or registration card, failure to display 2–318
Postgraduate classes or schools 2–321
Practicing under improper name 2–316
Practicing without license 2–328
Second or subsequent offenses, penalty 2–329
Desertion
Family 22–903—22–906
Destroying apparatus of Public Utilities Commission 43–909
Disfiguring maliciously 22–506
Disorderly conduct 22–1101—22–1120
Disorderly houses, keeping, penalty 22–2722
District Court of United States for District of Columbia, jurisdiction 11–306
District property, injuring 22–3111
Diversion of District funds 47–104
Divulging information obtained from Bureau of Internal Revenue 47–2504
Dogs
Allowing female in heat at large, penalty 22–1111
Dangerous, allowing at large, penalty 22–1111
Decoying from master's house 47–2007
Removing collar or tax tag 47–2006
Urging to frighten or bite, penalty 22–1110
Drinking in streets, parks, unlicensed public places, penalty 25–128
Driving while drugged or drunk 40–609
Dueling 22–1102—22–1104
Electrical Wiring Inspection Law 1–720
Connecting current before inspection and approval 1–723
Failure or refusal to remove or repair defective wiring 1–720
Police Court, jurisdiction 1–720
Electric company property, tampering with 22–3115
Elevators, regulations for construction and operation, violation 1–229
Embezzlement 22–1201—22–1211
Employer deducting unemployment compensation contributions from wages 46–318
Employer failing to provide seats for female employees 36–311
Employer violating Unemployment Compensation Act 46–319
Employment agency law violations 47–2111, 47–2347
Enticing boys from National Training School for Boys 32–818
Excessive fees in unemployment compensation cases 46–318
Excessive promotion expense of cooperative association 29–838
Explosives, placing with intent to destroy or injure property 22–3105
Extortion, recordation of deed, contract, or conveyance with intent of 22–1302

CRIMINAL OFFENSES—Continued
Failure to exhibit papers in distraint proceedings for collection of personal taxes 47–1405
Failure to file personal property tax return 47–1410
Failure to keep child in school 31–207
Failure to make corporate stock book entries 29–227
Failure to permit inspection of corporate stock book 29–227
False personation 22–1302—22–1308
Obtaining narcotic drugs by 33–420
False pretenses, penalty 22–1301
False reports regarding cooperative associations 29–839
False statements as to motor vehicle liens 40–714
False statements in compromise or closing agreements under income tax law 47–1586*l*
False statements in cooperative association annual report 29–834
Felony
Assault with attempt to commit 22–503
Compounding, police and private detectives 4–175
Fights with animals 22–1105
Fire alarms, false, penalty 22–1119
Fire Department, conspiracy to interfere with efficiency, penalty 4–407
Fire escapes and safety provisions
Failure to provide 5–313
Commissioners constructing, criminal prosecution not waived 5–313
Interfering with or preventing entry to correct conditions 5–314
Violation 5–308
Fire protection, violation of regulations 5–320
Fixtures, depredations of 22–3104
Flag
Mutilating, defiling 22–3414
Use for advertising 22–3414
Fleeing from scene of vehicle accident 40–609
Forcible entry and detainer 22–3101
Foreign consular and diplomatic officers, property, interference with, penalty 22–1115, 22–1116
Forgery 22–1401, 22–1402
Alcoholic beverage stamps 25–124
Forging proof of motor vehicle owners' financial ability 40–411
Obtaining narcotic drugs by 33–420
Fornication 22–1001
Fraud
In obtaining dependent child aid allowance 32–765
Obtaining aid for blind person by 46–113
Obtaining narcotic drugs by 33–420
Obtaining old-age assistance by 46–210
Obtaining unemployment compensation by 46–319
Furnishing tobacco to minors 22–1120
Gambling 22–1501—22–1512
Bucket shops 22–1509—22–1512
Confidence games 22–1506
Gaming 22–1504—22–1508
Lotteries 22–1501—22–1503
Pools 22–1508

CRIMINAL OFFENSES—Continued
Game and Fish Laws 22–1601—22–1627
Gaming 22–1504—22–1508
Garbage collections 6–504, 6–508
Incinerators constructed, owners disposing of garbage by other means 6–508
Offering to or acceptance of gifts by collectors, penalty 6–504
Gas lines, tapping 22–3116
Gift enterprise 22–3401—22–3403
Grave robbery 2–206, 22–3103
Growing crops, cutting down, destroying 22–3108
Harboring boys escaping from National Training School for Boys 32–818
Harbor regulations, penalty for violation 22–1701
Healing Arts Practice Act
False swearing to evade provision 2–128
General penal clause 2–130
Health and Safety regulations 6–113
Homicide
Assault with attempt to commit 22–501
Manslaughter 22–2405
Murder 22–2401—22–2404
Horse meat or horse-meat products, sale of 33–503
Housebreaking 22–1801
Immunity of witnesses in prosecutions under Life Insurance Act 35–802
Incest 22–1901
Increasing total debt of District 47–102
Indecent exposure, penalty 22–1112
Indecent publications 22–2001
Industrial safety, violation of act 36–442
Injuries to property 22–3101—22–3122
Insanitary building
Condemned, owner or part owner failing or refusing to demolish 5–607
Violations 5–613
Insect Pests Control Law 6–904
Insurance
Failure to make entries in capital-stock book of domestic life insurance companies 35–515
False entries in records of fire, casualty, or marine companies 35–1313
False statements in fire, casualty, or marine company reports 35–1312
False statements in life company reports 35–408
False statements regarding life insurance applications 35–719
Fraudulent representations regarding fraternal benefit memberships 35–913
Penalties for violation of life insurance act 35–801
Representing unauthorized fire, casualty, and marine companies 35–1343
Unlawful advertising by life insurance companies 35–410
Unlawful issuance of accident and health policies 35–712
Violating injunctions against fraternal benefit associations 35–914
Interfering with National Guard on active duty 39–606

CRIMINAL OFFENSES—Continued
Narcotic drugs—Continued
Intoxicated persons
Public places, being in 25–128
Sales of alcoholic beverages to 25–121
Vehicles, operation of 25–127
Introducing contraband into penal institutions 22–2603
Jail officers and employees corrupt conduct, penalty 22–2602
Jurisdiction, United States District Court 11–306
Jury and jurors 22–1414
Collusion in drawing 22–1414
Jury box, tampering with 22–1414
Kidnaping 22–2101
Kites, flying, penalty 22–1117
Larceny 22–2201—22–2208
As to building associations 26–404
Trust, title and indemnity companies 26–320
Larceny from vehicles 22–2204a
Law relating to District Training School 32–619
Libel 22–2301—22–2304
Locomotives or railway cars, endanger passage of 22–3119
Lotteries 22–1501—22–1503
Manslaughter
Manslaughter with vehicle includes negligent homicide 40–607
Punishment 22–2405
Manuscripts, stealing or injuring 22–3106
Marriage
Celebration without authority 30–107
Celebration without license 30–108
Failure to make return of license 30–113
Mattress Law violations 6–605
Maximum hours of labor, laborers, mechanics on public works 22–3407, 22–3408
Mayhem, penalty 22–506
Meat, mislabelling as Kosher 22–3404—22–3406
Milestones, removing 22–3120
Minimum wage law violations 36–417, 36–418
Minor offenses, jurisdiction of Commissioners of District 1–224
Penalties prescribed, effective date 1–225
Misuse of documents in compromise or closing agreement under income tax law 47–1586*l*
Mortgaged goods, removing from District, penalty 22–1209
Motor Vehicle Lien Law 40–714
Motor vehicle owners' financial responsibility act 40–408—40–411
Motor vehicles, unauthorized use, penalty 22–2204
Murder 22–2401—22–2404
First degree 22–2401, 22–2402, 22–2404
Second degree 22–2403, 22–2404
Narcotic drugs
Compounding, unauthorized 33–402
Control over, unauthorized 33–402
Dispensing, unauthorized 33–402
False labeling 33–420
False personation to obtain 33–420
False statements to obtain 33–420
Forged labels, affixing 33–420
Manufacture, unauthorized 33–402
Possession, unauthorized 33–402

CRIMINAL OFFENSES—Continued
Prescribing, unauthorized 33–402
Resisting officer serving search warrant 33–414
Neglect of duty by assistant assessors 47–707
Negligent homicide by vehicle operator 40–606
Nonresidents violating motor vehicle operators' permit requirements 40–303
Nonsupport of wife, minor children 22–903
Notaries public, excessive fee 1–515
Nurses' Regulatory Law 2–409
Obstructing justice 22–703
Obstructing personal property, examinations of assessor 47–1401
Offenses committed outside District 22–108
Offenses not covered by Code, penalty 22–107
Officials, corruptly influencing 22–704
Operating medical or dental college without registration and permit 31–903
Operating motor vehicle after revocation or suspension of permit 40–302
Operation of motor vehicle while registration is suspended or revoked 40–206
Optometry Law, violations of 2–502
Outdoor sign regulation, violation 1–233
Pandering 22–2705—22–2709
Parachutes, flying, penalty 22–1117
Perjury
As to building associations 26–404
Board of Assistant Assessors 47–606
Board of Equalization and Review 47–606
Fraternal benefit associations, death claims 35–913
In personal property tax return affidavits 47–1203
Marriage license, use in obtaining 30–110
Penalty 22–2501
Trust, title, and indemnity companies 26–320
Plant Disease Control Law 6–904
Plants, growing, cutting down, or destroying 22–3108
Plumber's Licensing Law 2–1408
Plumbing Inspection Law 1–725
Podiatry Licensing Law
Diploma, certificate, or license, altering 2–714
Diploma, selling or offering to sell 2–714
False representations concerning degree 2–715
General penal clause 2–717
Impersonating another at examination 2–715
License and registration card, failure to display 2–713
License, selling or offering to sell 2–714
Postgraduate classes or schools, conducting without approval of board 2–716
Practicing under false name 2–715
Practicing without license 2–717
Police Department
Aiding criminals to escape justice 4–175
Conspiracy to interfere with or obstruct conduct or operation of force 4–125
Interfering with supervisory powers over certain businesses 4–150
Neglect to make arrest, penalty 4–143
Unnecessary force in making arrest 4–176
Pools, gambling 22–1508
Potatoes, mislabeling 22–3409—22–3412

CRIMINAL OFFENSES—Continued
Potomac River, throwing or depositing matter into, penalty 22–1702
Prison breach, penalty 22–2601
Private detective, acting as without complying with law 4–173
Privies, construction and maintenance contrary to law 6–704
Prize fights 22–1105, 22–1106
Property of another, taking and carrying away, penalty 22–1211
Property of District, purloining 22–2206
Prosecutions 22–109
Prostitution 22–2701
Definition, penalty 22–2701
Female under 16 22–2704
Houses of 4–145, 4–146, 11–604, 22–2701—22–2722
Pandering 22–2705—22–2712
Premises occupied for 22–2713—22–2722
Wife, causing to practice 22–2708
Public highways, obstructing 22–3121
Fines collected in name of United States 22–3122
Penalty 22–3121
Public records, destroying or defacing 22–3107
Public utilities and their agents 43–901—43–913
Demanding or receiving rates different from schedule 43–902
Divulging information obtained in investigations 43–601
Failure to obey orders of Public Utilities Commission 43–906
Failure to perform lawful duty 43–906
False information, furnishing 43–905
False statements to secure approval of issuance of securities 43–901
Keeping accounts improperly 43–905
Perjury before Public Utilities Commission 43–712
Rebates 43–904
Refusal to remove utility poles 43–1404, 43–1411
Refusing information 43–905
Unlawful issuance of securities 43–808
Violating orders of Board of Tax Appeals 43–907
Violating orders of joint board 43–907
Violating orders of Public Utilities Commission 43–907
Punishment doubled in certain cases 6–1005
Rape 22–2801
Real estate and business brokers 45–1416
Receiving embezzled property, penalty 22–1204
Reckless driving 40–605
Recordable instrument, false certification of, penalty 22–1308
Registered bottles, unauthorized use of, penalty 48–102
Religious congregations, disturbing, penalty 22–1114
Representing unlicensed insurance company 35–201
Resisting service of search warrant for narcotic drugs 33–414
Robbery 2–206, 22–2901, 22–2902
School census, neglect or refusal to furnish information 31–210
Second conviction, added penalty 22–104
Seduction 22–3001, 22–3002

CRIMINAL OFFENSES—Continued
Selling merchandise to certain minors for public resale 36–223
Sewer connections, failure to make after notice 6–403
Sexual intercourse 22–2701
Slugs 22–1407, 22–1408
Coin machines, operating with 22–1407
Issuing 22–1408
Manufacturing 22–1408
Possession 22–1408
Small-loan law violations 26–607
Smoke Preventive Law 6–803
Speeding 40–605
Statutes and regulations for private hospitals and asylums 32–303
Steam and other Operating Engineers Licensing Law 2–1506
Stolen property
Destroying, penalty 22–2208
Receiving, penalty 22–2205
Receiving property of District, penalty 22–2207
Stones, throwing, in streets, penalty 22–1109
Street cars, failing to stop at intersection 4–112
Street lighting company failing to furnish and set up equipment 7–705
Streets and other ways
Cutting trenches without permit 7–615, 7–616
Playing in, penalty 22–1108
Removing work or material without permit 7–615, 7–616
Subornation of perjury, penalty 22–2501
Trees, cutting down, destroying 22–3108
Trees on public grounds, injuring 22–3110
Unauthorized tapping of water mains laid by United States 43–1538
Unauthorized use of name "cooperative" 29–837
Unauthorized use or rule of registered milk-beverage containers 48–303
Uniformed forces, discriminating against 22–3415
Uniform Narcotic Drug Law 33–401—33–425
United States property, injuring 22–3111
Unlawful assembly, penalty 22–1107
Unlawful entry on private property, penalty 22–3102
Unsafe buildings and structures 5–504
Failure to remove after notice 5–504
Unwholesome food, sale, prohibited 22–3416
Use or possession of vehicle smoke screen device 40–610
Vagrancy 22–3301, 22–3302
Vandalism 22–3112
Vehicles, larceny from 22–2204a
Veterinarians' Licensing Law, violation, prosecution 2–811, 2–812
Violating employment laws for women 36–309
Violating Labor Union Label Registration Law 48–403
Violating Motor Fuel Tax Law 47–1911
Violating Public Auction Permit Law 47–2207
Violating secrecy of income tax returns 47–1564c
Violation of license requirements 47–2347
Violation of Milk, Cream, and Ice Cream Law 33–319
Violation of Motor Vehicle Registration Law 40–104
Violation of personal property tax laws 47–1303
Violations of Institutions of Learning Act 29–419

CRIMINAL OFFENSES—Continued
Warehouse Receipts Act 28–2101—28–2106
Delivery of goods without obtaining negotiable receipts 28–2105
Encumbered goods, negotiation of receipts 28–2106
Failure to mark receipt as duplicate 28–2103
False statement in receipts 28–2102
Issuing receipts for goods not received 28–2101
No title to goods, negotiation of receipts 28–2106
Warehouseman failing to disclose ownership of goods 28–2104
Water, maliciously making impure 22–3118
Water meters, tampering with 22–3117
Water pipes, tapping 22–3117
Weapons 22–3201—22–3216
Weeds, failure to cut after notice 6–901
Weights and Measures Regulatory Law, violation, penalty 10–134
Wife desertion 22–903
Wilful failure to make inheritance or estate tax return 47–1622
Wilful violation of Income Tax Law 47–1589e
Wills, destroying or secreting 22–1403
Works of art, stealing or injurying 22–3106
Zoning Law, violations, penalty 5–422

CRIMINAL PROCEDURE
See INSANE CRIMINALS; PLEADINGS
Abandonment of prosecution 23–104
Extension of time for grand-jury action 23–104
Grand jury failing to act 23–104
Appeals by District or United States 23–105
Same right as defendant 23–105
Verdict for defendant not to be set aside 23–105
Appeal to Municipal Court of Appeals for District of Columbia 11–772
Bail, deposit and forfeiture 23–106
Burden of proof in vagrancy cases 22–3303
Death penalty 23–701
Death chamber, apparatus, to be provided by Commissioners of District 23–702
Electrocution prescribed 23–701
Executioner, assistants, appointment by Commissioners of District 23–702
Executions 23–704
Persons not to be present 23–705
Persons permitted to be present 23–704
Place 23–706
Sentence to be in writing 23–703
Defendant, inability to pay witness fees 23–109
Depositions 23–111
Commission to take, issuance and return 23–112
Grounds 23–111
Oral and written 23–111
Required contents 23–111
Fees for defense witnesses 23–109
Fresh pursuit 23–501
Arrests by officers of States 23–501
Commitment when arrest is lawful 23–502
Construction of act 23–503
Definition 23–504
Hearings 23–502

CRIMINAL PROCEDURE—Continued
Fugitives from justice 23–401
Admittance to bail 23–404
Apprehension 23–401
Bond for appearance before proper official 23–409
Commitment 23–405
Discharge when not demanded 23–406
Examination in Police Court 23–404
Extradition 23–401
Associate justices of District Court, duties 23–402
Chief Justice of District Court, duties 23–401
Forfeiture of bond 23–405
Fugitives from Federal districts 23–410
Fugitives from foreign counties 23–410
Notice of apprehension to be forwarded 23–407
Period of detention 23–408
Voluntary return 23–409
Warrants for apprehension, issuing from Police Court 23–403
Indictments 23–201
Allegations regarding
Intent to defraud, sufficiency 23–203
Money, sufficiency 23–202
Joinder of offenses 23–201
Perjury, sufficiency 23–204
Subornation of perjury, sufficiency 23–205
Joint defendant, discharge to be witness 23–110
Bars further prosecution 23–110
Method of discharge 23–110
Peremptory challenges 23–107
Professional bondsmen 23–601
Affidavit of past compliance on renewal of authority 23–608
Attorneys paying to secure clients, unlawful 23–604
Charges, attempting settlement or dismissal prohibited 23–605
Definitions 23–601
Bonding business 23–601
Employees to file affidavit of compliance 23–608
Enforcement of laws regarding bonding 23–612
Good moral character required 23–608
List of employees to be filed with court, contents 23–608
Lists to be furnished prisoners on request 23–606
Names to be posted in places of detention 23–606
Not to be given information on proposed raids 23–609
Penalties 23–611
Persons convicted of moral-turpitude offenses not qualified 23–608
Prisoners may communicate with 23–606
Prohibited from places of detention except on request in behalf of prisoner 23–607
Qualifications to be established by courts 23–608
Record of calls in detention places to be kept 23–607
Record of requests for bondsman to be kept 23–606

CRIMINAL PROCEDURE—Continued
Professional bondsmen—Continued
Remuneration beyond regular fee prohibited 23–605
Securing business
Paying attorneys prohibited 23–603
Paying court attaches prohibited 23–603
Paying public officials prohibited 23–603
Prosecutions, conduct of 23–101
Corporation counsel, attorney for District to be known as 23–101
Jurisdiction as between District Court and Police Court 23–103
Question of conducting to be certified to Court of Appeals 23–102
When by corporation counsel 23–101
When by district attorney 23–101
When in name of District 23–101
When in name of United States 23–101
Search warrants 23–301
Affidavit to be included or annexed 23–301
Contents 23–301
Destruction of seized property 23–304
Disposition of property seized 23–302
Execution by police 4–138
Form 23–301
Issuance upon complaint under oath 23–301
Property subject 23–301
Retention of property if defendant is committed 23–303
Return of seized property 23–304
Separability provisions 23–305
Sentence, death, time of execution may be extended 23–114
Postponement pending appeal 23–113
Unwholesome food, sale of 22–3420
Verdict not to be set aside by ground for challenge 23–108
Witnesses unable to give security for appearance, detention 4–144
Witness fees, defense witnesses 23–109

CRIMINALS
See Prisons and Prisoners

CROSSCLAIMS
Municipal Court for District of Columbia 11–755

CROSSING POLICEMEN
Detailing to street railway and street intersections 4–112—4–114

CROSSWALKS
Snow and ice
Duty of street railway to clear away 7–614
Removal 7–802, 7–803

CRUELTY
As ground for legal separation 16–403

CRUELTY TO ANIMALS
Additional definition 22–802
Arrest without warrant, notice to owner 22–804
Bull fighting 22–810
Keeping or using place 22–809
Cockfighting
Keeping or using place 22–809
Penalty 22–810

CRUELTY TO ANIMALS—Continued
Definitions 22–801, 22–813
Docking tails of horses, penalty 22–814
Impounders 22–807
Issuance of search warrants 22–805
Maimed or diseased animals, abandoning 22–812
Neglecting sick or disabled animals 22–811
Penalty 22–801
Prosecutions 22–806
Railroad companies, penalty 22–803
Relief of impounded animals 22–808

CRUELTY TO CHILDREN
See Children
Failure to provide for children, penalty 22–902
Jurisdiction, Police Court 11–603
Penaty 22–901

CURBINGS
Assessment of costs against abutting property 7–623
Exemption from replacement cost 7–626
Paving under permit, assessment of cost 7–627
Property abutting two or more streets, limitation on aggregate assessment 7–629
Street improvement, assessment against abutting property 7–606

CURBS
Assessments 7–612a—7–612d

CURTESY
See Decedents' Estates
Estates by the curtesy 18–215

CUSTODIANS OF PROPERTY
See Property Clerk

DAIRIES AND DAIRY PRODUCTS
See Food and Drugs; Milk and Milk Products
Dairies, requirements 33–302, 33–305, 33–312
Inspector, right to act as livestock inspector 6–116

DAMAGES
See Eminent Domain
District Boxing Commission, liability for 2–1222
Ejectment 16–511
Excessive damage as basis for new trial 13–221
Interest as element 28–2708
Liquidated and unliquidated, joinder 13–208
Measure of damages, replevin 16–1811
Negligence causing death 16–1201
Plural breaches, pleading 13–205
Recovery in quo warranto proceedings 16–1611
Replevin, Municipal Court 11–731
Unfounded equitable actions 13–219
Wrongful death 16–1201

DANCE HALLS
License 47–2320

DANGEROUS WEAPONS
Carrying concealed weapons 22–3204
Dealer's license 47–2340

DATE
See Computation of Time
Deeds, effective date as to, creditors 45–501
Parties 45–501
Subsequent bona fide purchasers 45–501
Subsequent mortgagees 45–501

DATE—Continued
Omission from negotiable instrument 28–107
Undated negotiable instrument, holder's right to fill in date 28–114

DAUGHTERS OF THE AMERICAN REVOLUTION
Property exempted from taxation 47–821—47–825

DAYS OF GRACE
Abolished, Negotiable Instruments Law 28–616
Life Insurance premiums 35–703

DEAD ANIMALS
Contracts for collection and disposal 6–502

DEAD HUMAN BODIES
See Anatomical Board; Cemeteries and Crematories; Grave Robbery
Bodies requiring burial at public expense 2–202
Delivery of bodies to Anatomical Board 2–202
Requests for burial or cremation, effect 2–202
Control over 2–201
Conveyance through District 27–119
Cremation by health officer, containers for ashes 6–115
Cremation permit required 27–125
Cremation required in certain cases 27–129
Criminal offenses
Buying or selling 22–3103
Grave robbery 2–206, 22–3103
Death from pestilential diseases 22–129
Deceased indigents, distribution of bodies among medical and dental schools and boards 2–201—2–208
Apportionment, method 2–203
Bond given by school 2–204
Expense of delivery paid by schools 2–207
Penalty for violating law 2–208
Receipt given for body 2–203
Relative or friend claiming body, effect 2–203
Use of body within District required 2–205
Disinterment by order of court 27–128
Disturbing or removing from vault, penalty 2–206
Embalming 27–125
Exhibition, permit of health officer 27–120
Grave robbery, penalty 2–206, 22–3103
Interment
Disinterment, disposal 27–119a
Duty of health officer to enforce regulations 6–102
Keeping, notice to health officer 27–120
Mode of burial 27–122
Penalties regarding 27–126
Prosecutions 27–127
Receipt of indigent dead by Anatomical Board 2–203
Relative or friend claiming body for burial 2–202
Reports of death to health officer 27–120
Restrictions on burial 27–121
Traffic in, prohibited 2–206

DEADLY WEAPONS
See Weapons
Dealer's license 47–2340

DEAF PERSONS
See Columbia Institution for the Deaf

DEATH
Stockholder, delivery of certificate after 28–2907

DEATH BENEFITS
Police and Firemen's Relief Fund 4–507

DEATH FROM NEGLIGENCE
See Negligence Causing Death

DEATH PENALTY
See Criminal Procedure
Death chamber, apparatus to be provided by Commissioners 23–702
Electrocution prescribed 23–701
Executioner, assistants, appointment by Commissioners 23–702
Executions 23–704—23–706
Persons not to be present 23–705
Persons permitted to be present 23–704
Place 23–706
Sentence required to be in writing 23–703

DEATHS
See Abatement and Revivor; Dead Human Bodies
Copies of records, fee 6–103
Negligence causing death, action for damages 16–1201—16–1203
Registration, duty of health officer to enforce regulations 6–102

DEBTS
See Statute of Frauds
Assignment 28–2503
Attachment and garnishment 16–301
Liquidated, interest on principal to be included in judgments 28–2707
Prostitute, detaining for debt due house, penalty 22–2709
Voidable by statue of frauds 12–302
Wife's separate property, freedom from husband's debts 30–207

DECEDENTS' ESTATES
See Abatement and Revivor; Executors and Administrators; Joint Contracts; Wills
Adoptive children, rights of 16–205
Assets 18–301
Appraisal 18–402
Appraisers dying or refusing to act 18–403
Claims against administrator, collector 18–305
Claims of testator against executor 18–303
Liability of sureties 18–303
Remedy for failure to inventory 18–304
Converting, penalty 22–1404
Discharge or bequest of debt or demand 18–302
Inclusion in inventory 18–301
Inventory 18–401
Co-executor or co-administrator 18–408
Collectors 18–407
Exceptions 18–401
General content 18–401
Specific contents 18–405
Specific exceptions 18–406
Notice of appraisement 18–404
Order for sale 18–602

DECEDENTS' ESTATES—Continued
Assets—Continued
Sale of personalty 18–601
Sale of realty 18–607
Bond to prevent 18–608
Proceedings for by creditors 18–612
Subject to dower 18–610
To satisfy debts and legacies 18–609
Trustee, appointment and bond 18–611
Sale of realty directed in will 18–603
Power of co-executors 18–605
Procedure 18–604
Survivor of several trustees 18–606
Bequest to female 18–722
Claims of creditors 18–501
Against nonresident decedents 18–501
Authentication prerequisite to discharge 18–502
Disputing 18–516
Distribution of residue 18–530
Docket 18–513
Entry does not toll limitations 18–514
Entry is not evidence of correctness 18–514
Executors' and administrators' claims 18–511
Oath 18–511
To be passed by Probate Court 18–512
Limit to bringing suits 18–518
Made after distribution 18–525
Meeting of creditors 18–521
Notice of distribution 18–522
Notice to file 18–526
Copy as evidence 18–529
Prima facie evidence 18–528
Proof 18–527
Reporting 18–527
Passing is not conclusive 18–517
Payment 18–519
Pleading limitation is discretionary 18–515
Priorities 18–520
Proving 18–503
Affidavit or deposition made outside District 18–510
Assigned instruments evidencing debt, oath of assignee 18–506
Commercial papers 18–507
Executors' and administrators' claims 18–511
Judgment or decree 18–504
Open account 18–509
Rent 18–508
Specialties, bills, checks, notes 18–505
Rejecting 18–516
Retention of assets for unexhibited claims 18–523
Retention of assets pending litigation 18–524
Continuing decedent's business 20–116
Criminal offenses 22–1403, 22–1404
Will, destroying, mutilating, secreting, stealing 22–1403
Distribution of intestate's surplus estate 18–701
Death of distributee 18–713
Escheatment 18–717
Illegitimate children 18–716
Partial 18–720
Posthumous children 18–714

DECEDENTS' ESTATES—Continued
Distribution of interstate's surplus estate—Continued
Specific property 18–718
Distribution 18–719
Sale 18–719
Surplus over spouse's share 18–705
Brother or sister and descendants 18–709
Brothers and sisters to share equally 18–710
Children 18–706
Collateral relations 18–711
Grandchildren 18–707
Grandfather and grandmother 18–712
Parents 18–708
When surviving spouse takes one-half 18–704
When surviving spouse takes one-third 18–703
When surviving spouse takes whole 18–702
Whole- and half-blood kindred 18–715
Distribution of specific bequests 18–721
Dower and curtesy rights 18–201
Assignment by guardian 18–208
Devise of both personalty and realty 18–212, 18–213
Devise passing nothing 18–214
Devises construed to be in lieu of dower 18–210
Dower, forfeiture by living in adultery 18–203
Dower in equitable titles 18–202
Estates by the curtesy 18–215
Fraudulent assignment by guardian of heir 18–207
Fraudulent judgments do not defeat 18–207
Husband's defaults do not defeat 18–207
Jointure after marriage, election to take dower 18–205
Jointure, effect 18–206
Release of dower 18–204
Absence of wife for 7 years 18–204
Insanity of wife 18–204
Renunciation of devises 18–211
Restoration on eviction from jointure 18–209
Right of quarantine 18–201
Drawee of bill of exchange dead, presentment of bill 28–921
Estate taxes 47–1608—47–1629
Executor's deed, form 45–301
Family allowance 18–801
Feeble minded persons
Liability for cost of maintenance 32–615
Relatives, liability for maintenance 32–616
Income tax
Application of 47–1577
Bequests and devises exempted 47–1557a
Gross income prior to death 47–1561a
Returns by fiduciary 47–1564a
Inheritance and estate taxes 47–1601—47–1629
Law of descent 18–101
Advancements 18–108
Antenuptial children 18–106
Children born after intestate's death 18–103
Descent from trustees 18–102
Descent through alien 18–110
Descent when heir kills decedent 18–109
Escheat of lands 18–111
Heirs, other than children 18–103
Illegitimate children 18–107

DECEDENTS' ESTATES—Continued
Law of descent—Continued
Kindred of same degree 18–105
Kindred of whole- and half-blood 18–104
Order of descent 18–101
Limitation of actions 12–202
Meeting of legatees, next of kin 18–723
National Guard officers, liability for equipment 39–511
Notice of dishonor of negotiable instruments 28–710
Posthumous children
Birth defeats future estates dependent on parents' death without heirs, issue or children 45–204
Presentment of negotiable instruments for payment 28–607
Property clerk, property delivered to by police, disposition made of 4–159
Property inherited, exemption from income tax 47–1557a
Real property, assessment in name of deceased person 47–701
Small estates, distribution 18–802—18–810
Discovery of additional property 18–807
Exemption from liability 18–804
False affidavits, penalty 18–808
Fees 18–806
Notice to creditors 18–803
Order 18–802
Petition 18–802
Waiver of Bond and Commissions 18–805

DECEIT
See Fraud

DEDICATION
Beach Parkway, exchanged land 8–122
Glover Parkway and Children's Playground 8–162
New alleys in place of existing alleys 7–303
Acceptance by Commissioners 7–303
Owners petitioning for closing of alleys, dedication of new ways 7–306
Readjustment of streets, highways, and alleys 7–403
Rock Creek Park 8–146
Rock Creek Park land, acceptance 8–150
Streets and other public ways 1–614
Streets by landowners, conditions 7–117
Whitehaven Parkway, exchange of land with property owners 8–119

DEEDS
See Commissioner of Deeds; Trust Deeds
Acknowledgment 45–401—45–412
Foreign country 45–404
Guam, Samoa, and Canal Zone 45–405
Philippine Islands and Puerto Rico 45–406
Outside District 45–403
Within District 45–402
"Bargain and sell" pass whole estate in absence of contrary showing 45–202
Commissioner of deeds, power to acknowledge 1–401
Contingent estates conveyable by deed 45–101
Conveyances by husband to wife 30–205

DEEDS—Continued
Covenant
Against having encumbered 45–307
Effect when used in deeds 45–303
For further assurances 45–308
Of quiet enjoyment 45–306
Running with land, married women 30–202
Deeds of corporations, requisite 45–302
Delivery, effect as notice 45–501
Description of property by subdivision 7–110
Description of property, reference to plat 1–622
"Die without issue", meaning 45–205
District executing, procedure 1–214
Earliest recorded deed has priority 45–502
Effective date 45–501
As to creditors 45–501
As to parties 45–501
As to subsequent bona fide purchasers 45–501
As to subsequent mortgagees 45–501
Estates good as executory devise is conveyable by deed 45–101
Executor's deed, form 45–301
Fee-simple estate
Created unless contrary intention appears 45–201
Form 45–301
Words of inheritance unnecessary to create 45–201
Foreign deeds as evidence 14–402
Future estates
Conveyable by deed 45–101
Limited to heirs, issue, or children, posthumous children take as though living at ancestor's death 45–204
Gifts to charitable uses, rule against perpetuities inapplicable 45–102
"Grant" passes whole estate in absence of contrary showing 45–202
"Have no issue" meaning 45–205
Husband and wife, form 45–301
Life estates
Conveyable by deed under seal 45–106
Form 45–301
Married woman's acknowledgment, notary's power to take 1–511
Not to be executed or acknowledged by attorney 45–401
Notary's power to take acknowledgment 1–511
Fee 1–514
Present estate conveyable by deed 45–101
Priority of first deed recorded 45–502
Real property, sale by Commissioners of District 9–303
Recording
Defective deeds not to be recorded 45–503
Effect as notice 45–501
Effective date 45–501
Not to be made when defective 45–503
Priority 45–502
Record as evidence 45–504
Remainder to heirs of life tenant does not give him fee-simple estate 45–203
Rule in Shelley's case abolished 45–203
Trust deeds for particular purposes, form 45–301

DEEDS—Continued
Trust deeds, married women authorized to execute 30–204
Vested estates conveyable by deed 45–101
Warranties 45–304, 45–305
General warranty 45–304
Special warranty 45–305
Wife empowered to convey separate property 30–201
Words of inheritance unnecessary to create fee-simple estate 45–201

DEEDS OF TRUSTS
See Trust Deeds

DEFAULT
See Statute of Frauds
Mandamus proceedings 16–1008
Proof in defaulted divorce actions 16–419
Replevin 16–1807

DEFINITIONS
Abortion 22–201
Acceptance
Relating to negotiable instruments 28–101
Statute of frauds under Uniform Sales Act 28–1104
Under Uniform Sales Act 28–1308
Acceptance of bill of exchange 28–907
Accommodation party, Negotiable Instrument Law 28–206
Action
Relating to negotiable instruments 28–101
Under Uniform Sales Act 28–1606
Under Uniform Warehouse Receipts Act 28–2203
Administrative decision, zoning law 5–425
Administrative office of body, zoning law 5–425
Administrator 49–205
Admitted assets, under Fire and Casualty Act 35–1303
Adult, Juvenile Court 11–906
Adultery 22–301
Advertisement, dentistry, Regulatory Law 2–330
Affirmation 49–206
Agency 40–803
Agent 35–1401
Under General License Law 47–2307
Under Life Insurance Act 35–302
Aid 32–752
Alcohol 25–103
Alcoholic beverages 25–103
Alien company
Under Fire and Casualty Act 35–1303
Under Life Insurance Act 35–302
Alley, Alley Dwelling Law 5–109
Alley dwelling 5–109
Amendment, Zoning Law 5–425
Animal 22–813
Annual payroll 46–303
Any officer, general rule 49–204
Anything of value 22–102
Apartment house 5–312
Apothecary, under Uniform Narcotic Drug Law 33–401
Applicant for employment 47–2101
Applicant for help 47–2101
Apprentice 36–127

DEFINITIONS—Continued
Apprentice in cosmetology 2–1301
Architect 2–1014
Arson 22–401
Assistance 32–752
Assistance, relating to old-age assistance 46–201
Association, relating to cooperative associations 29–801
Authorized company, under Fire and Casualty Act 35–1303
Average annual payroll 46–303
Bank
Relating to negotiable instruments 28–101
Under Uniform Fiduciaries Act 28–2301
Barber instructor 2–1102
Barbering 2–1102
Bargain and sell, meaning in real property conveyances 45–202
Base period employers 46–303
Base period, relating to unemployment compensation 46–301
Bearer, relating to negotiable instruments 28–101
Beer 25–103
Benefit year, relating to unemployment compensation 46–301
Beverage 25–103
Bigamy 22–601
Bill, relating to negotiable instruments 28–101
Bills of exchange 28–901
Blackmail 22–2305
Blank endorsement 28–305
Board of Pharmacy, under Uniform Narcotic Drug Law 33–401
Bond 28–2401
Bonding business 23–601
Bondsman 23–601
Branch, Municipal Court 11–802
Bribery 22–701
Broker 35–1401
Under Fire and Casualty Act 35–1303
Under Life Insurance Act 35–302
Bucket shop 22–1509
Bucketing 22–1509
Building, Architects Licensing Law 2–1018
Bulk sales 28–1703
Burglary 22–1801
Business-chance broker 45–1402
Business-chance salesman 45–1402
Buyer, under Uniform Sales Act 28–1606
Calendar quarter 46–301
Cannabis 33–401
Capital assets, under Income Tax Law 47–1551c
Capitol Buildings 9–132
Certificate 28–2922
Certificate, relating to liens on motor vehicles 40–701
Certified milk 33–313
Charter, regarding corporations for profit 29–239
Check 28–1002
Child 46–301
Child, Juvenile Court 11–906
Child-Placing Agency 32–782
Chronic alcoholic 24–502
Church building 47–801a
Club, relating to alcoholic beverages 25–103

DEFINITIONS—Continued
Coca leaves 33–401
Commissioner 40–803
Under Fire and Casualty Act 35–1303
Under Life Insurance Act 35–302
Commodities, in bucket shopping 22–1509
Common carrier, relating to public utilities 43–111
Communicable disease 6–119
Company 35–1401
Under Fire and Casualty Act 35–1303
Under Life Insurance Act 35–302
Computation date 46–301
Construction, relating to highways, under Motor Fuel Tax Law 47–1902
Contract, in bucket shopping 22–1509
Contract to sell 28–1101
Conversion of inhabited alleys fund 5–105
Cooperative basis, relating to cooperative associations 29–801
Corporation, under Income Tax Law 47–1551c
Cosmetology 2–1301
Court, Municipal Court 11–802
Cream 33–313
Crime of violence 22–3201
Cruelty to animals 22–801
Dealer
Relating to registration of motor vehicles 40–101
Under general license law 47–2307
Deficiency, under Income Tax Law 47–1551c
Deliverable state, under Uniform Sales Act 28–1606
Delivery 28–2922
Relating to negotiable instruments 28–101
Under Uniform Sales Act 28–1606
Under Uniform Warehouse Receipts Act 28–2203
Dentistry
Practice of 2–315
Unprofessional conduct 2–311
Dentist, under Uniform Narcotic Drug Law 33–401
Department
Under Fire and Casualty Act 35–1303
Under Life Insurance Act 35–302
Dependent child 32–752
Dependent relative, relating to unemployment compensation 46–301
Detective 47–2341
Under general license law 47–2341
Detective agency, under general license law 47–2341
Development, Alley Dwelling Law 5–112
Disease 2–101
Dispense, under Uniform Narcotic Drug Law 33–401
Distributor, relating to motor fuel tax 47–1902
District 35–1401, 40–803
Under Fire and Casualty Act 35–1303
Under Life Insurance Act 35–302
Dividend, under Income Tax Law 47–1551c
Divisible contract to sell or sale, under Uniform Sales Act 28–1606
Document of title to goods, under Uniform Sales Act 28–1606
Doing business, under Fraternal Benefit Association Law 35–915

DEFINITIONS—Continued
Domestic company
Under Fire and Casualty Act 35–1303
Under Life Insurance Act 35–302
Dower 18–201
Drug 33–102
Drugless healing 2–101
Dwelling, Alley Dwelling Law 5–109
Earnings, relating to unemployment compensation 46–301
Electric plant, relating to public utilities 43–114
Elevator shaft 5–312
Employer 36–432
Employer, relating to unemployment compensation 46–301
Employing unit 46–301
Employment, relating to unemployment compensation 46–301
Endorsement 28–2920
Entered into or incurred 26–104
Executor 49–205
Existing goods, under Uniform Sales Act 28–1105
Express warranty, under Uniform Sales Act 28–1112
Extension or extensions, relating to public utilities 43–108
False advertising 22–1411
Farm tractor, relating to registration of motor vehicles 40–101
Federal Narcotic Laws 33–401
Feeble-minded person, relating to District Training School 32–603
Fiduciaries Law 28–2301
Fiduciary
Under Income Tax Law 47–1551c
Under Uniform Fiduciaries Act 28–2301
Fire escape 5–312
Fire resisting 5–312
Fireproof 5–312
Fiscal year, under Income Tax Law 47–1551c
Flat 5–312
Food 33–102
Foreign company
Under Fire and Casualty Act 35–1303
Under Life Insurance Act 35–302
Fraternal benefit associations 35–901
Fresh pursuit 23–504
Fund 46–301
Fungible goods
Under Uniform Sales Act 28–1606
Under Uniform Warehouse Receipts Act 28–2203
Future estate 45–810
Future goods, under Uniform Sales Act 28–1105, 28–1606
Gas corporations, relating to public utilities 43–113
Gas plant, relating to public utilities 43–112
General acceptance of bill of exchange 28–914
General agent, under Life Insurance Act 35–302
General partners, relating to limited partnerships 41–102
General power, relating to realty 45–1002
Gift enterprise 22–3401
Good faith; Fiduciaries Law 28–2301

DEFINITIONS—Continued
Goods
Under Uniform Sales Act 28–1606
Under Uniform Warehouse Receipts Act 28–2203
Grant, meaning in real property conveyances 45–202
Gross income 47–1557a
Group life insurance 35–710
Gutter 7–612a
Head of family 15–401
Head teacher 31–113
Healing arts 2–101
Health, accident and life insurance companies 35–202
Health officer 6–119j
Heater method of resurfacing street 7–628
Highways, relating to motor fuel tax 47–1902
Holder
Relating to negotiable instruments 28–101
Under Uniform Warehouse Receipts Act 28–2203
Holder for value 28–203
Holder in due course, negotiable instruments 28–402
Hospital, under Uniform Narcotic Drug Law 33–401
Hotel 5–312
Relating to alcoholic beverages 25–103
Housebreaking 22–1801
House to house solicitors 47–2337
Housing project, Alley Dwelling Law 5–112
Ice cream 33–313
Idiot 49–207
Impairment of capital or surplus, under Fire and Casualty Act 35–1310
Importer, relating to motor fuel tax 47–1902
Improvement, relating to highways, under Motor Fuel Tax Law 47–1902
Incest 22–1901
Indecent publication 22–2001
Indigent insane person 32–405
Individual, under Income Tax Law 47–1551c
Indorsement, relating to negotiable instruments 28–101
Industrial life insurance 35–302
In good faith 28–2922
Under Uniform Fiduciaries Act 28–2301
Under Uniform Sales Act 28–1606
Under Uniform Warehouse Receipts Act 28–2203
Inhabited alley, Alley Dwelling Law 5–109
Insane person 49–207
Insolvency, under Fire and Casualty Act 35–1309
Insolvent person, under Uniform Sales Act 28–1606
Instructor of cosmetology 2–1301
Instrument
Relating to liens on motor vehicles 40–701
Relating to negotiable instruments 28–101
Joint contracts 16–901
Joint rates, relating to street railways 43–107
Judge
Juvenile Court 11–906
Municipal Court 11–802
Keeper, in bucket shopping 22–1509
Kidnaping 22–2101
Laboratory, under Uniform Narcotic Drug Law 33–401
Liens, relating to liens on motor vehicles 40–701
Localized service within State 46–301
DEFINITIONS—Continued
Lodging house 5–312
Lunatic 49–207
Maintenance, relating to highways, under Motor Fuel Tax Law 47–1902
Managing cosmetologist 2–1301
Manicurist 2–1301
Manufacture, relating to alcoholic beverages 25–103
Manufacture, under Uniform Narcotic Drug Law 33–401
Marine insurance 35–1101
Meals, relating to alcoholic beverages 25–103
Member, relating to cooperative associations 29–801
Merchandise, under general license law 47–2307
Military service 46–307
Milk 33–313
Minor street 7–301
Minor, under Minimum Wage Law 36–401
Most recent employer 46–303
Motor vehicle
Relating to motor fuel tax 47–1902
Relating to registration of motor vehicles 40–101
Under Traffic Act 40–602
Motor vehicle fuel, relating to motor fuel tax 47–1902
Narcotic drugs 33–401
Necessaries, Uniform Sales Act 28–1102
Needy blind person, relating to care of the blind 46–102
Negligence causing death 16–1201
Negligent homicide, under traffic regulations 40–606
Negotiable warehouse receipts 28–1805
Net income, under Income Tax Law 47–1557
Net premium receipts
Relating to insurance company taxes 47–1806
Under Life Insurance Act 35–302
Net savings, relating to cooperative associations 29–801
Non compos person 49–207
Nonnegotiable warehouse receipts 28–1804
Note broker 47–1708
Note, relating to negotiable instruments 28–101
Nurses' registry 47–2101
Oath 49–206
Occupation, under Minimum Wage Law 36–401
Officer, under Fire and Casualty Act 35–1303
Operator cosmetologist 2–1301
Opium 33–401
Optometry 2–501
Order
Under Uniform Sales Act 28–1606
Under Uniform Warehouse Receipts Act 28–2203
Owner
Relating to liens on motor vehicles 40–701
Relating to registration of motor vehicles 40–101
Under Uniform Warehouse Receipts Act 28–2203
Park system 8–108
Park, under Traffic Act 40–602
Parking facilities 40–803
Pasteurized 33–313
Pasteurized milk 33–313
Payment in due course 28–619

DEFINITIONS—Continued
Perjury 14–102
Person 2–1225, 28–2922
Boiler Inspection Act 1–702
Bucket shopping 22–1509
General rule 49–204
Under Life Insurance Act 35–302
Under Uniform Fiduciaries Act 28–2301
Under Uniform Narcotic Drug Law 33–401
Under Uniform Sales Act 28–1606
Under Uniform Warehouse Receipts Act 28–2203
Physician, under Uniform Narcotic Drug Law 33–401
Pipe-line company, pertaining to public utilities 43–121
Place of employment 36–432
Pneumatic tire, relating to registration of motor vehicles 40–101
Podiatry 2–711
Advertising 2–718
Unprofessional conduct 2–707
Policy, under Fire and Casualty Act 35–1303
Policy writing agent, under Fire and Casualty Act 35–1303
Power, relating to realty 45–1001
Practice of architecture 2–1014
Practice of engineering 2–1802
Practice of healing arts 2–101
Practicing veterinary medicine 2–808
Primary liability 28–101
Principal, under Uniform Fiduciaries Act 28–2301
Private bank 47–1706
Private employment agency 47–2101
Professional bondsmen, business impressed with public interest 23–602
Professional engineer 2–1802
Property, under Sales Act 28–1606
Prostitution 22–2712
Public accountant 2–902
Public highway
Relating to registration of Motor Vehicles 40–101
Under traffic act 40–602
Public utility 43–103
Pugilistic encounter 22–1106
Purchaser 28–2922
Under Uniform Sales Act 28–1606
Under Uniform Warehouse Receipts Act 28–2203
Qualified acceptance of bill of exchange 28–914
Quality of goods, under Uniform Sales Act 28–1606
Rape 22–2801
Raw milk 22–313
Real estate broker 45–1402
Reasonable time, relating to negotiable instruments 28–101
Reciprocal, under Fire and Casualty Act 35–1303
Reckless driving, under traffic regulations 40–605
Reconstructed cream 33–313
Reconstruction, relating to highways, under Motor Fuel Tax Law 47–1902
Registry number, under Uniform Narcotic Drug Law 33–401
Residence, relating to inheritance and estate taxes 47–1628
DEFINITIONS—Continued
Restaurant
Relating to alcoholic beverages 25–103
Under general license law 47–2327
Restrictive indorsement 28–307
Retire 11–776
Retirement 11–776
Reversion 45–809
Roadway, Street Improvement Law 7–623
Robbery 22–2901
Rooming house 5–312
Safety 36–432
Salaried company employee, under Fire and Casualty Act 35–1303
Sale
Relating to alcoholic beverages 25–103
Under Uniform Narcotic Drug Law 33–401
Under Uniform Sales Act 28–1101, 28–1606
Sales in bulk 28–1703
School
Healing Acts Practice Act 2–101
Secondary liability 28–101
Secretary of Labor 36–132
Securities, in bucket shopping 22–1509
Sell, relating to alcoholic beverages 25–103
Seller, under Uniform Sales Act 28–1606
Service, relating to public utilities 43–104
Shareholder, under Income Tax Law 47–1551c
Shares 28–2922
Sight-seeing operations 47–2331
Skimmed milk 33–313
Soliciting agent, under Fire and Casualty Act 35–1303
Solicitor, under Life Insurance Act 35–302
Special indorsement 28–305
Special partners, relating to limited partnerships 41–102
Special power relating to realty 45–1003
Specific goods, under Uniform Sales Act 28–1606
Speeding, under traffic regulations 40–605
Spirits 25–103
Standpipe 5–312
State 28–2922, 46–301
Stock, under Income Tax Law 47–1551c
Street railroad 43–109
Street Railroad Corporation, relating to public utilities 43–110
Subornation of perjury 22–2501
Superintendent 35–1401
Under Fire and Casualty Act 35–1303
Under Life Insurance Act 35–302
Surplus
Under Fire and Casualty Act 35–1303
Under Life Insurance Act 35–302
Table, relating to alcoholic beverages 25–103
Tavern, relating to alcoholic beverages 25–103
Taxable year, under Income Tax Law 47–1551c
Taxpayer, under Income Tax Law 47–1551c
Tenement house 5–312
Theatrical employment agency 47–2101
Title 28–2922
Ton 10–108
Trade or business, under Income Tax Law 47–1551c
Traffic, under Traffic Act 40–602

DEFINITIONS—Continued
Trailers, relating to registration of motor vehicles 40–101
Trainee 46–307
Transacting business, under Fraternal Benefit Association Law 35–915
Transfer 28–2922
Unauthorized company, under Fire and Casualty Act 35–1303
Undertaking 28–2402
Unemployed, relating to unemployment compensation 46–301
Unincorporated business, under Income Tax Law 47–1574
Unpaid seller, under Uniform Sales Act 28–1401
Unreasonable time, relating to negotiable instruments 28–101
Usury 28–2703
Vagrancy 22–3302
Valid claim, relating to unemployment compensation 46–301
Value 28–202, 28–1606, 28–2922
Negotiable Instrument Law 28–101, 28–202
Under Uniform Sales Act 28–1606
Under Uniform Warehouse Receipts Act 28–2203
Vehicle, under traffic act 40–602
Veterinarian, under Uniform Narcotic Drug Law 33–401
Voting trust agreement, under Life Insurance Act 35–531
Wages, relating to unemployment compensation 46–301
Warehouseman, under Uniform Warehouse Receipts Act 28–2203
Warehouse Receipts Act 28–2203
Weapons 22–3201
Wholesaler, under Uniform Narcotic Drug Law 33–401
Wine 25–103
Woman, under Minimum Wage Law 36–401
Writing 22–101
Written, relating to negotiable instruments 28–101
Wrongful death 16–1201
Zoning regulations, terms in 5–425

DELICATESSENS
License 47–2327

DELIVERY
Definition, Negotiable Instrument Law 28–101
Negotiable instruments 28–116, 28–117
Stock certificate 28–2922
Stock certificate for transfer 28–2905—28–2907, 28–2909

DEMAND INSTRUMENTS
Negotiable Instrument Law 28–108

DEMURRER
See PLEADINGS
Judgment on 13–206

DENTAL COLLEGES
See MEDICAL AND DENTAL COLLEGES

DENTISTRY
Administrative expenses of law, payment 2–313

DENTISTRY—Continued
Advertising
Definition 2–330
Revocation of license 2–311
Anesthetist, exemption from law 2–317
Application for license 2–307, 2–308
Citizenship, aliens, naturalization 2–307
Examination or admission without examination 2–308
False application or representation, penalty 2–320
Proof of eligibility and educational requirements 2–307
Associate name, use in practicing prohibited, penalty 2–316
Assuming title of dentist, penalty 2–320
Board of Dental Examiners 2–301
Annual report, contents 2–306
Appointed by Commissioners of District 2–301
Bond of secretary-treasurer 2–302
Books and papers, power to compel production 2–304
Certified copies of record, admissibility and evidence 2–303
Corporation counsel legal adviser 2–305
Dental college officer or faculty member ineligible 2–301
Expenses not to exceed receipts 2–313
Fee for each certificate issued 2–313
Fees of witnesses 2–304
Investigators, power to employ 2–305
Licensees and registrants, records 2–303
Nominations for appointment by dental society 2–301
Number of members 2–301
Per diem of members 2–313
President 2–302
Qualifications of members 2–301
Rules and regulations, power to adopt 2–302
Seal 2–303
Secretary-treasurer 2–302, 2–305
Term of office 2–301
Witnesses, power to call and examine 2–304
Certificate for postgraduate work, forgery or fraudulent use, penalty 2–319
Corporate name
Practicing under, unprofessional conduct 2–311
Use in practicing prohibited, penalty 2–316
Declaration of policy 2–310
Definitions of terms used 2–330
Dental hygienists 2–322—2–328
Annual registration fee of hygienist 2–327
Application for license 2–323
Certificate fee 2–326
Education requirements 2–323
Employment by licensed dentist, limitation on number 2–325
Examination for license 2–324
Fee for license 2–323
Health Department of District, right to employ 2–325
License fee 3–326
Nature and character of work limited 2–325
Photographs, filing with application required 2–323

DENTISTRY—Continued
Dental hygienists—Continued
Practice declared to affect public health and safety 2–327
Practicing without license, penalty 2–328
Practitioners from other States, admission to practice, reciprocity 2–326
Public institutions, right to employ 2–325
Qualification 2–323
Registration of license 2–324
Registration required 2–322
Revocation or suspension of license, ground 2–325
Services permitted to be performed 2–325
Dental internes, use in hospitals 2–302
Dentist, definition under Uniform Narcotic Drugs Law 33–401
Diploma, forgery or fraudulent use, penalty 2–319
Examination of applicants for license 2–308
Graduates from dental college, waiver of examination 2–308
Held twice yearly 2–302
Time and place held, determination 2–302
Exemptions from act 2–317
False name, practicing under prohibited 2–320
Fees for licenses and registration 2–313, 2–314
Application for license 2–313
Reregistering after discontinuing practice 2–314
License to practice 2–309
Display required, penalty 2–318
Forgery or fraudulent use, penalty 2–319
Narcotics, prescription 2–610, 2–611
Professional use 33–409
Restrictions on right to issue 2–610
Pharmacy Law, exception from 2–601
Physicians and surgeons, qualified exemption from law 2–317
Police Court, jurisdiction of violations of law 2–305
Postgraduate classes or schools 2–321
Approval by Board of Examiners 2–321
Penalty for violating law 2–321
Practice declared to affect public health and safety 2–310
"Practice" defined 2–315
Practicing under assumed name prohibited 2–316
Practicing under false or assumed name, unprofessional conduct 2–311
Practicing without license, penalty 2–328
Radiographic laboratory, exception from law 2–315
Reciprocity, admission to practice 2–308
Register of name of dentist, publication 2–314
Registration of applicants from other States 2–308
Revocation or suspension of licenses to practice 2–311, 2–312
Annual registration fee, nonpayment 2–314
Appeal to Court of Appeals 2–312
Dental hygienist, improper employment 2–325
Duration, determination by court 2–312
Employment of unlicensed operatives 2–311
Grounds 2–311
Petition, verification 2–312
Practicing under improper name 2–316
Procedure 2–312
United States District Court, jurisdiction 2–311
DENTISTRY—Continued
Rules and regulations of Board of Examiners, effective date 2–331
Mailing of notice to registrant 2–331
Publication 2–331
Secretary-treasurer of Board of Examiners 2–302, 2–305
Enforcement office of Dentistry Law 2–305
Student of dentistry in clinic room, exemption 2–317
Subject to regulation and control in public interest 2–310
Superintendent of police, duties 2–305
United States Army, Navy, or Health Service dentist, exemption 2–317
"Unprofessional conduct" defined 2–311
Violation of law, second or subsequent offenses, penalty 2–329

DEPARTMENT OF AGRICULTURE
Plant disease and insect pest control measures 6–904, 6–905
Potomac Park ground, temporary occupancy 8–156

DEPARTMENT OF CORRECTIONS
Care of persons confined in institutions 24–446
Creation 24–441
Director 24–441
Operating expenses 24–447
Powers 24–442
Public Welfare Board powers transferred 24–443
Rules and regulations 24–442

DEPARTMENT OF HEALTH
See Director of Public Health; Health and Safety; Health Officer
Child-Placing Agency, member of department as member of committee for formulating rules 32–783
Employees
Dairies, not to be employed by 33–320
Dairy supplies, not to deal in 33–320
Health officers to enforce adulterated food, drugs ban 33–104
Inspection of private hospitals and asylums 32–302
Rates for services to persons not indigent 32–322
Residence, requirement for care 32–321

DEPARTMENT OF PUBLIC WELFARE
Director of public welfare, advances to by disbursing officer 47–115

DEPARTMENT OF SCHOOL ATTENDANCE AND WORK PERMITS
See Education

DEPARTMENT OF WEIGHTS, MEASURES, AND MARKETS
See Weights, Measures, and Markets

DEPENDENT AND NEGLECTED CHILDREN
See Board of Public Welfare; Children; Cruelty to Children; Desertion; Parent and Child
Abandoned infants, liability of District for care 3–111

DEPENDENT AND NEGLECTED CHILDREN—Continued
Affidavits, form 32–754
Aid, residence requirement 32–753
"Aid" and "assistance" defined 32–752
Antecedents investigated 3–118
Appeal from application for assistance 32–760
Application for assistance 32–756
Appeal 32–760
Determination of board 32–758
Form 32–756
Investigation 32–757
Appropriations 32–763
Determination of amount 32–755
Grants as subject to amending or repealing acts 32–761
Reconsideration of grants 32–759
Withdrawal 32–759
Assistance, duty of Board of Public Welfare 3–110
Blanks, board of public welfare to supply 32–754
Administration of assistance 32–754
Application for assistance 32–756
Appeals from application for assistance 32–760
Change or withdrawal of assistance 32–759
Cooperation with Social Security Board 32–762
Determination
Amount of assistance 32–755
Application for assistance 32–758
Reconsideration of assistance grants 32–759
Supervisory powers 3–116
Cancellation of award of assistance, appeal 32–760
Care and assistance, matter of public concern 32–751
Commitment by courts of competent jurisdiction 3–114
Eleemosynary or correctional institutions, liability for maintenance 3–111
Religious faith considered in placing child 3–114
Awards of Board of Public Welfare 3–114
Contracts for care of 3–115
Definitions 32–752
Discharge from guardianship by Board of Public Welfare 3–125
Environment investigated 3–118
Expenses incurred, payment 32–764
Forms
Applications for assistance 32–756
Board of Public Welfare to prescribe and supply 32–756
Fraud, etc., in obtaining aid 32–765
Investigations
Application for assistance 32–757
Reconsideration of assistance grants 32–759
Placement in suitable homes or public institutions 3–123
Religious faith considered 3–123
Religious freedom 3–123
Record of application for assistance 32–757
Reports 32–754
Residence requirement for aid 32–753
Rules and regulations, board of public welfare to make 32–754
Social Security Act, acceptance of sums allotted 32–762
Withdrawal of assistance 32–759

DEPOSITIONS
See CRIMINAL PROCEDURE
Administration of oath 14–201
Aged and infirm witness 14–201
Commissioner of deeds, power to take 1–401
Commissions from courts outside district 14–204
Commission to take depositions 14–203
De bene esse 14–201
Method of taking 14–201
Nonresident of District 14–201
Notary's power to take 1–511
Fees and charges 1–514
Only used when witness unavailable 14–201
Probate Court 11–519
Public Utilities Commission, use by 43–420
Tender of witness fee, effect 14–202
Transmittal to court 14–201
Unemployment Compensation Board, power to take 46–313
Where taken 14–202
Witnesses
In foreign country, method 14–201
Likely to leave District 14–201
Summoning 14–201
Unable to attend during trial 14–201

DEPOSITS IN COURT
Demand for jury trials, to be earned 11–722a
Eminent domain proceedings, land for streets 7–215
Title to property in dispute or uncertain 7–215

DEPUTIES
Clerk
Court of Appeals 11–204
Municipal Court for District of Columbia 11–754
Municipal Court of Appeals for District of Columbia 11–771
Purchasing officer 1–305

DEPUTY CHIEF ENGINEERS
Fire Department 4–404
Salary 4–405

DEPUTY FIRE MARSHALS
Fire Department 4–404
Salary 4–405

DESCENT AND DISTRIBUTION
See DECEDENTS' ESTATES

DESERTION
See CHILDREN
Deserting family 22–903—22–906
Evidence 22–904
Juvenile Court clerk to account 22–906
Payment to family from workhouse 22–905
Ground for divorce 16–403
Ground for legal separation 16–403

DETAINER
See FORCIBLE ENTRY AND DETAINER

DETECTIVE AGENCIES
See DETECTIVES
Employees of, employment by District prohibited 1–317

DETECTIVE AGENCIES—Continued
License 47–2341
Approval by major and superintendent of police 47–2341
Fee 47–2341
Revocation 47–2341
Regulation 47–2341
Subject to police laws 47–2341

DETECTIVE BUREAU
Assignment of member of police force to 4–106a

DETECTIVES
Detailing private policemen for detective work 4–110
Intelligence office keepers, Police Department, powers and duties 4–147, 4–148, 4–150
Examination of books and premises 4–148
Penalty for interfering with officer 4–150
Supervision and inspection 4–147
Private detectives 4–168—4–175
Bond required, amount 4–169
Compromise of felony or unlawful act prohibited 4–175
"Detective" defined 47–2341
Duty on making arrest 4–172
Filing of bond 4–170
Penalty for acting as without complying with law 4–173
Permitting suspect to go unarrested prohibited 4–175
Police laws and regulations made applicable to 4–174
Receiving compensation from person arrested or liable to arrest prohibited 4–175
Record of name, age, residence, and nationality 4–170
Regulation 47–2341
Reports 4–174
Subject to police laws 47–2341
Withholding information prohibited 4–175

DETERMINATION
Suits to determine validity of marriage 16–422

DEVELOPMENT
Definition, Alley Dwelling Law 5–112

DEVISES
See DECEDENTS' ESTATES; WILLS
To attesting witnesses void 19–104

DIETETICS
Exemption from Healing Arts Practice Act 2–134

DIGITALIS
Poison, sale, restrictions 2–612

DIPLOMA
Altering or forging evidence of graduation in healing arts 2–126

DIPLOMATS
Interference with 22–1116

DIRECTOR
Industrial safety 36–437
Public off-street parking facilities 40–809

DIRECTOR OF INSPECTION
Powers and duties 1–246

DIRECTOR OF MOTOR VEHICLES AND TRAFFIC
Use of motor fuel tax proceeds for expenses 47–1901

DIRECTOR OF PUBLIC HEALTH
See FOOD AND DRUGS
Adulteration laws, enforcement 33–104, 33–105, 33–108
Appointment 6–101
Assistant health officer 6–109
Acting health officer during absence or disability of health officer 6–109
Required to be physician 6–109
Birth reports filed with 6–303
Acknowledgment of receipt 6–301
Publication of abstracts and analysis of data 6–303
Right of inspection 6–303
Chief inspector, acting as deputy prohibited 6–108
Clerks
Appointment, number 6–107
Chief clerk acting as deputy prohibited 6–108
Dead human bodies, cremation, containers for ashes 6–115
Deaths, registration 6–102
Ex officio member of Board of Podiatry Examiners 2–701
Fees 6–103
Amount 6–103
Collection and payment into treasury 6–103
Payable into treasury 47–126
Infants with inflamed eyes, duties 6–202
Interment of the dead, enforcement of regulations 6–102
Investigation of suspected violations 6–607
Seizure and destruction of unlawful mattresses 6–608
Licenses requiring approval
Abattoirs 47–2316
Slaughterhouses 47–2316
Mattress law, enforcement 6–606, 6–607
Member of Board for Condemnation of Insanitary Buildings 5–601
Deputy officer acting in place of 5–602
Milk, cream, and ice cream supervision 33–301—33–322
Permits regarding dead human bodies 27–119a
Podiatry licenses registered with 2–706
Powers and duties in general 6–101
Prophylactic against inflammation of eyes of new-born child 6–201
Duty of midwife to obtain from health officer 6–201
Registration of cemetery superintendents 27–117
Reports to Commissioners 6–106
Sewer connections, certification of necessity 6–401
Vital statistics regulations, enforcement 6–102

DIRECTOR OF PUBLIC WELFARE
See BOARD OF PUBLIC WELFARE
Appointment by Commissioners 3–105
Compensation determined by Classification Act 3–105

DIRECTOR OF PUBLIC WELFARE—Con.
Discharge from office 3–105
Nomination for appointment by Board of Public Welfare 3–105
Qualifications 3–105

DIRECTOR OF SOCIAL WORK
See JUVENILE COURT

DIRECTOR OF VEHICLES AND TRAFFIC
Process against nonresident employers under Unemployment Compensation Act served on 46–305

DISABLED AMERICAN VETERANS
Property exempt from taxation 47–801a–1

DISBARMENT
See ATTORNEYS

DISBURSING OFFICER
See TAXATION AND FISCAL AFFAIRS
Advances to librarian of Public Library 47–118
Advances to superintendent of Department of Weights, Measures, and Markets 10–103a
Advances to superintendent of recreation 8–211a
Appointment 47–112
Duties 47–112—47–119

DISCRIMINATION
Public off-street parking facilities 40–804

DISEASES
Carriers, generally 6–119a—6–119k
"Communicable disease" defined 6–119
Definition 2–101
Rabies, commissioners authorized to prevent spread 1–230
Regulations for prevention and control, powers of Commissioners 6–118
Regulations to prevent spread of 6–118

DISORDERLY CONDUCT
Affray, penalty 22–1101
Assembly, unlawful, penalty 22–1107
Balloons, flying, penalty 22–1117
Bonfires, kindling 22–1113
Disturbing religious congregations, penalty 22–1114
Dogs 22–1110, 22–1111
  Dangerous, allowing at large 22–1111
  Female in heat, allowing at large 22–1111
  Urging to fight 22–1110
Driving, riding, leading animals on footways, penalty 22–1118
Duelling 22–1102—22–1104
False fire alarms, penalty 22–1119
Fights with animals 22–1105
Foreign consular and diplomatic officers, property 22–1115, 22–1116
  Interference with 22–1115
  Penalty 22–1116
Indecent exposure 22–1112
Kites, flying, penalty 22–1117
Parachutes, flying, penalty 22–1117
Playing in streets, penalty 22–1108
Prize fights 22–1105
Throwing stones in streets, penalty 22–1109
Tobacco, furnishing to minors 22–1120

DISORDERLY HOUSES
See ASSIGNATION; HOUSES OF PROSTITUTION; PANDERING; PROSTITUTION
Debts contracted in, detaining female for 22–2709
Jurisdiction of police court 11–604
Keeping, penalty 22–2722

DISSOLUTION
Corporations 29–701—29–729
Employing unit under Unemployment Compensation Act 46–304
Limited partnerships 41–115, 41–116, 41–130
Partnerships 41–201—41–204

DISTRICT ATTORNEY
Corporations, dissolution by quo warranto 29–719—29–724
Ex officio member Healing Arts Licensure Commission 2–103
Fees and costs 11–1501
Healing Arts Practice Act, enforcement 2–137
Nurses, proceeding to revoke or suspend certificate, duties 2–407
Oath
  Administering 11–1002
Party to hearing on application for receiver for absentees', absconders' estates 20–701
Private detective's bond, forfeiture, suit against sureties 4–171
Quo warranto proceedings
  Refusal to institute 16–1603
  Right to institute 16–1602
Street obstructions, suits for removal 7–1207

DISTRICT BOARDS AND COMMISSIONS
See ACCOUNTANTS; ANATOMICAL BOARD; ARCHITECTS; BARBERS; BASIC SCIENCES; BOARD OF PUBLIC WELFARE; BOXING EXHIBITIONS; COMMISSIONERS OF DISTRICT OF COLUMBIA; COMMISSION OF FINE ARTS; COSMETOLOGISTS; DENTISTRY; HEALING ARTS PRACTICE ACT; INDETERMINATE SENTENCE AND PAROLE; INSANE PERSONS; INSANITARY BUILDINGS; NATIONAL CAPITAL PARK AND PLANNING COMMISSION; NURSES; OPTOMETRY; PARKS AND PLAYGROUNDS; PHARMACY; PLUMBING; PODIATRY; POLICE AND FIREMEN'S RELIEF FUND; POLICE DEPARTMENT; STEAM AND OTHER OPERATING ENGINEERS; VETERINARIANS; ZONING REGULATIONS
Anatomical board 2–201—2–209
Board of Accountancy 2–903
Board of Assistant Assessors 47–604, 47–605
Board of Barber Examiners 2–1103
Board of Condemnation of Insanitary Buildings 5–601
Board of Cosmetology 2–1302—2–1305
Board of Education 29–415, 31–401—31–406, 36–203
Board of Equalization and Review 47–605
Board of Examiners and Registrars of Architects 2–1001—2–1009
Board of Examiners in Medicine and Osteopathy 2–109
Board of Examiners in Midwifery 2–113
Board of Examiners in Naturopathy 2–106

DISTRICT BOARDS AND COMMISSIONS—Continued
Board of Examiners in Veterinary Medicine 2–801, 2–802
Board of Examiners of Drugless Healers 2–106—2–111
Board of Examiners of Steam and other Operating Engineers 2–1502
Board of Parole 24–201a
Board of Personal Tax Appeals 47–605, 47–1213
Board of Pharmacy 2–607—2–609, 33–403—33–405, 33–417, 33–422
Board of Podiatry Examiners 2–701—2–704
Board of Public Welfare 3–102—3–104, 32–501, 32–602, 32–751—32–765, 32–902
Board of Tax Appeals 47–1586i, 47–1586j, 47–2401—47–2412
Board of Zoning Adjustment 5–420
Boxing Commission 2–1210
Commission of Fine Arts 5–410
Commission on License to Practice the Healing Art 2–103
Commission on Mental Health 21–308
Dental Examiners 2–301—2–331
National Capital Park and Planning Commissions 8–101
Nurses Examining Board 2–401—2–411
Optometry Board 2–503—2–508
Plumbing Board 2–1401
Retiring and Relief Board, police and firemen 4–510
Zoning Advisory Council 5–417
Zoning Commission 5–412

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA
See UNITED STATES DISTRICT COURT

DISTRICT COURT TERM
See UNITED STATES DISTRICT COURT
Messenger for, appointment 11–312

DISTRICT EMPLOYEES' RELIEF ASSOCIATIONS
Exemptions from insurance company taxes 47–1808

DISTRICT OF COLUMBIA
See COMMISSIONERS OF DISTRICT OF COLUMBIA; CORPORATION COUNSEL; EMINENT DOMAIN; FIRE DEPARTMENT; MUNICIPAL ARCHITECT; POLICE DEPARTMENT; PURCHASING OFFICER
Acquisition of lands for District uses 16–601
Acquisition of lands in excess of needs 16–612
As defendant, limitation of actions 12–208
Asphalt plant, acquisition authorized 7–618 note
Body corporate for municipal purposes 1–102
Budget estimates 47–201—47–212
Claims against, expenses for witnesses and evidence to be included in budget estimates 47–208
Closing alleys on acquiring land 7–309
Property-owners' right of access preserved 7–309
Reversion of existing alleys to District 7–309
Commissioners officers of corporation 1–103
Contractors becoming surety for officers prohibited 1–210

DISTRICT OF COLUMBIA—Continued
Corporate name 1–102
Corporate powers 1–102
Corporation counsel and assistants 1–301, 1–302
Costs, not required to pay 11–1519
Credit of revenue required to be proportioned to District and United States 47–130a
Department of Weights, Measures, and Markets 10–101—10–103
Exemption from fees and costs 11–1519
Finances 47–101—47–2810
Fire department 4–401
Fiscal affairs 47–101—47–2810
Former corporation, continued existence for certain purposes 1–105
Injury, notice 12–208
Insurance of property 1–816
Judgments against, interest rate 28–2701
Limitation of actions against 12–208
Maps and plats of prior corporations made property of District 1–106
Metropolitan Police District 4–101, 4–102
Municipal architect 1–306
Oaths taken by civil officers 1–308
Power to sue and be sued 1–102
Property custodian 1–309
Contents of reports 1–309
Property of
Exemption from assessment 47–803
Exemption from taxation 47–801a
Purloining 22–2206
Property of preceding corporation vested in District 1–104
Public charges, limitation on liability for maintenance 3–111
Purchasing officer 1–304, 1–305
Real property, right to acquire and hold, purposes 1–105
Records of prior corporations made property of District 1–106
Revenue 47–101—47–2810
Sale of property unfit for service 1–818
Proceeds credited to appropriation 1–818
Seal 1–102
Surveys and drawings made property of District 1–106
Taxation 47–101—47–2810
Taxes, power to enforce payment 1–105
Territorial area 1–101
Zoning districts, power to establish 5–413

DISTRICT OF COLUMBIA EMPLOYEES
See OFFICERS AND EMPLOYEES OF DISTRICT

DISTRICT OF COLUMBIA GOVERNMENT
Expenses, payment by United States 47–2501a

DISTRICT OF COLUMBIA TEACHERS' SALARY ACT OF 1947
Generally 31–659—31–678

DISTRICT OF COLUMBIA UNEMPLOYMENT COMPENSATION ACT
See UNEMPLOYMENT COMPENSATION

DISTRICT TRAINING SCHOOL
See PRISONS AND PRISONERS
Admission of feeble-minded under 45 32–607
Authority to acquire site 32–601
Board of Public Welfare
Annual report to Commissioners of District 32–604
Appointment of superintendent 32–605
To make rules and regulations 32–604
To supervise and control 32–602
Commissioners of District, petition to require relatives to pay for maintenance 32–616
Commissioners of District to have jurisdiction over land 32–601
Contracts of inmates, approval of District Court required 32–628
Death of inmate, liability of estate for cost of maintenance 32–615
Estate of relative 32–616
Estate of
Inmate liable for cost of maintenance 32–615
Relative liable for cost of maintenance 32–616
"Feeble-minded person" defined 32–603
Home and school for feeble-minded 32–601
Juvenile Court 32–620
Adjoining proceedings to have petition for admission prepared 32–620
Paroles 32–626
Patients becoming insane, transfer to Saint Elizabeth's Hospital 32–622
Person convicted of crime, court may order inquiry on commitment 32–621
Persons to be admitted 32–607
Petition for admission 32–608
Contents 32–608
Decree for placing in school 32–613
Dismissal and discharge 32–613
Examination by physicians 32–610
Filing in District Court 32–608
Hearings 32–612
Jury, when used 32–612
Place of detention pending hearing 32–611
Summons and return 32–609
Warrant for custody of feeble-minded person 32–611
Petition for discharge 32–618
Causes for discharge 32–618
Who may file 32–618
Petition for variation of order 32–618
Petition to require relatives to pay for maintenance 32–616
Private patients, bond 32–614, 32–617
Public patients 32–614—32–617
Classification as 32–614
Liability of estate for maintenance 32–615
Proceedings to charge responsible relatives with cost of maintenance 32–616
Relatives of inmate, liability for maintenance 32–616
Removal of nonresident inmates 32–625
Rules and regulations 32–604
Sale of products, deposit of funds 32–606
Saving clause on invalidation 32–629

DISTRICT TRAINING SCHOOL—Continued
Superintendent 32–605
Appointment and removal 32–605
Discretion in paroles 32–626
Qualifications 32–605
Sale of products 32–606
Service of process on inmates 32–627
Supervised by Board of Public Welfare 32–602
Title to land in name of United States 32–601
Transfers from National Training Schools 32–624
Violation of chapter, penalty 32–619
Violation of parole 32–626

DISTRICT UNEMPLOYMENT COMPENSATION BOARD
See UNEMPLOYMENT COMPENSATION
Duties and authority 46–302—46–304, 46–308—46–318, 46–321
Establishment 46–315

DISTURBING RELIGIOUS CONGREGATION
Penalty 22–1114

DIVIDENDS
Alley dwellings, buildings and improvements, corporations, dividends limited 5–103
Registered stockholder, right to 28–2903

DIVISION WALLS
See PARTY WALLS
Payment of adjoining owner for land occupied 1–625

DIVORCE
See ANNULMENT; DOMESTIC RELATIONS
Absolute (a vinculo) 16–403
Decree dissolves property rights 16–409
Grounds 16–403
Adultery 16–403
Arising after legal separation 16–405
Conviction involving moral turpitude 16–403
Desertion 16–403
Issue, legitimacy not affected 16–408
Legal separation for two years 16–403
Voluntary separation 16–403
Admissions not sufficient proof 16–419
Alimony
Pendente lite 16–410
Permanent 16–411
When husband obtains divorce 16–412
Annulment of marriage 16–402
Decree dissolves property rights 16–409
Grounds 16–403
Additional causes 30–101—30–103
Bigamy 16–403
Lunacy 16–403
Matrimonial incapacity 16–403
Nonage 16–403
Procuring marriage by fraud 16–403
Issue of bigamous marriage, legitimacy 16–406
Issue of lunatic's marriage, legitimate 16–407
Assignment of attorney, discretion of court 16–418
Corespondent 16–417
Service, personal or by publication 16–417
To be made defendants 16–417

DIVORCE—Continued
Custody of children, pending proceedings 16–410
Decrees, effective date 16–421
Default, proof in 16–419
Enforcing orders for alimony or suit money 16–410
Enjoining disposition of property 16–410
Jurisdiction to award property 16–409
Law not retroactive 16–420
Legal separation (a mensa et thoro) 16–403
Grounds 16–403
Adultery 16–403
Conviction involving moral turpitude 16–403
Cruelty 16–403
Desertion 16–403
Voluntary separation 16–403
Revocation on joint application 16–404
Petition to District Court 16–416
Proceedings as in equity 16–416
Proof in defaulted cases 16–419
Proof necessary to decree 16–419
Questions of law and fact not to be referred 16–1701
Residence requirement 16–401
Cause occurring in District, period 16–401
Cause occurring outside District, period 16–401
Restoration of maiden or prior name 16–414
Retention of dower rights 16–411
Retention of jurisdiction 16–413
Alimony 16–413
Custody of children 16–413
Separate maintenance 16–415
Sequestration 16–410
Service of process by publication 13–108
Suit money, including counsel fees 16–410
Suit to determine validity of marriage 16–422
Uncontested cases 16–418
Assignment of attorney 16–418
Compensation of assigned attorney 16–418

DOCKET
Adoption docket, inspection on court order only 16–206
Creditors' claim, decedents' estates 18–513
Judgment docket 15–105
Judgment of Municipal Court for District of Columbia 11–755
Municipal Court 11–713
Small claims and conciliation branch 11–806
Real property attachments 16–334
Small claims and conciliation branch, Municipal Court 11–806

DOCUMENTS
See EVIDENCE
Negotiable document of title 28–1211

DOGS
Allowing at large 22–1111
Dangerous 22–1111
Female in heat 22–1111
Collar bearing owner's name and tax tag required 47–2006
Decoying dog away from master's house, penalty 47–2007
Dog tax 47–2001—47–2008

DOGS—Continued
Keeping and running at large, power to regulate 1–224
Liability of owner for damage 47–2005
Muzzling, power to require 1–230
Poundmaster, authority of 47–2003, 47–2008
Removing dog's collar or tax tag, penalty 47–2007
Running at large 47–2003, 47–2004
Dogs wearing tax tag permitted, exception 47–2004
Impounding of dogs without tax tags 47–2003
Impounding of female dogs in heat 47–2003
Sale of impounded dogs 47–2003
Urging to fight, frighten or bite 22–1110

DOMES
Fireproof construction 5–404
Exception, pending permits, square 345 5–404
Height, fireproof construction 5–405

DOMESTIC RELATIONS
See ADOPTION; ANNULMENT; CHILDREN; DIVORCE; HUSBAND AND WIFE; MARRIAGE; MINORS; PARENT AND CHILD
Marriage 30–101—30–117
Annulment 30–102—30–105
Property rights 30–201—30–216

DOMESTIC SERVICE
Unemployment Compensation Act excluding 46–301

DONATIONS
To institution of learning 29–406

DOORS AND OTHER OPENINGS
Fire escapes and safety provisions 5–301—5–316
Fireproofing, when required 5–305

DORMITORIES
Nonfireproof buildings, limitation on height 5–401

DOVER'S POWDER
Exception from Narcotic Act 2–610

DOWER
See CURTESY; DECEDENTS' ESTATES; PARTITION
Assignment of, in partition 16–1302
Definition 18–201
Devises construed to be in lieu of dower 18–210
Discharge from dower 16–1306
Release 18–204
By wife in same or separate deed 30–216
Retention of dower rights in divorce 16–411

DRAFT
See NEGOTIABLE INSTRUMENTS
"Bills of exchange" defined 28–901
Making, drawing, uttering with insufficient funds 22–1410

DRAFTSMEN
Architect's right to employ 2–1017
Sewers etc., employment 7–1235

DRAINAGE
See SEWERS
Buildings and lots, sewer connections 6–401—6–404

DRAINAGE—Continued
House drainage
Inspection by plumbing inspector 1–727
Regulations, commissioner's power to adopt 1–725

DRAWBRIDGES
Submarine cables, use 7–1231

DRAWER
See NEGOTIABLE INSTRUMENTS

DRIVE-IT-YOURSELF AGENCIES
License 47–2332

DRIVERS' LICENSES
Ambulances and passenger vehicles 47–2331

DRIVING, RIDING, LEADING ANIMALS ON FOOTWAYS
Penalty 22–1118

DRUG ADDICTS
See NARCOTIC DRUGS
Barber's registration certificate, refusal 2–1110
Committee 21–401
Application for discharge of 21–401
Appointment 21–401
Bond 21–401
Petition for 21–401
Powers and duties 21–401
Dentist, revocation or suspension of license 2–311
Jury 21–401
Optometrists, suspension or revocation of license 2–516
Prescription by physicians, dentists, and veterinarians, restriction 2–611
Property, restoration of 21–401
Summons for hearing 21–401

DRUGGISTS
See PHARMACY
License 47–2308

DRUGLESS HEALING
See HEALING ARTS PRACTICE ACT
Basic sciences, knowledge of required 2–112
Board of Examiners 2–106, 2–111, 2–112
Chairman 2–106
Examination of applicants for license 2–106, 2–111, 2–112
Number of members 2–106
Petition for appointment, contents 2–111
Preferences in appointing board members 2–111
Qualifications of members 2–106, 2–111
Reference of applicants for license to board 2–112
Resolution for appointment, contents 2–111
Secretary 2–106
Term of office of members 2–106
Definition, Healing Arts Practice Act 2–101
Examination as basis for issuing license 2–122
Educational requirements 2–122
Proof required of applicant for license 2–122
Reciprocity as basis for issuing license 2–121
Relicensing of practitioners licensed under prior law 2–120

DRUGS
See FOOD AND DRUGS; NARCOTIC DRUGS; PHARMACY
Narcotic drugs 33–401—33–425
Rates for services to persons not indigent 32–322

DRUNKARDS
Barber's registration certificate, refusal 2–1110
Committee 21–401
Appointment of 21–401
Bond 21–401
Discharge of 21–401
Petition for 21–401
Powers and duties 21–401
Dentists, revocation or suspension of license 2–311
Jury 21–401
Police and firemen's relief allowance, discontinuance 4–513
Property, restoration of 21–401
Steam and other operating engineers' licenses, suspension or revocation 2–1505
Summons for hearing 21–401

DRY CLEANING ESTABLISHMENTS
License 47–2317

DUCKS
See GAME AND FISH LAWS

DUELLING
Assault for refusal to accept challenge 22–1103
Challenger 22–1104
Leaving District to give or receive 22–1104
Penalty 22–1102

DUPLICATE
Motor vehicle operator's permit 40–301

DURESS
See SALES, UNIFORM ACT
Detaining female prostitute for debt, penalty 22–2709
Negotiable instrument, causing defective title to 28–405
Prostitution of females, penalty 22–2705, 22–2706
Stock certificates, transfer of 28–2906, 28–2907, 28–2918
Warehouse receipts, negotiation, effect 28–2011

DWELLINGS
See ALLEY DWELLINGS
Adjustment of line of front with line of street by surveyor 1–628
Carrying concealed pistols, exception 22–3204
Definition, Alley Dwelling Law 5–109
Frame dwelling, maximum height 5–406
Party-walls, location and placing by surveyor 1–628
Right to dispose of own refuse 6–507
Sewer connections 6–401

DYEING ESTABLISHMENTS
License 47–2317

EARNINGS
Exemption 15–403

EASTERN AVENUE VIADUCT
Use by street-railway company, payment of share of cost 7–515

EATING PLACES
Health regulations application to government eating places 6–1101

ECGONINE
See NARCOTIC DRUGS
Coca leaves derivative 33–401
Record kept of receipts and sales 33–411

EDES HOME
Property exempt from taxation 47–819

EDUCATION
See COLUMBIA INSTITUTION FOR THE DEAF; INSTITUTIONS OF LEARNING; MEDICAL AND DENTAL COLLEGES
Agency for Surplus Property 31–1301—31–1303
Appointment 31–1301
Functions and duties 31–1301
Rules and Regulations 31–1302
Termination 31–1303
Working Capital Fund 31–1302
Americanization schools, authorized 31–674
Arms for high school cadets not to be insured 31–1116
Authority to close certain streets and alleys for schools 31–1108
Aviation course in high schools 31–1201
Board of Education 31–101—31–120
Accepting and accounting for donations for colored schools 31–1109
Appointment of members by District Court judges 31–101
Appointment of superintendent of schools 31–105
Appointment of teachers and employees 31–103
Assignment of teachers, officers and employees to salary classes and positions 31–661—31–664
Aviation education in high schools 31–1201
Board of Examiners, designation of members 31–670
Chief examiner, appointment 31–671
Classification of academic, scientific instruction in certain high schools 31–112
Classification of teachers, school officers and employees for salary 31–660
Composition 31–101
Control of public schools vested in 31–101
Custodial employees exempted from operation of Appropriation Act 31–631a
Defining valid excuses for absence 31–204
Department of school attendance and work permits, authority to conduct 31–674
Designating number of rooms in elementary schools 31–119
Determination of general policies 31–103
Employment of minors, orders regarding dangerous places of 36–203
Evening schools, authority 31–674
Expenditure of funds 31–103
Franklin School may be used for offices 31–804
Free service, authority to accept 31–802
Free textbooks, providing 31–401—31–406
Granting use of school buildings 31–801

EDUCATION—Continued
Board of Education—Continued
Inspectors for child labor cases, appointment of 36–225
Institutions of learning, licensing to confer degrees 29–415
Junior colleges, accrediting 31–120
Limitation on appointment, promotion, transfer, and dismissal of school officials 31–102
Maps, textbooks, etc., to furnish 31–1203
Meetings 31–101
Members exempt from personal liability 31–101
Members not to profit from school supplies 31–1104
Occupational schools in elementary school level, authority 31–614
Power to expand normal schools 31–118
Providing for education of colored children 31–1110, 31–1113
Qualifications of members 31–101
Recreation Board
Act not to abridge powers 8–216
Agreement with for maintenance and improvement of facilities 8–217
Facilities made available to 8–209
Removal of Superintendent of Schools 31–108
Retirement of public school teachers 31–701—31–739
Sabbatical leaves, granting 31–632—31–637
Salaries, military service 31–664
Secretary 31–101
Substitute teachers, appointment 31–672
Teachers' Colleges, establishment 31–118
Teachers of aeronautics to be employed 31–1202
Temporary teachers, appointment 31–673
Terms of members 31–101
Textbooks, providing 31–401—31–406
Trade or vocational courses in senior high schools, authority 31–614
Vacation schools, authority 31–674
Work permits for minors 36–207a
Children of veterans who lost lives in World War 31–1114
Children, placement in schools 31–1111
Civil service, exception of school officers and teachers 1–217
Colored children, education 31–1110
Colored deaf persons 31–1011
Colored schools, donations for 31–1109
Columbia Institution for the Deaf 31–1001—31–1024
Compulsory school attendance 31–201—31–213
Absences in month to be reported 31–206
Absence without valid excuse unlawful 31–204
Census of children between 3 and 18 31–208
Children between 14 and 16 excused after completing eighth grade 31–202
Daily record of attendance required 31–205
Enrollment and withdrawals to be reported 31–209
Failure to keep child in school, penalty 31–207
Information for census, neglect or refusal to furnish, penalty 31–210
Instruction of residents between 7 and 16 required, duty of parent or guardian 31–201

EDUCATION—Continued
Compulsory school attendance—Continued
Juvenile Court given jurisdiction 31–213
Mentally, physically unfit, excused, to have specialized instruction 31–203
Valid excuses for absence defined by Board of Education 31–204
Corporations for 29–601
Custodial employees exempted from operation of Appropriation Act 31–631a
Deaf persons 31–1001—31–1024
Definitions
Head of the department 31–113
Head teacher 31–113
Department of school attendance and work permits 31–211
Authority to conduct 31–674
Authority to inspect attendance records 31–205
Census of children between 3 and 18 31–208
Creation 31–211
Director, appointment 31–212
Enrollments and withdrawals to be reported to 31–209
Examination of employees 31–212
Director of Intermediate Instruction 31–110
Estimate of expenditures for public-school system 31–677
Evening schools, authorized 31–674
Examination of teachers 31–114
Feeble-minded deaf persons 31–1009
Free textbooks 31–401—31–406
Board of Education to provide 31–401
Elementary schools 31–401
Junior high schools 31–401
Limitation on purchases 31–404
Lost and destroyed, payment 31–403
Parents and guardians liable for safekeeping 31–403
Sale or exchange by Board of Education 31–405
Senior high schools 31–401
To be loaned to pupils 31–402
Free tuition, children of men in military service 31–305
Head of department, definition and duties 31–113
Head teacher, definition and duties 31–113
Healing Arts Practice Act, "schools" defined 2–101
Indigent blind persons 31–1019, 31–1020
Janitors to make minor repairs 31–1105
John A. Chamberlain Vocational School 31–1107
Junior colleges, accrediting 31–120
Lenox Vocational School 31–1107
Medical and dental colleges 31–901—31–905
Military training, compulsory in high schools 31–1103
M Street High School (old) 31–1106
New Buildings, regard for future enlargement 1–812
Night schools authorized 31–674
Nonresident students 31–301—31–305
Admission free of charge 31–303—31–305
Admission of soldiers and sailors on duty at stations adjacent to District for special instruction free of charge 31–304

EDUCATION—Continued
Nonresident students—Continued
Admission of students whose parents are employed officially or otherwise in the District, free of charge 31–303
Children of Army, Navy, Marine Corps officers and men stationed outside district, admission without tuition 31–305
Children of employees of the United States stationed outside District, admission without tuition 31–305
Exemptions from tuition 31–301
May be admitted on payment of tuition 31–301
Taxes paid for previous year credited on tuition 31–302
Tuition 31–301
Board of Education to fix 31–301
Exemption of students owning District property 31–301
Exemption of students paying taxes in District in excess of nonresident tuition 31–301
Exemption where parents are engaged in public work in District 31–301
Exemption where parents pay taxes in excess of nonresident tuition 31–301
Exemption where parents reside in District 31–301
May be admitted on payment 31–301
Nonresident tuition, payable into treasury 31–301, 47–126
Organizations exempted from income tax 47–1554
Principals of schools, duties 31–115
Property used for, exemption from taxation 47–801a
Proportionate division of moneys for white and colored schools 31–1112
Retirement of public school teachers 31–701—31–739
Annual acturial evaluation of fund 31–715
Annual estimates 31–716
Annual report to Congress 31–715
Annuitants of States, cities not covered 31–719
Annuities under prior acts not affected 31–720
Annuity allowance 31–705
Application 31–720
Continuance in service deemed consent to deductions 31–712
Continuous employment requirement in payment of retirement sum 31–703
Credit for public school service outside District 31–708
Retirement after June 30, 1946 31–721—31–739
Robert Gould Shaw High School 31–1106
School attendance and work permits department 36–211
School supplies, no school officials to profit 31–1104
Seduction of pupil by teacher, penalty 22–3002
Sites for school buildings, acquisition 1–812
Power to acquire 1–105
Smallpox, compulsory vaccination against 31–1102
Superintendent of schools 31–105
Acting superintendent 31–107
Appointment 31–105
Authority to act between meetings of Board of Education 31–106
Director of intermediate instruction 31–110

EDUCATION—Continued
Superintendent of schools—Continued
Duties generally 31–105
Removal 31–108
Seat on Board of Education 31–105
Term 31–105
Supervisor of manual training 31–111
Supplies for military education in high school 31–1115
Teachers' Colleges 31–118
Teachers Foreign Exchange Program 31–699—31–699b
Teachers, school officers and employees 31–601—31–699b
Administrative principals, salaries 31–659
Annual substitute teachers, appointment, qualifications and assignment 31–672
Assignment and promotion 31–660
Assignment of those in service July 1, 1947 31–664
Assignment to salary classes 31–662, 31–664
Temporary teachers 31–673
Assistant principals, salaries 31–659
Assistant Superintendents of Schools, powers and duties 31–669
Assistant Superintendents of Schools, Salaries 31–659, 31–664
Attendance officers
Classification as teachers for pay-roll purposes 31–675
Salaries 31–659, 31–664
Automatic annual salary increases 31–663
Board of examiners, composition 31–670
Census supervisors, salary 31–659
Child labor inspectors, salary 31–659
Classification
Principals in elementary schools 31–668
Salaries 31–660
Colored schools
Board of examiners 31–670
Chief examiner 31–671
Computation of pay 31–630
Computation of salaries on promotion 31–666
Directors, salary 31–659, 31–664
Division of time 31–630
Elementary schools 31–659, 31–664
Elementary school principals' salaries 31–659
Eligibility groups for promotion 31–667
Estimates of expenditures 31–677
Examinations, probationary or permanent status 31–660
Exemption from double pay ban 31–631
Heads of departments, salaries 31–659, 31–664
Instructor in automobile driving at Abbott Vocational school, appointment and salary 31–624
Junior high school teachers, salary 31–659
Assignment to salary classes 31–664
Kindergarten and elementary school teachers
Assignment to salary classes 31–664
Salary 31–659
Leave of absence 31–632—31–637, 31–678, 31–691—31–697
Sabbatical year 31–632—31–637
Sick and emergency leaves 31–691—31–697

EDUCATION—Continued
Teachers, school officers and employees—Con.
Librarian, salary 31–659, 31–664, 31–667
Longevity allowance, temporary teachers 31–673
Not to profit from school supplies 31–1104
Principals, salaries 31–659, 31–664
Principals of Americanization schools, salaries 31–659
Principals of junior high schools, salaries 31–659
Principals of senior high schools, salaries 31–659
Principals of vocational schools, salaries 31–659
Probationary period 31–661
Promotion 31–665—31–667
Research assistants, appointment, classification and assignment 31–623
Research assistants, salary 31–659
Retirement 31–701—31–739
Sabbatical leave of absence 31–632—31–637
Filling places with temporary employees 31–632, 31–635
Grant by Board of Education 31–632
Inclusion in promotion and retirement time 31–636
Limitation on number granted 31–632
Meaning of words 31–637
Officers, salary during leave 31–635
Report of use of time, effect of failure to make 31–633
Teachers' salaries, amount during leave 31–634
Salaries 31–659—31–679
Additional increase 31–662, 31–679
Annual compensation 31–662
Assignment to salary classes 31–660—31–664, 31–673
Crediting previous experience 31–664
Effective date of rates 31–677
Leave of absence 31–678
No discrimination on account of sex 31–608
Payment 31–609
Promotion 31–665—31–667
School attendance and work permits department, salaries 31–659, 31–664
Census inspectors 31–659
Chief attendance officer 31–659
Director 31–659
School librarians' salaries, average not to exceed that of free public library employees 31–616
Senior high school teachers' salaries 31–659
Substitutes
Teachers, appointment 31–672
Substitutes for maintenance employees 31–625
Superintendents, salaries 31–659, 31–664
Teachers colleges, salaries 31–659, 31–664
Temporary teachers, appointment, term, salary 31–673
Trade or vocational schools, salaries 31–659, 31–664
Classification to salary schedule 31–664
Principals 31–659
Teachers 31–659
Textbooks, free 31–401—31–406

EDUCATION—Continued
Title to certain property for McKinley Technical High School 31–1108
Trial of teachers, right to have counsel 31–116
Use of school buildings 31–801—31–809
Board of Education may use Franklin School for office purposes 31–804
Certain property set apart for school use 31–808
Civic meetings for free discussion of public questions 31–801
Grant by Board of Education 31–801
Lots conveyed for colored schools, to revert if used for other purposes 31–807
Prohibited uses 31–802
Recreation centers 31–801
Restrictions on lot conveyed for public school use 31–805, 31–806
Social centers 31–801
Supervision of construction and repair 31–803
Supplementary educational purposes 31–801
Use of former business high school building 31–809
Vacation schools authorized 31–674
Whole-school day sessions required 31–1101

EDUCATIONAL AND RELIGIOUS INSTITUTIONS
Abandonment or readjustment of streets to provide grounds 7–113
Unemployment Compensation Act, excluding employees 46–301

EDUCATIONAL ASSOCIATIONS
See CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS; INSTITUTIONS OF LEARNING
Incorporation 29–601—29–606

EGRESS
Fire protection 5–317—5–323

EIGHT-HOUR LAW
Public buildings and works 22–3407, 22–3408

EJECTMENT
Absence of life tenant, remaindermen's remedy 16–528
Adverse possession, defense of 16–515
Inclosure 16–515
Insufficient acts 16–503
Tax payments in lieu of inclosure 16–515
Counts 16–504
Counts for furniture, rent, damages, landlord to separate 16–512
Death of life tenant concealed, remaindermen's remedy 16–527
Declaration, form 16–503
Distinct parcels, defendants occupying severally 16–508
Failure to pay rents and costs
Effect on mortgagee 16–532
Lessee barred 16–532
Final judgment, effect 16–518
Holding over after expiration of life tenancy 16–531
Injunction dissolved on failure to deposit rents, costs 16–533
Joint tenants to sue jointly 16–510
Landlord's action in District Court 45–910

EJECTMENT—Continued
Life tenant found to be living, rights of 16–530
Life tenant, rights of protected, re-entry 16–529
Mesne profits and damages, claiming by separate counts 16–511
Mortgagee suing for, release on payment into court 45–605
Parties 16–501
Defendants to be lessor, lessee, tenant, or possessor 16–501
Plaintiffs, joint and several 16–504
Paintiff to be real claimant 16–501
Payment, tender of rents, costs, proceedings stopped on 16–534
Plaintiff's title, effect of expiration before trial 16–514
Proof necessary 16–505
Recovery for improvements 16–519
Assessment 16–519
New trial as to assessment 16–520
Improvements exceeding damages, plaintiff to elect 16–523
Judgement after refusal of deed tendered 16–525
Judgment for damages in excess of improvements 16–521
Judgment where plaintiff pays for improvements 16–524
Judgment where plaintiff refuses to pay or tender deed 16–526
Notice 16–519
Recovery of less than is claimed 16–509
Relief in equity, effect on lease 16–534
Separate suit for rent, damages authorized 16–513
Tenant in common, may sue jointly or severally 16–510
Tenant served, notice to landlord, penalty 16–502
Title in mortgagee, trustee, effect 16–506
Vendor against vendee entitled to specific performance 16–507
Verdict and judgment 16–516
For defendant, effect 16–517
Plaintiff's title proved for whole or part 16–516

ELECTRICAL CORPORATION
Definition 43–115

ELECTRICAL ENGINEER
Appointment by Commissioners 1–721
Assistant engineer, duties and qualifications 1–722
Assistants, appointment, duties 1–721
Clerical assistance 1–721
Duties vested in Director of Inspection 1–246
Office established 1–721
Qualifications 1–721

ELECTRICAL INSPECTOR
Cutting off current for building or premises, grounds 1–723
Connecting current before inspection and approval probihited 1–723
Criminal offenses 1–720
Connecting current before wiring inspected or approved 1–723

ELECTRICAL INSPECTOR—Continued
Criminal offenses—Continued
Failure to remove or repair wiring after notice, penalty 1–720
Police Court, jurisdiction 1–720
Cutting off current until furnishing authorized by inspector 1–723
Electrical engineer chief inspector 1–720
Fees for examination, payment of 1–719
Inspection 1–720
Buildings in course of construction 1–720
Notice of defective or dangerous condition 1–720
Public service corporation producing and distributing electric current 1–719
Inspector's power to require removal and replacement 1–723
Property of electric company, tampering with, penalty 22–3115
Rules and regulations, Commissioners empowered to adopt 1–719

ELECTRIC LIGHT AND POWER
See Public Utilities; Street Lighting
Excise tax 47–1701
Lighting of streets 7–701—7–710
Plant, construction in connection with public building, restriction 9–203
Property of electric company, tampering with, penalty 22–3115
Public lamps, overhead wires prohibited 7–702
Regulations for production and use, commissioners empowered to adopt 1–719

ELECTRIC PLANT
See Public Utilities
Definition 43–114

ELECTRICIANS
Bond 1–244
Licenses 1–241

ELECTRIFICATION
Steam-railroad companies 7–1230—7-1234
Approval of plans and issuance of permit 7–1230
Cable and drawbridge opening 7–1231
Commissioners of District, jurisdiction not abridged 7–1233
Conduit systems, construction, permit 7–1232
Interstate Commerce Commission, jurisdiction not abridged 7–1233
Liability for personal injury 7–1234
Overhead and underground structures and equipment 7–1230
War Department jurisdiction not abridged 7–1233

ELECTROCUTION
See Death Penalty

ELEEMOSYNARY INSTITUTIONS
See Board of Public Welfare; Charitable Institutions; Hospital and Asylums; Saint Elizabeths Hospital

ELEVATORS
Enclosure of shaft, when required 5–305
Inspection by Assistant Inspector of Buildings 1–729
Passenger elevators, inspection, fees 5–316
Penthouses over shaft, height, location, fireproof construction 5–405
Regulations for construction and operation
Adoption of 1–229
Penalty for violation 1–229
Termination in fireproof compartment, when required 5–305

ELEVATOR SHAFT
Definition 5–312

EMBALMING
See Dead Human Bodies
Permit required 27–125

EMBEZZLEMENT
Administrators 22–1210
Agent of corporation 22–1202
Attorney 22–1202
Auctioneers 22–1208
Carriers 22–1205
Clerk 22–1202
Commission merchant 22–1206
Consignee 22–1208
Conversion of provisions 22–1208
Conviction of, disqualification from holding office 1–316
Corporate officer 22–1202
Executors 22–1210
Factor 22–1206
Fiduciaries 22–1210
Forwarding agent 22–1206
Innkeepers 22–1205
Life insurance agent embezzling premiums 35–429
Mortgagor of personal property 22–1209
Notes not delivered 22–1203
Property of District 22–1201
Property, taking without right 22–1211
Punishment for violations 22–1207
Receiving embezzled property 22–1204
Servant 22–1202
Storage agent 22–1206
Violations, punishment for 22–1207
Warehouseman 22–1206

EMERGENCY
Fire Department, cancelation of leave 4–410
Police and Fire Department leaves, cancelation 4–180
Purchase of supplies or services without advertising for bids 1–808
Retired member of Police or Fire Department, power to require active service 4–514

EMERGENCY RENT ACT
See Rent Control

EMINENT DOMAIN
Alley dwellings, slum-clearance and improvement work 5–103
Damages exceeding benefits, payment 5–104
Law governing proceedings 5–104

EMINENT DOMAIN—Continued
Alleys and minor streets 7–301—7–333
Abutting owners 7–302—7–304, 7–306, 7–307
Alleys previously closed unaffected 7–329
Amendment of description of property 7–321
Appeals, proceedings not stayed 7–323
Appeal taken, payment of award 7–323
Assessment of any and all lands benefited 7–319
Assessment of land no part of which taken, procedure 7–221
Benefits deducted from damages in making payments 7–320
Benefits to equal damages in amount 7–318, 7–319, 7–324
Commissioners authorized to institute proceedings 7–313
Confirmation of verdict by court, effect 7–320
Cost of making plats, payment 7–326
Costs and expenses, assessment as damages 7–318
Costs, assessment, new jury summoned 7–317
Counsel to institute proceedings, right to employ 7–333
Court's power to set aside or vacate verdict 7–317
Failure of proceedings, payment of costs and expenses 7–331
Fee of jurors 7–318, 7–322
Hearing of evidence 7–315
Jurors 7–315
Lands of United States, sale, proceeds paid into treasury 7–325, 7–330
Lien of assessments 7–321
Marshal's fee 7–318
New jury, verdict set aside or vacated 7–317
Notice of proceedings 7–314
Number of jurors 7–315
Objections to verdict or award 7–317
Opening, widening, or straightening 7–313—7–333
Partial setting aside of verdict 7–317
Part only of parcel condemned, assessment of benefits 7–316
Payment of assessments in instalments 7–321
Payment of awards to owners 7–320
Petition, contents 7–313
Plat filed with petition 7–313
Plats made by surveyor 7–326
Proper notice not given one owner, condemnation of land 7–327
Service of notice on owners 7–314
Validity of proceedings as to persons unaffected by error 7–327
Verdict of jury, contents 7–315
Verdict of second jury final 7–317
Assessment of land no part of which taken 7–221
Notice of assessment of benefits, method of giving 7–221
Objections and exceptions to assessment 7–221
Option of Commissioners preserved 7–221
Owner not served with notice of proceedings 7–221
Publication of assessment roll 7–221

EMINENT DOMAIN—Continued
Building lines, establishment 5–201—5–203, 7–319
Assessment of any and all lands benefited 7–319
Assessment proceedings and assessment area 5–203
Law governing proceedings 5–203
Petition, filing, contents 5–202
Plat 5–202
Street less than 90 feet wide, and more than block long 5–201
United States District Court, jurisdiction 5–202
Closing and readjusting streets and highways, objections filed 7–405—7–407
Abandonment of proceedings after verdict returned 7–407
Collection of benefit assessments 7–406
Commissioners authorized to institute proceedings 7–405
Effective date of closing and abandonment 7–405
Law governing proceedings 7–405
Payment of damage awards 7–406
Condemnation proceedings abandoned 16–610
Garbage reduction plants, acquisition of sites 6–505
Land for District uses 16–601
Abandonment of proceedings, liability 16–610
Appraisement 16–606
Citation to owners in condemnation 16–604
Condemnation authorized 16–601
Contents of petition 16–602
Declaration of taking, contents 16–605
Deposit of estimated compensation 16–605
Drawing of condemnation jury 16–603
Objections, exceptions to appraisement 16–607
Objections to jurors 16–606
Payment of award 16–608
Petition for condemnation 16–601
Selection of condemnation jury 16–604
Surrender of possession on filing 16–605
Title vests in District on filing declaration, making deposit 16–605
Land for United States uses 16–619
Amendment of proceedings 16–641
Appeal, deficiency judgment 16–638
Appearance after default 16–626
Citation and notice of condemnation 16–621
Citation of condemnation 16–622
Contents 16–622
Publication 16–623
Service 16–624
Condemnation authorized 16–619
Declaration of taking, contents, effects 16–628
Default in appearance, consent presumed 16–625
Delivery of possession 16–640
General authority of court 16–642
Guardians ad litem 16–627
Judgment, provisions 16–636
Judgment, when final 16–635
Jury to view lands, presence of parties 16–631
Measure of damages 16–632
Motion for new trial, time for making 16–635
New trial, procedure 16–634
Oath of juror 16–630
Payment of judgment 16–637

EMINENT DOMAIN—Continued
Land for United States uses—Continued
Pending proceedings, saving clause 16–643
Petition for condemnation, contents 16–620
Procedure for condemnation 16–620
Proceedings by District not affected 16–644
Selection and qualifications of jury 16–629
Setting aside verdict 16–634
Trial 16–632
Trial date 16–629
Verdict 16–633
Vesting of title on payment into court 16–639
Land in excess of needs 16–612
Agencies of United States may acquire 16–612
Condemnation by agencies of United States 16–616
Commissioners of District may acquire 16–612
Condemnation by Commissioners 16–615
Retention for public use 16–613
Sale 16–613
Notice to abutting owners 16–613
Proceeds to be deposited in Treasury 16–613
Saving clause 16–618
Laws pertaining to acquiring streets, alleys not affected 16–617
Materials for making or repairing highways 7–332
Parks 7–218
Amount of cost and expenses assessed as benefits 7–218
Parks and playgrounds, acquisition of land 8–102, 8–103
Parkways 7–218
Amount of cost assessed as benefits 7–218
Pending proceedings by United States not affected 16–611
Permanent Highway Plan adopted, abandoning highways 7–114
Use and maintenance of property pending condemnation 7–114
Philadelphia, Baltimore, and Washington Railroad Company 7–1221
Public off-street parking facilities 40–804
Street extensions 7–218
Cost and expenses assessed as benefits 7–218
United States not liable for cost of acquiring land 7–218
Streets and other ways
Amendment, petition, process, verdict, or record, power of court 7–212
Appeal by aggrieved party 7–214
Appointment of jury from names drawn 7–205
Appropriation for payment of costs and damages authorized 7–220
Assessment of all or part of damages, assessment as benefits 7–219
Assessment of benefits to reimburse District 7–201
Assessment of land no part of which condemned, procedure 7–221
Benefits collected paid into Federal Treasury for credit of District 7–220
Commissioners authorized to institute action 7–202
Compensation of jurors 7–213

EMINENT DOMAIN—Continued
Streets and other ways—Continued
Condemnation through unsubdivided part of plot 7–216, 7–217
Confirmation of verdict by court, effect 7–210
Costs and expenses assessed as benefits 7–201, 7–208
Costs and expenses paid by District 7–201
Damages assessed as benefits 7–208
Damages awarded paid by District 7–201
Damages in respect to land condemned assessed as benefits 7–201
Deposit of award in court registry, grounds 7–215
Description of property, power to amend 7–212
Dismissal of proceedings by Commissioners, damages exceeding benefits 7–219
Drawing of special jury 7–205
Excess damages and costs borne by District 7–208
Excess of damages over benefits paid out of appropriation 7–220
Execution of plan for permanent system of highways 7–201
Guardian ad litem for persons under disability 7–204
Hearing of evidence by jury 7–206
Instalment payment of assessments 7–211
Interest on deferred payments of assessments 7–211
Land subject to assessment 7–208
Lien of assessments 7–211
Matters considered in assessing benefits 7–208
Oath of jurors 7–205
Objections and exceptions to verdict 7–209
Objections to jurors 7–206
Opening, extending, or widening streets and highways 7–201
Partial vacation of verdict, effect 7–209
Parties not appealing, payment of award 7–214
Part of lands not condemned, assessment of benefits 7–207
Part only of plot taken, assessment of benefits 7–207
Payment of awards 7–210, 7–214
Petition, contents 7–203
Proceedings in rem 7–202
Proceedings not stayed by appeal 7–214
Publication of notice 7–204
Service of process on owners 7–204
Set-off of benefits against damages 7–211
Time allowed for excepting to verdict 7–209
Title to property in dispute or uncertain, deposit of award in court 7–215
Transfer of title 7–215
United States District Court given jurisdiction 7–202
Vacancy in jury, power to fill 7–206
Vacation of verdict, power of court 7–209
Verdict of jury, preparation, contents 7–206
Viewing of premises by jury 7–206
Streets through unsubdivided part of plot 7–216, 7–217
Appropriation for payment of cost, expenses and damages 7–217

EMINENT DOMAIN—Continued
Streets through unsubdivided part of plot—Continued
Assessment of benefits and damages 7–217
Commissioners authorized to institute proceedings 7–216
Failure or refusal to dedicate streets or highways 7–216
Law governing procedure 7–217
Reservation of part of land from subdivision 7–216
Time for return of verdict 16–609
United States District Court
Assignment of judge to hear cases 11–301
Viaducts and underpasses, construction 7–1215

EMPLOYEES
Board of Public Welfare 3–105

EMPLOYEES' BENEFICIARY ASSOCIATIONS
Exemption from insurance company taxes 47–1808
Income tax, when exempted 47–1554
Unemployment Compensation Act, excluding employees of 46–301

EMPLOYEES' COMPENSATION ACT
District employees 1–311
Awards, payment 1–311
Federal law made applicable 1–311

EMPLOYERS' LIABILITY ACT
See COMMON CARRIERS

EMPLOYMENT AGENCIES
Advertisements, letterheads, receipts, and blanks to bear name and address 47–2111
Annual license fee 47–2101
"Applicant for employment" defined 47–2101
"Applicant for help" defined 47–2101
Applications by minors not to be accepted 47–2106
Bond of licensed agency 47–2102
Actions on bonds 47–2102
Conditions 47–2102
Copy of bond, fee 47–2102
Sureties 47–2102
Checking of references, exception 47–2103
Exceptions from license requirements 47–2109
Agencies conducted by incorporated alumni associations of registered nurses 47–2109
Agencies conducted by incorporated hospitals 47–2109
Agencies conducted by registered medical institutions 47–2109
Free employment agencies 47–2109
False advertisements, information, and promises, prohibited 47–2108
Inducing domestic employees to leave employment 47–2110
Licenses 47–2101—47–2111
Denial, suspension and revocation 47–2101
Authority of Commissioners of the District 47–2101
Writ of error to Court of Appeals 47–2101
Fee 47–2101

EMPLOYMENT AGENCIES—Continued
Minors not to be placed in violation of compulsory education or child labor laws 47–2106
Not to procure help for places where intoxicants are sold, penalty 47–2111
Not to send applicants except to employers applying for help, penalty 47–2111
Not to send females to places of bad repute, penalty 47–2111
"Nurses registry" defined 47–2101
Persons of bad character not to be permitted to frequent, penalty 47–2111
Private agencies, operating without license unlawful 47–2101
Receipts to applicants for employment 47–2104
Records to be open for official inspection 47–2107
Register of applicants for employment required 47–2103
Register of applicants for help required 47–2103
Restrictions on locations 47–2105
Statement to contract laborers sent outside city 47–2110
"Theatrical employment agency" defined 47–2101

EMPLOYMENT OF WOMEN
See WOMEN

ENCROACHMENTS
Improper occupation of streets, squares, or reservations belonging to United States 7–1209

ENCUMBRANCES
Preference not affected by assignments for benefit of creditors 28–2606

ENDORSEMENT
See INDORSEMENTS
Stock certificate 28–2909, 28–2920, 28–2921
Stock certificate for transfer 28–2901, 28–2902, 28–2904, 28–2906, 28–2907

ENGINEER COMMISSIONER
Absence, performance of duties by assistant officer 1–211
Assistant 1–212
Detailed from Engineer Corps of Army 1–212
Duties 1–212
Member of Board for Condemnation of Insanitary Buildings 5–601
Number 1–212
Compensation 1–204
Detailed to commission by President 1–203
Member National Capitol Park and Planning Commission 8–101
Not considered as holding civil office 1–205
Not required to perform other duties 1–203
Officer in Engineer Corps of United States Army 1–201
Qualifications 1–202
Rank in Army 1–202

ENGINEERS
See STEAM AND OTHER OPERATING ENGINEERS; PROFESSIONAL ENGINEERS
Alley-dwelling and slum-clearance projects 5–105
Registration Act 2–1801—2–1818

ENGINES
Ashes and cinders, removal 6–801
Noisome odors prohibited 6–801
Smoke Prevention Law 6–801—6–804
Testing of boilers 2–1502

ENGLISH LANGUAGE
Penalty for failure to use in pleadings 13–202
Required in pleadings, exceptions 13–201

ENTERTAINMENT
Buildings for, licenses 47–2320

ENTRY
See FORCIBLE ENTRY AND DETAINER
Unlawful entry on private property, penalty 22–3102

E. O.
Gaming, keeping game or device or inducing play, penalty 22–1504

EPISCOPAL RESIDENCES
Exemption from taxation 47–801a

EQUALITY
Gaming, keeping game or device or inducing play, penalty 22–1504

EQUIPMENT
Trading in for new articles 1–819

EQUITY
See ABATEMENT AND REVIVOR
Abatement 12–108
Bill in equity not excluded in attachment and garnishment 16–332
Depositions as testimony 14–103
Jurisdiction, United States District Court 11–306
Pleading equitable defenses at law 13–214
Powers of Probate Court, relation 11–504
Principles, effect of Code 49–301
Reference of questions of law and fact 16–1701—16–1719
Revivor 12–108
Testimony 14–103

EQUITY COURT TERM
See UNITED STATES DISTRICT COURT
Attachment of persons to enforce decrees 11–326
Bonds and undertakings 28–2403
Commitment for contempt to enforce decree 11–326
Delivery of chattels, order for, enforcement 11–328
Enforcement of decrees 11–326
Fieri facias, issuance to enforce decree 11–326
Interlocutory decree, enforcement 11–327
Mandatory injunction to enforce decree 11–326
Messenger for, appointment 11–312
Money judgment, imprisonment of defendant to enforce payment restricted 11–326
Sequestration of property to enforce decree 11–326

ERGOT
Poison, sale, restrictions 2–612

ESCAPE
See CRIMINAL PROCEDURE
Breaking prison or aiding therein, penalty 22–2601

ESCAPE—Continued
Boys Training School, enticing away from or harboring escapes, penalty 32–818
Girls Training School, enticing away from or harboring escapes, penalty 32–818, 32–907
Police and private detectives aiding criminals to escape justice, prosecution 4–175

ESCHEAT
See DECEDENTS' ESTATES
Intestate's surplus estate 18–717

ESTATES
See ABSENTEES' AND ABSCONDERS' ESTATES; DECEDENTS' ESTATES
Absconders' and absentees' estates 20–701
Assessment on basis of return 47–1614
By sufferance, effect of statute of frauds 12–301
By the curtesy 18–215
Chattels real 45–804
Conditions precedent 45–804
Conditions subsequent 45–804
Contingent, conveyable by deed or will 45–101
Contingent interests, sale 45–1101—45–1103
Coparceny estates abolished 45–817
Creation by deeds, effect of statute of frauds 12–301
Creation by parol, effect of statute of frauds 12–301
Entailed estates abolished 45–802
Enumeration of estates in land 45–801—45–822
Estates classified 45–806
Estates of inheritance, conveyance by deed or will required 45–106
Estates tail abolished 45–802
Expectant 45–808
  Alienable 45–815
  Descendible 45–815
  Devisable 45–815
  Disseisin, destruction by, does not defeat 45–814
  Forfeiture, destruction by, does not defeat 45–814
  Future estates 45–808
  Intermediate owner's alienation does not defeat 45–814
  Merger, destruction by, does not defeat 45–814
  Not void in creation by liability to defeat 45–814
  Preceding owner's alienation does not defeat 45–814
  Reversion 45–808
  Surrender, destruction by, does not defeat 45–814
Fee simple 45–802, 45–803
  Absolute 45–803
  Created unless contrary intention appears 45–201
  Form of deed 45–301
    By husband and wife 45–301
  Qualified 45–803
  Words of inheritance unnecessary to create 45–201
For term of years, conveyance by deed, lease, or will required 45–106
For the life of a third person 45–805
Freehold, alienation 45–104
Freeholds 45–804

ESTATES—Continued
Will, estates at—Continued
Future 45–810
Alienation, rule against perpetuities 45–102
Alternative 45–813
Conditional limitations 45–811
Contingent 45–812
Conveyable by deed or will 45–101
Definition 45–810
Dependent on person's death without heirs, issue, or children, defeated by birth of his posthumous children 45–204
Limited to heirs, issue, or children, posthumous children take as though living at ancestor's death 45–204
Remainder 45–811
Vested 45–812
Good as executory devises, conveyable by deed 45–101
Income tax 47–1577
Inheritable 45–801
Fee simple estates 45–802
Freehold 45–804
Joint tenancy 45–816
Life 45–801
Conveyable by deed or will 45–106
Conveyance required to be signed and sealed 45–106
Creation in term for years 45–104
Form of deed 45–301
Freehold 45–804
Warranty by life tenant void as to heir 45–309
Minors 21–101
Month to month 45–821
Notice to quit 45–902
Termination 45–902
Possession, estates in 45–807
Present, conveyable by deed or will 45–101
Pur autre vie 45–805
Chattel real after death of grantee or devisee 45–805
Freeholds during life of grantee or devisee 45–805
Quarter to quarter 45–821
Notice to quit 45–902
Termination 45–902
"Reversion" defined 45–809
Sale of interests in an estate 45–1101—45–1104
Sale of limited estates and interests therein 45–1101—45–1104
Sufferance 45–801
As chattel interests 45–804
Description 45–820
Not liable to sale under execution as chattel interests 45–804
Notice to quit 45–904
Tenancy by entireties 45–816 note
Tenancy in common 45–816
Vested, conveyable by deed or will 45–101
Will, estates at 45–801
As chattel interests 45–804
Creation 45–822
Description 45–822
Not liable to sale under execution as chattel interests 45–804
Notice to quit 45–903

ESTATES—Continued
Tenant after sale under mortgage, trust deed or execution, without lease 45–822
Termination 45–822, 45–903
Year to year, estates from, good for one year only 45–819
Yearly 45–801
Chattels real 45–804
Years, estate for, description 45–818

ESTATE TAX
See INHERITANCE TAXES; TAXATION AND FISCAL AFFAIRS
Abatement of assessment 47–1614
Additional assessment 47–1614
Additional levy on transfers 47–1608
Administration 47–1618
Assessment on basis of return 47–1614
Assessor
Definition 47–1628
Determining tax when return not filed 47–1626
To determine tax 47–1618
Arrears 47–1619
Benefits to District 47–1611
Bureau of Internal Revenue to supply information 47–1625
Collected like personal property taxes 47–1619
"Collector of taxes" defined 47–1628
"Commissioners" defined 47–1628
Commissioners of the District to supervise enforcement 47–1618
Compelling attendance of witnesses 47–1618
Compounding and settling, assessor's authority 47–1627
Compromise 47–1630
Copies of federal communications on estate tax to be filed with assessor 47–1613
Copy of federal estate tax return to be filed with assessor 47–1613
Credits against tax 47–1609
Estate tax imposed by state or territory 47–1609
Inheritance tax imposed by state or territory 47–1609
Legacy tax imposed by state or territory 47–1609
Succession tax imposed by state or territory 47–1609
Definitions 47–1628
"District" defined 47–1628
Enforcement by mandamus 47–1620
Examining books and witnesses 47–1618
Extinguishment and reattachment of lien on personal property 47–1603
Failure to file return, liability 47–1621
False or fraudulent return, liability 47–1621
Federal Bureau of Internal Revenue to supply data 47–1625
Imposition of tax 47–1608
"Include" defined 47–1628
Interest added when not paid on time 47–1619
Is additional to inheritance tax 47–1608
Liability of bond for assessments 47–1616
Liability of personal representative's bond, limitation 47–1616
Maximum tax 47–1610
"Metropolitan police department" defined 47–1628

ESTATE TAX—Continued
Monthly report of register of wills to assessor 47–1617
Payment 47–1615
Rate is 80 per cent of federal estate tax 47–1608
Release of lien 47–1623
"Residence" defined 47–1628
"Resident" defined 47–1628
Return not filed, assessor determining tax 47–1626
Rules and regulations 47–1618
Situs of intangibles 47–1629
Tax is lien for 10 years 47–1603
Tax on transfers of nonresident decedent's property in District 47–1612
Transfer of assets 47–1624
Transfer of nonresidents' realty and personalty 47–1612
Transfers except to decedent's fiduciary 47–1624
Liability of transferor not reporting 47–1624
Transferor's duty to make prior report 47–1624
Wilful failure to make return, penalty 47–1622
Wilful failure to pay tax, penalty 47–1622
Wilful failure to supply data, penalty 47–1622

ESTOPPEL
Forged signature to negotiable instrument 28–124

ETHYL ALCOHOL
Definition of "alcohol" includes 25–103

EVACUATION
Wartime, Commissioners may order during 6–1008

EVIDENCE
Admissibility elsewhere of Juvenile Court testimony 11–915
Board of Cosmetology books and records 2–1302
Board of Dental Examiners, certified copies of record 2–303
Board of Podiatry Examiners, certified copies of record 2–702
Certificates of incorporation, trust, title and indemnity firms 26–332
Certified copy of notary's record 1–513
Contents of capital stock book of domestic life insurance companies 35–515
Coroner's inquests 11–1205
Corporation stock-book entries, presumptions 29–226
Depositions 14–201—14–204
Documentary
Effect in District 14–404
Prima facie evidence, limitation 14–402
Foreign deeds, nontestamentary 14–402
Certificate of keeper 14–402
Prima facie evidence, limitation 14–402
Municipal ordinances and regulations 14–406
Method of proof 14–406
Prima facie evidence, limitation 14–406
Production of books and papers, at law 14–405
Records in states 14–401
Certificate of keeper 14–401
Prima facie evidence, limitation 14–401
Seal of court or recording office 14–401
Wills recorded with register of deeds 14–403
Admitted to probate in District 14–403
Foreign wills, by transcript 14–403
Prima facie evidence, limitation 14–403

EVIDENCE—Continued
Effect of bulk sales law 28–1705
Impeachment of own witness 14–104
Insufficient, as basis for new trial 13–221
Judgment admitting will to probate, admissibility 11–519
Oath or affirmation required 14–101
Optometry board record, certified copies 2–508
Optometry, license to practice, certified copy 2–513
Parking without consent 40–810
Party-wall, certificate of location 1–628
"Perjury" defined 14–102
Property in possession of property clerk 4–166
Protest of bill or notes by notary 1–513
Seal of Commission on Licensure to Practice the Healing Arts, judicial notice of 2–103
Surveyor's records, transcript 1–611
Testimony in equity causes 14–103
Depositions 14–103
Oral before court, commissions, or examiners 14–103
Rules of Supreme Court of the United States and District Court 14–103
Testimony of surviving party 14–302
Transcript of testimony before public utilities commission 43–422
Witnesses 14–301—14–309

EXAMINATIONS
See DENTISTRY; HEALING ARTS PRACTICE ACT; OPTOMETRY

EXCAVATIONS
Abatement as nuisance 5–504
Making in streets and other public ways, permits 1–726
Unsafe conditions 5–501
Inspection by building inspector 5–501
Notice given owner by building inspector 5–501
Remedy of condition by owner, time limit 5–501
Report 5–501

EXCEPTIONS
As basis for new trial 13–221
Exceptions to auditor's report in actions on account 16–102—16–105
Probate Court 11–519

EXCHANGE
Note providing for payment, negotiability 28–103
Trading in old equipment on purchasing new articles 1–819

EXCLUSIVE JURISDICTION
Municipal Court for District of Columbia 11–755

EXECUTION
Stock certificate 28–2913

EXECUTION OF PRISONERS
See DEATH PENALTY
Executioners, appointment by Commissioners of District 23–702

EXECUTIONS
See EXEMPTIONS

EXECUTIONS—Continued
Alias writs 15–202
After flat rendered 15–204
Returns 15–203
Appraisal of levied property 15–214
Death of marshal after receipt of writs 15–215
Defective sales, effect 15–216
Equitable interests in chattels pledged 15–212
Exemption, notaries public, seal and official document 1–507
Fiat instead of execution 15–205
Goods in warehouse
Right to levy on 28–1919
Negotiable receipt outstanding 28–1919
Transferred nonnegotiable receipts outstanding 28–2006
Issuance
Three years from expiration of suspension 15–201
Three years from judgment 15–201
Judgments of Municipal Court 15–209
Lien on personal property 15–209
Not lien on real property 15–209
Lien 15–206
Equitable interests in goods and chattels 15–206
Goods and chattels 15–206
Marshal, remedy in sale of wrong property 15–217
Money decrees in equity, same as judgments 15–218
Municipal Court 11–724
Notice of sales by advertisement 15–214
Proceedings supplementary 15–301
Attachment and garnishment 15–301
Answers to interrogatories 15–304
Condemnation of property 15–311
Costs 15–301
Interrogatories to garnishee 15–304
Judgment against garnishee 15–312
Levying 15–305
Liability of garnishee 15–305
Oral examination of garnishee 15–304
Pleading to attachment 15–308
Preservation of property 15–307
Property in hands of executor, administrator 15–306
Property in hands of marshal or coroner 15–306
Property to be subjected 15–303
Sale of perishable property 15–307
Sale of property 15–311
Time of issuance 15–301
Traversing garnishee's answers 15–309
Trial of right to attached property 15–310
Real property 15–313
Order to show cause why possession is retained 15–313
Possessor showing superior title, effect 15–313
Property on which fieri facias may be levied 15–210
Evidences of debt to be sold 15–211
Money not to be placed on sale 15–211
Return, period 15–201
Sale of levied property 15–214
Stay of execution, Small Claims and Conciliation Branch, Municipal Court 11–811
To be satisfied from personalty if possible 15–213
EXECUTIONS—Continued
Writs 15–207
Death of debtor after delivery to marshal 15–208
Marshal or coroner indorsing date 15–207
EXECUTIVE DEPARTMENT
Commissioners of District 1–218
EXECUTORS AND ADMINISTRATORS
See DECEDENTS' ESTATES; WILLS
Accounting by representative of deceased 20–110
Accounts 20–601
Assets to be charged 20–604
Bequests to executors 20–606
Deceased executrix or administratrix 20–608
Disbursements and allowances 20–605
Executors and administrators of deceased, commission 20–610
Failure to return 20–603
Lost property 20–609
Return by executor, administrator of deceased 20–607
Subsequent accounts 20–602
Action against for accounting 16–101
Additional bond 20–108
Delivery of assets on failure to provide 20–108
Administrators
Bond 20–202
Bonds and undertakings, in District Court 28–2403
Construction of "administrator" 49–205
Declining administration 20–218
Granting of letters 20–201
Letters of administration, form 20–219
Notice of application for letters 20–217
Persons entitled to administer 20–204
Brothers and sisters 20–207
Children 20–204
Creditors 20–216
Descending relations preferred to collateral 20–211
Father 20–206
Feme sole preferred to married woman 20–213
Grandchild 20–205
Incompetents to be excluded 20–215
Limit to preference in lineal relatives 20–212
Males preferred 20–209
Mother 20–206
Next of kin 20–208
Relations of whole blood preferred 20–210
Relations on part of father preferred 20–214
Surviving spouse 20–204
Special bond 20–203
Application for letters 20–104
Bond 20–104
Bonds 20–117
Actions on bonds 20–117
Liable for estate tax 47–1616
Limitation of actions 12–201
Recording 20–117
Bonds and undertakings, in District Court 28–2403
Bulk sales law, exemption 28–1704
Claims against, as assets of estate 18–303

EXECUTORS AND ADMINISTRATORS—Con.
Collectors 20–401
Bond, form 20–402
Bonds and undertakings, in District Court 28–2403
Cessation of powers 20–404
Commission 20–403
Duties 20–403
Failure to deliver over 20–405
Letters ad colligendum 20–401
Form 20–401
Grant 20–401
Liability 20–403
Oath, form 20–402
Competency, determination 20–101
Continuing decedents' business 20–116
Corporate stock, voting 29–221
Default in performance of duties, power of court to compel performance 11–508
Discretion in pleading limitation to creditors' claims 18–515
Executor de son tort 20–113
Executors 20–301
Absent from probate hearing, summons, notice 20–306
Acting without letters 20–310
Bond 20–301
For debts only, waste 20–302
For joint executors 20–304
Special 20–303
Bonds and undertakings, in District Court 28–2403
Construction of "executor" 49–205
Deed, form 45–301
Disqualified 20–309
Failure to serve, issuance of letters of administration 20–305
Letters testamentary 20–301
Form 20–311
Oath, except corporations 20–301
Renunciation 20–308
Several, summons to all 20–307
Failure to account, revocation of letters 11–515
Failure to invest funds, revocation of letters 11–513
Fiduciary residing outside District 20–118
Power of attorney to register of wills 20–118
For assignees for benefit of creditors 28–2604
For trustees for benefit of creditors 28–2604
Foreign, suits by 20–505
Fraudulent conveyances, suits to vacate 12–403
Grant of letters ad colligendum, by Probate Court 11–504
Grant of letters of administration by Probate Court 11–504
Grant of letters testamentary by Probate Court 11–504
Inheritance and estate taxes, duties 47–1601—47–1629
Investment of funds 20–115
Letters de bonis non, form, duties 20–105
Letters revoked 20–106
Levy on money in attachment and garnishment 16–313
Liability for waste of executor de son tort 20–114

EXECUTORS AND ADMINISTRATORS—Con.
Liability of executors or administrators of deceased 20–112
Municipal Court for District of Columbia, jurisdiction of actions against 11–755
Order against representative of deceased 20–111
Personally exempt from stockholder's liability 29–220
Persons between 18 and 21 20–102
Persons preferred for administrator with will annexed 20–103
Probate court summoning to appear 11–506—11–508
Failure to appear, sequestration of property 11–508
Fine for failure to obey summons 11–506, 11–507
Removal of co-fiduciaries 20–107
Resignations 20–119
Sale of real estate, additional bond 20–104
Set-off 16–1908
Stock certificate, laws relating to executors and administrators applicable to transfer of 28–2918
Stock, transfer by 28–2902
Suits
Against, because of concealment 20–504
Against concealers of assets 20–503
Judgments against 20–502
Amount of damages 20–502
Fine for assessment of damages 20–502
On bonds against heirs 20–506
Power to sue and defend 20–501
Surety applying for counter security 20–109
Unemployment Compensation Act, employing unit within 46–301

EXEMPTIONS
See TAXATION AND FISCAL AFFAIRS
Alley Dwelling Authority property 5–114
Annuities 15–403
Boiler Inspection Act 1–705, 1–709
Dentistry, law regulating practice 2–317
Earnings of family providers 15–403
Encumbrances on exempt property, validity 15–402
Husband and wife, aggregate earnings, salary etc. 15–403
Insurance proceeds 15–403
Jury service 11–1420
Notary's public seal and official document from execution 1–507
Notice of claim of exemptions 15–403
Pensions 15–403
Property of householder 15–401
Quashing attachment 15–403
Retirement benefits 15–403
Salary 15–403
Taxation, from 47–801—47–830, 47–1208

EXHIBITIONS
Buildings for, license 47–2320

EXIT LIGHTS
Fire protection 5–317—5–323

EXPLOSION INSURANCE
Application of act relating to rates 35–1402

EXPLOSIVES
Power to prohibit use in District 1–224
Sale location license 47–2314
Approval of fire marshal 47–2314
Fee 47–2314
Setting off on Capitol grounds, prohibited 9–123
Storage license 47–2314
Approval of fire marshal 47–2314
Fee 47–2314
Use within District, power to regulate 1–227

EXPRESS COMPANIES
See COMMON CARRIERS; PUBLIC UTILITIES
Rolling stock, taxation 47–1215

EXPULSION
See ATTORNEYS

EXTORTION
See BLACKMAIL
Recording deed, contract, or conveyance with intent to extort 22–1302

EXTRADITION
See CRIMINAL PROCEDURE
Admittance to bail of fugitive 23–404
Apprehension of accused 23–401
Bond for appearance before proper official 23–409
Commitment 23–405
Complaint for apprehension of fugitive 23–403
Discharge when not demanded by return day 23–406
Examination in Police Court 23–404
Forfeiture of bond 23–405
Fugitives from federal districts 23–410
Fugitives from foreign countries 23–410
Fugitives from other states or territories 23–401
Associate justices of District Court, duties 23–402
Chief Justice of District Court, duties 23–401
Notice of apprehension to be forwarded 23–407
Period of detention 23–408
Voluntary return 23–409
Warrants for apprehension, issuing from Police Court 23–403

EYES
See OPTOMETRY

FAIRS
Fair building license 47–2320
Outdoors, license 47–2326

FALSE CERTIFICATION
Recordable instruments, penalty 22–1308

FALSE FIRE ALARMS
Penalty 22–1119

FALSE PERSONATION
Applicant for license to practice healing arts 2–124
Clergyman, penalty 22–1304
Courts, penalty 22–1303
District inspector, penalty 22–1305
Licensees under Healing Arts Practice Act 2–125
Narcotic drugs, obtaining by 33–420
Notary, penalty 22–1303
Officers, penalty 22–1303

FALSE PERSONATION—Continued
Police officer, penalty 22–1306
Public officer, penalty 22–1304
Wearing insignia of certain organizations, penalty 22–1307

FALSE PRETENSES
Penalty 22–1301

FALSE REPRESENTATION
Alcoholic beverages, by minor of age to obtain, penalty 25–130

FAMILY DWELLINGS
See TAXATION AND FISCAL AFFAIRS
Taxation 47–901—47–905

FAMILY HOMES
Persons entitled to place child 32–785
Purpose of Act 32–781
Supervision of children by Child-Placing Agency 32–785
Visitation by Child-Placing Agency 32–785

FARMERS' PRODUCE MARKET
Charges for use of space 10–136, 10–137
Control and regulation by Commissioners of District 10–137
Location 10–136, 10–137

FARO BANK
Gaming, penalty 22–1504

FARRAGUT SQUARE
Street fronting, railroads prohibited 7–1202

FEDERAL AID
Alley-dwellings, slum-clearance, housing projects 5–114

FEDERAL FOOD, DRUG AND COSMETIC ACT
Supplementary law re unwholesome food 22–3422

FEDERAL HOME LOAN BANK
See BANKS AND OTHER FINANCIAL INSTITUTIONS; BUILDING ASSOCIATIONS; CREDIT UNIONS; PETTY LOANS

FEDERAL SECURITY ADMINISTRATOR
Insane criminals, certification to 24–301
Real property of St. Elizabeths Hospital 32–411

FEDERAL WORKS ADMINISTRATOR
Motor Vehicle Parking Agency, member designated by 40–805
Parking, regulations by 40–811

FEEBLE-MINDED PERSONS
See CHILDREN; DISTRICT TRAINING SCHOOL; INSANE PERSONS

FEES AND COSTS
See CRIMINAL PROCEDURE; LICENSES
Architect's Registration Law 2–1023
Attachment and garnishment 16–317
Attorneys 11–1501
Agreements with clients not prohibited 11–1501
Docket fees 11–1502
Taxed as costs, when 11–1501

FEES AND COSTS—Continued
Attorneys for District of Columbia, excepted 11–1516
Barber's Registration Law 2–1111
Bathing pools and beaches, use 8–170
Board of Zoning Adjustment, appeals to 5–420
Boiler inspection 1–710
Commissioners empowered to fix 1–715
Effective date of schedule 1–718
Boxing exhibition licenses and permits 2–1216
Building permits, certificates, and transcripts of records 5–429
Buildings, inspection, fire escapes 5–316
Business license fees 47–2301—47–2350
Certificates of taxes and assessments due 47–306
Commissioners of District of Columbia, power to fix 1–244
Copy of Judgment of Municipal Court for District of Columbia 11–755
Cosmetologist Licensing and Registration Law 2–1319
Defendants 11–1517
Plaintiff nonsuited 11–1517
Verdict for 11–1517
Exception 11–1518
Dental Regulatory and Licensing Law 2–313, 2–314
Dental hygienists 2–326, 2–327
Licensing 2–326
Deposit by Juvenile Court Clerk 11–939
District Attorney
Taxed as costs, when 11–1501
District Court 11–1509
Apportionment of fees collected 11–330
Clerk 11–1509
Prepayment required 11–1507
Deposit required 11–1506
District of Columbia and its officials exempt 11–1519
Jurors at inquests 11–1515
Nonresident plaintiffs 11–1506
Deposit to secure costs 11–1506
Security for costs 11–1506
Refunds 11–1506
Witnesses at inquests 11–1515
Docketing judgment of Municipal Court for District of Columbia 11–755
Exceptions 11–1507
District of Columbia 11–1507
United States 11–1507
Gas connection 1–726
Healing arts, license fees. 2–119
Health officer for copies of records 6–103
Inquests
Jurors 11–1515
Witnesses 11–1515
Jurors
Alleys or minor streets, eminent domain proceedings 7–317, 7–322
Eminent domain proceedings, land for streets 7–213
Licenses to practice healing arts, refund 2–119
Life insurance act 35–402
Mandamus proceedings 16–1006

FEES AND COSTS—Continued
Marshal 7–318, 11–1510
Alleys or minor streets, condemnation proceedings 7–318
Municipal Court 11–710
Nonresident plaintiff 11–719
Paupers 11–720
Power to establish 11–722
Small claims and conciliation branch 11–807
Municipal fish wharf and market 10–135
Notaries public 1–514, 1–515
Nurses Registration Law 2–404, 2–406
Annual registration fee 2–406
Application for examination and registration 2–404
Training school 2–406
Optometry Licensing Law 2–513, 2–514
Clerk's fee for recording license 2–513
Examination fee 2–514
Practitioners from other states, licensing 2–518
Reinstatement after failure to pay renewal fee 2–514
Renewal of registration 2–514
Outdoor sign license 1–232
Parking meters 40–804
Pharmacists' Licensing Laws 2–609
Pharmacists from other states or countries applying for license 2–604
Plumber's licenses 2–1405
Podiatry Licensing Act 2–709, 2–710
Poor persons, exemption from prepayment 11–1508
Printing records and briefs on appeal to Municipal Court of Appeals for District of Columbia 11–772
Probate Court 11–1503
Deposits 11–1505
Judgment for costs 11–518
Plenary proceedings 11–510
Prepayment required 11–1505
Register of wills
As clerk 11–1503
Prepayment required 11–1507
Proctors 11–1501
Recorder of deeds 45–708
Register of wills
Deposit in treasury 11–1504
Fees to be deposited 19–404a
Payable to collector of taxes 11–1504
Penalty for charging excessive fees 19–408
Table of fees, to be posted 19–406
Security for cost on appeal, exemption of Recreation Board member 8–203
Service of Police Court process 11–614
Sewer connection 1–726
Small claims and conciliation branch, Municipal Court 11–807
Solicitors 11–1501
Steam and other operating engineers, license fee 2–1504
Surveyor of District 1–616
Commissioners' power to prescribe 1–629
Paid to tax collector 1–616
Posting of schedule in office 1–629
Transmission to United States Treasury 1–616
Taxed as costs, when 11–1501

FEES AND COSTS—Continued
United States District Court, apportionment of fee collected 11–330
Veterinarians' Licensing Law 2–803, 2–805
Waiver, small claims and conciliation branch, Municipal Court 1–726
Water connections 1–726
Witness fees, Public Utilities Commission 43–419
Witnesses 11–1520
Advances to clerk by disbursing officer 11–1521
Board of Assistant Assessors 47–606
Board of Dental Examiners calling 2–304
Board of Equalization and Review 47–606
Inquests 11–1515
Officers of United States courts excepted 11–1520
Police Court 11–615
Cruelty cases 11–603
Trial boards of Police and Fire Departments 4–601
Unemployment compensation hearings 46–311

FEE SIMPLE
Absolute or qualified estate 45–803
Estate of inheritance 45–802
Form of deed 45–301

FEE TAIL
Converted into fee-simple estate 45–802

FEME SOLE
Powers of married women 30–201, 30–208

FERN STREET VIADUCT
Closing of grade crossings 7–516
Use by street railway company, payment of share of cost 7–515

FERRY LINES
Employers' Liability Act 44–401, 44–405

FICTITOUS PAYEES
Instruments payable to bearer 28–110

FIDELITY COMPANIES
Excise tax 47–1702

FIDUCIARIES
See Executors and Administrators; Guardian and Ward; Receivers; Trusts
Action against for accounting 16–101
Bonds and undertakings
Continuance of liability 28–2407
In District Court 28–2403
Payment to self in another capacity 28–2407
Bonds, liable for inheritance and estate taxes 47–1616
Checks 28–2305, 28–2306
Creditor of fiduciary taking check, rights and liabilities 28–2305
Fiduciary drawing in favor of third person 28–2305
Payable to or cashed by fiduciary 28–2306
Rights and liabilities of parties 28–2305, 28–2306
Citation of law 28–2314
Definition under income tax law 47–1551c

FIDUCIARIES—Continued
Definitions of terms 28–2301
Bank 28–2301
Fiduciary 28–2301
In good faith 28–2301
Person 28–2301
Principal 28–2301
Deposits in bank 28–2307—28–2310
Adverse claims, fiduciary of claimant 26–203
Deposits in name of two or more trustees, checks, liabilities 28–2310
Fiduciary making deposit as such, checks against account, liability 28–2307
Paid in name of principal, checks against account, liability 28–2308
General laws, when applicable 28–2312
Income tax returns 47–1564a
Indorsement of negotiable instruments 28–2304
Indorsee without notice 28–2304
Payment of personal debt, liability of parties 28–2304
Inheritance and estate taxes, duties 47–1601—47–1629
Interpretation of law to effect uniformity 28–2313
Law governing not retroactive 28–2311
Municipal Court for District of Columbia, jurisdiction of action against 11–755
Negotiable instruments 28–2304
Liability of parties, indorsement by fiduciaries 28–2304
Payment to fiduciaries 28–2302
Payor not liable for application 28–2302
Personally exempt from stockholders' liability 29–220
Securities held by fiduciaries 28–2303
Registration of transfer, liability 28–2303
Transfer of securities belonging to trust 28–2303
Corporation or issuer registering transfer, liability 28–2303
Uniform law 28–2301—28–2314

FIELD NOTES
Preservation by surveyor of District 1–616

FIERI FACIAS
Enforcement of decrees in equity 11–326

FIGHTS WITH ANIMALS
Penalty 22–1105

FIGURES
Controlled by words, negotiable instruments 28–118
Use in pleadings 13–203

FILM STORAGE
Motion picture film storage license 47–2313

FINAL ORDERS OR JUDGMENTS
Appeal from to Municipal Court of Appeals for District of Columbia 11–772

FINANCIAL INSTITUTIONS
See Banks and Other Financial Institutions; Building Associations; Credit Unions; Petty Loans

FINANCIAL RESPONSIBILITY ACT

See MOTOR VEHICLES
Automobile owners 40–401—40–416

FINES

See CRIMINAL OFFENSES
Collection by District Court, apportionment between District and United States 11–330

FIRE CASUALTY, AND MARINE INSURANCE

See INSURANCE AND INSURANCE COMPANIES

FIRE DEPARTMENT

See POLICE AND FIREMEN'S RELIEF FUND
Absence from District, leave 4–409
Age limits, original appointments, determination 4–403
Age retirement allowance, conditions 4–507
Anacostia Engine-House, use authorized 4–412
Appointments and promotions 4–402
  Application of Civil Service Act 4–402
Appropriations for clothing 4–406
Arrears of pension, granting prohibited 4–517
Assistant marine engineers 4–404
  Salary 4–405
Assistant superintendents of machinery 4–404
  Salary 4–405
Awards for meritorious service 4–701—4–704
  Annual awards made 4–701
  Appropriation for medals 4–704
  Committee to make awards, members, service without compensation 4–702
  Gold and silver medals 4–701
  Holders of medals, preference in promotion 4–703
Battalion chief engineers 4–404
  Salary 4–405
Captains 4–404
  Salary 4–405
Certificate of compliance required for certain licenses 47–2302
Chief engineer 4–402, 4–404
  Salary 4–405
  Selection, eligible members 4–402
Classification of privates 4–402
Clerks 4–404
Columbia Engine-House, use authorized 4–412
Combinations to interfere with efficiency prohibited, penalty 4–407
Conspiracies to interfere with efficiency prohibited, penalty 4–407
Credit for military service 4–504a
Death benefits for widow and children, conditions 4–507
Death while in service, repayment of contributions to relief fund 4–504
Deputy chief engineers 4–404
  Experience, eligibility 4–404
  Salary 4–405
  Selection, eligible members 4–402
Deputy fire marshals 4–404
  Salary 4–405
Discontinuance of relief allowance, grounds 4–512, 4–513
Emergency, cancelation of leave 4–410

FIRE DEPARTMENT—Continued

Entire district covered by department 4–401
Equalization of relief allowances 4–517
Exclusive jurisdiction of Commissioners 4–402
False fire alarms, penalty 22–1119
Fining of members, powers of Commissioners 4–402
Fire-fighting apparatus, construction in department repair shop authorized 4–413
Fire marshal 4–404
  Salary 4–405
Franklin Engine House, use authorized 4–412
Free transportation of firemen by street railways 44–213
Funeral expenses of deceased member, amount from relief fund 4–509
Hostlers and laborers 4–404
Inspectors 4–404
  Salary 4–405
Jury service, exemption of members 11–1420
Leaves of absence 4–408—4–410
  Emergency, cancelation 4–180
  Excess leave, consent of Commissioners 4–409
  Leave in excess of twenty days without pay 4–409
  Leave in lieu of Sunday 4–410
  Number of days with pay 4–408
Lieutenants 4–404
  Salary 4–405
Marine engineers 4–404
  Salary 4–405
Marine firemen 4–404
  Salary 4–405
Medical examination of pensioners 4–512
  Discretion of Commissioners 4–512
  Failure to appear after notice, reduction or discontinuance of relief 4–512
Motor vehicles not to be transferred to other departments 40–504
Personal injuries, compensation, exception 1–311
Pilots 4–404
  Salary 4–405
Powers of Commissioners with reference to department 4–402
Privates 4–402, 4–404
  Classes 4–402, 4–404
  First year probationary 4–405
  Increase in salary denied, service unsatisfactory 4–802
  Outstanding efficiency, additional compensation 4–802
  Removal for inefficiency 4–802
  Salary schedule 4–405, 4–801
  Vacancies in classes two and three, filling 4–402
Probationary appointment of privates 4–405
Promotions, medal-holders, preference 4–703
Property assigned and located by Commissioners 4–401
Reappointment to force, redeposit of refund in relief fund 4–504
Reduction of relief allowance, grounds 4–512, 4–513
Reductions in rank, powers of Commissioners 4–402
Refund from relief fund on separation from force 4–504
Removal of officers and members, powers of Commissioners 4–402

FIRE DEPARTMENT—Continued
Residence within District required 4–409
Territory within 12 miles of Capitol deemed within District 4–409
Resignation from service 4–407
Notice required 4–407
Withdrawing without notice, permission of Commissioners 4–407
Retired member, active service during emergencies, power to require 4–514
Retiring and relief board, members, powers and duties, report of findings 4–510
Rules and regulations 4–402
Salaries 4–405
Adjustment 4–803—4–805
Deductions for relief fund 4–503, 4–504
Privates 4–801
Temporary increases 4–108 note
Seniority rights and rank of member serving in armed forces 4–902, 4–903
Sergeants 4–404
Salary 4–405
Sick leave 4–409
Strikes prohibited 4–407
Superintendent of machinery 4–404
Salary 4–405
Surgeons 4–106, 4–124, 4–404
Attendance on members without charge 4–404
Duties 4–124
Examination of applicants for appointment, promotion, or retirement 4–404
Number 4–124
Telephone, when members required to have 4–409
Temporary disability allowance 4–506
Medical, surgical, or hospital treatment 4–506
Sickness or injury in course of employment 4–506
Total disability allowance, conditions 4–507
Trial boards 4–601—4–604
Books and papers, power to compel production 4–601
Compelling obedience to process by witness 4–603
False swearing before, perjury 4–602
Fees of witnesses 4–601
Oath of members 4–604
Subpoenas, power to issue 4–601
Witnesses, power to compel attendance 4–601
Uniforms 4–406
Annual allowance 4–406
Union Engine-House, use authorized 4–412
Veterinary surgeons employed by district, right to call 4–404
Voluntary retirement 4–508
Age and service requirements 4–508
Retirement benefits, payment, amount 4–508
Volunteer fire organizations 4–411
Apparatus and appliances of regular department, use 4–411
Suburban districts 4–411

FIRE ESCAPES AND SAFETY PROVISIONS
Alarm gong and striking stations 5–303
Alterations or changes in buildings, power to require 5–304

FIRE ESCAPES AND SAFETY PROVISIONS—Continued
"Apartment-house" defined 5–312
Buildings subject to regulations 5–317
Combustible or nonfireproof building, restriction on construction or alteration 5–401—5–409
Commissioners' power 5–317, 5–322
Corporation, service of notice on corporation requiring protection 5–321
Cost of constructing or installing appliances by commissioner 5–322
Definition of terms used 5–312
Elevators 5–305
Enclosure of shaft 5–305
Shaft required to terminate in fireproof compartment 5–305
Enjoining use of building, violation of Fire Escape Act 5–311
Enjoining use of building violating regulations 5–323
Failure to construct after notice 5–310, 5–313
Commissioners causing erection, assessment of cost against property 5–310
Commissioners constructing, taxation of cost against property 5–313
Correction of condition by Commissioner, criminal prosecution not waived 5–313
Failure to provide after notice, penalty 5–308
Failure to provide lights and signs, penalty 5–308
Fire escapes
Additional fire escapes, erection, power to require 5–304
Apartment-houses 5–301
Fire resisting doors to stairways 5–301
Fire resisting stairways, buildings not more than three stories nor more than 40 feet high 5–301
Asylums 5–301
Buildings in which required 5–301
Buildings three or more stories in height 5–301
Sleeping quarters for ten or more persons, above first floor 5–301
Dormitories 5–301
Duty to install 5–303
Educational institutions 5–301
Exempted buildings 5–301
Hospitals 5–301
Hotels 5–301
Inspection by assistant inspector of buildings 1–729
Lodging-houses 5–301
Office buildings 5–301
Places of amusement 5–301
Stores 5–301
Fire extinguishers 5–303, 5–317—5–323
Failure to install after notice, penalty 5–308
Installing in buildings, when required 5–303
Fireproof buildings, exception from requirement 5–305
Fireproofing of windows and openings when required 5–305
Foreign corporation, service of notice on 5–321
Guide signs and lights 5–303
Hall light 5–302

FIRE ESCAPES AND SAFETY PROVISIONS—Continued
Hall or passageway, obstruction prohibited 5–306
Inspection of building 5–316
Commissioners to fix fee 5–316
Deposit and apportionment of fees 5–316
Printing and display of schedule of fees 5–316
Jurisdiction of injunction against use of building violating regulations 5–323
Notice of requiring correction, service, method 5–315
Notice requiring erection 5–315
Content 5–309, 5–310, 5–315
Location 5–309
Service of notice, method 5–310
Specification of character and number 5–309
Notice requiring furnishing of appliances, etc. 5–318—5–322
Obstruction of approaches prohibited 5–307
Occupancy of building after neglect to comply with notice 5–318
Offenses, violation of regulations 5–320
Orders, power of Commissioners to issue 5–304
Places of employment 5–302, 5–303
Alarm gong 5–303
Duty to install 5–302
Fire extinguishers 5–303
Guide-signs and lights 5–303
Keeping lighted at night 5–302
Stairway lights 5–303
Standpipes 5–303
Ten or more persons employed above second story 5–302
Three-story buildings used as stores or for offices, exception, stairways 5–302
Publication of notice requiring furnishing of egress and appliances 5–321
Regulations, power of Commissioners to adopt and enforce 5–304
Right of entry to correct conditions 5–314
Interfering with or preventing, penalty 5–314
Service of notice requiring furnishing of appliances, etc. 5–321
Stairway lights 5–303
Stairways, enclosure 5–305
Stairways, obstruction prohibited 5–306
Standpipes 5–303
Taxation of costs of installing appliances, etc. 5–322
Time for compliance with notice to erect egress or other appliances 5–319
Time within which construction required 5–309
Violation of law or regulations promulgated thereunder, penalty 5–303

FIRE HAZARDS
Inflammable substances, Commissioner's power to regulate storage 1–224

FIRE INSURANCE
See INSURANCE AND INSURANCE COMPANIES

FIRE LIMIT
Barbed-wire fences, construction or maintenance, restrictions, penalties 7–1101—7–1105
Public electric lamp, overhead wires prohibited 7–702
Removal of snow and ice from sidewalk 7–801—7–806

FIRE MARSHALS
Fire Department 4–404
Salary 4–405
Licenses requiring approval 47–2313—47–2315
Explosive storage or sale establishments 47–2314
Gasoline stations 47–2314
Kerosene storage or sale establishments 47–2314
Motion picture film storage establishments 47–2313
Pyroxylin storage establishments 47–2315

FIRE RESISTING
Definition 5–312

FIREARMS
See WEAPONS

FIREPROOF
Definition 5–312

FIRES
Police protection 4–119

FIREWORKS
Power to prohibit use 1–224

FISCAL AFFAIRS
See TAXATION AND FISCAL AFFAIRS

FISH
See GAME AND FISH LAWS
Sale by weight required 10–120
Wholesale dealers, license 47–2327

FISH WHARF AND MARKET
Control and regulation by Commissioners of District 10–135
Location 10–135
Wharfage and dockage fees, determination and collection by Commissioners 10–135

FIXTURES
Depredation of, penalty 22–3104

FLAGS
Advertising, use for 22–3414
Mutilating, defiling 22–3414

FLAT
See APARTMENT HOUSES
Definition 5–312

FOOD AND DRUGS
See DRUG ADDICTS; NARCOTIC DRUGS; UNWHOLESOME FOOD
"Adulterated article" defined 33–103
Adulterated candy 33–201
Penalty for manufacture 33–202
Penalty for sale 33–202
Prosecutions, prosecuting attorneys to appear 33–203
Adulteration 33–101
Expenditure for detecting 33–111
Not to be exposed for sale 33–101
Not to be sold 33–101
Best quality to be furnished purchaser, exceptions 33–102
Bread standards, sale and weight regulations 10–113

FOOD AND DRUGS—Continued

Candy 33–201
- Adulteration 33–201—33–203
- Factory license 47–2327
- Manufacture of adulterated, prohibited 33–201
- Offer for sale of adulterated, phohibited 33–201
- Sale of adulterated, prohibited 33–201

Dairies, requirements 33–302
- Application for permit 33–302
- Certificate of soundness of cattle 33–302
- Permit 33–302
- Permit holders to report communicable disease 33–312
- "Person" defined 33–302
- Revocation of permit, grounds 33–305
- Suspension of permit 33–303
  - Grounds 33–303
  - Notice of suspension 33–303
  - Statement of reasons 33–303

Definitions
- Adulterated drug 33–103
- Adulterated food 33–103
- Drug 33–102

Drug addict, fiduciary's bond 28–2403

Drugs
- Compounders subject to druggist license 47–2308
- Compounding, licensed pharmacist 2–601
- Dentists dispensing, restrictions 2–611
- Directions for use on label 2–614
- Dispensers subject to druggist license 47–2308
- Display of permit or license to sell 2–606
- Exceptions from Pharmacy Act 2–601
- Fraudulent representations to obtain, prohibited 2–613
- Leaving in public place prohibited 2–615
- Narcotic drugs 33–401—33–425
- Peddling on streets prohibited 2–615
- Permit to sell 2–601
  - Hearings before board, procedure, appeal 2–606
  - Renewal 2–606
- Physicians and surgeons dispensing, restrictions 2–611
- Preservation of prescription 2–614
- Regulation of sale 2–601
- Sale, licensed pharmacist 2–601
- Sale on prescription 2–610
  - Contents of prescription 2–610
  - Dentist authorized to issue 2–610
  - Diarrhea and cholera remedies excepted 2–610
  - Dover powder excepted 2–610
  - Liniments and ointments, exception 2–610
  - Physicians authorized to issue 2–610
  - Preparations exempted from act 2–610
  - Preservation of prescription 2–610
  - Refilling of prescription prohibited 2–610
  - Sale at wholesale excepted 2–610
  - Veterinarians authorized to issue 2–610
  - Veterinarians dispensing, restrictions 2–611

Examination for adulteration 33–104

FOOD AND DRUGS—Continued

Food and Food products
- Brands, forging or imitating, penalty 22–1402
- Commission merchant's license 47–2327
- Dealer's license 47–2327
- Defined 22–3417
- Frozen food products, standard measures, capacity 10–119
- Inspection by health officer 22–3418
- Market stands, license 47–2327
- Measure and inspection of commodities by Superintendent of Weights and Measures 10–124
- Packages of food, marking with weight, measure, or count required, tolerances 10–117
- Proration of price with reference to quantity sold 10–123
- Weighing or inspecting of commodities by Superintendent of Weights and Measures 10–124

"Food" defined 33–102

Health officers
- Not to be hindered in enforcement 33–108
- To enforce adulteration law 33–104
- To investigate complaints of adulteration 33–105

Horse meat or horse-meat product 33–501—33–503

Milk and milk products
- Production and sale, regulatory law 33–301—33–322
- Standard containers 10–114

Portion of sample analyzed to be sealed and retained for defendant 33–107

Prosecutions for adulteration 33–109

Purchase by Superintendent of Weights, Measures, and Markets for investigation of misrepresentation or false advertising 10–124a

Purchase from government 1–241

Repeal of prior laws, exception 33–110

Rules and regulations for enforcement 33–104

Sale to examiner required 33–106

Vegetables, standard containers 10–115

FOOTBALL

Grounds for, license 47–2323

FORCIBLE ENTRY AND DETAINER

Definition 11–735

Judgment and execution 11–737

Judgment, when not bar 11–739

Landlord's action in Municipal Court 45–910

Plea of title 11–738
- Certification to District Court 11–738
- Undertaking 11–738

Procedure 11–735

Summons 11–735
- Service 11–736

FOREIGN BILLS OF EXCHANGE

See NEGOTIABLE INSTRUMENTS

FOREIGN CORPORATIONS

See CORPORATIONS FOR PROFIT; CORPORATIONS IN GENERAL

Financial statement, semiannual publication 29–105

Income tax, withholding amounts to pay 47–1586g

FOREIGN GOVERNMENTS
Unemployment Compensation Act, excluding employees of 46–301

FOREIGN COUNTRIES
Acts of notary of District, legality 1–510
Diplomatic, consular officers, property, interference with 22–1115
Penalty 22–1116
Income exempted from income tax 47–1557a

FOREST SERVICE
Chief, member of National Capital Park and Planning Commission 8–101

FORGERY
Alcoholic beverage stamps, penalty 25–124
Criminal offense, penalty 22–1401
Diploma or other evidence of graduation in healing arts 2–126
Labels, trade-marks, packages 22–1402
Narcotic drugs
Forged labels 33–420
Forgery to obtain 33–420
Negotiable instruments 28–124
Estoppel to deny signature 28–124
Instruments unenforceable 28–124

FORMS
Board of Optometry, members, oath 2–503
Deed for fee-simple estate 45–301
Executor's deed 45–301
Fee-simple deed 45–301
Husband and wife, deed for fee-simple estate 45–301
Lease 45–301
Life estate deed 45–301
Mortgage, with or without power of sale 45–301
Municipal Court for District of Columbia, power to prescribe 11–756
Municipal Court of Appeals for District of Columbia, power to prescribe 11–774
Trust deed for particular purpose 45–301
Trustee's deed under decree 45–301

FORT DAVIS
Made part of park system 8–125

FORT DUPONT
Made part of park system 8–125

FORTUNE TELLERS
For charity 47–2342
Licenses 47–2342
Approval by major and superintendent of police 47–2342
Fees 47–2342
Persons exempted 47–2342
Residence requirement 47–2342

FORTY-FOURTH STREET
Widening, use of land owned by United States authorized 7–126

FOUNTAIN
Police department memorial fountain, acceptance and maintenance authorized 4–901

FOURTH STREET SOUTHEAST
Widening, use of land owned by United States authorized 7–126

FOWLS
See FISH AND GAME LAWS; POULTRY

FRANCIS SCOTT KEY BRIDGE
Electrical propulsion, use by railways required 7–511
Gas and water-mains on bridge 7–511
Interurban railroads, right to use bridge 7–511
Paving between tracks, payment of cost 7–511
Power, telegraph and telephone wires or cables on bridge 7–511
Use for highway traffic 7–511
Washington and Old Dominion Railway, right to use bridge 7–511

FRANKLIN ENGINE-HOUSE
Use authorized 4–412

FRANKLIN SQUARE
Street fronting, railroad prohibited 7–1202

FRATERNAL BENEFIT ASSOCIATIONS
See INSURANCE AND INSURANCE COMPANIES
Act relating to 35–901—35–928
Definition 35–901
Income tax, exemption 47–1554

FRATERNAL ORGANIZATIONS
Insuring members only, exemption from insurance company taxes 47–1808

FRAUD
See FRAUDULENT CONVEYANCES; SALES, UNIFORM ACT; STATUTE OF FRAUDS
Advertisement, false 22–1411—22–1413
Definition 22–1411
Penalty 22–1413
Prosecution 22–1412
Architect's certificate of registration, cancelation 2–1027
Blind persons, obtaining aid for by 46–113
Causing defective title to negotiable instrument 28–405
Check, draft or order, uttering with insufficient funds 22–1410
Conversion by conditional vendee 22–1406
Creditors, intent to defraud 12–401
Decedents' estates 22–1403, 22–1404
Concealing writings 22–1405
Converting assets 22–1404
Misusing property 22–1404
Secreting writings 22–1405
Dentists, license to practice obtained by, revocation or suspension 2–311
Dependent children, obtaining aid 32–765
False weighting or measuring devices prohibited 10–107
Food, purchase authorized to investigate misrepresentation, etc. 10–124a
Fraternal benefit memberships, fraudulent representations regarding 35–913

FRAUD—Continued
Gambling and gaming transactions 16–704, 16–706
Actions to recover losses by 16–706
Penalties 16–704, 16–706
Winning more than $26.67 by 16–704
Jury and jurors 22–1414
Collusion in drawing 22–1414
Jury box, tampering with 22–1414
License to practice healing arts, fraud in obtaining 2–124
Marriages procured by, voidable 30–103
Narcotic drugs, obtaining by 33–420
Old-age assistance, obtaining by 46–210
Procuring marriage by, as ground for annulment 16–403
Purchasers, intent to defraud 12–402
Slugs 22–1407, 22–1408
Coin machine, operating with 22–1407
Issuing 22–1408
Manufacturing 22–1408
Possession 22–1408
Stock certificate, transfer of 28–2906, 28–2907, 28–2918
Unemployment compensation, obtaining by 46–319
Warehouse receipts, fraudulent negotiation, effect 28–2011
Wills 22–1403
Destroying 22–1403
Mutilating 22–1403
Stealing 22–1403

FRAUDULENT CONVEYANCES
Intent to defraud creditors 12–401
Bonds 12–401
Choses in action 12–401
Declared void 12–401
Deemed question of fact 12–401
Evidences of debt 12–401
Goods 12–401
Innocent purchaser protected 12–401
Judgments and decrees suffered 12–401
Real property 12–401
Intent to defraud purchasers 12–402
Declared void 12–402
Grantee privy to fraud 12–402
Purchaser with notice 12–402
Real property only 12–402
Suits to vacate 12–403
Assignees 12–403
Executor or administrator 12–403
Liability of holder 12–403
Receivers 12–403
Trustees 12–403

FREDERICK DOUGLASS MEMORIAL AND HISTORICAL ASSOCIATION
Property exempted from taxation 47–818

FREE TEXT-BOOKS
Elementary and high schools 31–401—31–406

FREEDMEN'S HOSPITAL
See Hospitals and Asylums

FREEHOLD ESTATES
Estates of inheritance 45–804
Life estates 45–804, 45–805

FRESH PURSUIT
See Criminal Procedure

FRONTAGE
Assessments for curbs and gutters 7–612a

FRONT-FOOT RULE
Assessment for street improvement 7–611, 7–612
Street improvement assessment 7–622
Limitation on amount 7–625

FRUITS
Apples, standard box, dimension 10–115
Baskets, standard sizes 10–115
Berries, standard container 10–115
Bushel and half-bushel boxes, dimensions 10–115
Hamper, dimensions 10–115
Standard container 10–115

FUEL
Wood, sale, standards of measurement 10–118

FUGITIVES FROM JUSTICE
See Criminal Procedure
Detention and extradition 23–401—23–410

FUNGIBLE GOODS
Deposit in warehouse 28–1916, 28–1917
Apportionment among depositors 28–1916
Liability of warehouseman to depositors 28–1917
Warehouseman's right to mingle 28–1916

FURNITURE
Exemption from judicial process 15–401

GALLINGER MUNICIPAL HOSPITAL
See Hospitals and Asylums

GALLON
Liquid gallon, dimension 10–119

GAMBLING
Athletic contests, corrupt influence in 22–1513

GAMBLING AND GAMING TRANSACTIONS
See Bucket Shops; Lotteries
Assaulting, beating, fighting, on account of money won by 16–705
Bookmaking 22–1508
Bookmaker 22–1508
Penalty 22–1508
Bucket shops 22–1509—22–1512
Bucketing, penalty 22–1510
Communicating, displaying quotations 22–1511
Corporations 22–1510
Domestic, dissolving 22–1510
Foreign, restraining from doing business 22–1510
Definitions 22–1509
Bucketing 22–1509
Bucket shopping 22–1509
Commodities 22–1509
Contract 22–1509
Keeper 22–1509
Person 22–1509
Securities 22–1509
Demand for statement on purchases, sales 22–1512

GAMBLING AND GAMING TRANSACTIONS—Continued
Bucket shops—Continued
Keeping, penalty 22–1510
Refusing demand for statement, effect 22–1512
Confidence games 22–1506
Any swindling game, playing, penalty 22–1506
Three card monte 22–1506
Destruction of property seized 4–146
Duty of Commissioners to enforce laws concerning 4–119
Gambling-houses, complaints, right of entry, searches and seizures 4–145
Gaming 22–1504—22–1508
Gaming tables 22–1504, 22–1505, 22–1507
Definition 22–1507
Inducing play, penalty 22–1504
Permitting establishment on premises, penalty 22–1505
Setting up, penalty 22–1504
Using, penalty 22–1504
Gaming transactions 16–701—16–707
Contracts growing out of, to be void 16–701
Defendant discovering and repaying losses, effect 16–703
Fraud 16–704, 16–706
Action to recover losses by 16–706
Penalties 16–704, 16–706
Winning more than $26.67 by 16–704
Recovery where contract void 16–707
Suits to recover losses 16–702
Lotteries 22–1501, 22–1503
Permitting ticket sales on premises, penalty 22–1503
Possession of tickets, penalty 22–1502
Promotion, penalty 22–1501
Selling tickets, penalty 22–1501
Pools 22–1508
Bookmaking 22–1508
Election 22–1508
Racing 22–1508
Prosecution of persons arrested 4–146
Three card monte 22–1506

GAME AND FISH LAWS
Bass
Catching, displaying, out of season 22–1602
Sale of 22–1603
Captivity, sale of certain birds raised in 22–1627
Catching or possessing wild birds 22–1614
Deer meat, possession of, out of season 22–1613
English sparrows, shooting without permit 22–1623
Explosives, drugs, poisons, use of in fishing 22–1606
Forfeiture of equipment, violations of fish laws 22–1608
Game birds, killing in District, or attempt 22–1621
Game, fish caught outside District, no defense 22–1619
Informers to receive one-half of fines 22–1620
Inspection to premises, preventing 22–1616
Licenses for scientific purposes 22–1626
Net fishing, exceptions and permits 22–1601
No-trespass signs, defacing, penalty 22–1617
Penalties, violation of fish laws 22–1607

GAME AND FISH LAWS—Continued
Posted lands, shooting, hunting on, penalty 22–1617
Purchase, sale, possession for sale of certain birds 22–1625
Rabbits, squirrels, possession out of season 22–1610
Sale of certain fish under 12 inches 22–1605
Shad or herring, possession, sale of 22–1604
Squirrels, chipmunks, rabbits, trapping, catching 22–1622
Sunday shooting, penalty 22–1618
Traps, nets, snares for wild fowl, possession of 22–1615
Water-rail, reed bird, game birds, possession of 22–1612
Wild animals, shooting injured or diseased 22–1623
Wild ducks, geese or brant, snipe, plover, possession of 22–1611
Wild duck, geese, waterfowl, hunting, disturbing 22–1624
Wild fowl, trapping, netting, ensnaring 22–1615
Woodcocks, possession of out of season, penalty 22–1609

GARAGES
Failure to report damaged motor vehicles, penalty 40–611
License 47–2334
Lien 38–201—38–203
To report motor vehicles damaged in accidents or struck by bullets 40–611

GARBAGE
Apartment-houses, right to burn own refuse 6–507
Business house, right to burn own refuse 6–507
Collection and disposal of, declared municipal function 6–504
Offering to or acceptance by employee of gift prohibited, penalty 6–504
Personnel, employment authorized 6–509
Purchase of motor-trucks and trailers authorized 6–509
Collection by District authorized 6–504
Commissioners' power to make necessary regulations concerning 6–501
Authorized to provide penalties 6–501
Contractors for collection and disposal of 6–502
Duration 6–502
Employee or contractor prohibited from accepting gifts, penalty 6–504
Power vested in Commissioners 6–502
Subject to appropriations by Congress 6–502
Facilities for collection, acquisition, and use by District 6–504
Hotels, right to burn own refuse 6–507
Incinerators for combustible refuse 6–505—6–511
Acquisition and operation authorized 6–505
Acquisition of buildings and machinery authorized 6–509
Appropriation 6–510
Arlington County, Virginia, use of incinerators 6–511
Completion, abandonment of leased plan 6–510
Condemnation of sites 6–505
Construction authorized 6–506
Entry into possession of sites by District 6–505

GARBAGE—Continued
Incinerators for combustible refuse—Con.
Location of sites, approval by National Capital Park and Planning Commission 6–505
Montgomery County, Maryland, use of incinerators 6–511
Notice of commencement of operation 6–507
Occupation of highways and streets leading to sites 6–505
Penalties for violating law 6–508
Prince Georges County, Maryland, use of incinerators 6–511
Street sweepings 6–506
Night soil, collection and disposal 6–502
Reduction plants 6–504—6–509
Acquisition and operation authorized 6–504
Incinerators 6–505—6–511
Sale of products 6–504
Regulations concerning, duty of Commissioners to enforce 4–119
Residences, right to burn own refuse 6–507
Sale of salvageable material by owners or Commissioners of District 6–507
Use of feeding of live stock and poultry authorized 6–503

GARFIELD MEMORIAL HOSPITAL
See Hospitals and Asylums

GARNISHMENT
See Attachment and Garnishment; Executions

Goods in warehouse 28–1919
Negotiable receipts outstanding 28–1919
Transferred nonnegotiable receipts outstanding 28–2006
Wages paid in advance to prevent 16–312
Warehouse receipts by creditors 28–1920

GAS
See Gasoline and Oil
Fee for permit to make connection 1–726
Gas-fitter, employment of unlicensed gas-fitter prohibited 2–1407
Gas lines, tampering with, penalty 22–3116
Gas mains
Extension for street lights 7–706
Laying in street before improvement 7–605
Laying in street, permit required, restoration of street 7–1204

GAS COMPANIES
Excise tax 47–1701

GAS CORPORATIONS
See Public Utilities
Definition 43–113

GAS PLANTS
See Public Utilities
Definition 43–112

GASOLINE AND OIL
See Taxation and Fiscal Affairs; Weights, Measures, and Markets
Automatic measuring pump 10–122
Motor fuel tax 47–1901—47–1919

GASOLINE AND OIL—Continued
"Out of order" sign, when required 10–122
Subject to inspection and approval or condemnation 10–122
Sale location license 47–2314
Approval of fire marshal 47–2314
Fee 47–2314
Theft from vehicle 22–2204a

GATE TAX
Boxing exhibitions 2–1218

GEESE
See Game and Fish Laws

GENERAL ACCOUNTING OFFICE
Settlement of accounts with 47–309

GENERAL COURT TERM
See United States District Court
Auditor, appointment 11–312
Messengers, appointment 11–312
Officers and employees of court, appointment 11–312

GENERAL EDUCATION BOARD
Property exempted from taxation 47–820

GENERAL FUND
Investment in United States Government Securities 47–135

GEORGETOWN
District of Columbia, successor to corporation of Georgetown 1–104
Existence as separate and independent city abolished 1–107
Made part of city of Washington 1–107
Port of entry 1–107
Records and other documents made property of District 1–106

GEORGETOWN RESERVOIR
Site transferred to jurisdiction of Commissioners 8–142

GEORGETOWN UNIVERSITY
Hospital, height permitted 5–405

GIFT ENTERPRISE
Conduct prohibited 22–3402
Definition 22–3401
Penalty 22–3403

GIFTS
Charitable uses, rule against perpetuities inapplicable 45–102
Property acquired by gift, exemption from income tax 47–1557a

GILL
Liquid gill, dimension 10–119

GIN
See Alcoholic Beverages
Definition of "spirits" includes 25–103

GLOVER PARKWAY AND CHILDREN'S PLAYGROUND
Acceptance of dedicated land authorized 8–162
Made part of park system 8–163

GOLD
Poisonous compounds, sale, restrictions 2–612

GONGS
Power to regulate and prohibit noises 1–224

GOOD FAITH
Definitions, fiduciaries law 28–2301

GOODS, WARES, AND MERCHANDISE
See Sales; Statute of Frauds
Conveyance in fraud of creditors 12–401

GOVERNMENT EMPLOYEES RELIEF ASSOCIATIONS
Exemption from insurance company taxes 47–1808

GOVERNMENT OWNERSHIP
See Public Off-Street Parking Facilities

GOVERNMENTAL PUBLICATIONS
Public library as depository for 37–111

GRADE CROSSING
Baltimore and Ohio Railroad Company prohibited from establishing 7–1212
Cost and elimination, payment 7–1214, 7–1215
Elimination by construction of viaducts or underpasses 7–1214, 7–1215
Existing streets, construction of underpasses or viaducts 7–1215
New streets, underpasses or viaducts constructed 7–1214
Pennsylvania Railroad Company constructing, approval by Commissioners 7–1227

GRAND JURY
See Juries and Jury Commission

GRAND LARCENY
See Larceny

GRANT
"Grant" in conveyance passes whole estate in absence of contrary showing 45–202
Power to dispose by devise cannot be executed by grant 45–1018
Power to dispose by grant cannot be executed by will 45–1018

GRANT ROAD
Closing in part authorized, consent of property-owners 7–123

GRAPES
Baskets, standard sizes 10–115

GRAVE ROBBERY
See Dead Human Bodies
Dead bodies, buying or selling 22–3103
Penalty 2–206, 22–3103

GRAVES
See Cemeteries and Crematories

GROCERY STORES
License 47–2327

GROWING CROPS
Destroying, penalty 22–3108

GUARANTY COMPANIES
Excise tax 47–1702

GUARDIAN AND WARD
See Board of Public Welfare; Drunkards; Drug Addicts; Insane Persons
As fiduciary under Income Tax Law 47–1551b
Board of Public Welfare 3–114, 3–117, 3–123
Children committed to care of board 3–114, 3–123
Children over whom board has supervision 3–116
Children under 17 committed to board by Juvenile Court 3–120, 3–121
Contracts for care of dependent children 3–115
Discharge of child from guardianship 3–125
Visitation of ward 3–114, 3–123, 3–124
Bonds and undertakings, in District Court 28–2403
Child-Placing Agency given guardianship of child 32–786
Corporate stock, voting 29–221
For married women under 21 30–203
Grant of letters by Probate Court 11–504
Insanitary buildings, ownership, condemnation, appointment of guardian 5–609
Juvenile Court 11–917
Marriage of ward, consent to 30–111
Minors 21–101
Ancillary guardians, property in District 21–115
Appointment by will or deed 21–108
Appointment of guardians 21–103
Consent of infant over 14 21–111
Election of infant over 14 21–113
Enlistment of indigent boys 21–104
Guardian of estate 21–110
Orphans entitled to property 21–109
Preferences in appointment 21–112
Preparation of guardianship papers for enlistments 21–105
Bond of guardians 21–118, 21–119
Additional 21–121
Counter security 21–122
Form 21–119
One bond for several wards 21–120
Relief of surety 21–123
Bond of natural guardians 21–106
Expiration 21–129
Guardian's rights and duties 21–124
Accounts 21–126
Allowances made before bond given 21–127
Compensation 21–126
Final account 21–130
Inventory 21–125
Maintenance and education 21–126
Possession of property 21–124
Sale of realty 21–128
Sales 21–126
Husband as guardian 21–114
Interfering with minor's estate 21–107
Natural guardians 21–101
Parents as natural guardians 21–101
Suits by ancillary guardian 21–116
Testamentary guardians 21–102

GUARDIAN AND WARD—Continued
Personally exempt from stockholders liability 29–220
Prostitution of female ward, guardian consenting, penalty 22–2705

GUARDIAN AD LITEM
See EMINENT DOMAIN; PROCESS
Appointment for infants 13–105
Appointment for persons non compos mentis 13–107
Eminent domain, land for streets 7–204
For probate of will 19–303
Service of process 13–105

GUIDE SIGNS AND LIGHTS
Fire protection 5–317—5–323

GUIDES
License 47–2338
Approval of major and superintendent of police 47–2338
Examination 47–2338
Fee 47–2338
Regulation 47–2338

GUNS
See WEAPONS
Dealer's license 47–2340

GUTTERS
Assessments 7–612a—7–612d
Assessment of costs against abutting property 7–623
Exemption from assessment for replacement cost 7–626
Paving under permit, assessment of cost 7–627
Property abutting two or more streets, limitation on aggregate assessment 7–629

HABEAS CORPUS
Copy of commitment, failure to deliver, forfeiture 16–805
Evasion of writ 16–803
Inquiry into cause of detention 16–806
Issuance of writ 16–801
Petition, sufficiency 16–801
Refusal to produce, forfeiture penalty 16–804
Release, on bail 16–806
Remander 16–806
Right to writ by persons entitled to custody 16–808
Service and return of writ 16–802
Traversing return 16–807

HACK STANDS
See TAXICABS

HACKS
See PUBLIC HACKS

HALL LIGHTS
Fire protection 5–317—5–323

HAMPERS
Fruits and vegetable container, standard sizes and dimensions 10–115
Use of other than standard containers prohibited 10–116

HARBOR REGULATIONS
Affecting navigable waters, approval of Secretary of War 22–1701
Commissioners of District to make 22–1701
Establishment 22–1701
Fees payable to treasury 47–127
Penalty for violation of 22–1701

HARBORING
Boys escaped from National Training School 32–818
Escaped prisoner, penalty 22–2601
Female under 16 for purposes of prostitution 22–2704
Girls escaped from National Training School 32–818, 32–907

HAWKERS AND PEDDLERS
Badge 47–2336
License 47–2336
Weighting and measuring devices, duty to have tested 10–103
Weights and Measures Law, right of enforcing officers to stop and make inspections or tests 10–126

HEAD OF FAMILY
Exemptions 15–401

HEALING ARTS PRACTICE ACT
Altering or forging license or evidence of registration prohibited 2–126
Applications for license 2–119—2–122
Contents 2–119
Fee 2–119
Filed with commission 2–119
Licensees in medicine, surgery, or midwifery under prior law 2–119, 2–120
Licenses to be issued on examination 2–119, 2–122
Applications for licenses and registration 2–104
Certification to proper examining board 2–104
Classification 2–104
Numbering and recording 2–104
Reciprocity as basis of application 2–119, 2–121
Approved schools and hospitals 2–103
Entry in register 2–103
Redetermination of standing 2–103
Refusal of credit for diploma or degree from unapproved school or hospital 2–103
Basic sciences, Boards of Examiners 2–106—2–108
Certification of applicant to other boards 2–108
Chairman 2–106
Educational qualifications 2–107
Examination of applicants for license 2–108
Examinations, power to conduct 2–106
Federal or District employees, appointment authorized 2–106
Number of members 2–106
Qualifications of members 2–106, 2–107
Reciprocity with other states 2–108
Reference of applicant for license to board 2–108
Reports 2–106, 2–108
Secretary 2–106

HEALING ARTS PRACTICE ACT—Continued
Basic sciences, Boards of Examiners—Con.
Serving as teacher while on board prohibited 2–107
Term of office 2–106
Time of holding examination 2–114
Basis of application to be shown 2–119
Boards of Examiners in general 2–106
Compensation determined by commission 2–135
Reports open to inspection 2–118
Certificate or diploma from national examining board, proof required 2–122a
Chiropractic, Board of Examiners 2–106
Examination of applicants 2–106, 2–114—2–117
Federal or District officers or employees, appointment authorized 2–106
Number of members 2–106
Qualifications 2–106
Term of office 2–106
Christian Science, exemption from act 2–134
Class of practice shown by license 2–118
Clerks, power to appoint, suspend, or remove 2–105
Commission on licensure
Annual report to Congress, contents 2–138
Contracts for use and occupancy or quarters 2–105
Creation 2–103
Duty to enforce law 2–137
Election of president and vice-president 2–103
Expenditure of funds, method 2–135
Indebtedness, limitation on power to incur 2–105
Issuance of licenses to applicants 2–118
Members of commission 2–103
Officers and employees, power to appoint, suspend, or remove 2–105
Petition to enjoin unlawful practice 2–132
Petition to suspend or revoke license 2–123
Quarters for commission 2–105
Rules, power to adopt 2–103
Seal, adoption, judicial notice 2–103
Secretary-treasurer 2–103
Supplies, power to purchase 2–105
Compensation of administrative officers and employees 2–135
Corporation counsel, duties 2–137
Counsel, power to appoint, suspend, or remove 2–105
Counterfeiting seal of commission prohibited 2–126
Criminal prosecutions
Conducted by district attorney 2–137
Definition of terms used 2–101
Demonstrations or clinics, exemption from act 2–133
Display of license 2–118
District attorney, duties 2–137
Drugless healers, Board of Examiners 2–106, 2–111
Basic sciences, knowledge of required 2–112
Chairman 2–106
Educational qualifications of members 2–111
Examination of applicants for license 2–106, 2–114—2–117
Federal or District officers or employees, appointment authorized 2–106
Number of members 2–106
Petition for appointment, contents 2–111
Preferences in appointment to board 2–111

HEALING ARTS PRACTICE ACT—Continued
Drugless healers, Board of Examiners—Con.
Qualifications of members 2–106, 2–111
Reference of applicants for license to board 2–112
Resolution for appointment, contents 2–111
Secretary 2–106
Term of office 2–106
Educational standards 2–103
Power of commission to establish 2–103
Emergency cases, exemption from act 2–134
Enforcement of law 2–137
Enjoining unlawful practice 2–132
Advancement of trial calendar and on appeal 2–132
Hearing and judgment 2–132
Petition, parties plaintiff 2–132
Procedure 2–132
Remedy additional to criminal prosecution 2–132
United States District Court, jurisdiction 2–132
Examination as basis for license 2–119, 2–122
Drugless healer 2–122
Educational requirement 2–122
Midwifery 2–122
Osteopaths 2–122
Physicians and surgeons 2–122
Proof required of applicant 2–122
Examination of applicants for license 2–114—2–117
Clinical and laboratory tests 2–117
Collection and examination of papers 2–117
Concealment of identity of examinee 2–116, 2–117
Conducted in English language 2–115
Determination of final standing of applicants 2–117
Diagnosis and prevention of communicable diseases, selection of questions 2–116
Disclosure of identification number prohibited 2–124
Giving unauthorized advantages prohibited 2–127
Imposing unfair disadvantages prohibited 2–127
Method of conducting 2–115
Modification of rules governing 2–115
Nature and extent prescribed by commission 2–115
Notice of time and place given 2–114
Number assigned to each applicant 2–117
Premature disclosure of question prohibited 2–125
Preparation and distribution of questions 2–116
Preservation of examination papers 2–118
Questions and answers open to inspection 2–118
Rating of tests 2–117
Report of findings to commission 2–117
Same questions submitted to applicants for same license 2–115, 2–116
Secrecy as to identity of examination paper 2–115
Submission of question to commission 2–116
Time of holding 2–114
Uniform ratings and standards 2–115
Written examinations required 2–115

HEALING ARTS PRACTICE ACT—Continued
Examiners, power to appoint, suspend, or remove 2–105
Exemptions from operation of law 2–133
Burden of proof 2–134
Limitations and restrictions 2–134
Practice of massage or dietetics 2–134
Practitioners from other states or countries and federal medical officers 2–133
Proof of right to exemption 2–133
Registration of name of applicant 2–133
Treatment of emergency cases 2–134
Use of hygienic methods 2–134
X-ray laboratory technicians 2–134
False impersonation of applicant for license prohibited 2–124
False swearing, perjury 2–128
Falsely impersonating licensee under act 2–125
Fee for annual registration 2–104
Fees for licenses 2–119
Basis of issuance reciprocity 2–119
Certification of application for license by reciprocity to other jurisdiction 2–119
Deposited to credit of commission 2–135
Exemption from license, registration fee 2–119
Issuance of license on basis of examination 2–119
Issuance on basis of years of practice in District 2–119
Licensees in medicine or surgery or midwifery under prior law, relicensing 2–120
Paid to collector of taxes 2–135
Refunding in whole or in part, grounds 2–119
Filing of false data prohibited 2–124
Forging or altering diploma or other evidence of graduation 2–126
"Healing arts" defined 2–101
Inspectors, power to appoint, suspend, or remove 2–105
Interne training, power to establish minimum standard 2–103
Issuance of license 2–104
Issuance of license by reciprocity 2–108
Issuance of license to practice 2–118
Issuing after examination 2–104
Issuing without examination, grounds 2–104
Licenses recorded 2–118
Licensed practitioners from other states or countries, exemption 2–133
License on years of practice 2–103, 2–120
License required 2–102
Licensee allowing impersonation by another 2–125
Licenses to practice numbered consecutively 2–118
Licenses of different classes 2–118
Licensing to practice after examination 2–119, 2–122
Educational requirements 2–122
Interneship 2–122
Proof of qualification by applicant 2–122
Medical officers in federal service, exemption 2–133
Medicine and osteopathy, Board of Examiners 2–106
Basic sciences 2–110
Certification of qualified applicants for license to commission 2–109
Chairman 2–106

HEALING ARTS PRACTICE ACT—Continued
Medicine and osteopathy, Board of Examiners—Continued
Educational qualifications of members 2–109
Examination of applicants for license 2–109
Federal or District officers or employees, appointment authorized 2–106
Grading of examination papers 2–109
Homeopathic members 2–109
Number of members 2–106
Osteopathic members 2–109
Qualifications of members 2–106, 2–109
Reference of applicants for license to board 2–110
Reports 2–106
Secretary 2–106
Term of office 2–106
Midwifery, Board of Examiners 2–106, 2–113
Chairman 2–106
Examination of applicants for license 2–106, 2–114—2–117
Federal or District officers or employees, appointment to board authorized 2–106
Number of members 2–106
Power to abolish board 2–113
Qualifications of members 2–106, 2–113
Reference of applicants for license to board 2–113
Secretary of board 2–106
Term of office of members 2–106
Money remaining to credit of prior board, transfer to commission 2–136
Name of act 2–139
Naturopathy, Board of Examiners 2–106
Examination of applicants for license 2–106, 2–114—2–117
Observance of terms of license required 2–102
Penalty for violating law 2–130
Physicians and surgeons in federal service, exemption 2–119, 2–133
Practicing in accordance with terms of license or registration required 2–102
Practitioners from other states and countries, exemption 2–133
Reciprocity as basis for license to practice
Application for license 2–119, 2–121
Failure to pass examination, issuance of license under reciprocity provision prohibited 2–121
Issuance of license 2–121
Licensing without examination 2–121
Proof of qualifications 2–121
Records and property of prior board, delivery to commission 2–136
Refusal to license or register applicant 2–129
Appeal to Court of Appeals 2–129
Disobedient witnesses, contempt 2–129
Enforcing attendance of witnesses 2–129
Grounds 2–123, 2–129
Hearing, witnesses 2–129
Review by District Court of United States 2–129
Swearing of witnesses at hearing 2–129
Registration of licensees 2–104

HEALING ARTS PRACTICE ACT—Continued
Relicensing of licensees under prior law 2–120
Application for license required 2–120
Chiropractors 2–120
Contents of application 2–120
Drugless healers 2–120
Issuance of license 2–120
License without examination 2–120
Midwives 2–120
Osteopaths 2–120
Physicians and surgeons 2–120
Time limit for applying for license 2–120
Repeal of contrary or inconsistent laws 2–140
Revocation of license to practice
Conviction of felony, appeal, effect 2–131
Grounds, procedure 2–123
Saving clause 2–140
Superintendent of police, duty to enforce laws 2–137
Suspension of license to practice 2–123
Appeal to Court of Appeals 2–123
Conviction of felony, appeal, effect 2–131
Misconduct or professional incapacity 2–123
Procedure 2–123
Unfair rating of applicants for license prohibited 2–127

HEALTH AND SAFETY
See Blindness in Infants; Dentistry; Fire Department; Garage; Health Officer; Insanitary Buildings; Nurses; Optometry; Physicians and Surgeons; Police Department; Privies; Sewers; Smoke Prevention; Unsafe Structures
Blindness in infants, prevention 6–201—6–204
Commissioners authorized to adopt regulations 6–114
Garbage, collection and disposal 6–501—6–511
Government eating places 6–1101
Health officer, ex officio member Healing Art Licensure Commission 2–103
Insanitary buildings 5–601—5–615
Mattresses, regulation of manufacture, renovation, and sale 6–601—6–608
Ordinances, rules, and regulations of Board of Health legalized 6–111—6–113
Exceptions 6–111—6–113
Given force and effect of Acts of Congress, exception 6–113
Ordinances of 1875 6–111
Repeal by Commissioners authorized 6–114
Schedule of specific ordinances 6–112
Outside toilets, maintenance, restrictions 6–701—6–704
Penalty for violating regulations for control of disease 6–119h
Pound and stable, reservation number 290 8–137
Publication of Code authorized 4–177
Rates for services to persons not indigent 32–322
Regulations for protection, power of Commissioners to adopt 1–226
Sanitary inspectors 6–104, 6–105
Appointment by Commissioners 6–104
Inspector of fish and other marine products, duties transferred 6–110

HEALTH AND SAFETY—Continued
Sanitary inspectors—Continued
Nomination by health officer 6–104
Qualifications 6–104
Removal of subordinates by Commissioners 6–104
Reports to health officer 6–105
Sewer and drainage connections 6–401—6–404
Smoke prevention 6–801—6–804
Tuberculosis Sanatoria 6–117
Direction and control by health department 6–117
Unsafe structures 5–501—5–505
Volunteer medical services, acceptance 1–215 note

HEALTH CERTIFICATE
Cosmetologists 2–1307, 2–1313
Registered barber 2–1104, 2–1107
Registered barber apprentice 2–1105

HEALTH DEPARTMENT
See Department of Health

HEALTH INSURANCE
See Insurance and Insurance Companies

HEALTH OFFICER
See Director of Public Health
Food inspection 22–3418
Horse meat and horse-meat products, regulation of sale by 33–502

HEATER METHOD
Definition, resurfacing street 7–628
Payment of costs, resurfacing street 7–628

HEIGHT
Buildings
Governed by width and character of street, basis of measurement 5–407
Maximum fixed by law 5–401—5–409, 5–418
Zoning commission's power to regulate 5–413
Combustible or nonfireproof building, maximum height and number of stories 5–401, 5–402
Fireproof construction of buildings, when required 5–403
Frame building used for human habitation 5–406
Parapet, regulation 5–407
Width and character of street as governing height of building 5–405

HEIRS
See Decedents' Estates
Law of descents 18–101
One who kills intestate 18–109
One who kills testator 18–109

HEROIN
See Narcotic Drugs
Exempted medical preparations 33–410
Included in term "opium" 33–401
Sale by manufacturer or wholesaler, written orders 33–405

HERRING
See Game and Fish Laws

HIGH SCHOOLS
Aviation course to be added 31–1201
Teachers of aeronautics to be employed 31–1202

HIGHWAY BRIDGE
Abutment and roadway maintained and controlled by Commissioners 7–103
Paving between tracks, payment of cost by street railways 7–507
Street railways' right to use 7–507
Tugboats and power boats, construction, approval by Secretary of War 7–509
Tugboats passing under without use of draw 7–509
Under control of Commissioners 7–507
Use for Highway traffic 7–507

HIGHWAY COMMISSION
Abolished, powers and duties transferred to National Capital Park and Planning Commission 8–101

HIGHWAY FUND
Appropriations 40–809
Investment in United States Government securities 47–135
Reimbursement 40–808

HIGHWAY PLANNING SURVEY UNIT
Public off-street parking facilities, powers and duties 40–807

HIGHWAYS
See EMINENT DOMAIN; STREETS AND OTHER WAYS
Assessments for curbs and gutters 7–612a—7–612d
Bituminous macadam, use in improving authorized 7–617
Boundaries permanently marked 7–105
Capitol grounds 9–119, 9–120
Closing and readjusting, procedure 7–401—7–410
Closing of certain highways authorized
Apportionment of land among abutting owners 7–124
Assessment for taxation 7–124
Plat, preparation and approval 7–124
Closing of various streets and highways by Commissioners authorized 7–123
Consent of property-owners 7–123
Reversion of title to abutting property-owners 7–123
Commissioners of District, control over 7–102
Cost of opening 7–1214
Cutting trenches or removing work and materials, permit required 7–615
Penalty for violating act 7–616
Eminent domain, land for highways 7–201—7–221
Maintenance 7–1214
Materials for making or repairing, condemnation 7–332
Maximum width 7–108
Names
Powers of Commissioners 1–241, 7–107
Recording in office of surveyor 7–107
Roads outside city limits, power of Commissioners to name 7–107
Obstructing, penalty 22–3120, 22–3121
Fines collected in name of United States 22–3122

HIGHWAYS—Continued
Parks, traffic regulations, enforcement by director 8–109
Parkway connecting Potomac, Zoological, and Rock Creek Park 8–158—8–160
Permanent Highway Plan 7–108, 7–109
Abandonment of highways, maintenance pending assessment of damages resulting 7–114
Abandonment of ways, reversion to abutting owners 7–118
Adoption to existing subdivisions 7–109
Authority vested in Commissioners 7–108
Beatty and Hawkins's Addition to Georgetown, inclusion authorized 7–116
Binding effect on property-owners 7–109
Conformity with street plan of city of Washington 7–108
Eminent domain authorized, procedure, law governing 7–201—7–221
Extension of system outside limits of city of Washington 7–108
Hearing on new plans 7–122
Map 7–109
Naming of streets, avenues, and alleys 7–112
New plans, preparation by Commissioners and adoption authorized 7–122
Notice given owners, hearing 7–115
Preparation in sections 7–109
Recording with surveyor 7–109
Resubdivision of property affected pending condemnation proceedings 7–119
Submission to National Capital Park and Planning Commission 7–109
Surveys, right of entry 7–111
Use of property by owner until condemnation 7–114
Railroad crossings 7–1214
Roads outside city of Washington made public highways 7–104
Roadways in spaces and reservations, widening 8–127
Rock Creek Park 8–148
Subdivisions outside city limits 7–125
Approval of plat by Commissioners 7–125
Recording of plat with surveyor 7–125
Testing of materials in laboratory of department 1–814
Use of motor fuel tax proceeds for 47–1901
Widening of certain roads, use of land owned by United States authorized 7–126

HISTOLOGY
Dentist, examination for license 2–308

HOLDER
Definition, Negotiable Instruments Law 28–101

HOLDER FOR VALUE
Definition 28–203
Lien held on instrument 28–204

HOLDER IN DUE COURSE
See NEGOTIABLE INSTRUMENTS
Conclusive presumption of delivery 28–117

HOLIDAYS
Laborers employed by District, leaves with pay 1–314
Last day falling on holiday, Negotiable Instruments Law 28–101
Negotiable instruments falling due on, day payable 28–616
Negotiable instrument, presentation for payment on 28–616
Per diem employees, leaves with pay 1–314
Presentment of bill of exchange 28–922

HOME FOR THE AGED AND INFIRM
See CHARITABLE INSTITUTIONS

HOME OWNERS' LOAN CORPORATION
See BANKS AND OTHER FINANCIAL INSTITUTIONS

HOMES
See ALLEY DWELLINGS

HOMESTEAD ASSOCIATIONS
See BANKS AND OTHER FINANCIAL INSTITUTIONS

HOMICIDE
See MANSLAUGHTER; MURDER; NEGLIGENT HOMICIDE

HORNS
Power to regulate and prohibit noises 1–224

HORSE DRAWN VEHICLES
Sewer work etc., purchase 7–1237

HORSE MEAT OR HORSE-MEAT PRODUCTS
Sale regulated 33–501—33–503

HORSE RACES
Gambling on, penalty 22–1508

HORSES
Sewer work etc., purchase and employment 7–1237, 7–1238

HORTICULTURE
See AGRICULTURE AND HORTICULTURE; INSECT PESTS; PLANTS

HORTICULTURAL ORGANIZATIONS
Unemployment Compensation Act, excluding employees of 46–301

HOSPITALS AND ASYLUMS
Children's Hospital, public works, loan, tubercular children clinic 9–204, 9–208
Children's Tuberculosis Sanatorium 32–312, 32–313
  Admission of pay patients 32–313
  Construction and equipment authorized 32–312
Columbia Hospital for Women and Lying-in Asylum 32–314, 32–315
  Repairs and improvements under direction of superintendent of United States Capitol building 32–314
  Vacancies among trustees other than members of Congress 32–315
Commissioners of the District to make rules and regulations 32–304
Contagious diseases, hospitals for, limitation on erection 32–311

HOSPITALS AND ASYLUMS—Continued
Dental internes 2–302
Fire protection 5–317
Freedmen's Hospital 32–317—32–320
  Admission of patients 32–318
  Charges for treatment 32–318, 32–318a
  Continuance under direction of Secretary of Interior 32–317
  Contract between Secretary of Interior and Board of Public Welfare 32–319
  Disposition of money collected 32–318
  Estimates for expenses 32–317
  Unclaimed money of deceased patients, disposal 32–320
Gallinger Municipal Hospital 32–308, 32–309
  Admission of pay patients 32–308, 32–309
    To contagious-disease ward 32–309
    To psychopathic ward 32–308
  Control and management by Board of Public Welfare 3–106
  Insane criminals, commitment 24–301
  Public works loan for construction 9–204
  Rates for persons not indigent 32–322
  Superintendent, appointment of retired officers 3–107 note
Garfield Memorial Hospital 32–316
  Contagious disease patients referred by Commissioners of the District 32–316
General provisions 32–301—32–320
Georgetown University, height permitted 5–405
Home for Aged and Infirm 32–1009
  Admission of pay patients 32–1010
  Sale of surplus products, deposit of proceeds 32–1009
Hospital liens 38–301—38–305
  Docket 38–305
  Failure to pay, liability 38–303
  Grounds 38–301
  Hospital ledgers, examination 38–304
  Notice 38–302
Indigent insane, designation of hospitals for care of 3–110
Indigent poor, medical care and treatment, contracts with District 3–110
Infants, inflamed eyes, hospital care 6–202
Inspections by health officers 32–302
Internes, Providence Hospital authorized to conduct school for 32–316a
Interneship, minimum standards, power of commission to establish 2–103
Jury service, keepers, exemption 11–1420
Liability of District for care and maintenance of patients limited 3–110, 3–111
Mattresses, use of material from by renovator prohibited 6–602
Nonfireproof buildings
  Limitation on height 5–401
  Number of stories, maximum height 5–401
Nurses, Providence Hospital authorized to conduct school for 32–316a
Penalties for violation of statute and regulations 32–303
Private hospitals and asylums to be licensed 32–301
Prosecutions in police court 32–305

HOSPITALS AND ASYLUMS—Continued
Providence Hospital 32–316
Contagious disease patients referred by Commissioners of District 32–316
Regulations, enforcement by health officer 32–302
Residence is requirement for care 32–321
Rules and regulations 32–304
Saint Elizabeths Hospital 32–401—32–417g
Ability of patient to pay 32–412
Admission of indigent insane of District 32–405
Admission of insane convicts 32–407
Admission on written application 32–417b
Commitment by special commissioners of United States District Courts 32–417
Commitment by United States officers and employees 32–417a
Detention after notice for release 32–413
Examinations and Hearings 32–417, 32–417a, 32–417d
Expenses of indigent insane admitted from District 32–401, 32–402
Financial agreement 32–414
Gifts to 32–408—32–411
Intangible personal property 32–410
Real property 32–411
"Indigent insane person" defined 32–405
Military personnel 32–417e
Payments for treatment to be credited to appropriations 32–403
Private patients from District, admission and charges 32–406
Regulations, by commissioners 32–416
Regulations, by superintendent 32–415
Reimbursement by Board of Public Welfare 32–412
Reimbursement on expenses by District to be credited to it 32–404
Revocation of certification 32–414
Support of indigent insane, residence requirement 32–401a
Transfers from District Training School 32–622
Treatment of patients 32–412
Veterans 32–417f
Writ de lunatico inquirendo 32–413
Smallpox hospitals, regulation 32–306
Tuberculosis Hospital 32–310
Admission of pay patients 32–310
Control and management by Board of Public Welfare 3–106
Public works loan for constructoin 9–204
Tuberculosis Sanatoria 6–117
Board of Commissioners, supervisory power 6–117
Health department, direction and control of 6–117
Visitorial power of Commissioners of the District 32–1002
Washington Asylum Hospital, services continued 32–307

HOTELS AND LODGINGHOUSES
See Apartment Houses; Fire Escapes and Safety Provisions
Defrauding, penalty 22–1301

HOTELS AND LODGINGHOUSES—Continued
Embezzlement of property of guest 22–1205, 22–1207
Penalty 22–1207
Fire escapes and safety provisions 5–301
Fireproof construction, when required 5–403
Hotel
Definition 5–312
License, fee 47–2328
License, prerequisites 47–2302
Innkeeper
Defrauding, penalty 22–1301
Embezzlement of property of guest, punishment 22–1205, 22–1207
Inspection, fees 5–316
Liabilities 34–101, 34–102
Baggage stolen from rooms 34–102
For goods in safe, limitation 34–101
For money, jewelry prudently kept in rooms 34–101
Limitation by notice to keep doors locked 34–102
Limiting by notice of safe 34–101
Wearing apparel 34–101
Lien on baggage, effect for amounts due 34–103
Liens 34–103
Enforcement by bill in equity 34–105
Enforcement by sale 34–104
Lodginghouses
Definition 5–312
License, fee 47–2302
License, prerequisites 47–2302
Notice regarding safe, limiting liability 34–101
Notice to keep doors locked, limiting liability 34–102
Providing safe for valuables 34–101
Right to dispose of own refuse 6–507

HOURS OF LABOR
Females 36–301
Public buildings and works 22–3407, 22–3408

HOUSEBREAKING
Definition, penalty 22–1801
Killing during and while armed, murder in first degree 22–2401

HOUSE OF REPRESENTATIVES
Sergeant at Arms, Capitol Buildings and Grounds, powers 9–105

HOUSES OF PROSTITUTION
See Assignation; Prostitution; Lewdness; Pandering
Child, harboring as prostitute 22–2704
Children found in, commitment to charitable institution 32–209
Complaints, right of entry, searches and seizures 4–145
Debts contracted in, detention for 22–2709
Destruction of property seized 4–146
Entry when closed by injunction 22–2717
Husband placing wife in, penalty 22–2708
Inducing or compelling female to reside in 22–2705, 22–2706
Jurisdiction of Police Court 11–604
Keeping, penalty 22–2722

HOUSES OF PROSTITUTION—Continued
Nuisance 22–2713—22–2721
Abatement of 22–2713—22–2719
Bond for abatement 22–2719
Costs in action to abate 22–2715
Declared such 22–2713
Delivery of premises, order for 22–2719
Injunction 22–2714—22–2717
Order for abatement 22–2717
Sale of property 22–2717, 22–2718
Tax for maintaining 22–2720
Witnesses, granting immunity to 22–2721
Parent, guardian, consent to taking female for 22–2705
Placing female in 22–2704, 22–2705, 22–2706, 22–2708, 22–2710, 22–2711
Husband placing wife 22–2708
Parent, guardian, consent to 22–2705
Receiving consideration for 22–2710
Procuring female for 22–2710, 22–2711
Prosecution of persons arrested 4–146
"Prostitution" defined 22–2701
Receiving consideration for furnishing, servicing 22–2712
Right of entry 4–145
Running, penalty 22–2712
Searches and seizures 4–145, 4–146
Destruction of property seized 4–146
Suspension of sentence of guilty person 22–2703

HOUSING
See RENT CONTROL

HOUSING PROJECTS
See ALLEY DWELLINGS
Definition, Alley Dwelling Law 5–112

HOUSING REDEVELOPMENT
Generally 5–701—5–719

HOWARD UNIVERSITY
Property exempted from taxation 47–811

HUCKSTERS
Weighing and measuring devices, duty to have tested 10–103

HUIDEKOPER PLACE
Whitehaven Parkway 8–117

HUMAN BODIES
See DEAD HUMAN BODIES

HUNTING
See GAME AND FISH LAWS

HUSBAND AND WIFE
See DIVORCE; MARRIAGE; MARRIED WOMEN
Antenuptial debts, liability 30–210
Common-law liability of husband for wife's debts continued 30–211
Competency as witnesses 14–306
Contracts of wife deemed made with reference to separate estate 30–209
Conveyance by husband to wife 30–205
Not notice of existence of husband's creditors 30–205
Rights of creditors 30–205
Conveyance of separate property by wife 30–201

HUSBAND AND WIFE—Continued
Covenants running with land, power of married woman to execute 30–202
Disabilities of married women under twenty-one 30–201, 30–203
Equitable separate estates 30–206
Exemption of aggregate earnings, salaries, etc. 15–403
Guardian for married woman under 21 3–203
Husband's liability for necessities 30–211
Insurance for benefit of creditor, free from other creditor's claim 30–213
Insurance for benefit of wife, children, or dependent relative, free from creditor's claim 20–214
Insurance on husband's life, exemption from debts of husband 30–213
Prostitution, husband encouraging wife to live life of prostitute 22–2708
Receipt for money given by wife, validity, exception 30–215
Release of dower by joint or separate deed 30–216
Separate contracts of wife, exemption of husband from liability 30–208
Suits by or against wife authorized 30–208
Torts committed by wife, husband's exemption from liability 30–208
Trade or business, married woman's right to engage in 30–208
Trust deed, wife empowered to execute 30–204
Trustee for separate property of wife unnecessary 30–204
Wife's power to dispose of separate property 30–201
Wife's receipt of funds in fraud of husband's creditors, attachment or injunction 30–215
Wife's separate contracts, exemption of husband from liability 30–208
Wife's separate property, freedom from liability for husband's debts 30–207

HYDRATED OXIDE OR ETHYL
Definition of "alcohol" includes 25–103

HYDROCYANIC ACIDS
Poison, sale, restrictions 2–612

HYGIENE
See DENTISTRY
Use of hygienic methods, exemption from Healing Arts Practice Act 2–134

HYOSCYAMUS
Poison, sale, restrictions 2–612

ICE
See SIDEWALKS; SNOW AND ICE
Sale by weight required 10–112
Scale for weighing, regulations concerning 10–112
Weight ascertained at time of delivery 10–112

ICE CREAM
See DAIRIES AND DAIRY PRODUCTS; MILK AND MILK PRODUCTS
Factory license 47–2327
Ice cream parlors, license 47–2327
Milk, cream, and ice cream, production and sale, regulatory law 33–301—33–322
Standard measures and their capacity 10–119

IDIOT
Annulment of marriage 30–104

ILLEGITIMATE CHILDREN
See DECEDENTS' ESTATES; LEGITIMACY

IMMORALITY
Inviting for purpose 22–2701
Penalty 22–2701

IMPERSONATION
See FALSE PERSONATION

IMPLIED WARRANTIES
Sale of stock certificates 28–2912

IMPOUNDING
Motor vehicles parked without consent 40–810, 40–811

IMPRISONMENT
See PRISONS AND PRISONERS

IMPROVEMENTS
Recovery for in ejectment 16–519

INCAPACITY
As ground for annulment of marriage 16–403

INCEST
Definition, penalty 22–1901

INCINERATORS
See GARBAGE
Garbage reduction plants 6–505—6–511

INCOME TAX
See TAXATION AND FISCAL AFFAIRS
Accounting periods 47–1561
- Calendar year 47–1561
- Period used for federal income tax return 47–1561
- Taxpayer's fiscal year 47–1561

Additions for nonpayment 47–1589c
- After extension period 47–1589c
- Covering extension periods 47–1589c
- Deficiencies 47–1589c
- General rule 47–1589c

Additions in case of deficiency 47–1589b
Adjusted gross income, definition 47–1557a
All gross income during taxable year to be included, exception 47–1561a
Allocation and apportionment 47–1580a—47–1580b
- Businesses controlled by same interests 47–1580b
- Income within and without District 47–1580a

Application of law 47–1551a
Assessor allocating income and deductions 47–1580b
- Businesses owned by same interests 47–1580b
- Organizations owned by same interests 47–1580b
- Trades jointly owned by same interests 47–1580b

"Assessor" defined 47–1551c
Assessor to administer 47–1586
- Duties 47–1586
- Examination of books and witnesses 47–1586b
- Making returns where taxpayer fails 47–1586c
- Making return when taxpayer's is false 47–1586c
- Statements and special returns 47–1586a
- Withholding of tax at source 47–1586g

INCOME TAX—Continued
Bases 47–1583—47–1583e
- Deductions for depreciation 47–1583e
- Dividends paid in property 47–1583c
- Exchange in reorganizations 47–1583b
- For determining gain or loss 47–1583

Businesses owned by same interests 47–1580b
- Allocation of income and deductions 47–1580b
- Assessor to make allocations 47–1580b

Blanks for returns, assessor to supply 47–1564
Capital assets 47–1551c
- Definition 47–1551c

Closing agreements 47–1586k, 47–1586*l*
- Approval by Commissioners of the District 47–1586k
- Authority of assessor to make 47–1586k
- Concealment of assets, penalty 47–1586*l*
- False statements, penalty 47–1586*l*
- Finality, exception 47–1586k
- Misuse of document, penalty 47–1586*l*

Collection, as for personal property taxes 47–1586h
"Collector" defined 47–1551c
"Commissioners" defined 47–1551c
Compromises
- Authority to make 47–1586*l*
- Concealment of assets, penalty 47–1586*l*
- False statements, penalty 47–1586*l*
- Misuse of documents, penalty 47–1586*l*
- Penalties may be compromised 47–1586*l*

"Corporation" defined 47–1551c
Corporation returns 47–1564a
- By receivers, trustees in bankruptcy or assignees 47–1564a

Corporation tax 47–1571—47–1571a
Credit for tax paid to state 47–1567d
Credits against net income of individuals 47–1567a
- Change of status, effect 47–1567a
- Credit for dependents 47–1567a
- In return for fractional part of year 47–1567a
- Periods 47–1561b
- Personal exemptions 47–1567a

Credits against net income, periods for which taken 47–1561b
Criminal penalties 47–1589e
Deductions from gross income 47–1557b
- Alimony 47–1557b
- Allocation of deductions 47–1557b
- Bad debts 47–1557b
- Charitable contributions, limitation 47–1557b
- Depreciation 47–1557b
- Employer's contributions to employees' trust or annuity plan 47–1557b
- Expenses 47–1557b
- Insurance premiums 47–1557b
- Interest paid or accrued on debts 47–1557b
- Items of deduction enumerated 47–1557b
- Losses in trade or business 47–1557b
- Medical and dental expenses 47–1557b
- Optional standard deduction 47–1557b
- Periods for which taken 47–1561b
- Taxes paid. exceptions 47–1557b

Deductions not allowed in computing net income 47–1557b
- Amounts spent in restoring property 47–1557b
- Business life insurance premiums 47–1557b

INCOME TAX—Continued
Deductions not allowed in computing net income—Continued
Capital losses 47–1557b
New buildings and value-increasing improvements 47–1557b
Personal expenses 47–1557b
Deficiencies 47–1586d
Additions for nonpayment 47–1589c
Appealing assessments to Board of Tax Appeals 47–1593
Assessment 47–1586d
Definition 47–1551c
Determination 47–1586d
Due to fraud, addition to tax 47–1589b
Due to negligence, addition to tax 47–1589b
Extension for payment of 47–1589a
Interest upon 47–1589a
Definitions 47–1551c
Capital assets 47–1551c
Corporation 47–1551c
Deficiency 47–1551c
Dependent 47–1551c
Dividends 47–1551c
Fiduciary 47–1551c
Fiscal year 47–1551c
Individual 47–1551c
Non-resident 47–1551c
Person 47–1551c
Resident 47–1551c
Shareholder 47–1551c
Stock 47–1551c
Taxable year 47–1551c
Trade or business 47–1551c
Exception, sales of property by corporation or unincorporated business maintaining agent in District for sole purpose of doing business with United States 47–1551c
Exception, sales of property by corporation or unincorporated business not maintaining office in District 47–1551c
Unincorporated business 47–1574
Duty of assessor to obtain return from all taxpayers liable 47–1564
Duty of taxpayer to make return 47–1564
Estates and trusts 47–1577—47–1577i
Computation of tax 47–1577c
Credits against net income 1577d
Different taxable year 47–1577e
Employees' trusts 47–1557i
Imposition of tax 47–1577b
Income for benefit of grantor 47–1577g
"In discretion of grantor" defined 47–1577h
Net income computation 47–1577d
Resident and non-resident estates and trusts 47–1577
Revocable trusts 47–1577f
Examination of books and witnesses 47–1586b
Compelling attendance by witnesses 47–1586b
Summoning witnesses 47–1586b
Exchange of information with United States and states 47–1564c

INCOME TAX—Continued
Exclusions from gross income 47–1557a
Annuity benefits, exceptions 47–1557a
Benefits under laws relating to veterans 47–1557a
Capital gains 47–1557a
Compensation for injury or sickness 47–1557a
Dues and initiation fees 47–1557a
Gifts 47–1557a
Income exempted under treaties 47–1557a
Income from sale of personal property to United States by corporations having principal place of business outside District 47–1557a
Income from unincorporated business 47–1557a
Income of foreign governments 47–1557a
Interest on tax exempt securities 47–1557a
Life insurance death benefits 47–1557a
Property acquired by bequest or devise 47–1557a
Property acquired by inheritance 47–1557a
Rental value minister's dwelling-house 47–1557a
Exemptions 47–1554
Banks 47–1554
Boards of trade 47–1554
Bonding companies 47–1554
Building and loan associations 47–1554
Cemetery associations 47–1554
Certain non-profit corporations 47–1554
Chambers of Commerce 47–1554
Charitable institutions 47–1554
Churches 47–1554
Citizens' associations 47–1554
Community chest, fund, or foundation 47–1554
Corporate instrumentalities of the United States 47–1554
Corporations holding property exclusively for benefit of tax exempt organizations 47–1554
Educational institutions 47–1554
Fraternal Beneficiary Societies 47–1554
Insurance companies 47–1554
Labor organizations 47–1554
Literary associations 47–1554
Religious institutions 47–1554
Scientific institutions 47–1554
Teachers' retirement fund associations 47–1554
Trade associations 47–1554
Voluntary employees' beneficiary associations 47–1554
Exemptions from gross income
Property acquired by gift 47–1557a
Exemption from taxation 47–1554
Extension of time for filing returns 47–1564b
Assessor may grant for good cause 47–1564b
Penalty for deferred filing 47–1589d
Time limits on extension 47–1564b
Extension of time for payment 47–1586f
Failure to file return, amount to be added 47–1589
False or fraudulent return, punishment 47–1589e
Fiduciaries, information returns 47–1564
"Fiduciary" defined 47–1551c
Fiduciary returns 47–1564a
For estates 47–1564a
For individuals 47–1564a

INCOME TAX—Continued
Fiduciary returns—Continued
For trusts 47–1564a
Joint fiduciaries 47–1564a
"Fiscal year" defined 47–1551c
Foreign corporations, withholding amounts payable to 47–1586g
Furnishing copies of returns 47–1564c
On court order only where District interested 47–1564c
Taxpayer's copy, fee 47–1564c
Gains and losses in sale of property 47–1583, 47–1583a
Gains or losses in exchange of property 47–1583, 47–1583a, 47–1583b
Securities exchanged in reorganizations 47–1583b
Gross income 47–1557a
Deductions from gross income 47–1557b
Definition 47–1557a
Exclusions from gross income 47–1557a
"Include" defined 47–1551c
"Individual" defined 47–1551c
Individual returns 47–1564a
Information returns 47–1564
Information from Bureau of Internal Revenue 47–1564c
Installment sales 47–1561c
Interest on deficiencies 47–1589a
Inventories 47–1561d
Assessor may require 47–1561d
Basis of taking 47–1561d
Jeopardy assessments 47–1586e
Authority of assessor to make 47–1586e
Bond to stay collection 47–1586e
Payable on assessment 47–1586c
Limitation on assessment and collection 47–1586i
Collection within three years of assessment 47–1586i
Corporation income, 12-month rule 47–1586i
Failure to file return, no time limit 47–1586i
False return, no time limit 47–1586i
General rule, three years 47–1586i
Income during administration of decedent's estate, 12-month rule 47–1586i
Income in lifetime of decedent, 12-month rule 47–1586i
Omission of gross income, five-year rule 47–1586i
Waiver of assessment by agreement 47–1586i
Waiver of collection by agreement 47–1586i
Method of accounting, assessor may reject 47–1561e
Negligent violations, penalty 47–1589b
"Net income" defined 47–1557
Nontaxable items 47–1557a
Organizations owned by same interests 47–1580b
Allocation of income and deductions 47–1580b
Assessor to make allocations 47–1580b
Partnerships 47–1564a, 47–1574e
Information returns 47–1564
No tax on partnership as such 47–1574e
Partnership return required, contents 47–1564a
Partners taxable separately 47–1574e

INCOME TAX—Continued
Payment 47–1586n
Extension of time 47–1586f
Payable to collector of taxes 47–1586n
Receipts 47–1586n
Time for payment 47–1586f
Voluntary advance payment 47–1586f
Penalties 47–1589—47–1589e
Periods for which deductions and credits taken 47–1561b
Periods in which items of gross income included 47–1561a
Personal debt 47–1586h
Personal exemptions 47–1567a
"Person" defined 47–1551c, 47–1586m
Persons under disability, returns for 47–1564a
Persons required to make returns 47–1564a
Preservation of returns by assessor 47–1564c
Publication of return statistics 47–1564c
Rate 47–1567b, 47–1571a, 47–1574b
Receipts 47–1586n
Receivers, information returns 47–1564
Reciprocal exchange of information in returns 47–1564c
With states 47–1564c
With the United States 47–1564c
Refunds 47–1586j
Appealing disallowed claims to Board of Tax Appeals 47–1593
Claims, verification, grounds and filing 47–1586j
Limitation on amount 47–1586j
Time limitation 47–1586j
Retention of provisions of former law for certain purposes 47–1551
Returns 47–1564
Form prescribed by assessor 47–1564
Time and place for filing 47–1564b
Who must file 47–1564a
Return to be made without call 47–1564
Secrecy of returns 47–1564c
Penalty for violation 47–1564c
"Shareholder" defined 47–1551c
"Stock" defined 47–1551c
Taxable year 47–1561a
Definition 47–1551c
Tax is personal debt 47–1586h
Tax rates 47–1567b, 47–1571a, 47–1574b
Corporations 47–1571a
"Taxpayer" defined 47–1551c
Time for filing returns 47–1564b
Extension 47–1564b
On calendar year basis 47–1564b
On fiscal year basis 47–1564b
"Trade or business" defined 47–1551c
Trades owned by same interests 47–1580b
Allocation of income and deductions 47–1580b
Assessor to make allocations 47–1580b
Trusts 47–1577—47–1577i
Unincorporated business
Definition 47–1574
Partnership 47–1574e

INCOME TAX—Continued
Unincorporated business—Continued
Tax 47–1574—47–1574e
By whom payable 47–1574d
Exemption 47–1574c
Rate 47–1574b
Violating secrecy of returns, penalty 47–1564c
Violation of Income Tax Law 47–1589e
"Person" defined 47–1589e
Wilful violation, penalty 47–1589e
Withholding of tax at source 47–1586g

INCOME AND FRANCHISE TAX
Generally 47–1551—47–1595

INCORPORATED BANKS
See BANKS AND OTHER FINANCIAL INSTITUTIONS
Excise tax 47–1701

INCORPORATED SAVINGS BANKS
See BANKS AND OTHER FINANCIAL INSTITUTIONS
Excise tax 47–1703

INCORPORATION
See CORPORATIONS IN GENERAL; CORPORATIONS FOR PROFIT; CORPORATIONS NOT FOR PROFIT; INSURANCE AND INSURANCE COMPANIES

INCUMBRANCES
Preference in assignments for benefit of creditors void 28–2606

INDECENT ACTS, CHILDREN
Consent 22–3501
Penalty 22–3501

INDECENT EXPOSURE
Penalty 22–1112

INDECENT PUBLICATIONS
Defined 22–2001
Sale, offer, gift, penalty 22–2001

INDEMNITY COMPANY
See BANKS AND OTHER FINANCIAL INSTITUTIONS

INDETERMINATE SENTENCE AND PAROLE
See CRIMINAL PROCEDURE, PRISONERS
Board of Parole 24–201a—24–201c
Application for reduction of minimum sentence 24–201c
Cooperation with other agencies of District 24–201b
Creation 24–201a
Duties generally 24–201b
Rules and regulations 24–201a
Federal Board of Parole, powers over prisoners convicted in District extended 24–209
Indeterminate sentences authorized 24–203
Parole 24–204
Authorization 24–204
Conditions 24–204
Crimes other than felonies 24–208
Custody of paroled prisoners 24–204
New parole after revocation 24–206
Revocation hearing 24–206
Violation, effect 24–205
Prior acts repealed 24–207

INDETERMINATE SENTENCE AND PAROLE—Continued
Prior parole board, powers to be transferred 24–208
Prisoners under indeterminate sentences may be paroled 24–203
Prisoners under life sentence may be paroled 24–203

INDEXES
Surveyor of records 1–607

INDICTMENTS
See CRIMINAL PROCEDURE

INDIGENTS
See PAUPERS; POOR PERSONS
Burial ground 8–141

INDORSEMENTS
See NEGOTIABLE INSTRUMENTS
Definition, Negotiable Instruments Law 28–101
Indorsing payments on obligations, effect of statute of frauds 12–305
Negotiable warehouse receipts 28–2002
Transferee's right to compel indorsement 28–2007
Nonnegotiable warehouse receipts, no additional rights transferred 28–2003

INDUSTRIAL ENTERPRISES
Workhouse and Reformatory, Working Capital Fund 47–131

INDUSTRIAL HOME SCHOOL FOR COLORED CHILDREN
Moneys received to be deposited to credit of District 32–504

INDUSTRIAL HOME SCHOOLS
See PRISONS AND PRISONERS
Board of Public Welfare 32–501
Control and management by 32–501
To purchase supplies 32–501
To receive all moneys 32–501
Board of Trustees abolished, powers transferred to Board of Public Welfare 32–502
Control and management 32–501
Exchange of part of site for part of Naval Observatory grounds 32-503

INDUSTRIAL LIFE INSURANCE
See INSURANCE AND INSURANCE COMPANIES
Industrial policies 35–1001—35–1005

INDUSTRIAL SAFETY
Board
Office space, equipment and supplies 36–440
Powers and duties 36–433, 36–436, 36–439, 36–441
Contempt by disobeying subpoena issued by Minimum Wage and Industrial Safety Board 36–435
Definitions 36–432
Director of 36–437
Employers' duties 36–438
Hearings by board 36–434
Inspections and investigations 36–433
Oaths, power to administer 36–435

INDUSTRIAL SAFETY—Continued
Offenses 36–442
Place of employment 36–438
Purpose of act 36–431
Record of employees 36–438
Record of variations from rules and regulations 36–436
Report of board 36–441
Report of accident 36–433, 36–438
Rules and regulations 36–433, 36–434
Standards of safety 36–433, 36–434
Subpoenas 36–435

INFANTS
See Blindness in Infants; Children; Juvenile Offenders; Minors; Process
Stock, transfer by 28–2902

INFORMATION RETURNS
Income tax 47–1564

INHABITED ALLEY
Definition, Alley Dwelling-Law 5–109

INHERITANCE TAXES
See Estate Tax; Taxation and Fiscal Affairs
Administration 47–1618
Adopted children, transfers to, rate 47–1601
Appraisal by assessor 47–1602
Appraisal by Probate Court 47–1602
Appraisal deemed true value 47–1603
Arrears 47–1619
Assessor
Compounding and settling tax 47–1627
Definition 47–1628
To determine tax 47–1618, 47–1626
Associations, transfers to, rate 47–1601
Beneficiary dying within 6 months 47–1601
Beneficiary failing to pay, sale of part of share 47–1605
Brothers and sisters, transfers to, rate 47–1601
Bureau of Internal Revenue to supply information 47–1625
Collateral relatives except brothers and sisters, and other persons, transfers to, rate 47–1601
Collected like personal property taxes 47–1619
Collection from beneficiary 47–1605
"Collector of taxes" defined 47–1628
"Commissioners" defined 47–1628
Commissioners of the District to supervise enforcement 47–1618
Compelling attendance of witnesses 47–1618
Compounding and settling, assessor's authority 47–1627
Corporations, transfers to, rate 47–1601
Definitions 47–1628
Discharge of fiduciaries from liability 47–1601
"District" defined 47–1628
Doctrine of equitable conversion not invocable 47–1601
Donee for life or years 47–1607
Computation of tax 47–1607
Time for payment of tax 47–1607
Donee of future interest 47–1607
Computation of tax 47–1607
Interest contingent, time for payment 47–1607
Interest vested, time for payment 47–1607

INHERITANCE TAXES—Continued
Duty of personal representative to collect 47–1605
Enforcement by mandamus 47–1620
Examining books and witnesses 47–1618
Executors and administrators, discharge from liability 47–1601
Exemption of property for public or municipal, etc., purposes 47–1601
Extinguishment and reattachment of lien on personal property 47–1603
Failure to file return, liability 47–1621
False or fraudulent return, liability 47–1621
Firms, transfers to, rate 47–1601
Future estates 47–1607
General power of appointment, effect 47–1601
Husband or wife, transfers to, rate 47–1601
Imposition of tax 47–1601
"Include" defined 47–1628
Institutions, transfers to, rate 47–1601
Interest added when not paid on time 47–1619
Liability of personal representative's bond, limitation 47–1616
Lien, release of 47–1623
Life estates 47–1607
Lineal ancestors, transfers to, rate 47–1601
Lineal descendants, transfers to, rate 47–1601
Market value, based upon 47–1602
"Metropolitan police department" defined 47–1628
Monthly report of register of wills to assessor 47–1617
Payment by personal representative 47–1604
Property not under control of personal representative 47–1606
Report to be made by person entitled 47–1606
Time for payment of tax 47–1606
Property taxable 47–1601
Property transfers exempted from tax 47–1601
For charitable purpose in District 47–1601
For educational purposes in the District 47–1601
For public or municipal purpose 47–1601
For religious purposes in the District 47–1601
Release of lien 47–1623
Report of personal representative 47–1604
Contents 47–1604
Filing with assessor, time limit 47–1604
"Residence" defined 47–1628
"Resident" defined 47–1628
Return not filed, assessor determining tax 47–1626
Rules and regulations 47–1618
Situs of intangibles 47–1629
Tax based on market value at death 47–1602
Tax is lien for 10 years 47–1603
Tax rates 47–1601
Time for payment 47–1604
Transfer in contemplation of death, when presumed 47–1601
Transfers except to decedent's fiduciary 47–1624
Liability of transferor not reporting 47–1624
Transferor's duty to make prior report 47–1624
Trustees, discharge from liability 47–1601
Wilful failure to make return, penalty 47–1622
Wilful failure to pay, penalty 47–1622
Wilful failure to supply data, penalty 47–1622

INJUNCTIONS
Assessment and collection of taxes not to be enjoined 47–2410
Boilers, unauthorized use 1–713
Buildings erected or altered in violation of law 5–408
Violation of injunction, penalty 5–408
Buildings, erection, construction, reconstruction, or alteration 5–422
Corporations
Barring transfer of assets 29–727
Restraint from ultra vires acts 29–725
Enforcement of decrees in equity 11–326
Enjoining disposition of property in divorce actions 16–410
Fire, casualty, marine insurance, receivership actions 35–1308
Fire regulations, against use of building violating 5–323
Fraternal benefit associations, refusal to make report 35–914
Healing arts, unlawful practice 2–132
Parties plaintiff 2–132
Life insurance company, restraining transactions 35–419
Prostitution, house of, abatement by as nuisance 22–2714—22–2717
Rent control cases 45–1610
Stock certificate, remedy of creditors 28–2914
Taxes, collection not to be enjoined 47–2410
Unregistered medical and dental colleges 31–904

INJURIES TO PROPERTY
See TRESPASS
Criminal offenses 22–3101—22–3122

INLAND BILLS OF EXCHANGE
See NEGOTIABLE INSTRUMENTS

INLAND MARINE INSURANCE
Rates, application of act 35–1402

IN LOCO PARENTIS
Service of process where infant is defendant 13–105

INNKEEPERS
See HOTELS AND LODGINGHOUSES

INNOCENT PURCHASER
See FRAUDULENT CONVEYANCES

INQUEST
See CORONER

INSANE CRIMINALS
Certification to Federal Security Administrator 24–301
Persons acquitted on sole ground of insanity 24–301
Commitment when insanity develops during sentence 24–302
Confinement in hospital for insane 24–301
Expenses of confinement 24–301
Restoration to sanity 24–303
Right to appeal, bill of exceptions 24–301

INSANE PERSONS
See DISTRICT TRAINING SCHOOL
Arrest, not in public places 21–327

INSANE PERSONS—Continued
Arrest without warrant when found in public places 21–326
Certificate of physician 21–330
Commission on Mental Health 21–308
Authority 21–308
Composition 21–308
Recommendations 31–314
Salaries 21–309
Commitment after inquisition 21–315
Commitment to St. Elizabeths hospital 32–417—32–417g
By special commissioners of United States District Courts 32–417
By United States officers and employees 32–417a
Examination and hearings 32–417, 32–417a 32–417d
Military personnel 32–417e
Veterans 32–417g
Committee 21–301
Bonds and undertakings, in District Court 28–2403
Compensation 21–301
Limit to appointment 21–302
Confinement 21–317
Custody of harmless insane 21–317
Discharge of patients on bond 21–332
Discharge of those temporarily committed 21–329
Estates 21–301
Accounting 21–301
Power of court 21–303
Sale or mortgage for maintenance 21–304
Sales to be ratified by court 21–305
Examination 21–311
False affidavit or certificate 21–331
Feeble-minded children, care and maintenance, duties of Board of Public Welfare 3–114
Forms furnished 21–323
Guardianship
Ancillary guardian, property in District 21–115
Suits by ancillary guardian 21–116
Hearings to restore status of parolees 21–320
Indigent insane, hospitalization 3–110
"Insane person" includes every idiot, non compos and lunatic 49–207
Insanitary buildings, ownership, condemnation, appointment of guardian 5–609
Issuance of attachment 21–311
Jury in lunacy inquisitions 21–313
Leases 45–924—45–930
Liability of relatives for maintenance and treatment 21–318
Lunacy proceedings 21–307
Appointment of committee or trustee 21–307
Inquest application 21–310
Jury 21–307
Petition of Commissioners of District 21–307
Non compos mentis trustee, mortgage, conveying 45–620
Nonresident insane, return to place of residence 3–110
Not to be confined in jail 21–333
Penalty for false petition, affidavit 21–324
Police taking into custody, duties of police surgeons 4–124

INSANE PERSONS—Continued
Prior remedies preserved 21–325
Procedure, without jury, in lunacy inquisitions 21–314
Property-owners, charge for care 21–319
Property subject to encumbrances 21–202
Report 21–312
Sale of property held jointly or in common 21–213
Sales to under Uniform Sales Act 28–1102
Service by publication 13–112
Service of process 13–107
Temporary commitment 21–329
Temporary detention when insanity alleged 21–328
Transfer of nonresidents 21–317
Undertakings for lunacy inquisitions 21–322
Witness fees in lunacy inquisitions 21–321

INSANITARY BUILDINGS
See Unsafe Structures
Appropriations for enforcement of act 5–615
Board for Condemnation 5–601—5–603
Commissioners to furnish assistance 5–601
Creation 5–601
Deputy health officer acting as member 5–602
Inspection of buildings 5–603
Interest in property affected prohibited 5–602
Interference with prohibited 5–611
Investigation of buildings 5–603
Jurisdiction and authority 5–601
Members of Board 5-601
Powers and duties 5–601, 5–603
Principal assistant inspector of building acting as member 5–602
Quorum 5–602
Report to Commissioners of District 5–601
Right of entry 5–601
Changes, cancelation of order of condemnation 5–606
Condemnation of buildings 5–601, 5–603
Authority of board 5–601
Copy of order affixed to building 5–603
Destroying, obliterating, or removing affixed notice prohibited 5–612
Majority of members of board present required 5–602
Notice to vacate 5–605
Order of condemnation 5–603
Service of order on owner or part owner 5–603
Demolition
Commissioners demolishing at public expense, assessment of cost against premises 5–607
Conditions irremediable 5–607
Owner or part owner failing to demolish, misdemeanor 5–607
Notice to show cause 5–603
Time allowed 5–603
Occupation after notice prohibited 5–604
Extension of time, repairs or changes being made 5–606
Fifteen days' notice given 5–605
Owner or part owner under legal disability 5–609
Appointment of guardian, jurisdiction 5–609
Report of fact to corporation counsel 5–609
Penalty for violating law concerning 5–613

INSANITARY BUILDINGS—Continued
Preventing or refusing to permit inspection or work prohibited 5–611
Property in litigation 5–608
Powers of court 5–608
Procedure, duty of corporation counsel 5–608
Repairs, cancelation of order of condemnation 5–606
Service of notices required by act, method 5–610

INSANITY
See Insane Criminals; Insane Persons
As ground for annulment 16–403

INSANITY PROCEEDINGS
Evidence, examination, commitment and discharge 21–311

INSECT PESTS
Common carriers, liability limited 6–905
Control law 6–904
Control measures 6–904
Secretary of Agriculture, powers and duties 6–904
Shipment of plants into or out of District, regulation and control 6–904

INSECTICIDES
Sale by other than pharmacist 2–601

INSOLVENCY
Employing unit under Unemployment Compensation Act 46–304
Surety on bond of plumber, electrician, etc. 1–244

INSPECTION
See Boiler Inspection; Inspectors; Plumbing
Boiler Inspection Act 1–701—1–718
Child-placing Agencies 32–789
Director of 1–246
Electrical wiring 1–719—1–723
Fire escapes and safety provisions of buildings 5–316
License issued to corporation or unincorporated business 47–1591b
Minimum Wage and Industrial Safety Board 36–433
Plumbing 1–724—1–727

INSPECTORS
See Building Inspector; Health and Safety; Police Department
Asphalt and cement, rendering similar services for others prohibited 1–307
Board of Barber Examiners authorized to appoint 2–1112
Boiler inspector 1–703
Appointment by Commissioners 1–703
Bond 1–704
Oath of office 1–704
Right of entry 1–711
Buildings, inspection of elevators and fire escapes 1–729
Chief inspector of health department, acting as deputy health officer prohibited 6–108
Dairies and dairy farms, right to act as livestock inspector 6–116
Electrical wiring 1–720, 1–721
Assistant inspectors 1–721
Electrical engineer chief inspector 1–720

INSPECTORS—Continued
False personation as 22–1305
Fire Department 4–404
Salary 4–405
Fish and marine products, duties transferred 6–110
Plumbing inspector 1–724
Principal assistant inspector of buildings, discharge of duties of inspector 1–728
Sanitary inspectors 6–104, 6–105
Appointment by Commissioners 6–104
Drainage and ventilation member 6–104
Inspector of fish and other marine products, duties transferred 6–110
Nomination by health officer 6–104
Physician members 6–104
Removal of subordinates by Commissioners 6–104
Reports to health officer 6–105
Sewers, etc. employment 7–1235
Weights and measures 10–103—10–106

INSTALMENT PAYMENTS
Alley or minor streets, condemnation proceedings, assessments 7–321
Streets and other public improvements, permit system of making 7–608
Streets, opening, widening, or extending, assessment of benefits 7–211

INSTALMENTS
Income tax, instalment selling 47–1561c
Notes payable in instalments, negotiability 28–103

INSTITUTIONS
Inheritance tax rates on transfers to 47–1601

INSTITUTIONS OF LEARNING
See EDUCATION
Annual report 29–411
Content 29–411
Filing with recorder of deeds 29–411
Application of funds 29–405
Bequests for particular purpose 29–406
Certificate of incorporation 29–401
Contents 29–401
Branches of learning to be taught 29–401
Name 29–401
Number, designation of professorships 29–401
Trustees, managers or directors 29–401
Recording 29–401
Degrees, conferring 29–415
Application for license to confer 29–416
License from Board of Education 29–415
Prerequisites to license 29–415
Revocation of license to confer 29–417
Devises for particular purpose 29–406
Dissolution 29–701—29–729
Donations for particular purpose 29–406
Foreign institutions 29–418
General provisions 29–101—29–105
Implying connection with United States or District prohibited 29–418
Incorporation 29–402
Certificate 29–401
Fee 29–414

INSTITUTIONS OF LEARNING—Continued
Officers 29–409
Authority to appoint or replace 29–409
Bond of treasurer 29–410
Penalties for violating chapter 29–419
Powers 29–402, 29–403
Process against, service 29–412
Property to be held solely for purposes of education 29–404
Quo warranto 29–413
Real property 29–407
Limitation on amount held 29–407
Reversion on failure to sell excess 29–408
Sale of excess within 15 years 29–407
Tax exemption
Income tax 47–1554
Property 47–801a
Treasurer's bond 29–410
Unemployment Compensation Act, excluding employees 46–301

INSTRUMENTS
Definition, Negotiable Instrument Law 28–101
False certification of recordable instruments, penalty 22–1308
Preservation by surveyor of District 1–606

INSURANCE AND INSURANCE COMPANIES
Accident and health 35–712, 35–1332
Standard policy provisions 35–712
Taxation 47–1801—47–1808
Agent
Defined 35–1401
Policies to conform to requirements of superintendent 35–1405
Rates
Approval by superintendent 35–1408
Violation of laws relating to 35–1409
Records
Examination by superintendent 35–1407
Policy contracts issued 35–1406
Agents and solicitors excluded from Unemployment Compensation Act 46–301
Agents, representing unlicensed company, penalty 35–201
Alien companies
Annual reports 35–104
Documents to be filed with superintendent 35–601
Information to be furnished superintendent 35–601
Policy provisions required in home country may be retained in policies sold in District 35–709
Prerequisites to authority 35–601
Taxation 47–1801—47–1808
Trustees of funds in United States 35–602
Annuities, when exempted from gross income tax 47–1557a
Appeal from order of superintendent 35–1403
Benefit orders and associations
Application, copy to accompany policy 35–203
Statements in application as defense 35–203
Boilers, application of act relating to rates 35–1402

INSURANCE AND INSURANCE COMPANIES—Continued

Boilers covered by insurance, certificate of inspection 1–707
Report of inspection to District inspector 1–707
Broker
Defined 35–1401
Form of policy etc. approved by superintendent 35–1408
Policies to conform to requirements of superintendent 35–1405
Rates
Approval by superintendent 35–1408
Violation of laws relating to 35–1409
By-laws, approved by superintendent 35–1408
Casualty companies, taxation 47–1801—47–1808
Casualty described 35–1314
Clauses, approval by superintendent 35–1408
Company defined 35–1401
Company, unauthorized, dealing with 35–1344
Compensation 35–205
Regulations 35–205
Review of superintendent's decisions 35–205
Companies holding capital stock of life companies, examination 35–418
Companies organizing as life companies, examination 35–418
Department of Insurance 35–101—35–108
Commissioners of the District to supervise 35–101
Deputy superintendents 35–401
Employees, compensation 35–401
Establishment 35–101
Records are public records 35–1304
Seal 35–401
Superintendent 35–101—35–108
Appointment 35–101
Duties 35–102
Discrimination between individual risks or classes of risks 35–1403
District defined 35–1401
District property, insurance 1–816
Documents under seal of department 35–401
Domestic companies, taxation 47–1801—47–1808
Domestic life companies 35–501—35–540
Acquisition of own capital stock, when unlawful 35–540
Agreements to withhold securities from sale prohibited 35–535
Amending articles to increase capital stock, increase to be paid within year 35–510
Articles of incorporation 35–501—35–503
Amending to increase capital stock 35–510
Amendment, procedure 35–509
Amendment to decrease capital stock 35–511
Contents 35–501
Filing with superintendent 35–502
Notice of intention to file 35–502
Recording 35–503
Submission to corporation counsel 35–503
By-laws, contents 35–522
Calls on subscribers to stock 35–513
Capital stock book 35–515
Contents 35–515
Contents as evidence 35–515

INSURANCE AND INSURANCE COMPANIES—Continued

Domestic life companies—Continued
Capital stock book—Continued
Failure to exhibit, penalty 35–515
Failure to make entry, penalty 35–515
Opening for inspection 35–515
Capital-stock company 35–508
Paid-up stock, amount required 35–508
Surplus paid-up, amount required 35–508
Capital stock to be paid in before doing business 35–513
Certificate of authority 35–503
Companies to which Life Insurance Act applies 35–520
Company in course of organization 35–503—35–507
Cessation of corporate powers, liquidation 35–507
Corporate powers 35–503
Examination 35–506
Extension of time for completion 35–507
Investment of subscribed funds 35–505
Limitation of organizational expense 35–505
Not to issue policies 35–503
Permit 35–503
Revocation of permit 35–506
Revocation of solicitor's authority 35–506
Solicitors' authority to be filed with superintendent 35–504
Subscriptions to capital stock 35–505
Conversion of stock company into mutual 35–519
Companies which may convert 35–519
Plan for acquisition of stock, requirements 35–519
Directors 35–521
Conduct of elections 35–523
Cumulative voting in elections 35–524
Election 35–521
Liabilities 35–526
Limitation on proxies for election of directors 35–521
Not to be pecuniarily interested in transactions 35–530
Objecting to dividends, method and effect 35–526
Qualifications of mutual company directors 35–521
Qualifications of stock company directors 35–521
Dividends to policy holders, limitations 35–528
Dividends to stockholders, limitations 35–528
Documents to be filed with superintendent 35–502
Examinations, not longer than three years apart 35–418
Failure to pay stock call, forfeiture 35–513
Fiduciaries as stockholders, liability 35–512
Incorporators' bond 35–502
Investment of funds, approved securities 35–535
Keeping books, records, accounts, vouchers 35–539

INSURANCE AND INSURANCE COMPANIES—Continued
Domestic life companies—Continued
Mutual companies 35–516
Borrowing to pay organization expenses 35–534
Classification of members 35–533
Classification of risks 35–533
Corporations, associations may hold policies 35–516
Directors' qualifications 35–521
Guaranty fund, approval by superintendent 35–534
Providing for creation of surplus 35–533
Providing for payment of dividends 35–533
Representatives of corporations, associations, estates 35–516
Requirement before transacting business 35–517
Notice of stock call 35–513
By publication 35–513
Personal 35–513
Not to subscribe in underwriting of securities 35–535
Officers 35–529, 35–530
Not to be pecuniarily interested in transactions 35–530
Selection 35–529
Pledgee of stock, liability 35–512
Pledgor of stock, rights and liabilities 35–512
Policy provisions required at point of issuance may be inserted 35–709
Publication of notice to form and of filing of articles 35–502
Reincorporation of existing corporations 35–518
Reinsurance of risks 35–537
Salary limitation 35–527
Stock-book record, effect of 35–514
Stock companies, directors' qualifications 35–521
Stockholders' liability 35–512
Superintendent as attorney for service of process 35–423
Transfers of capital stock 35–514
Voting trust agreements 35–531
Declared unlawful 35–531
Definition 35–531
Voting under group policies 35–525
Vouchers for disbursements 35–538
Domestic marine companies 35–1101—35–1133
Endorsement, approval of form by superintendent 35–1408
Exemption from judicial process 15–403
Explosions, application of act relating to rates 35–1402
Fire companies
Capital impaired, suspension and revocation of license 35–201
May become perpetual 29–237
Taxation 47–1801—47–1808
To maintain reinsurance reserves 35–201
Writing marine insurance 35–1101—35–1133, 35–1301—35–1350

INSURANCE AND INSURANCE COMPANIES—Continued
Fire, marine, and casualty insurance 35–1301—35–1350
Accident and health policies 35–1332
"Admitted assets" defined 35–1303
Agents 35–1334
Alien companies 35–1323
Admission 35–1323
Application for certificate of authority 35–1325
Certificate of authority 35–1323
Definition 35–1303
Examination in foreign country, superintendent may accept 35–1313
Requirements for admission 35–1326
To appoint superintendent as attorney for service of process 35–1327
Alien Lloyd's 35–1323
Admission 35–1323
Certificate of authority 35–1323
Requirements for admission 35–1324
Alien mutuals
Certificate of authority 35–1323
Minimum surplus 35–1316
Alien stock companies 35–1323
Admission 35–1323
Certificate of authority 35–1323
Annual statement
Contents 35–1311
Publication of summary at discretion of superintendent 35–1311
Time for filing, extension 35–1311
Verification 35–1311
Appeals from superintendent 35–1348
Application of Fire and Casualty Act 35–1302
"Authorized company" defined 35–1303
Brokers 35–1334
Application for license 35–1336
Appropriations for premium 1–816a
Bond 35–1336
Definition 35–1303
Effective date of license 35–1337
Examination for license 35–1336
License fees 35–1345
Penalty in lieu of revocation or suspension of license 35–1340
Renewal of license 35–1339
Representing unauthorized companies, exception 35–1343
Revocation and suspension of license 35–1340
Special license to deal with unauthorized companies 35–1344
Temporary transfer of license 35–1338
"Casualty insurance" defined 35–1314
Certificate of authority 35–1305, 35–1306
Grounds for suspension without notice 35–1306
Hearing before revocation or suspension 35–1306
Investigation before issuance 35–1305
Issuance by superintendents 35–1305

INSURANCE AND INSURANCE COMPANIES—Continued
Fire, marine, and casualty insurance—Con.
Certificate of authority—Continued
Notice before revocation or suspension 35–1306
Refusal to issue 35–1305
Revocation, grounds 35–1306
Suspension, grounds 35–1306
Transacting business without, prohibited 35–1305
Classification of insurance 35–1314
Casualty described 35–1314
Fire and marine described 35–1314
"Commissioners" defined 35–1303
Commissions to unlicensed persons prohibited 35–1335
"Company" defined 35–1303
Constitutionality clause 35–1350
Court proceedings 35–1349
"Department" defined 35–1303
Discrimination prohibited 35–1333
"District" defined 35–1303
Domestic companies 35–1318—35–1322
Definition 35–1303
Exclusive agency contracts, approval of superintendent required 35–1322
Formation 35–1318
Investments, permitted 35–1321
Mutuals borrowing to defray organization expense 35–1320
Real-estate holdings 35–1319
Realty, excess to be sold 35–1319
Domestic mutuals
Formation 35–1318
May borrow to defray organization expense 35–1320
Minimum surplus 35–1316
Prerequisites to transacting business 35–1305
Domestic reciprocals
Formation 35–1318
Minimum surplus 35–1316
Domestic stock companies, formation 35–1318
Examination 35–1313
Expense 35–1313
Production of records 35–1313
Exemptions from licenses 35–1342
False entries in records, penalty 35–1313
False statements in reports, penalty 35–1312
Fidelity insurance, excepted 35–1302
Filing lists of agents 35–1334
"Fire and marine insurance" defined 35–1314
Foreign companies 35–1323
Admission 35–1323
Application for certificate of authority 35–1325
Appointment of superintendent as attorney for service of process 35–423
Certificate of authority 35–1323
Definition 35–1303
Examination in state, superintendent may accept 35–1313
Requirements for admission 35–1326

INSURANCE AND INSURANCE COMPANIES—Continued
Fire, marine, and casualty insurance—Con.
Foreign Lloyd's 35–1323
Admission 35–1323
Certificate of authority 35–1323
Requirements for admission 35–1324
Foreign mutuals 35–1323
Certificate of authority 35–1323
Minimum surplus 35–1316
Foreign reciprocals 35–1323
Certificate of authority 35–1323
Minimum surplus 35–1316
Foreign stock companies 35–1323
Admission 35–1323
Certificate of authority 35–1323
Formation 35–1318
Articles of incorporation 35–1318
Certificate of authority 35–1318
Information to be filed with superintendent 35–1318
"Impairment of capital or surplus" defined 35–1310
Injunction in receivership actions 35–1308
"Insolvency" defined 35–1309
"Liabilities" defined 35–1303
Licenses 35–1334—35–1345
Application 35–1336
Effective date 35–1337
Examination for 35–1336
Exemptions from 35–1342
Fees 35–1345
Renewal 35–1339
Revocation and suspension 35–1340
Temporary transfer 35–1338
Life companies excepted 35–1302
Limitation of risks 35–1315
Mutuals and reciprocals 35–1315
Other than mutuals and reciprocals 35–1315
Provision inapplicable to compensation, employers' liability, marine or inland marine risks 35–1315
Reinsured risks not included in determining 35–1315
Lloyds, minimum surplus not increased 35–1317
Minimum capital not applicable to prior authorized companies 35–1317
Minimum surplus 35–1316
Alien mutuals 35–1316
Alien reciprocals 35–1316
Domestic mutuals 35–1316
Foreign mutuals 35–1316
Foreign reciprocals 35–1316
Not applicable to preexisting companies 35–1317
Stock companies 35–1316
Mutuals
Name, requirements 35–1328
Premiums, maximum and contingent 35–1329
"Officer" defined 35–1303
Penalties 35–1347

INSURANCE AND INSURANCE COMPANIES—Continued
Fire, marine, and casualty insurance—Con.
Penalty in lieu of revocation or suspension of certificate 35–1306
Penalty in lieu of revocation or suspension of license of broker 35–1340
Pension plans excepted 35–1302
"Person" defined 35–1303
Policies 35–1331
Accident and health policies 35–1332
Definition 35–1303
Discrimination prohibited 35–1333
Filing with superintendent 35–1331
Superintendent's power to disapprove 35–1331
To be executed by licensed and authorized agents 35–1334
To contain all agreements 35–1334
"Policy writing agent" defined 35–1303
Included in term agent 35–1401
Revocation or suspension of license 35–1340
Prosecutions 35–1347
Immunity of witnesses 35–1346
Penalties 35–1347
Production of papers 35–1346
Rates, regulation of 35–1401—35–1409, 35–1501—35–1510
Rebates prohibited 35–1334
Receivership 35–1308
Grounds 35–1308
Liquidation by superintendent 35–1308
Superintendent applying for 35–1308
Termination 35–1308
"Reciprocal" defined 35–1303
Reciprocals, name, requirements 35–1328
Representing unauthorized companies, penalty 35–1343
Reserves, computation 35–1330
Rules and regulations 35–1304
"Salaried company employee"
Defined 35–1303
Included in term agent 35–1401
Revocation or suspension of license 35–1340
Service of process on unauthorized company 35–1327
Short title of law applicable 35–1301
"Soliciting agent" defined 35–1303
Special license to deal with unauthorized companies 35–1344
Stock companies
Minimum capital and surplus 35–1316
Minimum surplus 35–1316
"Superintendent" defined 35–1303
Superintendent's power to disapprove policy forms 35–1331
Surety contracts excepted 35–1302
"Surplus" defined 35–1303
Surplus, minimum requirements 35–1316
Taxes, report and payment upon ceasing business 35–1307
Title companies excepted 35–1302
To be executed by licensed and authorized agents 35–1334
To contain all agreements 35–1334

INSURANCE AND INSURANCE COMPANIES—Continued
Fire, marine, and casualty insurance—Con.
"Unauthorized company" defined 35–1303
Unauthorized solicitations 35–1341
Fire-marine companies 35–1101—35–1133
Fire, stock and marine companies, alien mutuals 35–1323
Foreign companies 35–102
Appointment of resident attorney for purposes of service of process 35–102
Process against, service on superintendent 35–102
Taxation 47–1801—47–1808
Foreign life companies
Documents to be filed with superintendent 35–601
Information to be furnished superintendent 35–601
Policy provisions required in home state may be retained in policies sold in District 35–709
Prerequisites to authority 35–601
Foreign marine companies 35–1105
Form of policy etc., approval by superintendent 35–1408
Fraternal benefit associations 35–901—35–928
Acting without authority 35–915
Alien associations 35–903
Annual reports 35–904
Contents 35–904
Filing with superintendent 35–904
Application of funds 35–901
Associations not issuing benefit certificates exempted 35–916
Becoming mutual life insurance companies 35–925
Benefits exempt from attachment 35–911
Certificate of declaration 35–907
Contents 35–907
Recording 35–907
Contract invalid if beneficiary is to pay assessments or dues 35–910
Corporate powers 35–907
Definition 35–901
"Doing business" defined 35–915
Exemption from other insurance laws 35–901
Exemption of societies 35–916
Exemptions from general insurance laws 35–916
Existing associations 35–902
Foreign associations 35–903
Fraudulent representations regarding membership 35–913
Incorporation of subordinate bodies 35–909
Injunction for refusal to make reports 35–914
Penalty for violation of injunction 35–914
Superintendent to give notice 35–914
Insurance and annuities on lives of children 35–918
Insurance division becoming mutual life insurance company 35–922—35–928
Juvenile fraternal insurance 35–918—35–921
Contributions, computation 35–919
Enforcement of contribution payments 35–921

INSURANCE AND INSURANCE COMPANIES—Continued
Fraternal benefit associations—Continued
Juvenile fraternal insurance—Continued
Issuance of certificates 35–918
Reserves 35–920
Meetings 35–912
Nonresident associations 35–903
Appointment of superintendent as attorney for service of process 35–905
Conditions precedent to doing business in District 35–903
Right of superintendent to examine 35–903
Organization 35–907
Certificate of declaration 35–907
Procedure 35–907
Perjury in death claims 35–913
Permit to do business in District, fee 35–906
Profit associations exempted 35–916
Refusal to make reports 35–914
Effect 35–914
Injunction 35–914
Reincorporation of existing associations 35–908
Reserves 35–901
Separation of insurance and fraternal activities 35–922
Certificate of separation 35–923, 35–924
Continuance of fraternal activities 35–925
Contracts not impaired 35–927
Directors of insurance activities 35–925
Division of activities and property 35–925
Insurance activities to be continued as mutual legal reserve company 35–925
Laws applicable 35–928
Original corporation not dissolved 35–926
Taxation 47–1801—47–1808
To whom benefits may be paid 35–901
"Transacting business" defined 35–915
Trustees, managers or directors 35–907
Using name of previously existing association, law not applicable 35–917
Group Life Insurance 35–710, 35–711
Health, accident, and life companies 35–202
Amount of policies, limitation 35–202
Appeal to Commissioners of the District 35–202
Assets and capital stock required 35–202
Benefits exempted from income tax 47–1557a
Definition 35–202
Examination by superintendent 35–202
Fraternal beneficial associations exempted 35–202
Reports to superintendent 35–202
Taxation 35–202
Husband and wife, insurance on husband's life, proceeds, exemption from husband's debt 30–212—30–214
Income tax, when exempted 47–1554
Industrial insurance agents, licensing 35–1202
Industrial life insurance 35–1001—35–1005, 35–722—35–724
Assignment of policies 35–1004
Beneficiaries 35–1005
Conditions of policies 35–1001
Good faith of insured a material element 35–1002

INSURANCE AND INSURANCE COMPANIES—Continued
Industrial life insurance—Continued
Incontestability of policies 35–1003
Prohibited provisions 35–724
Standard provisions 35–723
Unsound health as defense 35–1002
Validity of policies 35–1002
Valuation of industrial policies 35–701
Inland marine insurance, application of act relating to rates 35–1402
Insurance agents, except life 35–1201, 35–1202
Employing solicitors 35–1202
Fraternal agents excepted 35–1202
Penalty for acting without license 35–1201
Insurance agents, representing unlicensed company, penalty 35–201
Insurance brokers, except life 35–1201
Insurance companies
Prerequisites to doing business in District 35–102
Insurance companies, generally 35–102
Annual reports 35–103
Contents 35–103
Failure to file and publish, license to be revoked 35–103
Filing with superintendent 35–103
Publication 35–103
Annual statement of business done in District 35–105
Commissions to unlicensed agents prohibited 35–1201
Declaration of assets 35–108
Doing business after revocation of license, penalty 35–201
Doing business without license, penalty 35–201
Domestic corporation to have principal office in District 35–204
Reincorporation under state laws 35–204
Removal of principal office, books from District, penalty 35–204
Solicitors' licenses 35–1202
Taxation 47–1801—47–1808
Insurance solicitors, except life 35–1202
Insuring agents, except life
Solicitors' licenses 35–1202
To secure license 35–1201
Juvenile Fraternal Act 35–918—35–921
Life 35–301—35–803
"Agent" defined 35–302
"Alien company" defined 35–302
Annual valuation of policies 35–701
Annuities and endowments, standard provisions 35–705
Applications, false statements, effect 35–414, 35–719
Beneficiaries, rights against insureds' creditors 35–716
Beneficiaries when minor over 15 is purchaser 35–430
"Broker" defined 35–302
Certificate of authority 35–404
"Commissioners" defined 35–302
"Company" defined 35–302
Definitions 35–302
"Department" defined 35–302

INSURANCE AND INSURANCE COMPANIES—Continued
Life—Continued
Disability insurance, exemption from execution 35–717
"District" defined 35–302
"Domestic company" defined 35–302
Extension of time for premium payment 35–706
False statements in reports, penalty 35–408
Fees and charges 35–402
Agent's license 35–402
Broker's license 35–402
Certificates of authority for companies 35–402
Filing articles of incorporation 35–402
Filing deed of settlement 35–402
General agent's license 35–402
Payable to collector 35–402
Refund of excess payments 35–403
Solicitor's license 35–402
"Foreign company" defined 35–302
"General agent" defined 35–302
Group life insurance 35–710, 35–711
Definition 35–710
Standard policy provisions 35–711
Industrial life insurance 35–1001—35–1005, 35–722—35–724
Definition 35–302
"Liabilities" defined 35–302
Minors over 15 may contract for 35–430
"Net premium receipts" defined 35–302
Oath to false statement in report is perjury 35–408
Penalty for violation of act 35–801
"Person" defined 35–302
Physicians, false statements regarding applications 35–719
Prohibited policy provisions 35–704
Prosecutions 35–801, 35–802
Immunity of witnesses 35–802
Penalties 35–801
Right of minor over 15 to surrender and discharge policies 35–430
Rights of creditors of insured 35–716
Short title of law 35–301
"Solicitor" defined 35–302
Standard policy provisions 35–703
Stock and insurance operations not to be mixed 35–713
"Superintendent" defined 35–302
"Surplus" defined 35–302
Life agents
Appeal from license suspension or revocation 35–427
From District Court to Court of Appeals 35–427
To District Court 35–427
Appeal from refusal to issue license 35–427
Application for license, contents 35–425
Embezzlement of premiums received 35–429
False statements regarding applications 35–719
Forbidden to misrepresent policies 35–714
Inducing lapsation of policies prohibited 35–714

INSURANCE AND INSURANCE COMPANIES—Continued
Life agents—Continued
Licenses 35–425—35–427
Grounds for suspension and revocation 35–426
Hearings for suspension or revocation 35–426
Notice of hearing for suspension or revocation 35–426
Revocation 35–426
Suspension 35–426
Licenses of general agents 35–425
Licenses of solicitors 35–425
Not to use stock as inducement to insure 35–713
Penalty for violating licensing provision 35–426
Placing risks with other companies 35–425
Life brokers 35–426—35–429
Appeal from refusal to issue license 35–427
Appeal from suspension or revocation of license 35–426
Application for license, contents 35–428
Embezzlement of premiums received 35–429
Examination for license 35–428
False statements regarding applications 35–719
Licenses 35–428
Penalty for violating licensing provisions 35–428
Suspension or revocation of license 35–426
Life companies 35–301—35–803
Accident and health insurance 35–712
Standard policy provisions 35–712
Actual premium less than net premium, effect 35–721
Advertisements 35–409, 35–410
Contents 35–410
Deceptive statements prohibited 35–409
Penalties 35–410
Agents 35–425
Licenses 35–425
Placing risks with other companies 35–425
Alien companies 35–601, 35–602
Advertisements, contents 35–410
Appointment of superintendent as attorney for service of process 35–423
Contents of annual statement 35–407
Annual statement 35–407
Filing with superintendent 35–407
Verification 35–407
Annuities and endowments, standards provisions 35–705
Application, copy to accompany policy 35–203
Assessment companies prohibited 35–431
Capital impaired, suspension and revocation of license 35–201
Certificate of authority
Contents 35–404
Effect 35–404
Grounds for revocation 35–405
Notice of proposed revocation 35–405
Revocation 35–405
Suspension without notice 35–405
Transacting business without, prohibited 35–404

INSURANCE AND INSURANCE COMPANIES—Continued
Life companies—Continued
Companies selling in District only by mail, appointment of superintendent as attorney for service of process 35–423
Contracts varying policy terms prohibited 35–715
Deceptive statements prohibited 35–409
Defaming, penalty 35–411
Deposits, general 35–415—35–417
Amount 35–415
Collection of income 35–416
Custody 35–416
Decline in value of securities 35–416
Deposits outside District 35–415
Required securities 35–416
Substitution of securities 35–416
Transfer to reinsuring company 35–417
Withdrawal, notice, examination, bond 35–417
Discrimination between policyholders of same class prohibited 35–715
Domestic companies 35–501—35–540
Appointment of superintendent as attorney for service of process 35–423
Examination at least every three years 35–418
Examination 35–418
Expense 35–418
Hearing on report 35–418
Publication of report 35–418
Report, contents, verification 35–418
Excepted from Fire and Casualty Act 35–1302
Extension of time for premium payment 35–706
Failure to appoint superintendent as attorney for service of process, penalty 35–423
Foreign companies
Appointment of superintendent as attorney for service of process 35–423
General agents 35–425
License 35–425
Group life insurance 35–710, 35–711
Definition 35–710
Standard policy provisions 35–711
Holding policy proceeds in trust 35–720
Inducing lapsation of policies prohibited 35–714
Law applicable 35–301
Liquidation by superintendent 35–419
Misrepresentation concerning policies prohibited 35–714
Mutual companies, formed from insurance division of fraternal benefit associations 35–922—35–928
Notice of nonconformity of policies, review 35–708
Notifying superintendent on termination of connection of general agent, agent, or solicitor 35–425
Persons exempted from agents' license requirement 35–425
Policy forms to be filed with superintendent 35–708

INSURANCE AND INSURANCE COMPANIES—Continued
Life companies—Continued
Policy loans, addition of unpaid interest 35–707
Political contributions 35–424
Immunity of witnesses 35–424
Penalty 35–424
Prohibition 35–424
Soliciting 35–424
Premium loans, addition of unpaid interest 35–707
Prohibited policy provisions 35–704
Promises of profit as inducements to insure 35–713
Rebates prohibited 35–715
Reinsurance by superintendent 35–421
Rights of creditors of insured 35–716
Separation of participating and nonparticipating business 35–702
Solicitors 35–425
Licenses 35–425
Standard policy provisions 35–703
Policies exempted 35–703
Policies required to contain 35–703
Statements in application as defense 35–203
Stock as inducement to insure forbidden 35–713
Superintendent as receiver reinsuring 35–421
Superintendent taking possession 35–419
Application for order to show cause 35–419
Conditions precedent 35–419
Grounds 35–419
Hearing on rule to show cause 35–419
Injunction to restrain transactions 35–419
Liquidation 35–419
Procedure 35–419
Restoration to officers 35–419
Superintendent made receiver 35–419
Superintendent to furnish annual report forms 35–406
Taxation 47–1801—47–1808
Refund of excess payments of taxes 35–403
To maintain reinsurance reserves 35–201
Unlawful inducements to purchase insurance 35–713
Validity of process served on superintendent 35–423
Valuation of assets 35–422
Discretion of superintendent, limitation 35–422
Rule 35–422
Valuation of policies 35–701
Legal standard of valuation 35–701
Superintendent to value annually 35–701
When deemed insolvent 35–420
Life Insurance
Cash surrender value
Statement of calculation method 35–705b
Adjusted premiums 35–705b
Basis 35–705b
Annual valuation of reserve liabilities 35–701
Basis 35–701

INSURANCE AND INSURANCE COMPANIES—Continued
Life Insurance—Continued
Calculation of benefits 35–705b
Dividends, net value 35–705b
Nonapplicability 35–705b
Calculation of reserves 35–701
Optional standards 35–701
Use of lower interest rate 35–701
Cash surrender value 35–705b
Deferred payment 35–705b
Statement of mortality table and interest rate used 35–705b
Deductions 35–705a
Default in premium payments 35–705a
Election of compliance by company 35–705b
Investment of funds of domestic companies
Approved investments 35–535
Loans 35–703
Indebtedness 35–703
Interest 35–703
Loan value 35–705c
Deferment of loan 35–705c
Deductions 35–705c
Minimum standards for valuation 35–701
Modified net premiums 35–701
Nonforfeiture benefit 35–705b
Preliminary term method 35–701
Premium payment 35–701
Period 35–701
Reserves 35–701
Rates of mortality 35–705b
Substandard basis 35–705b
Reserves 35–701
Settlement at maturity at less than face value 35–704
Surrender for cash value 35–705a
Deferred payment 35–705a
Net single premium rate 35–705a
Valuation of annuities, industrial policies and life insurance contracts 35–701
Variation of standards 35–701
Life Insurance Act
Immunity of witnesses in prosecutions 35–802
Penalties for violation 35–801
Saving clause on constitutionality 35–803
Life policies 35–701—35–721
False statements regarding applications 35–719
Forms to be filed with superintendent 35–708
Group policies, exemption from executions 35–718
Inducing lapsation prohibited 35–714
Industrial insurance policies 35–1001—35–1005
Misrepresentations concerning, prohibited 35–714
Notice of nonconformity, review 35–708
Prohibited provisions 35–704
Rebates prohibited 35–715
Rights of beneficiaries 35–716
Rights of creditors of insured 35–716
Standard provisions 35–703
Lightning, application of act relating to rates 35–1402
Lloyd's, taxation 47–1801—47–1808

INSURANCE AND INSURANCE COMPANIES—Continued
Losses, reports required 35–1407
Machinery, application of act relating to rates 35–1402
Marine 35–1101—35–1133, 35–1301—35–1350
Brokers dealing with unlicensed insurers 35–1123—35–1126, 35–1334—35–1345
Bond 35–1126
Failure to obtain license, penalty 35–1123
Licensing 35–1124
Office and records to be maintained 35–1125
Brokers licensed to deal with unlicensed insurers 35–1125
"Company" defined 35–1101
Definition 35–1101
"District" defined 35–1101
"Domestic company" defined 35–1101
Immunity of witnesses 35–1129
"Insurance company" defined 35–1101
Licensing brokers to deal with unlicensed insurers 35–1124
"Marine insurance company" defined 35–1101
Penalty for violating provisions 35–1128
Production of incriminating evidence 35–1129
Rates, application of act 35–1402
"Superintendent" defined 35–1101
Superintendent's powers 35–1102
Superintendent to have special clerks 35–1130
Unauthorized insurance prohibited 35–1123
Marine Companies 35–1101—35–1133, 35–1301—35–1350
Capital stock requirements 35–1103
Classified records to be kept 35–1127
Companies exclusively writing in foreign countries 35–1122
Computation of earned premiums 35–1108
Definition 35–1101
Domestic companies
Definition 35–1101
Establishing foreign connections 35–1121
Investment of assets 35–1118
Merger 35–1120
Realty holdings 35–1119
Sale of excess realty 35–1119
Domestic mutual companies 35–1104, 35–1305, 35–1316
Advance premiums required 35–1104
Surplus required 35–1104
Domestic stock companies 35–1103
Failure to report for taxation or to pay license fee 35–1115
Foreign companies 35–1105, 35–1323—35–1326
Investments 35–1105
Requirements before doing business in District 35–1105
Kinds of insurance to be written 35–1103
Law applicable 35–1102, 35–1304
Not exempt from Federal income taxes 35–1117
Notification of amount of taxes 35–1112
Power of superintendent 35–1102, 35–1304
Reinsurance companies 35–1103
Reinsuring risks 35–1106
Report for computation of taxes 35–1112

INSURANCE AND INSURANCE COMPANIES—Continued
Marine Companies—Continued
Report upon cessation of marine insurance business 35–1114
Separate accounts for each kind of insurance 35–1103
Separate reserves for each kind of insurance 35–1103
Statement of taxes, mailing 35–1109
Statements for taxation purposes 35–1109
Superintendent computing taxes 35–1109
Syndicate B exempt from taxes and fees 35–1116
Taxation 35–1108, 47–1801—47–1808
Taxation in lieu of license fees 35–1113
Taxes on income from reserves 35–1110
Taxes on income from stock and surplus 35–1111
Unearned premium reserve 35–1107
Wagering policies illegal 35–1133
Mutual companies, taxation 47–1801—47–1808
Organizations exempted from Fraternal Benefit Associations Law 35–916
Passenger motor vehicle for hire 44–301
Premiums, fire insurance
Approval by superintendent 35–1408
Deductible in income tax returns 47–1557b
Statistical reports required by superintendent 35–1407
Rates, casualty and marine insurance
Adjustments 35–1504
Agreements, etc. 35–1506
Amendment of license 35–1506
Authority and duty of Superintendent 35–1508
Classification of risks 35–1503
Commissions or salaries 35–1503
Cooperative and concerted action authorized 35–1505
Definitions 35–1501
Deviation from filings 35–1506
Excessive rates 35–1503
Fee 35–1506
Forms of insurance covered 35–1502
Hearing grievances 35–1507
Information to be furnished by companies 35–1507
Investigations 35–1504
Judicial review 35–1510
License to operate in District of Columbia 35–1506
Losses, risks 35–1503
Making of rates 35–1503
Penalties 35–1506, 35–1509
Removal of discrimination 35–1504
Subscribers 35–1506
Supervision of rates 35–1504
Suspension or revocation 35–1506
Withholding information 35–1507
Written notice of hearing 35–1504
Rates, fire insurance
Application of act 35–1402
Approval by superintendent 35–1408
Definitions 35–1401
Exceeding those promulgated by bureau 35–1405
Records 35–1406

INSURANCE AND INSURANCE COMPANIES—Continued
Rates, fire insurance—Continued
Statistical reports required to be furnished 35–1407
Superintendent empowered to investigate 35–1403
Violation of law relating to 35–1409
Rating Bureaus
Apportionment of expense of operation 35–1404
By-laws, rules and regulations 35–1404
Consolidation of reports of experience, requirement 35–1407
Filing of deviation from requirements of superintendent 35–1405
Organization 35–1404
Powers 35–1404
Records, examination by superintendent 35–1407
Rates, schedules and proceedings 35–1406
Reports, consolidation of experience reports 35–1407
Rules, by-laws and regulations, approval by superintendent 35–1408
Reciprocal companies, taxation 47–1801—47–1808
Records
Agents, policy contracts issued 35–1406
Examination by superintendent 35–1407
Rates, schedules and proceedings 35–1406
Recovery of penalty for doing business without license 35–201
Riders, approval by superintendent 35–1408
Soliciting agent
Included in term agent 35–1401
Revocation or suspension of license 35–1340
Statistical reports required 35–1407
Stock companies, taxation 47–1801—47–1808
Superintendent defined 35–1401
Superintendent of insurance 35–101—35–108
Annual reports to be bound 35–107
Annual report to commissioners, contents 35–401
Annual valuation of life policies 35–701
Appeals from, on suspension or revocation of life agent's license 35–427
Appeal from order or ruling 35–1403
Appeals from, time limit 35–432
Appointment 35–101
Appointment as attorney for service of process 35–423
As attorney for service of process on nonresident fraternal benefit associations 35–905
Attending national conventions 35–401
By-laws, rules and regulations of rating bureau, approval 35–1404
Discretion in evaluating assets of life company 35–422
Duties 35–101, 35–102
Annual report to Commissioners of the District 35–106
Execution of insurance laws 35–102
Inquiries regarding companies' capital and assets 35–108
Keeping copies of charters 35–102

INSURANCE AND INSURANCE COMPANIES—Continued
Superintendent of insurance—Continued
Duties—Continued
Keeping copies of declarations of organization 35–102
Providing annual report forms 35–103
Employees for liquidating life companies 35–419
Enforcement of orders through corporation counsel 35–413
Examination of life companies 35–418
Examination of records of rating bureau, companies and agents 35–1407
Examining domestic life companies at least every three years 35–418
Failure to obey subpenas issued by 35–412
Filing of deviation from requirements of superintendent 35–1405
Furnishing annual report forms to life companies 35–406
Holds office at pleasure of Board of Commissioners 35–401
Issuing certificates of authority to life companies 35–404
Not to be interested in insurance company 35–401
Oath 35–401
Passenger motor vehicles for hire, powers relating to insurance 44–301
Policies to conform to requirements approved 35–1405
Power over marine insurance companies 35–1102
Power to examine companies to discover impairment or insolvency 35–201
Power to issue subpenas in examining life companies 35–412
Rates, investigation 35–1403
Records are public records 35–401
Revocation of fire company license due to impaired capital 35–201
Revocation of life company license due to impaired capital 35–201
Rules and regulations, authority 35–102
Rules and regulations under Fire and Casualty Act 35–1304
Statistical reports required of companies 35–1407
Suits to recover penalty for failure to keep stock book of domestic life companies open 35–515
Suspension of fire company license due to impaired capital 35–201
Taking possession of life companies 35–419
To mail process served on to life company 35–423
To report life companies taken over in report to Commissioners 35–419
Visiting state insurance departments 35–401
Title companies excepted from Fire and Casualty Act 35–1302
Title guaranty companies, taxation 47–1801—47–1808

INSURANCE AND INSURANCE COMPANIES—Continued
Tornadoes, application of act relating to rates 35–1402
Transportation, application of act relating to rates 35–1402
Unemployment Compensation Act, employing unit within 46–301
Warranty, approval by superintendent 35–1408
Wind storm, application of act relating to rates 35–1402
Workmen's compensation benefits exempted from income tax 47–1557b

INTANGIBLE PERSONAL PROPERTY
Situs under inheritance and estate tax laws 47–1629

INTELLIGENCE OFFICE KEEPERS
Police Department, supervisory powers 4–147, 4–148, 4–150

INTENT TO DEFRAUD
See FRAUD; FRAUDULENT CONVEYANCES

INTEREST AND USURY
See USURY
Alley-dwelling improvement loan 5–103
Interest as element of damage 28–2708
Judgments for breach of contract to bear interest from date only 28–2708
Judgments on contracts bearing higher than District rate, but lawful where made 28–2709
Judgments, when interest on principal shall be included 28–2707
Municipal Court judgments 11–724
Public contracts, sum retained out of final payment 1–807
Public Works Administration loan to District 9–213, 9–214
Rate of interest 28–2701
Express contracts 28–2702
In absence of agreement 28–2701
Judgments against District 28–2701
Judgments and decrees 28–2701
Street-improvement assessment 7–608, 7–630
Tax sale, redemption 47–1003
Usury 28–2703
Actions to recover usury paid 28–2704
Definition 28–2703
Forfeiture of all interests 28–2703
Indorsee of negotiable instrument 28–2705
Parties may be made to testify regarding 28–2706
Payments to be credited to principal 28–2705
Small loan licensees exempt 28–2703

INTERLOCUTORY ORDERS AND DECREES
Appeal to Municipal Court of Appeals for District of Columbia 11–772
Enforcement 11–326, 11–327

INTERNES
Application to practice healing arts 2–122
Dental students in hospitals 2–302
Minimum training standards, power to establish 2–103

INTERNES—Continued
Providence Hospital, authority to conduct schools for training 32–316a

INTERPLEADER
See PLEADINGS
Applicable where 13–217
Payment into court 13–217
Surety on contractor's bond paying money into court 1–804
Warehouse receipts, adverse claimants to goods 28–1910

INTERPRETATION OF INSTRUMENTS
Real property conveyances 45–201—45–205

INTERROGATORIES
Attachment and garnishment 16–303

INTERSTATE COMMERCE
Unemployment Compensation Act, applicable to services in 46–301

INTERSTATE COMMERCE COMMISSION
Carriers using facilities of Philadelphia, Baltimore, and Washington Railroad Company, fixing compensation 7–1223
Powers withdrawn, vested in Public Utilities Commission 43–207

INTERVENERS
Contractor's bond, actions on 1–804

INTOXICATED PERSONS
Public places, being in, penalty 25–128
Sales of alcoholic beverages to 25–121
Vehicles, operation of 25–127

INVENTORY
Decedents' estates 18–401

INVESTIGATIONS
Board of Public Welfare 3–118
In Juvenile Court 11–908
Municipal matters by Commissioners 1–237
Law made applicable 1–237
Oaths, power to administer 1–237

INVESTMENT OF FUNDS
General fund, etc., in United States Government Securities 47–135
Probate Court powers over 11–513

ISLAND
See THEODORE ROOSEVELT ISLAND

ISSUE
Definition, Negotiable Instruments Law 28–101

JAILS
See PRISONS AND PRISONERS
Officers and employees, corrupt conduct, penalty 22–2602

JEWELRY
Auctioneers, Police Department, supervisory powers 4–147, 4–148, 4–150

JOHN PHILIP SOUSA BRIDGE
Pennsylvania Avenue over Anacostia River 7–506

JOINDER OF COUNTS
See PLEADINGS

JOINT ACCOUNTS
See BANKS AND OTHER FINANCIAL INSTITUTIONS

JOINT COMMITTEE ON PRINTING
Directing printing, binding and distribution of Code 49–109

JOINT CONTRACTS
Death after commencement of action 16–904
Death of joint contractor, effect 16–902
Deemed joint and several 16–901
Definition 16–901
Proof of joint liability not necessary 16–905
Service on part, remainder may be sued separately 16–903

JOINT STOCK COMPANY
Unemployment Compensation Act, employing unit within 46–301

JOINT TENANTS
Action by or against for an accounting 16–101

JOINT TRAFFIC BOARD
Creation and duties 40–603
Violation of orders, penalty 43–907

JOINTURE
See DECEDENTS' ESTATES

JUDGES
See COURT OF APPEALS
Appointment of Police Court judges 11–601
Juvenile Court 11–920
Juvenile Court, retirement 11–776
Municipal Court 11–701
Municipal Court for District of Columbia 11–752—11–755, 11–771, 11–776
Municipal Court of Appeals for District of Columbia 11–771, 11–776
Police Court 11–601
Small Claims and Conciliation Branch, Municipal Court 11–803

JUDGMENTS AND DECREES
See EMINENT DOMAIN
Actions on account, judgment in 16–106
Adoption proceedings 16–203
Amendment to pleadings 13–305
Attachment and garnishment, levy on in 16–313
Condemnation of attached property 16–320
Confirming sales, decrees registered in land records 15–109
Confirming sales, decrees registered in land records
As notice 15–109
Conveyance, decree for, effect as conveyance 15–110
Dating, effect 15–104
Demurrer, judgment on, pleading 13–206
Divorce decree, effective date 16–421
Ejectment, judgment in 16–516, 16–517, 16–518, 16–524—16–526
Enforcement by Court of Equity 11–326
Execution 15–201

JUDGMENTS AND DECREES—Continued
Expiration 15–102
Final judgment on partial admission of claim 13–216
Final, Juvenile Court 11–938
Foreign judgments, limitation of actions 12–203
Interest on judgments where contract made outside District bears high rate of interest, legal where made 28–2709
Interest on principal debt, when included 28–2707
Interest rate 28–2701
Judgment docket 15–105
Contents 15–105
Judgments not docketed 15–106
Juvenile Court 11–915, 11–916
Liens 15–103
Expiration 15–103
Extent 15–103
Inferior to subsequent purchase-money mortgages 15–108
Municipal Court judgments, when docketed with District Court clerk 15–103
Recognizances in District Court, forfeited 15–103
Limitations 15–107
Extension by scire facias 15–107
Mechanics' liens 38–111, 38–120, 38–122
Money judgment or decree, assignment 28–2501
Municipal Court 11–718
Satisfaction 11–742
Stay of execution 11–748
Municipal Court for District of Columbia 11–755
Payment stays execution 15–111
Police Court, exceptions to finality 11–619
Probate Court, admission of will to probate, decree for 19–308
Enforcement by 11–516
Plenary proceedings 11–510
Quieting title obtained by adverse possession 16–1501
Reference of questions of law and fact 16–1708
Replevin 16–1812
Set-off 16–1909
Small Claims and Conciliation Branch, Municipal Court 11–811
Enforcement 11–819
Instalment payment 11–811
Judgments by default 11–805
Suffered with intent to defraud creditors 12–401
Voluntary dissolution of corporations 29–705
Wills, admitting to probate, admissibility as evidence 11–519
Decree for 11–519

JUDICIAL NOTICE
Seal of Commission on Licensure to Practice the Healing Art 2–103
Unemployment Compensation Board 46–315

JUDICIARY
See COURTS

JUDICIARY SQUARE
See COURT OF APPEALS
Heat furnished from Central Heating Plant, terms and conditions 9–103

JUDICIARY SQUARE—Continued
Public works, loan for construction of building 9–204

JUNK
Dealers, Commissioners' power to provide for inspection 1–224
Yards, abatement as nuisance 5–504

JURIES AND JURY COMMISSION
Array, challenge of, civil cases, right preserved 11–319
Criminal offenses
Collusion in drawing 22–1414
Jury box, tampering with 22–1414
Deposits on demand for jury trials, to be earned 11–722a
Eminent domain, land for streets 7–205, 7–206
Appointment from names drawn 7–205
Compensation of jurors 7–213
Drawing of names 7–205
Hearing of evidence 7–206
New jury on vacation of verdict 7–209
Oath of jurors 7–205
Objections to jurors 7–206
Vacancy in jury, power to fill 7–206
Verdict, preparation and return, content 7–206
Viewing of premises 7–206
Eminent domain proceeding, alleys or minor streets, opening, widening, or straightening 7–315
Fees
Alleys or minor streets, condemnation proceedings 7–322
Eminent domain proceedings, alleys or minor streets, condemnation proceedings 7–318
Grand jury 11–1406, 11–1408
Additional, impaneling 11–1408
Selection of foreman 11–1406
Term of service 11–1406
Impaneling juries 11–1407
Grand juries, District Court 11–1407
Juvenile Court 11–936, 11–937, 11–1407
Petit juries, District Court 11–1407
Police Court 11–1407
Vacancies, substitutions 11–1409
Jurors
District of Columbia employees 11–1421
Service in State and United States courts, salaries not to be diminished 11–1421
Service in State and United States courts, time not to be deducted from leaves of absence 11–1421
Service in State courts, compensation to be credited against salary 11–1423
Service in United States courts, not to receive compensation for 11–1422
Excused from further service 11–1410
Exemption from service 11–1420
Geographical selection 11–1402
Petit, term of service 11–1405
Qualifications 11–1417

JURIES AND JURY COMMISSION—Con.

Jurors—Continued
- Qualified, government employees 11–1420
  - Not to be paid 11–1420
  - Salaries not to be diminished 11–1420
  - Service not to be deducted from leaves of absence 11–1420
- Women as 11–1418

Jury box 11–1403, 11–1404, 11–1410, 11–1411
- Custody by District Court clerk 11–1404
- Disposition after drawing 11–1410
- Number of names for drawing 11–1411
- Placing names in 11–1403
- Sealing 11–1404
- Tampering with, penalty 22–1414

Jury commission 11–1401
- Eminent domain, land for streets, drawing of jury 7–205
- Keeping record of names in jury box 11–1411
- Membership 11–1401

Juvenile Court
- Impaneling 11–937
- Jury trial, right to 11–915, 11–919
- Term of service 11–936
- Failure to appear, penalty 11–1416

Omission of names from panel sworn in case 11–319
- List submitted by parties 11–319

Paternity cases, right to jury trial 11–945

Police Court 11–617

Police Department members, exemption from service 4–128

Review by Municipal Court of Appeals for District of Columbia of issues tried by jury 11–772

Special venire in criminal cases 11–1413

Struck jury, civil cases, United States District Court 11–319

JURISDICTION

See CRIMINAL PROCEDURE

Adoption proceedings 16–201

Assignment of wages and salaries, prosecution for 28–2505

District Court of United States for District of Columbia 11–305, 11–306

Divorce 16–416

Retention of 16–413
- To award property 16–409

Felonies of children over 16 11–914

Injunction against use of building violating fire protection regulations 5–323

Juvenile Court 11–907

Municipal Court 11–703
- Small Claims and Conciliation Branch 11–804

Municipal Court for District of Columbia 11–755, 11–756

Notaries public 1–501

Parking without consent 40–810, 40–811

Police Court 11–602

Probate Court term 11–501, 11–503

JURY COMMISSION

Eligibility for reappointment to 11–1401

JURY COMMISSIONERS

See JURIES AND JURY COMMISSION

JUVENILE COURT

Abused children, commitment 32–209

Adult 11–919
- Jury trial, when 11–919
- "Offense," definition and penalty 11–919

Appeals from 11–771

Appeals to United States Court of Appeals for District of Columbia 11–772

Application of statute 11–906

Child, subject to statute
- Committing to a National Training School 11–915
- Committing to Board of Public Welfare 11–915
- Committing to private institution, agency 11–915
- Custody of, taking 11–912
- Evidence here inadmissible elsewhere 11–915
- Examination by physician, psychiatrist, psychologist 11–926
- Probation 11–915

Children brought before by Washington Humane Society 32–209

Civil disabilities not to be imposed on child 11–915

Clerk 11–922
- Audit of accounts 11–940
- Deposit of fines, penalties, costs, forfeitures 11–939
- Duties 11–925
- Itemized statement of fines, penalties, costs, forfeitures 11–939

Commitments to National Training School for Girls 32–908

Contempt, penalty 11–933

Cooperation of agencies, institutions, societies, departments and officials 11–931

Corporation counsel, duties 11–932

Court of record 11–904

Custodian, religious faith of parent 11–918

Definitions 11–906
- "Adult" 11–906
- "Child" 11–906
- "Judge" 11–906
- "The Court" 11–906

Department of probation
- Chief probation officer, advances to by disbursing officer 41–116
- Duties and powers 11–924

Director of social work 11–922
- Duties and powers 11–923

Establishment 11–901

Feeble-minded children, providing petition for admission to District Training School 32–620

Fees prohibited 11–935

Felony by child 16 or over 11–914
- Transfer to proper court 11–914
- Waiver of jurisdiction 11–914

Guardian
- Appointment by 11–917
- Religious faith of child 11–918
- Religious faith of parents 11–918

Hearing 11–915
- General public excluded 11–915
- Informal 11–915
- Jury, when 11–915
- Parent, opportunity to be heard 11–915
- Separate for children 11–915

JUVENILE COURT—Continued
Investigation 11–908
Judge 11–920
Administering oaths 11–904
Appointment by President 11–920
Authority to take acknowledgement of deeds 45–402
Continuance in office 11–942
Filling vacancy 11–921
Judges, retirement 11–776
Judgments, final 11–938
Jurisdiction 11–907
Adults 11–907
Children 11–907
Compulsory school attendance cases 31–213
Contributing to delinquency of children 11–907
Exclusive 11–907
Guardianship 11–907
Law violations before age of 18 11–907
Original 11–907
Paternity cases 11–907
Retention of 11–907
Waiver of 11–914
Jury 11–936
Impaneling 11–937, 11–1407
In general 11–936
Notice 11–909
Oaths 11–904
Orders, power to issue 11–930
Payment of fines, penalties, costs, forfeitures 11–939
Person authorized to take bail after regular hours 23–610
Petition 11–908
Place of detention for child 11–927
Probation officers, appointment, salary 11–922
Quarters 11–928
Records 11–929
Forms 11–929
Inspection limited 11–929
Rules, power to frame and publish 11–930
Seal 11–904
Separability of statutory provisions 11–941
Statute, liberal construction 11–903
Summons 11–909
Failure to obey, contempt 11–911
May authorize immediate custody 11–909
Service 11–910
Supervisor of probation, appointment, salary 11–922
Support of child, parent to pay 11–915
Terms 11–905
Transfer from another court 11–913
Writs, power to issue 11–930

JUVENILE OFFENDERS
Antecedents investigated 3–118
Board of Public Welfare, supervisory powers 3–116
Children under 17 3–120, 3–121
Commitment to Board of Public Welfare 3–120, 3–121
Petty offenses, commitment 3–120, 3–121
Placement in suitable homes or institutions 3–120, 3–121
Females under 16, prostitution 22–2704

KALE
Sale by net weight authorized 10–115

KENO
Gaming, penalty 22–1504

KEROSENE
See Taxation and Fiscal Affairs
Motor fuel tax 47–1901—47–1919
Sale location license 47–2314
Approval of fire marshal 47–2314
Fee 47–2314
Storage license 47–2314
Approval of fire marshal 47–2314
Fee 47–2314

KEY
See Francis Scott Key Bridge

KIDNAPING
Definition, penalty 22–2101
Killing while perpetrating, murder in the first degree 22–2401

KITES
Flying, penalty 22–1117

KOSHER
Mislabeling meat as 22–3404—22–3406
Definitions 22–3405
Penalty 22–3406

LABELS
See Trade-Marks and Trade Names
Alcoholic beverage containers to be labeled for content 25–134
Bread loaf 10–113
Drugs, directions for use of on 2–614
Forgery of, penalty 22–1402
Horse meat or horse-meat products 33–501—33–503
Labor union, registration 48–401—48–403
Mattresses 6–602, 6–603
Contents 6–603
Labeling required 6–602
Narcotic drugs 33–412
False 33–420
Packages containing poison 2–601, 2–612
Prescriptions of physicians 2–612
Potatoes, mislabeling 22–3409—22–3412
"Reconstructed cream" 33–310
"Reconstructed milk" 33–310
"Skimmed milk" 33–310

LABOR
See Apprentices; Child Labor; Minimum Wage Law; Public Buildings and Works; Unemployment Compensation; Women; Workmen's Compensation
Apprentices, voluntary 36–121—36–133
Bond to secure payment of wages, public contractors 1–804
Child labor 36–201—36–227
Common carrier employers' liability act 44–401—44–405
Industrial safety 36–431—36–442
Minimum wage law 36–401—36–422
Public buildings and works, prevailing wage rate paid, exceptions 1–815
Public contracts, separate contracts for materials and for labor 1–810

LABOR—Continued
Sewer work, etc., employment 7–1237, 7–1238
Temporary employment by commissioners 7–1237
Unemployment Compensation Act 46–301—46–324
Unions, registration of union labels 48–401—48–403
Women, employment of 36–301—36–311
Work or vacation permits 36–208—36–227
Workmen's compensation 36–501, 36–502

LABOR DISPUTES
Unemployment compensation benefits affected by 46–310

LABOR ORGANIZATIONS
See LABELS
Income tax, when exempted 47–1554
Police, affiliation with, restrictions 4–125
Union labels, registration of 48–401—48–403

LABORATORY EQUIPMENT
Purchase by commissioners, exchange of similar items 1–247

LABORERS' LIEN
See LIENS

LAFAYETTE PARK
Buildings fronting, plans, approval by Commission of Fine Arts 5–410

LAGOON
Construction in Potomac Park
Authorization by Congress required 8–155
Expenditure of funds prohibited 8–155

LANDLORD AND TENANT
See EJECTMENT; LEASES; RENT CONTROL
Attornment 45–933, 45–934
Fraudulent 45–934
Unnecessary 45–933
Death of life tenant landlord, recovery of rent from under-tenant 45–921
Landlord's lien for rent 45–915
Enforcement by attachment 45–917
Fraudulent removal, conveyance or concealment of property subject, double value 45–920
Methods of enforcement 45–916
Action against purchaser with notice 45–916
Attachment 45–916
Judgment and levy 45–916
Payment before taking an execution 45–918
Leases of infants 45–927—47–930
Leases of lunatic 45–924—47–930
Married woman's power to execute lease 30–201
Notice to quit 45–901—45–906
Agreement regarding notice 45–908
Month to month tenancy 45–902
Not to be recalled 45–905
Quarter to quarter tenancy 45–902
Service of notice 45–906
Tenancy at will 45–903
Tenancy by sufferance 45–904
When unnecessary 45–901

LANDLORD AND TENANT—Continued
Possessory actions 45–909—45–914
Consolidation of actions for possession, arrears of rent and double rent 45–912
Distress not void for irregularity 45–919
Ejectment in District Court 45–910
Ejectment of married woman 45–913
Forcible entry and detainer in Municipal Court 45–910
Joinder of possession, arrears of rent and double rent 45–911
Plea of title in Municipal Court, procedure 45–914
Recovery of real and personal property leased together 45–909
Summary proceedings for possession in Municipal Court 45–910
Recovery for use and occupation 45–923
Recovery of real and personal property leased together 45–909
Recovery of rent on lease for life or lives 45–922
Refusal to quit after notice, double rent for 45–907
Rights of assignee of lessee 45–932
Rights of grantee or assignee of reversion 45–932
Surrender for new lease, effect 45–931
Termination of tenancies 45–901—45–906
Unsafe structures, building inspector making safe, liability for costs 5–503
Waste 45–1301—45–1304

LARCENY
After trust, penalty 22–2203
Building associations 26–404
Grand, definition, penalty 22–2201
Indemnity companies 26–320
Petit, definition, penalty 22–2202
Restitution, order of 22–2202
Stolen warehouse receipts, negotiation, effect 28–2011
Title companies 26–320
Trust companies 26–320
Vehicle, theft from 22-2204a

LARD
Sale by weight required 10–120

LAUNDRIES
Hand power, license 47–2317
Mechanical power, license 47–2317

LAW MERCHANT
Application to
Fiduciaries 28–2312
Negotiable instruments 28–101
Warehouse receipts 28–2201

LAW OF DESCENT
See DECEDENTS' ESTATES

LAWS AND ORDINANCES
Execution by Commissioners 1–220

LEAD
Poisonous compounds, sale, restrictions 2–612

LEAP YEAR
See COMPUTATION OF TIME

LEASES
See EJECTMENT
Alley Dwelling Authority, receipts covered into treasury 5–105a
Commissioners of District of Columbia, power of 1–244
District executing, procedure 1–214
Form 45–301
Land acquired for park or playground purposes pending need for use 8–105
Lessee, as defendant in ejectment 16–501
Lessor, as defendant in ejectment 16–501
Limitations on rentals to be paid by district 1–243
Public off-street parking facilities 40–804
Recreation Board act not to affect 8–210
Wharf property, maximum duration 9–102

LEAVES OF ABSENCE
Employees of District 1–312
Federal law made appliance 1–312
Holidays, leaves with pay 1–314
Members of Police and Fire Department excepted 1–312
Per diem employees 1–313
Public school officers, teachers and employees excepted 1–312
Fire Department members 4–408—4–410
Absence exceeding 20 days in year without pay 4–409
Emergency, cancelation 4–410
Leave in lieu of Sunday 4–410
Sick leave 4–409
Park police 4–207
Police Department, sick leave 4–180
Teachers, school officials, employees 31–632—31–637

LECTURES
Buildings for, licenses 47–2320

LEGAL HOLIDAYS
See HOLIDAYS

LEGAL SEPARATION
See DIVORCE
When ground for divorce 16–403

LEGALIZING ACTS
Alleys previously closed 7–329
Existing alleys in city of Washington 7–328

LEGATEES
See DECEDENTS' ESTATES
Meetings with next of kin 18–723

LEGATIONS
Exemptions from taxation 47–801a

LEGITIMACY
See DECEDENTS' ESTATES; WILLS
Illegitimate children 18–107, 18–716
Board of Public Welfare to safeguard welfare 3–126
Decedent's estate, distribution of 18–716
Descent, law of 18–107
Bigamous marriage 16–406
Lunatic's annulled marriage 16–407
Marriage dissolved by divorce, contesting parentage 16–408

LEGITIMACY—Continued
Not affected by absolute divorce 16–408
Paternity cases, jurisdiction, jury trials 11–907

LEGITIMATE THEATERS
See THEATRES AND SHOWS

LEVELERS
Sewers etc., employment 7–1235

LEVY
Stock certificates 28–2913, 28–2914

LEVY COURT
Records and papers made property of District 1–106

LEWDNESS
See ASSIGNATION; HOUSES OF PROSTITUTION; PANDERING; PROSTITUTION
Premises occupied for 22–2713—22–2722
Bawdy-house, keeping 22–2722
Disorderly house, keeping 22–2722
Nuisance 22–2713—22–2721
Abatement of 22–2714—22–2719
Bond for abatement 22–2719
Costs in action to abate 22–2715
Delivery of premises, order for 22–2719
Injunction 22–2714, 22–2717
Sale of property 27–2717, 22–2718
Tax for maintaining 22–2720
Witnesses, granting immunity to 22–2721

LIABILITY INSURANCE
Steam boilers 1–707
Termination, certificate invalidated 1–710

LIBEL
See BLACKMAIL
Blackmail 22–2305
Justification 22–2303
Penalty 22–2301
Publication 22–2302
Unchastity, accusing woman of 22–2304

LIBRARY BUILDING
Exemption from taxation 47–801a

LIBRARY OF CONGRESS
Federal Judges, withdrawal of books 11–102

LICENSED VENDERS
Police Department, supervisory powers 4–147—4–150

LICENSES
See ALCOHOLIC BEVERAGES; BARBERS; BOXING EXHIBITIONS; COSMETOLOGISTS; DENTISTRY; HEALING ARTS PRACTICE ACT; OPTOMETRY; PHARMACY; PODIATRY; TAXATION AND FISCAL AFFAIRS; VETERINARIANS
Abattoirs, or slaughterhouses 47–2316
Approval of director of public health 47–2316
Compliance with laws concerning location required 47–2316
Fee 47–2316
Abolition by Commissioners of the District 47–2344
Ambulances 47–2331
Amusement parks 47–2323
Fee 47–2323
Prerequisites to license 47–2302

LICENSES—Continued
Apartment houses 47–2329
Definition 47–2329
Prerequisites to license 47–2302
Without restaurant, fee 47–2329
With restaurant, fee 47–2329
Application for licenses 47–2301
Athletic exhibition grounds 47–2323
Auctioneers, fee 47–2309
Bakeries, fee 47–2327
Ballrooms, fee 47–2320
Barber and beauty shops, fee 47–2310
Baseball grounds, fee 47–2323
Bottling establishments, fee 47–2327
Bowling alleys 47–2321
Approval of major and superintendent of police required, exception 47–2321
Fee 47–2321
Boxing exhibitions, persons connected with 2–1214—2–1217, 2–1223
Buildings exempt from requirements 47–2328
Bus lines 47–2331
Application to public utilities commission 47–2331
Extension, new application required 47–2331
Tax rate 47–2331
Business licenses, general 47–2301—47–2350
Candy manufacturing establishments, fee 47–2327
Carnivals
Buildings for, fee 47–2320
Outdoor, fee 47–2326
Child-Placing Agencies 32–782
Application for 32–784
Reissuance, revocation or suspension 32–787
Circuses
Maximum fee 47–2325
Transported by railroad, fee 47–2325
Transported by wagons or trucks, fee 47–2325
Clairvoyants 47–2342
Classification of buildings containing living quarters 47–2328
Commission merchants dealing in food, fee 47–2327
Compliance with fire escape laws 47–2302
Corporations 47–1591
Creation by Commissioners of the District 47–2344
Dairies, fee 47–2327
Dance halls, fee 47–2320
Dangerous weapons, dealers in, fee 47–2340
Date and expiration 47–2305
Delicatessens, fee 47–2327
Detective agencies 47–2341
Approval by major and superintendent of police 47–2341
Fee 47–2341
Police laws applicable 47–2341
Drive-it-yourself establishments, fee 47–2332
Drivers of ambulances and passenger vehicles 47–2331
Drivers of sight-seeing buses 47–2331
Badge, display 47–2331
Fee 47–2331
Record in department of vehicles and traffic 47–2331
LICENSES—Continued
Drivers of taxicabs and hacks 47–2331
Badge, display 47–2331
Fee 47–2331
Record in department of vehicles and traffic 47–2331
Druggists, apothecaries and patent-medicine sellers, fee 47–2308
Dry cleaning or dyeing establishments, fee 47–2317
Electricians 1–244
Exemption of entertainments for church or charity 47–2320
Exhibition buildings, fee 47–2320
Explosive storage and sale establishments 47–2314
Fairs
Buildings for, fee 47–2320
Outdoor, fee 47–2326
Food products generally, fee 47–2327
Football grounds, fee 47–2323
Fortune tellers 47–2342
Garages, fee 47–2334
Gas-fitters 2–1406
Gasoline stations 47–2314
Approval of fire marshal required 47–2314
Fee 47–2314
General License law 47–2301—47–2350
Construction 47–2307
Definitions 47–2307
Grocery stores, fee 47–2327
Guides 47–2338
Approval of major and superintendent of police 47–2338
Badges 47–2338
Examinations 47–2338
Fee 47–2338
Gun dealers 47–2340
Approval of major and superintendent of police 47–2340
Fee 47–2340
Regulations 47–2340
Hauling vehicles operating from public space, fee 47–2333
Hawkers, fee 47–2336
Hotels 47–2328
Fee 47–2328
Prerequisite to license 47–2302
Ice cream manufacturing establishments, fee 47–2327
Kerosene storage and sale establishments 47–2314
Approval of fire marshal required 47–2314
Fee 47–2314
Laundries 47–2317
Lecture halls, fee 47–2320
Livery stables 47–2335
Lodginghouses 47–2330
Definition 47–2330
Fee 47–2330
Prerequisites to license 47–2302
Market stands handling food, fee 47–2327
Massage and bath establishments, fee 47–2311
Mattresses 47–2318
Definition 47–2318
Manufacturing or renovating, fee 47–2318
Storing or selling, fee 47–2318

LICENSES—Continued
Meat shops, fee 47–2327
Mediums 47–2342
Motion picture film storage establishments 47–2313
Approval of fire marshal required 47–2313
Fee 47–2313
Motor vehicle rental establishments, fee 47–2332
Motor vehicle repair establishments, fee 47–2334
Notaries public 1–501
Outdoor signs 1–232
Palmists 47–2342
Passenger vehicles for hire 47–2331
Phrenologists 47–2342
Pistols, carrying concealed pistols 22–3204
Place of business 47–2304
Plumbers 1–244, 2–1406
Posting 47–2306
Prerequisites 47–2301, 47–2302
Professional licenses, general 47–2301—47–2350
Public bath establishments, fee 47–2312
Pyroxylin storage establishments, fee 47–2315
Regulations for, by Commissioners of the District 47–2345
Restaurants 47–2327
Definition 47–2327
Fees 47–2327
In apartment houses, separately owned 47–2329
Routed passenger vehicles without rails or tracks 47–2331
Secondhand dealers 47–2339
Definition 47–2339
Fee 47–2339
Purchase of stolen goods, revocation 47–2339
Separate license for each business, etc 47–2304
Separate license for each trade or profession 47–2304
Service stations 47–2334
Shooting galleries 47–2322
Fee 47–2322
Requirements 47–2322
Skating rinks, fee 47–2320
Slot machines, fee 47–2319
Soda fountains, fee 47–2327
Soft drink establishments, fee 47–2327
Solicitors, house to house 47–2337
Application, contents 47–2337
Bond 47–2337
Definition 47–2337
Fee 47–2337
Soothsayers 47–2342
Steam and other operating engineers 2–1501—2–1507
Suspension of
Cosmetologists 2–1304
Dentists 2–311, 2–312
Healing Arts, license to practice 2–123
Conviction of felony, appeal, effect 2–131
Plumbers 2–1405
Swimming pools, fee 47–2324
Taxicabs and hacks 47–2331
Fee 47–2331
Identification tags 47–2331
Regulation by public utilities commission 47–2331
LICENSES—Continued
Theatres 47–2303, 47–2320
Compliance with fire and building laws 47–2303
Legitimate or burlesque, fee 47–2320
Motion picture, fee 47–2320
Theatres, punishment for violating license regulations 1–224a
Trade licenses, general 47–2301—47–2350
Transfer forbidden 47–2304
Undertakers 47–2344a
Venders 47–2336
Badges 47–2336
Fee 47–2336
From vehicles, tags 47–2336
Sellers of own produce in markets or at wholesale exempted 47–2336
Waiver of fees of persons in military service 1–244
Weapons, carrying concealed weapons 22–3204
Wholesale fish and sea food dealers, fee 47–2327

LIENS
See JUDGMENTS AND DEGREES; TAXATION AND FISCAL AFFAIRS
Alleys or minor streets, condemnation proceedings, assessments 7–321
Artisans 38–124—38–126
Enforcement by bill in equity 38–126
Enforcement by sale 38–125
Right to lien 38–124
Assessments for curbs and gutters 7–612a
Benning Bridge, cost of construction, street railway 7–514
Certificate of delinquent personal taxes 47–1406
Contractors' liens 38–101—38–126
Executions 15–206
Expiration of judgment lien 15–103
Garage keepers 38–201—38–203
Enforcement by bill in equity 38–203
Enforcement by sale 38–202
Right to lien 38–201
Hospitals 38–301—38–305
Failure to pay hospital, liability 38–303
Hospital lien docket 38–305
Notice of lien 38–302
Contents 38–302
Right to inspect hospital ledgers 38–304
Hotel and lodging houses 34–103—34–105
Insanitary buildings, remedying condition at public expense 5–607, 5–614
Judgments and decrees as liens 15–103
Judgments of Municipal Court 11–718
Laborers 38–103—38–122
Landlord's lien for rent 45–915—45–920
Enforcement 45–916, 45–917
Property subject 45–915
Liverymen 38–201—38–203
Enforcement by bill in equity 38–203
Enforcement by sale 38–202
Right to lien 38–201
Materialmen's liens 38–101—38–126
Mechanic's lien on personal property 38–124—38–126

LIENS—Continued
Mechanics, materialmen and contractors 38–101—38–126
Contractor not preferred to subcontractor 38–112
Decree against sureties 38–120
Decree of sale 38–111
Distribution of proceeds of sale 38–113
Enforcement 38–110
Entry of satisfaction 38–117
Extent of ground bound 38–116
Fixtures 38–101
Judgment for deficiency upon a sale 38–122
Notice of intent to hold 38–102
On wharves and lots 38–123
Payment into court, release 38–118
Penalty for failure to enter satisfaction 38–117
Persons employed by contractors 38–103
Priority of lien 38–109
Property liable 38–101
Recording 38–102
Several buildings 38–114
Subcontractor, materialmen, laborers 38–103
Advance payments by owner to contractor, effect 38–108
Conditions 38–104
Entitled to know terms of contract 38–107
Not entitled to personal judgment against owner, exception 38–121
Notice to owner 38–105
Owner's duty 38–106
Preferred to contractor 38–112
Right to lien 38–103
Time for commencement of suit 38–115
Undertaking for release from lien 38–118
Undertaking to discharge liens before suit 38–119
Motor vehicles
Appropriations 40–715
Assignment 40–708
Entry and recording 40–708
Entry where certificate is not available 40–709
Form and requirements 40–708
Effect of liens not entered on certificate of title 40–702
Entry by Recorder on certificate of title 40–703
Entry of lien
On application for certificate of title 40–706
On certificates previously issued 40–707
Entry of lien shown as application for certificate, procedure 40–706
False statements as to, penalty 40–714
Fee for recording or release 40–712, 40–712a
Instrument creating, form and requirements 40–704
Place and method of recording 40–713
Possession of certificate 40–710
Priority of liens 40–703
Prior liens 40–702
Recording fees 40–712, 40–712a
Requirements for entry on certificate of title 40–704
Satisfaction 40–710, 40–711
LIENS—Continued
Motor vehicles—Continued
To be kept in director's office 40–705
Violation of law, penalty 40–714
Motor vehicles and trailers 40–701—40–715
Negotiable instrument, lienor holder for value 28–204
Preference not affected by assignments for benefit of creditors 28–2606
Seller's lien, negotiable warehouse receipts issued 28–2013
Sewer connections made at public expense, cost taxed against premises 6–404
Stock certificate 28–2915
Street and other public improvement assessment under permit system 7–608
Street improvement assessment 7–622
Streets, opening, widening, or extending, assessments for benefits 7–211
Unemployment compensation contributions 46–304
Unsafe structures and excavations, removal or correction at public expense 5–503, 5–504
Viaducts, construction over railway and canal rights of way 7–502
Warehouseman's lien 28–1921—28–1930
Charges and expenses giving rise to lien 28–1921
Charges prior to storage, noting on negotiable receipts required 28–1924
Goods subject to lien 28–1922
Loss of lien 28–1923
Negotiable receipts issued, subsequent charges 28–1924
Other remedies not precluded 28–1926
Remedies for enforcing 28–1929
Right to hold goods until lien satisfied 28–1925
Sale of goods to satisfy lien 28–1927
Third person satisfying 28–1927
Weeds on property, cutting at public expense 6–902

LIEUTENANTS
Fire Department 4–404
Salary 4–405
Park police 4–202
Police department 4–106, 4–108

LIFE ESTATES
See Estates
Parks, grantor of land reserving limited interest for life 8–103

LIFE INSURANCE
See Insurance and Insurance Companies
Alien life companies 35–601, 35–602
Beneficiaries' rights under policies 35–716
Creditors' rights under policies 35–716
Domestic life companies 35–501—35–540
Foreign life companies 35–601
Life insurance act 35–301—35–803

LIGHT WINES
Defined 25–103

LIGHTNING INSURANCE
Rates, application of act 35–1402

LIGHTS
See STREET LIGHTING
Bridges, lighting of 7–501
Fire protection 5–317—5–323
Power to maintain outside city limits 1–234
Streets, lighting of 7–701—7–710

LIMITATION OF ACTIONS
Absence of defendant, statute tolled 12–205
Action stayed, statute tolled 12–206
Actions to recover usury paid 28–2704
Common Carrier Employers' Liability Act 44–404
Contractor's bond, action on 1–804
Decedents' estates, suits against 12–202
Disabilities, extension for 12–201
Discretionary pleading, to creditors' claims in decedents' estates 18–515
District of Columbia, defendant 12–208
  Notice of injury 12–208
  Police report as notice 12–208
Executor's or administrator's bond 12–201
Foreign judgments 12–203
Instruments under seal 12–201
Judgments and decrees 15–101
Negligence causing death 16–1202
Personal property 12–201
  Detention of 12–201
  Recovering 12–201
Probate Court jurisdiction 11–512
Property damage 12–201
Real property, recovering 12–201
Simple contract 12–201
Statutory penalty or forfeiture 12–201
Tax refund 1–903
Tolling of statute 12–201
  Absence of defendant 12–205
  Action stayed 12–206
  Disabilities 12–201
Torts to person 12–201
United States real plaintiff, no bar when 12–204
Wills, effect on debts in 12–207
Wrongful death 16–1202

LIMITATION OF HOURS
Laborers and mechanics on public works 22–3407, 22–3408
  Penalty 22–3408

LIMITED PARTNERSHIPS
See PARTNERSHIPS

LIQUID MEASURE
Standard measure, dimensions 10–119

LIQUOR
See ALCOHOLIC BEVERAGES

LITERATURE
Corporations for 29–601

LIVERY STABLES
License 47–2335
Lien 38–201, 38–203

LIVESTOCK
Dairy inspector acting as inspector of 6–116
Garbage, use in feeding live stock 6–503

LOAN ASSOCIATIONS
See BUILDING ASSOCIATIONS

LOAN SHARK LAW
See PETTY LOANS

LOANS
See PETTY LOANS

LOCK-OUTS
Unemployment compensation benefits affected by 46–310

LOCOMOTIVES
Ashes and cinders, accumulations prohibited 6–801
Endangering passage of, penalty 22–3119
Exemption from Boiler Inspection Act 1–709
Noisome odors prohibited 6–801
Smoke Prevention Law 6–801—6–804

LODGING-HOUSES
See FIRE ESCAPES AND SAFETY PROVISIONS; HOTELS AND LODGINGHOUSES
Definition 5–312
Fire escapes and safety provisions 5–301—5–315
Nonfireproof building, limitation on height 5–401

LONG BRIDGE
Draw in bridge, duty to maintain 7–508
Maintenance cost, payment of 7–508
Tugboats passing under without use of draw, construction requirements 7–509
Use by other railroad companies 7–508

LOST INSTRUMENTS
Protest of lost or destroyed bill of exchange 28–936
Stock certificates 28–2917
Warehouse receipts 28–1907
  Bond to protect warehouseman, goods delivered 28–1907
  Delivery of goods under order of court 28–1907

LOST PROPERTY
Adverse claims to 4–156
Police Department records, open to public inspection 4–135
Police registry book 4–134
Property clerk made custodian 4–152
  Record kept, contents 4–153
Property clerk of Police Department, duties 4–155

LOTS
See BUILDING LINES; PLATS; SUBDIVISIONS
Sewer and water-main connections 6–401—6–404

LOTTERIES
Complaints, right of entry, searches and seizures 4–145
Destruction of property seized 4–146
Duty of Commissioners to enforce laws concerning 4–119
Prosecution of persons arrested 4–146
Tickets 22–1501—22–1503
  Permitting sale on premises 22–1503
  Possession of 22–1502
  Selling 22–1501

LOUISE HOME
Property exempted from taxation 47–805

LOW-COST HOUSING
Alley dwellings, slum-clearance projects 5–103—5–105

LUNACY
See INSANE PERSONS
Ground for annulment of marriage 16–403, 30–104
"Lunatic" includes every idiot, non compos and insane person 49–207
Proceeding in lunacy cases 21–307

LUTHER STATUE ASSOCIATION
Property exempted from taxation 47–812

LYE
Concentrated lye, sale, regulation 2–601

MACHINERY INSURANCE
Application of act relating to rates 35–1402

MAIL
Affidavit of mailing copy of publication 13–111
Depositing notice of dishonor in post office, effect 28–717, 28–718
Eminent domain, assessment of land no part of which taken, notice 7–221
Fire escapes and safety provisions, requiring construction, service of notice 5–310
Notice
Amount of real estate tax 47–1001a
Owners of tax exempt properties 47–801f
Notices of dishonor 28–720
Addresses to which sent 28–720
Mailing, time limit 28–715, 28–716
Order closing public ways, service 7–404

MAJOR AND SUPERINTENDENT OF POLICE
See POLICE DEPARTMENT; SUPERINTENDENT OF POLICE

MALE ORPHAN ASYLUM SOCIETY
Deed of transfer to Columbia Institution for the Deaf 31–1003

MALICIOUSLY DISFIGURING
Penalty 22–506

MALL PARK SYSTEM
Buildings fronting, plans, approval by Commission of Fine Arts 5–410

MANDAMUS
Appeal, bond 16–1010
Compelling the filing of personal property tax schedules 47–1209
Corporation failing to publish annual report 29–214
Costs
Judgment for defendant 16–1007
Judgment for petitioner 16–1006
Defendant's answer, contents, verification 16–1003
Defendant's default 16–1008
Denial of writ 16–1009
Granting of writ 10–1008
Enforcement of inheritance and estate taxes 47–1620
Granting writ 16–1006

MANDAMUS—Continued
Jury trial may be required 16–1006
Petition, contents and verification 16–1001
Pleadings and proceedings 13–320, 16–1004
Rule to show cause, service 16–1002
Trial 16–1005
Use by Public Utilities Commission 43–204

MANICURIST
Definition 2–1301
Limited certificate under Cosmetologists Law 2–1309

MANSLAUGHTER
Punishment 22–2405
Vehicle, includes negligent homicide 40–607

MANUSCRIPTS
Stealing or injuring, penalty 22–3106

MAPS
District opening and closing alleys on own lands 7–312
Permanent highway plan 7–109
Preservation by surveyor 1–606
Property of District 1–106
Zoning Commission maps, copy filed with Engineer Commissioner 5–421
Zoning regulations, amendment 5–415—5–417, 5–420
Board of Adjustment prohibited from amending 5–420
Submission to Advisory Council 5–417

MARINE CORPS
Children of officers and men stationed outside District, admission to schools without tuition 31–305
Free tuition of children of men in military service 31–305

MARINE ENGINEERS
Fire Department 4–404
Salary 4–405

MARINE FIREMEN
Fire Department 4–404
Salary 4–405

MARINE INSURANCE
See INSURANCE AND INSURANCE COMPANIES
Definitions 35–1101, 35–1303
Domestic mutual marine companies 35–1104
Domestic stock marine companies 35–1103, 35–1314, 35–1316
Foreign marine companies 35–1105

MARINE PRODUCTS
Wholesale dealers, license 47–2327

MARKERS
Highway boundaries 7–105
Employees to receive no compensation in addition to salaries 47–128
Farmers produce market 10–137
Charges for use of space 10–136, 10–137
Control and regulation by Commissioners of District 10–137
Location 10–136, 10–137
Fish wharf and market 10–135

MARKERS—Continued
Investigation of sale, distribution or prices of commodity by superintendent of market 10–130
Regulations by commissioners 10–130
Rents, fees and income payable to collector of taxes 47–128
Supervision by superintendent of weights, measures, and markets 10–130
Wholesale producers market 10–136
Charges for space, collection, maximum amount 10–136
Disposition made of receipts 10–136
Location 10–136

MARKS
See Trade Marks and Trade Names
Pay roll, signing by mark, witnesses 1–315

MARRIAGE
See Abatement and Revivor; Annulment; Divorce; Husband and Wife
Annulment 30–102—30–105
Authority to celebrate 30–106, 30–107
Celebration by unauthorized person prohibited 30–107
Celebration without license, penalty 30–108
Colored persons married by customary practices, legitimacy of children for property rights 30–117
Contracts in consideration of marriage, effect of statute of frauds 12–302
Duress of female, penalty 22–2705
Illegal marriage entered into outside District, by residents of District, is void 30–105
License to marry 30–108—30–114
Application 30–110
Certificate to contracting parties, form 30–112
Consent of parent or guardian, when required 30–111
Failure to make return, penalty 30–113
Form 30–112
Issuance 30–109
Perjury in securing 30–110
Prerequisites to issuance 30–110
Return, form 30–112
Persons authorized to perform 30–106
Prohibited marriages 30–101
Declared void ab initio 30–101
Decrees declaring void 30–102
Previous marriage, effect on 30–101
Record 30–114
Records transferred from Health Department 30–115
Slave marriages validated 30–116
Unauthorized person performing, penalty 30–107
Validity of, suit to determine 16–422
Voidable marriages 30–102
Idiot or lunatic 30–103
Non-age 30–103
Physical incapacity 30–103
Procured by force or fraud 30–103
Widow of tenant in common 16–1303
Wife of tenant in common 16–1304

MARRIED WOMEN
See Husband and Wife; Marriage
Acknowledgment of, notary's power to take 1–511
Depositions of, notary's power to take 1–511
Oaths of, notary's power to administer 1–511
Power to act as feme sole 30–201, 30–208

MARSHAL
Absentees' and absconders' estates, warrant 20–702
Alleys or minor streets, condemnation proceedings, fee 7–318
Charge of Police Court Jury 11–618
Dating writs of execution 15–207
Fees and costs 11–1510
Fees and fines collected by, apportionment between District and United States 11–330
Levy on property held, in attachment and garnishment 16–313
Restoring possession of United States property 11–1104
Service
Charges against attorney 11–775
Process of Municipal Court of Appeals for District of Columbia by 11–774

MARYLAND
Agreement with District for use of sewers 1–817
Payment of share of cost 1–817
Land for park purposes, acquisition by District 8–102
Laws adopted for District, recovery of penalties 13–222

MASSACHUSETTS AVENUE
Naval Observatory grounds, public street 7–121

MASSAGE ESTABLISHMENTS
Exemption from Healing Arts Practice Act 2–134
License 47–2311
Approval by major and superintendent of police 47–2311
Fee 47–2311
Unlawful acts enumerated 47–2311

MATERIA MEDICA
Dentist, examination for license 2–308
Podiatry license examination 2–705

MATERIALMEN
Bond to secure payment of claim, public contract 1–804
Public contracts, separate contracts for materials and labor 1–810

MATERIALMEN'S LIENS
See Liens

MATERNITY AND INFANCY
See Midwifery
Blindness in infants, prevention 6–201—6–204
Inflammation of eyes, notice given, treatment 6–202, 6–203
Penalty for violating law 6–204
Prophylactic, provision for 6–201

MATRONS
Police Department 4–116—4–118
Duties in general 4–117
Number appointed 4–116
Qualifications 4–118
Recommendation for appointment required 4–118

MATTRESSES
Definition of terms used 6–601, 47–2318
Guaranty of manufacturer 6–604
Health officer, duty to administer law 6–606
Labels 6–602, 6–603
Contents 6–603
False labels prohibited 6–602
Selling without label prohibited 6–602
Manufacturers and renovators 6–602
Mattresses composed of second-hand material, selling or giving away, restrictions 6–602
Mattress used by individual having infectious or contagious disease 6–602
Mattresses from sanitarium or hospital, renovation prohibited 6–602
Nonresident manufacturers, prosecution 6–604
Removing or concealing label prohibited 6–602
Right of entry to inspect places of business 6–607
Second-hand material, use by manufacturer prohibited 6–602
Selling, exchanging, or giving away mattress used in hospital or by individual having communicable disease prohibited 6–602
Manufacturing establishment license 47–2318
Penalties for violating regulatory law 6–605
Regulations under Mattress Law, powers of Commissioners 6–606
Renovating establishment license 47–2318
Sale location license 47–2318
Seizure and destruction of unlawful mattresses 6–608
Storage license 47–2318
Violations of law, reporting and investigation of 6–607

MAYHEM
Definition, penalty 22–506
Killing while perpetrating, murder in the first degree 22–2401

MEANING OF WORDS
See DEFINITIONS

MEASURES
See WEIGHTS, MEASURES, AND MARKETS

MEASURING DEVICES
Sale or interest in sale by superintendent of weights and measures prohibited 10–125

MEAT
See KOSHER
Meat shop license 47–2327
Sale by weight required 10–120

MECHANICS' LIENS
See LIENS
Lien law 38–101—38–126

MEDALS
Police and Fire Departments, awards for meritorious service 4–701—4–704

MEDICAL AND DENTAL COLLEGES
Application for registration and permit 31–902
Colleges not incorporated by special act of Congress only 31–901
Injunction to restrain operation of unregistered colleges 31–904
Issuing degrees 31–901
Jurisdiction of District Court in injunction proceedings 31–904
Penalty for failure to register and obtain permit 31–903
Permit for Commissioners of the District required 31–901
Registration with Board of Commissioners, required 31–901
Regulations regarding applications 31–902
Repeal provisions 31–905

MEDICAL APPLIANCES
Leaving in streets or public places prohibited 2–615

MEDICAL SOCIETIES
Exemption of buildings from taxation 47–801a

MEDICAL TREATMENT
Civilian defense members 6–1009

MEDICATED BATH ESTABLISHMENTS
License 47–2311
Approval by major and superintendent of police 47–2311
Fee 47–2311
Unlawful acts enumerated 47–2311

MEDICINE AND OSTEOPATHY
See HEALING ARTS PRACTICE ACT
Basic sciences, knowledge of required 2–110
Board of Examiners 2–106, 2–109, 2–110
Certification of qualified applicants for license to commission 2–109
Chairman 2–106
Examination of applicants for license 2–106, 2–109, 2–114—2–117
Examination of paper of applicants for license 2–109
Membership 2–109
Number 2–109
Qualifications 2–106, 2–109
Requirements as to 2–109
Reference of applicants for license to board 2–106, 2–110
Secretary 2–106
Term of office 2–106
Compounders subject to druggist license 47–2308
Deceased indigent, distribution of bodies among schools and boards 2–203—2–207
Allotment among schools 2–203
Bond given by schools 2–204
Dispensers subject to druggist license 47–2308

MEDICINE AND OSTEOPATHY—Continued
Examination as basis for issuing license 2–122
Educational requirements 2–122
Proof required of applicant 2–122
Reciprocity as basis of issuing license 2–121
Relicensing of licensees under prior law 2–120

MEDIUMS
See FORTUNE TELLERS

MEMORIAL FOUNTAIN
Police Department members, acceptance and maintenance authorized 4–901

MERCHANDISE
See SALES; STATUTE OF FRAUDS
Conveyance in fraud of creditors 12–401

MERCHANT MARINE
Motor vehicle operator's permit 40–301

MERCURY
Poisonous compounds, sale, restrictions 2–612

MERGER
Employing unit under Unemployment Compensation Act 46–303

MERIDIAN HILL PARK
Appropriations for maintenance and improvement 8–112
Part of park system of District 8–112

MESNE PROFITS
See EJECTMENT

MESSENGER
Court of Appeals 11–204

METALLURGY
Dentist, examination for license 2–308

METROPOLITAN POLICE
See POLICE DEPARTMENT

METROPOLITAN POLICE FORCE
Band 4–182—4–184
Credit for military service 4–504a
District boxing commission, member of 2–1210
Seniority rights and rank of member serving in armed forces 4–902, 4–903
Use of private vehicles by inspectors 4–108a

MICHIGAN AVENUE
Abandoned portion, transfer in part to United States Soldiers' Home 7–129
Plat showing relocation, preparation and recordation 7–130
Relocation, lands transferred to United States Soldiers' Home 7–127
Street railway company given easement 7–131
Transfer of title to abandoned portion 7–129, 7–130
United States Soldiers' Home, vacation of part of grounds authorized 7–128

MICHIGAN AVENUE VIADUCT
Closing of grade crossing 7–520, 7–522
Construction authorized 7–520
Division of costs between District and Baltimore and Ohio Railroad 7–520
Use by street railway company, payment of share of cost 7–521

MIDWIFERY
See HEALING ARTS PRACTICE ACT
Applicants for license, examination of 2–114—2–117
Birth reports 6–301—6–304
Blindness in infants, preventative treatment 6–201—6–204
Board of Examiners 2–106, 2–113
Examination as basis for issuing license 2–122
Educational requirements 2–122
Proof required of applicant 2–122
Reciprocity as basis for issuing license 2–121
Relicensing of licensees under prior law 2–120

MILESTONES
Removing, penalty 22–3106

MILITARY
See MILITIA
Free tuition for children of men in military service, etc 31–305
Jury service, exemption, exceptions 11–1420
Police Department members, exemption 4–128
Unemployment compensation benefits after termination of service 46–307

MILITARY SERVICE
Certificates of discharge, recording 45–711
Fees for licenses and permits, waiver of payment by persons in 1–244
Motor vehicle operator's permit of person engaged in 40–301

MILITIA
Active military duty 39–601—39–608
Camp duty 39–607
Causes for excuse from duty 39–604
Drills, parades, encampments 39–601
Drills prescribed 39–602
Interference with militia during 39–606
Leave of absence of Government employee guardists 39–608
Military offenses during, effect 39–601
Parades to have right-of-way 39–605
Rules for parades and encampments 39–606
Subject to superior officers during 39–601
Suppression of riots 39–603
Immunity from liability for acts 39–603
Ordering out militia 39–603
Annual inspections 39–515
Annual muster 39–515
Armament, equipment and supplies 39–501—39–517
Accounting 39–501
Annual inspection 39–515
Armories and their equipment 39–514
Death or desertion of accounting officer 39–509
Duties of surveying officer 39–509
Defective accounts on transfer of property 39–508
Duties of surveying officer 39–508
Desertion of accounting officer 39–509

MILITIA—Continued

Armament, equipment and supplies—Con.
Determining value of lost equipment 39–503
Distinctive uniforms 39–512
Failure to transfer property 39–507
Appointment of surveying officer 39–507
Issued property remains property of United States 39–501
Liability of officer or his estate until accounts are found correct 35–510
Liability of officer's estate for lost, injured or destroyed property 39–511
Officers' liability for return of equipment 39–504
Ordnance, clothing, stores, medicine, issuance 39–501
Penalty for conversion 39–505
Penalty for selling or pawning 39–505
Personal liability for equipment 39–503
Purchase of supplies 39–517
Regulations for reissue 39–502
Transfer of property on promotion, retirement or dismissal 39–506
Uniforms, arms, and equipment, issuance 39–501
Armories and their equipment 39–514
Assessors to list persons liable to enrollment 39–103
By-laws of companies, battalions, regiments 39–903
Commander-in-chief 39–112
Commissioned officers 39–201—39–213
Appointment 39–206
Appointments to grade of second lieutenant 39–209
Commanding general 39–201
Appointment by President 39–201
Tenure 39–201
Date of commissions 39–902
Dismissal, basis for 39–214
Duties 39–901
Examination for promotion 39–210
Honorable discharge, basis for 39–214
Oaths 39–206
Retirement
Basis for 39–213
Obligations after retirement 39–213
Privileges after retirement 39–213
Special capability examination 39–212
Board of examination to conduct 39–212
Failure to appear or pass, certificate to President 39–212
Staff corps officers 39–207
Staff department officers 39–207
Staff officers 39–202
Vacancies above grade of second lieutenant, filling 39–208
Courts-martial 39–701—39–709
Compulsory attendance of non-guard witnesses 39–707
Courts of inquiry 39–701, 39–702
Designation and duties 39–701
District Court Marshal to execute warrants 39–709
General courts-martial 39–701, 39–703
Jurisdiction 39–704
Limits of punishment 39–704

MILITIA—Continued

Courts-martial—Continued
General courts-martial—Continued
Ordered by President or commanding general 39–703
Jurisdiction to be presumed 39–706
Prosecution of members prohibited 39–705
Sentences, execution by District Court Marshal 36–708
Special courts-martial 39–701
Summary courts-martial 39–701
Warrant for arrest of absent accused 39–709
Witnesses, not members of guard 39–707
Compulsory attendance 39–707
Nonresidents 39–707
Self-incriminating evidence not compellable 39–707
Enlisted personnel 39–401—39–405
Discharge, classification 39–403
Discharge without honor, grounds 39–404
Dishonorable discharge, grounds 39–405
Enlistment contract and oath 39–402
Extension of terms in event of emergency 39–401
National Guard enlistment period 39–401
Enrolled militia 39–104, 39–105
Duties 39–104
Ordering into service 39–105
Enrollment 39–101
Assessors to list persons liable 39–103
Persons excepted 39–101, 39–102
Persons exempted 39–102
Persons subject 39–101
Examinations
For promotion of officers 39–210
For promotion to second lieutenant 39–211
For staff corps officers 39–207
For staff department officers 39–207
Special examination concerning officer's capability 39–212
Immunity of guardsmen from civil or criminal prosecution for acts in discharge of duty 39–705
Miscellaneous provisions 39–901—39–906
National Guard 39–106—39–906
Companies below minimum strength, disbanding or consolidating 39–111
Organization 39–107
Units to be maintained, prescribed by President 39–107
National Guard Reserve Corps 39–108
Naval battalion not affected by militia laws 39–906
Noncommissioned officers 39–301
Appointment 39–301
Discharge of men enlisted as 39–301
Reduction to ranks 39–301
Noncommissioned staff 39–202
Organizations may own personal property 39–513
Organizations may sue for injuries to personal property 39–513
Organized militia 39–106
Composed of volunteers 39–106
Designated as National Guard 39–106
Parades to have right-of-way, exceptions 39–605

MILITIA—Continued
Pay and allowances 39–801—39–806
Annual estimates to be included in District estimates 39–805
Deductions for lost property 39–806
For active service 39–801
General expenses of militia 39–802
Musicians 39–803
Officers' clothing 39–806
Subsistence while on duty 39–804
President to be commander-in-chief 39–112
Regulations, company, battalion, regimental rules 39–903
Regulations of commanding general 39–905
Rules for parades and encampments 39–606
Staff corps officers 39–207
Staff department officers 32–207
Staff officers 39–202
Adjutant-general 39–202
Army officer may be detailed as 39–204
Major's ranking 39–202
Retired army officer may be detailed as 39–204
Chief engineer, a major 39–202
Chief of ordnance, a major 39–202
Commissary-general, a major 39–202
Four aides-de-camp, captains 39–202
Inspector-general, a major 39–202
Inspector-general of rifle practice, a major 39–202
Judge-advocate general, a major 39–202
Qualifications 39–203
Quartermaster-general, a major 39–202
Surgeon-general, a major 39–202
Tenure 39–203
Vacancies 39–203
System of discipline and field exercise 39–904
Use of appropriations and fines 39–806
Washington Barracks, use of 39–516

MILK AND MILK PRODUCTS
See FOOD AND DRUGS
Adulteration, expenditure for detectinig 33–111
Milk and cream, standard container 10–114
Milk-beverage containers, registration 48–301—48–307
Milk containers, registration of trade marks and trade names 48–201—48–211
Milk, cream, and ice cream 33–301—33–322
Application of regulations to States shipping into District 33–321
"Certified milk" defined 33–313
"Cream" defined 33–313
Dealers to post names of suppliers 33–309
Definitions 33–313
Factory license 47–2327
General distributors to keep list of suppliers 33–309
Grade to be labelled 33–314
"Ice cream" defined 33–313
Ice cream parlor, license 47–2327
Illegal importation, seizure, destruction 33–306
Importation of inspected products 33–304
Inspectors, limit on automobile allowance 33–322

MILK AND MILK PRODUCTS—Continued
Milk, cream, and ice cream—Continued
Interference with health officer 33–316
Licensed deliverers to receive only from licensed shippers 33–318
Milk-beverage containers, registration 48–301—48–307
Milk containers, registration of trade marks and trade names 48–201—48–211
"Milk" defined 33–313
Milk trucks and wagons, name of owner 33–308
Names of shippers to be posted in receiving stations 33–317
Names of suppliers to be posted 33–317
Pasteurization under direction of director of public health 33–315
"Pasteurized" defined 33–313
"Pasteurized milk" defined 33–313
Penalty for violating sections 33–301—33–319
Pure, clean and wholesome only 33–301
"Raw milk" defined 33–313
"Reconstructed cream" defined 33–313
"Reconstructed cream" to be labelled 33–310
"Reconstructed milk" defined 33–313
"Reconstructed milk" to be labelled 33–310
Requirements for dairies 33–302, 33–303
Restrictions on sales and use before and after parturition 33–311
Rules and regulations to protect supply, publication 33–307
"Skimmed milk" defined 33–313
"Skimmed milk" to be labelled 33–310
Standards 33–313
Standards for sale 33–314
"Pasteurized" defined 33–313

MINARETS
Height, fireproof construction 5–405

MINERAL WATER
Bottles for, registration 48–101
Unauthorized use of registered bottles, penalty 48–102

MINIMUM WAGE AND INDUSTRIAL SAFETY BOARD
Name of former Minimum Wage Board changed to 36–401, 36–402
Permit allowing employment of females for longer period than eight hours issued by 36–301

MINIMUM WAGE LAW
Action on conference report by board 36–411
Appeals from board on questions of law 36–416
Approval of Conference report 36–411
Hearings 36–411
Publication of notice of hearing 36–411
Authority of board 36–407
"Board" defined 36–401
Civil action to recover minimum wage 36–421
"Commissioners" defined 36–401
Conference on inadequate wages 36–409
Appointment of members 36–409
Report of findings 36–410
Separate inquiries 36–414
Decisions of facts by board final 36–416

MINIMUM WAGE LAW—Continued
Definitions 36–401
Determining minimum wages for minors 36–413
Discrimination against employee who testifies, penalty 36–418
Employers responsible for violations by their agents 36–419
Hearings before board 36–404
Investigations into compliance with standards 36–415
Jurisdiction in police court 36–420
Licenses to work for less than minimum 36–412
Minimum wage board 36–402
Annual report 36–406
Members 36–402
Name changed to Minimum Wage and Industrial Safety Board 36–401, 36–402
Officers 36–403
"Minor" defined 36–401
"Occupation" defined 36–401
Penalties for violations 36–417
Regulations made by board 36–405
Standards of wages to be declared 36–408
Title and purpose 36–422
"Woman" defined 36–401

MINISTERS
See CLERGY

MINOR STREET
Definition

MINORITY
Disability removed for purposes of veterans loans 45–1701

MINORS
See CHILD LABOR; CHILDREN; EMINENT DOMAIN; GUARDIAN AND WARD; JUVENILE COURT; JUVENILE OFFENDERS; PARENT AND CHILD
Adoption 16–201—16–207
Alcoholic beverages
Misrepresenting age to obtain, penalty 25–130
Sales to, penalty 25–121
Boys under 17, commitment to National Training School for Boys 32–815
Child labor 36–201—36–227
Civil disabilities, not to suffer 11–915
Cosmetologists, minimum age 2–1308
Custodians of children 11–918
Detention home, committing to 11–912
Examination by psychologist or physician in Juvenile Court 11–926
Exchange of property 21–209
Executor or administrator, right to act as 20–102
Girls under 18, custody of Association for Works of Mercy 32–101
Guardians ad litem, appointment 13–105
Guardianships 21–101—21–130
Infant mortgagee, conveying 45–608
Infant trustee, conveying 45–608
Insanitary buildings, ownership, condemnation, appointment of guardian 5–609
Juvenile Court jurisdiction 11–907
Lease of infant's estate, consent 21–211
Leases 45–927—45–930

MINORS—Continued
Marriage, when consent of parent or guardian required 30–111
Married women under 21, sale or conveyance of property 30–201
Mortgage of infant's estate 21–212
Necessaries, Uniform Sales Act 28–1102
Negotiable instrument, indorsement, effect 28–123
Pharmacist, minimum age 2–602
Poisons, sale to minors under 18
Prohibited 2–601
Restricted 2–612
Private institution, committing to 11–915
Property subject to encumbrances 21–202
Property subject to executory contract 21–203
Religious faith considered in placements 11–918
Sale of infant's principal 21–201
Sale of partial estate in particular property 21–210
Sale of property held jointly or in common 21–213
Sale or exchange of infant's realty 21–204
Bill to be filed 21–204
Decree 21–207
Disposition of proceeds 21–208
Parties 21–205
Proof 21–206
Terms of sale 21–208
Sales to under Uniform Sales Act 28–1102
Service of process 13–105
Statute of frauds, ratification of promise to pay 12–306
Suits by next friend 21–117
Work or vacation permits 36–208—36–227
Work permits 36–207a

MISCELLANEOUS TRUST FUND DEPOSITS
Employments authorized by commissioners 7–1238

MISDEMEANORS
Assisting child to leave institution 3–127

MISPRISIONS
By jailers, penalty 22–2602

MISREPRESENTATION
See FRAUD

MISSIONARY ASSOCIATIONS
Incorporation 29–601

MISTAKE
Cancellation of negotiable instrument, effect, burden of proof 28–805
Stock certificate, transfer of 28–2906, 28–2907, 28–2918
Warehouse receipts, negotiation, effect 28–2011

MISTAKES IN PLEADINGS AND PROCEEDINGS
See PLEADINGS
Jurisdiction mistaken, transfer of cause 13–215
Mistake in pleadings, as cause for reversal 13–310

MONEY
Executions on money 15–211

MONEY LENDING
See PETTY LOANS

MONOPOLY
Cooperative association operations 29–842

MONROE STREET VIADUCT
Use by street railway, payment of share of cost 7–510

MONTGOMERY COUNTY, MARYLAND
Garbage incinerators of District, use, terms and conditions 6–511

MONTROSE PARK
Appropriations for maintenance and improvement 8–113
Part of park system of District 8–113

MONUMENTS
Theodore Roosevelt Memorial 8–166

MORAL TURPITUDE
Ground for
Divorce 16–403
Legal separation 16–403

MORPHINE
See NARCOTIC DRUGS
Exempted medical preparations 33–410
Included in term "opium" 33–401
Sale by manufacturer or wholesaler, written orders 33–405
Sale, prescription 2–610, 2–611

MORTGAGE LOAN COMPANIES
See BANKS AND OTHER FINANCIAL INSTITUTIONS

MORTGAGES
See EJECTMENT
Acknowledgment 45–601
Conveyance by non compos mentis mortgagee 45–620
Deficiency decree in personam on sale of property 45–616
Ejectment by mortgagee, release on payment into court 45–605
Ejectment, mortgagee's failure to pay rents and costs in 16–532
Estate of mortgagee, construing 45–603
Execution 45–601
Expense and commission on sale 45–618
Foreclosure
Decree without hearing on motion of defendant 45–606
Defenses against 45–612
Form 45–301
Infant mortgagee, conveyance by 45–608, 45–609
Joint mortgagees, survival of title and trust 45–604
Married woman's right to execute 30–201
Mortgaged goods, removing from District, penalty 22–1209
Mortgagee
Decease, appointment of trustee 45–611
May redeem prior mortgage 45–610
Takes qualified fee simple 45–603
Negotiable instruments secured by 28–106
Payment into court, when not permitted 45–607
Prior mortgage, redemption by subsequent mortgagee 45–610
Recording 45–601
Redemption by subsequent mortgagee 45–610

MORTGAGES—Continued
Release after death of mortgagee 45–619
Release on payment into court after suit 45–605
Replacement of deceased trustee 45–613
Stock, warranty by mortgagee accepting payment of debt 28–2912
Terms of sale of property 45–615

MOTION PICTURE THEATERS
License
Fee 47–2320
Prerequisites 47–2302
Revocation of, for violation of decency regulations 47–2303

MOTIONS
See PLEADINGS
Municipal Court for District of Columbia, power to prescribe form 11–756
Municipal Court of Appeals for District of Columbia, form prescribed by 11–774

MOTOR CARRIERS FOR HIRE
Power to fix rates 1–222, 1–223

MOTORCYCLES
See MOTOR VEHICLES

MOTOR FUEL
Licenses for sale and storage locations 47–2314
Approval of fire marshal 47–2314
Fee 47–2314

MOTOR FUEL TAX
Accepting fuel without itemized statement, liability for tax 47–1908
"Commissioners" defined 47–1902
Construction 47–1914, 47–1915
Personal property tax on motor vehicles not affected 47–1915
Public hackers license law not affected 47–1914
"Construction" defined 47–1902
Definitions 47–1902
Disposition of paving revenue 47–1918
"Distributor" defined 47–1902
Distributors 47–1905
Rendition of invoice except on retail sales 47–1905
Exported fuel, exempted from tax 47–1909
Fuel not used for motor vehicles, refund of tax 47–1910
"Highways" defined 47–1902
"Importer" defined 47–1902
Importers 47–1903
Application for license, contents 47–1903
Bond 47–1903
Failure to make monthly report, additional amount 47–1903
Inspection of records 47–1907
License required 47–1903
Monthly report, contents and verification 47–1904
Rendition of invoice except on retail sales 47–1905
Revocation of license 47–1903
Time for tax payment 47–1906
"Improvement" defined 47–1902

MOTOR FUEL TAX—Continued
Invoice requirements 47–1905
"Maintenance" defined 47–1902
Monthly report of fuel sold 47–1904
"Motor vehicle" defined 47–1902
"Motor vehicle fuels" defined 47–1902
Payment 47–1906
"Person" defined 47–1902
Proceeds used for roadways 47–1917—47–1919
Assessments for such roads, continuation 47–1917
Continuing charge for uncompleted projects 47–1919
Disposal of assessment proceeds 47–1918
Prosecution of violators 47–1913
Rate 47–1901
"Reconstruction" defined 47–1902
Refunds 47–1910
Application for, time limit 47–1910
Grounds for refunds 47–1910
Payment by collector of taxes 47–1910
Refund account 47–1910
Regulations and fines 47–1916
Sales by United States agencies 47–1912
Special account 47–1901
Street paving assessments 47–1917
Uncompleted paving projects 47–1919
Use of proceeds 47–1901
Expenses of director of vehicles and traffic 47–1901
Expenses of police control of traffic, limitation 47–1901
Public highways, construction and maintenance 47–1901
Violations, penalty 47–1911

MOTOR VEHICLE PARKING AGENCY
Compensation of members 40–809
Creation, membership, etc. 40–805

MOTOR VEHICLES
See MOTOR FUEL TAX; PASSENGER MOTOR VEHICLES FOR HIRE; PUBLIC OFF-STREET PARKING FACILITIES
Abandoned vehicles, accumulation, abatement as nuisance 5–504, 5–505
Accident, fleeing from scene of 40–609
Ambulance, licenses 47–2331
Appointment of director of vehicles and traffic 40–603
Appropriations for inspection facilities 40–203
Cars involved in accidents, garagemen to report 40–611
Civilian defense, responsibility during use 6–1009
Congressional tags 40–603
Appropriations for expenses 40–603b
Consent of owner of property to parking or storing 40–810
Dealers' Registration 40–102
Definitions 40–101
Dealer 40–101
Director 40–101
Farm tractor 40–101
Motor vehicle 40–101
Owner 40–101
Person 40–101
Pneumatic tire 40–101
Public highway 40–101
Trailer 40–101
Department of Vehicles and Traffic
Employee to be known as Registrar of Titles and Tags 40–603a
Record of sight-seeing bus drivers 47–2331
Record of taxicab and hack drivers 47–2331
Director of vehicles and traffic
Attorney for service of process for nonresident owners of vehicles operated in District 40–403
Furnishing certificate of operating record, fee 40–406
Use of motor fuel tax proceeds for expenses 47–1901
District of Columbia Traffic Act
Citing 40–601
Definitions 40–602
Driving while drugged or drunk 40–402
Evidence in prosecutions for parking without consent 40–810
Exemption from judicial process 15–401
Failure to pay accident judgments within 30 days, need for financial proof 40–403
Federal Works Administrators, parking regulations 40–811
Foreign bond forfeiture in drugged or drunken driving case 40–402
Foreign conviction for driving while drugged or drunk, need for financial proof 40–402
Government property, parking on 40–810, 40–811
Hire for construction in maintenance of sewers, etc. 7–1238
Impounding vehicle parked without consent 40–810, 40–811
Inspection 40–201—40–207
Appropriations for facilities for inspections 40–203
Fee 40–201, 40–204
Government owned vehicles exempt from fee 40–204
Payment of inspection fee to collector 40–202
Regulations, Commission's authority 40–207
Uninspected vehicles, refusal of registration 40–205
Unsafe vehicles, refusal of registration 40–205
Insurance, application of act relating to rates 35–1402
Intoxicated persons, operation by 25–127
Joint board 40–603
Creation 40–603
Reference of regulations regarding public utilities to 40–603
Jurisdiction for parking without consent 40–810, 40–811
Leaving scene of accident in foreign jurisdiction, conviction, bond forfeiture 40–402
Leaving scene of personal injury accident, conviction, bond forfeiture 40–402
Liens, certificate to be mailed to holder of first lien 40–706

MOTOR VEHICLES—Continued
Liens on motor vehicles and trailers 40–701—40–715
Absence of liens to be shown on certificate 40–706
Appropriations 40–715
Assignment 40–708
Certificate to holder of first lien 40–708
Entry and recording 40–708
Entry where certificate is not available 40–709
Form and requirements 40–708
"Certificate" defined 40–701
Collection of fees on entry 40–706
Definitions 40–701
"Director" defined 40–701
Effect of liens not entered on certificate of title 40–702
Entering on certificate 40–702
Entry by Recorder on certificate 40–703
Entry of liens
On application for certificate 40–706
On previously issued certificate 40–707
Shown on application, procedure 40–706
Entry where certificate is not available 40–709
False statements as to, penalty 40–714
Fee for recording or release 40–712, 40–712a
Instruments creating, form and requirements 40–704
"Instrument" defined 40–701
"Lien" defined 40–701
"Lien information" defined 40–701
Manner of entry on certificate of title 40–703
"Owner" defined 40–701
"Person" defined 40–701
Place and method of recording 40–713
Possession of certificate 40–710
Priority of liens 40–703
Prior liens 40–702
"Recorder" defined 40–701
Recording fees 40–712
Requirements for entering on certificates 40–704
Satisfaction 40–710, 40–711
Duties of lienee 40–710
Duty of Recorder 40–711
Where certificate is lost 40–711
To be kept in director's office 40–705
To be shown on application for certificate 40–706
Violations of law, penalty 40–714
Loitering by public cabs 40–617
Milk trucks 33–308
Motor fuel tax 47–1901—47–1919
Motor vehicles for hire, Employers' Liability Act 44–401—44–405
Nonresidents, operation in District equivalent to appointment of director as attorney for service of process 40–403
Operators' permits 40–301—40–303
Age restriction 40–301
Applications 40–301
Denial 40–301
Review 40–302
Examination 40–301
MOTOR VEHICLES—Continued
Operators' permits—Continued
Fee 40–301
Learners permit; extension 40–301
Military service, persons in 40–301
New permit after revocation 40–302
Nonresidents' exemption 40–303
Examination, when required 40–303
Penalty for violation 40–303
Operation of dual control vehicles 40–301
Penalty 40–301
Penalty for operating without permit 40–301
Period for which issued 40–301
Period of permit 40–301
Permit for government-owned vehicles 40–301
Revocation and suspension 40–302
Nonresidents' right to drive in District 40–302
Operating after revocation or suspension, penalty 40–302
Review 40–302
Owners' Financial Responsibility Act 40–401—40–416
Agency of operator of vehicle used for civilian defense 6–1009
Causes for suspension of operators' permit and registration 40–402, 40–403
Certificate of operating record, director to furnish 40–406
Coverage of liability policy 40–412
Definitions 40–412, 40–413
Evidence of ability to respond in damage, director to furnish to injured persons 40–407
Exemption of those required by law to make other provisions for damages 40–410
"Motor-vehicle liability policy" defined 40–412
Need for responsibility proof 40–402
Convicted of drugged or drunken driving, in or out of District 40–402
Conviction for leaving scene of accident, in or out of District 40–402
Failure to pay judgments in accident cases within thirty days 40–402
Forfeiting bond in drugged or drunken driving case, in or out of District 40–402
Judgments and orders to be certified to Commissioners of District 40–402
Nonresident owners 40–402, 40–403
Operation in District equivalent to appointment of director as attorney for service of process 40–403
Unsatisfied judgment, proof of financial responsibility 40–403
Withdrawal of privilege of operating car, unsatisfied judgment 40–403
Plaintiff not prevented from using other processes 40–415
Police to obtain suspended certificates and return to director 40–408
Proof for chauffeur or member of owner's family 40–402
Proof of ability to respond in damages 40–404
Bond of surety company as 40–404
Certificate of insurance carrier as 40–404

MOTOR VEHICLES—Continued
Owners' Financial Responsibility Act—Con.
Proof of ability to respond in damages—Continued
Commissioners may cancel or return after 3 years 40–409
Deposit of $11,000 with District Court clerk as 40–404
Effect of failure to replace canceled or expired insurance or bond 40–405
Forgery, penalty 40–411
Individual sureties' bond as 40–404
Notice to Commissioners of cancellation of insurance or bond 40–405
Substitution of types of proof 40–409
Proof of ownership prima facie evidence of operators' authority from owner 40–403
Proof to be submitted to Commissioners of District 40–402
Return of suspended certificates to director required, penalty 40–408
Rules and regulations, Commissioners of District to make 40–414
Satisfaction of judgment, what constitutes 40–403
Saving clause on constitutionality 40–416
Service of process on non-resident owners 40–403
Traffic laws not repealed 40–401
Parking 40–804, 40–810, 40–811
Zoning Commission's power to require facilities 5–413
Parking meters 40–616
Parking space, reservation for congressmen 40–604
Parks, regulations, enforcement by director 8–109
Passenger motor vehicles for hire, insurance required 44–301
Passenger vehicles for hire, licenses 47–2331
Penalty for unauthorized use 22–2204
Public-owned vehicles
Application of provision to District of Columbia 40–503
Fire and police motor vehicles not to be transferred to other branches of government 40–504
Marking 40–501
Vehicles for personal or official use, restrictions 40–502
Purchase by commissioners, exchange of similar item 1–250
Reckless driving, conviction 40–402
Registrar of titles and tags 40–603a
Registration 40–101—40–105
Application 40–102
Application to show liens 40–706
Authority of Commissioners of District 40–102
Certificate 40–102
"Dealer" defined 40–101
Definitions 40–101
"Director" defined 40–101
Expiration 40–102
"Farm tractor" defined 40–101
Fees, classification and use of proceeds 40–103
Identification tags 40–102
"Motor vehicle" defined 40–101

MOTOR VEHICLES—Continued
Registration—Continued
Operating while registration is revoked, penalty 40–206
Operating while registration is suspended, penalty 40–206
Operation without registration prohibited, exceptions 40–102
Other tax requirements not affected 40–105
"Owner" defined 40–101
Permitting operation while registration is suspended or revoked 40–206
"Person" defined 40–101
"Pneumatic tire" defined 40–101
Power of Commissioners to make rules and regulations not affected 40–105
Prohibited acts 40–104
False statements in registration 40–104
Operation of motor vehicle or trailer without certificate of registration or tags 40–104
Owner permitting unlawful operation 40–104
Penalties 40–104
"Public highway" defined 40–101
Refusal to register uninspected or unsafe vehicles 40–205
Suspension and revocation, uninspected or unsafe vehicles 40–205
Tags not to be issued until tax is paid 47–1210
"Trailer" defined 40–101
Regulation of traffic 40–601—40–617
Rental agency license 47–2332
Repair establishment, license 47–2334
Service of process on nonresident owners 40–403
Service stations, license 47–2334
Smoke Prevention Law 6–801—6–804
Storage on property of another 40–810, 40–811
Taxation 47–1210
Taxicabs, insurance required 44–301
Theft from 22–2204a
Title certificate 40–603
Issuance 40–603
Revocation 40–603
Excise tax on issuance 40–603
Appeal from assessment 40–603–1
Traffic regulations 40–601—40–617
Accident, fleeing from scene of 40–609
Commissioners authorized to make 40–603
"Commissioners" defined 40–602
"Court" defined 40–602
Definitions 40–602
Director of vehicles and traffic 40–603
"District" defined 40–602
Driving while drunk 40–609
Joint board, reference to 40–603
Loitering by public cabs, penalty 40–617
"Motor vehicle" defined 40–602
Negligent homicide, manslaughter 40–606, 40–607
"Park" defined 40–602
Parking meters 40–616
Park traffic not affected 40–613
"Persons" defined 40–602
"Public highway" defined 40–602

MOTOR VEHICLES—Continued
Traffic regulations—Continued
Repeal and saving clauses, traffic act 40–614
Saving clause an amendment 40–609
Separability clause, Traffic Act 40–615
Smoke screen device, use or possession of 40–610
Speeding 40–605
"Traffic" defined 40–602
"Vehicle" defined 40–602
Unauthorized use, penalty 22–2204

MOVING PICTURE SHOWS
Inspection, fees fixed by Commissioners 5–316

MOVING VANS
License 47–2333
Stands 47–2333

MUNICIPAL ARCHITECT
Construction of municipal buildings, superintendent 1–306
Duties 1–306
Repair and improvement of District-owned buildings 1–306

MUNICIPAL BUILDING
Policeman, detailing as watchman prohibited 4–111

MUNICIPAL CENTER
Acquisition of land authorized, location 9–201
Buildings on grounds, rental 9–202
Streets and alleys, closing authorized 9–201

MUNICIPAL CORPORATIONS
District of Columbia 1–102

MUNICIPAL COURT
See ATTACHMENT AND GARNISHMENT
Appropriations 11–777
Assistant clerk
Power to administer oaths 11–712
Signing clerk's name, form 11–711
Attachment 11–733
Claim against property 11–745—11–747
Docketing, trial 11–745
Judgment 11–746
Replevin 11–747
Trial of right to property, notices 11–744
Clerk
Appointment and tenure 11–708
Assistant 11–708, 11–711
Bond 11–701, 11–709
Court to prescribe further duties 11–714
Docket to be kept 11–713
Fees, in charge of 11–710
Judgments, to furnish copies 11–713
Power to administer oaths 11–712
To sign process 11–711
Unclaimed funds 11–710
Contempt, penalties 11–740
Costs, paupers 11–720
Court of record 11–702
Deposits for jury trial, when earned 11–749
Docket, contents 11–713
Equitable defenses in actions at law 13–214
Executions 11–724

MUNICIPAL COURT—Continued
Fees, payable into Treasury 47–126
Forcible entry and detainer 11–735—11–739
Inferior Court of District 11–101
Insane criminals 24–301
Interest on judgments 11–724
Judges 11–701
Appointment by President 11–701
Apportionment of business 11–706
Authority to take acknowledgment of deeds 45–402
Certification of cases to Small Claims and Conciliation Branch 11–810
Deaf and dumb persons, reporting to the president of Columbia Institution for the Deaf 31–1015
Issuing warrants returnable to police courts 11–705
Number 11–701
Oath 11–701
Qualifications 11–701
Record of warrants 11–705
Transfer to Police or Juvenile Courts 11–707
Warrants 11–705
Judgments 11–718, 11–724
Docketing in District Court clerks's office 11–718, 11–743
Execution 15–209
Stay of execution, rules 11–748
Jurisdiction 11–703
Limitations 11–703
Trespass where title is in issue 11–704
Jurors 11–716
Additional 11–716
Compensation 11–716
How drawn 11–716
Jury trial 11–715
Conduct 11–715
Right to 11–715
Marshal, deputy, assignment of 11–721
Municipal Court for the District of Columbia, now known as 11–751
Nonresident plaintiffs 11–719
Security for costs, motion to require 11–719
Security for costs unnecessary 11–719
Nonresident witnesses 11–741
Affidavit showing material knowledge 11–741
Commission to examine 11–741
Written interrogatories to be filed 11–741
Paupers, costs 11–720
Payment of money into court 11–734
Power to make rules 11–722
Power to set fees and costs 11–722
Process, service 11–748
Quarters 11–701
Replevin 11–725—11–732
Affidavit 11–725
Declaration, form of 11–725
Defendant not found, publication 11–727
Measure of damages for defendant 11–732
Measure of damages for plaintiff 11–731
Motion for return of property 11–730
Pleading, not guilty or special plea 11–728
Property not found, procedure 11–726
Quashing writ 11–729

MUNICIPAL COURT—Continued
Replevin—Continued
Renewal of writ 11–726
Retention by marshal 11–729
Return of property 11–729
Undertaking 11–725
Sufficiency of 11–729
Satisfaction of judgment, receipt of plaintiff 11–742
Seal 11–702
Small claims and conciliation branch 11–801
Action, how commenced 11–805
Appeal from judgment 11–772
Arbitration 11–804
Conciliation 11–804
Definitions 11–802
Branch 11–802
Clerk 11–802
Court 11–802
Judge 11–802
Disposal of actions 11–808
Docket, separate 11–806
Enforcement of judgments 11–819
Fees and costs, waiver 11–807
Fees barred 11–804
Hearing, date of 11–805
Judges 11–803
Judgment 11–811
Judgment by default, when 11–805
Judgment for wages 11–812
Jurisdiction 11–804
Limitations 11–804
Jury trials, assignment to regular branches 11–818
Notice 11–805
Pre-trial settlement 11–808
Procedure 11–808
Record, clerk to keep 11–813
Rules of practice 11–814
Rules of procedure 11–815
Saving clause 11–820
Service 11–805
Sessions 11–816
Set-off or counterclaim, effect of pleading 11–809
Statement of claim, form and verification 11–805
Stay of execution 11–811
Installment payment 11–811
Vacating 11–811
Writ of error to United States Court of Appeals 11–817
Summons, forcible entry and detainer 11–735
Trial by court 11–717
Exemptions 11–717
Findings, general, special 11–717
Witnesses, attendance compelled 11–740

MUNICIPAL COURT FOR DISTRICT OF COLUMBIA
Administrators, exclusive jurisdiction of actions against 11–755
Amount or value in controversy 11–755
Appeals from 11–771, 11–772
Appeal to United States Court of Appeals for District of Columbia 11–772

MUNICIPAL COURT FOR DISTRICT OF COLUMBIA—Continued
Appropriations for Police Court or Municipal Court 11–754
Assistant probation officers 11–754
Attendance of witnesses, power to compel 11–756
Attorney General, report to 11–754
Attorneys, disbarment or suspension of 11–775
Branches 11–755
Assignment of judges to 11–754
Certifying action by District Court of United States for the District of Columbia 11–756
Charges against attorneys 11–775
Chief judge 11–752
Calling retired judge to perform services 11–776
Disability or disqualification 11–754
Power and duties 11–754
Salary 11–753
Civil actions, jurisdiction of 11–755
Clerk
Appointment and removal 11–754
Charges against attorney filed with 11–775
Chief judge's report filed with 11–754
Fee for copying judgment 11–755
Powers and duties 11–754
Record of case pending in District Court of United States for District of Columbia sent to 11–756
Salary 11–754
Commissioners of District of Columbia, report to 11–754
Consolidation of courts to form 11–751
Contempt of court 11–756
Counterclaims and crossclaims 11–755
Criminal branch 11–755
Appeals from 11–772
Service of process 11–755
Deposits for jury trials 11–722a
Disobedience of orders 11–756
Docketing judgments 11–755
Employees 11–754
Exclusive jurisdiction 11–755
Executors, exclusive jurisdiction of actions against 11–755
Fiduciaries, exclusive jurisdiction of actions against 11–755
Forms, power to prescribe 11–752, 11–756
Judges 11–752—11–754
Appointment 11–752
Assignment to act as judge of Municipal Court of Appeals for District of Columbia 11–771
Assignment to branches and sessions 11–754
Illness or disability of retired judge 11–776
Meetings 11–754
Nonresidents appointed as 11–753
Number 11–752
Oath 11–753
Police judges to be judges of 11–752
Powers and duties 11–754, 11–755
Qualifications 11–753
Removal 11–753
Report 11–754
Retirement 11–776
Salary 11–753

MUNICIPAL COURT FOR DISTRICT OF COLUMBIA—Continued
Judges—Continued
Term of office 11–752, 11–753
Vacations 11–754
Judgments 11–755
Motions, power to prescribe form 11–756
Pleadings, power to prescribe form 11–756
Police Court now known as 11–751
Probation officer 11–754
Process
Power to prescribe form 11–756
Service of 11–755
Reporter's fees for transcripts 11–754a
Rules of practice and procedure 11–756
Salaries of judges, officers and employees 11–754
Seal 11–752
Service
Charges against attorney 11–775
Process 11–755
Sessions, number and time of holding 11–754
Small claims and conciliation branch, law establishing not effected 11–756
Witnesses, power to compel attendance 11–756
Writs, power to prescribe form 11–756

MUNICIPAL COURT OF APPEALS FOR DISTRICT OF COLUMBIA
Allowance of appeal 11–772, 11–773
Appointment of judge or clerk 11–771
Appropriations 11–777
Assignment of judge to Municipal Court for District of Columbia 11–771
Attorneys, disbarment or suspension of 11–775
Briefs 11–772
Chief judge 11–771
Calling retired judge to perform services 11–776
Contempt, power to punish 11–774
Cost of printing records and briefs 11–772
Creation and establishment 11–771
Criminal cases, allowance of appeal 11–772
Decisions reviewable 11–772
Denial of appeal as affirmance 11–772
Deputy clerk 11–771
Disobedience of orders 11–774
Disqualification or disability of judges 11–771
Dissolution of attachment, appeal from 11–772
Facts, review of 11–772
Final orders or judgments, appeals from 11–772
Forms prescribed by court 11–774
Illness of retired judge 11–776
Interlocutory orders, appeals from 11–772
Judges 11–771, 11–776
Jury trial, review of matters of law on 11–772
Juvenile Court, appeals from 11–771
Law and facts, review of 11–772
Marshal to serve process 11–774
Motions, forms prescribed by court 11–774
Municipal Court for District of Columbia, appeals from 11–771, 11–772
Number of judges 11–771
Oath of judges 11–771
Petition for allowance of appeal to United States Court of Appeals 11–773
Pleadings, forms prescribed by court 11–774

MUNICIPAL COURT OF APPEALS FOR DISTRICT OF COLUMBIA—Continued
Possession of property, appeals from orders 11–772
Preferred case on appeal 11–772
Printing records and briefs 11–772
Process, forms prescribed by court 11–774
Qualification of judges 11–771
Quorum of judges 11–771
Record of grant of appeal 11–772
Record on appeal 11–772
Removal of judge, clerk or deputy clerk 11–771
Retirement of judges 11–776
Rules of court 11–772, 11–774
Salaries
Judges, clerk and employees 11–771
Retired judge 11–776
Seal 11–771
Service
Process 11–774
Small claims and conciliation branch, allowance of appeal from 11–772
Term of office of judges 11–771
Time for
Application for appeal 11–772
Filing petition for allowance of appeal to United States Court of Appeals 11–773
Filing transcript of record in Court of Appeals 11–773
Transcript of record to Court of Appeals 11–773
United States Court of Appeals, appeal to 11–773
Vacancy of office of judge 11–771
Writs, forms prescribed by court 11–774

MUNICIPAL FISH WHARF AND MARKET
See Fish Wharf and Market

MUNICIPAL LODGING-HOUSE
See Charitable Institutions

MUNICIPAL ORDINANCES AND REGULATIONS
Admissibility in evidence of certified copy 14–406
Jurisdiction of Police Court 11–602
Orders of Public Utilities Commission take precedence 43–209
Sale and exchange of copies 49–110

MUNICIPALITY OF THE DISTRICT OF COLUMBIA
See respective subject headings

MURDER
See Manslaughter
First degree 22–2401, 22–2402, 22–2404
Obstructing train or trolley, killing by 22–2402
Perpetrating or attempting to perpetrate certain crimes 22–2401
Poison, killing through 22–2401
Premeditated malice, killing with 22–2401
Punishment 22–2404
Second degree 22–2403, 22–2404
Punishment 22–2404

MUSIC
Corporations for 29–601

MUTUAL IMPROVEMENT SOCIETIES
Incorporation 29–601

MUTUAL SAVINGS BANKS
See Banks and Other Financial Institutions
Excise tax 47–1703

MUZZLES
Dogs, power of Commissioners to require muzzling 1–230

NAMES
See Assumed Name
Adoption proceedings, names given in 16–205
Change of 16–1101—16–1103
By charitable, educational, and religious associations 29–604
Decree 16–1103
Notice, publication 16–1102
Petition, contents 16–1101
"Cooperative", use of in 29–837
Corporations, change of name 29–103
Highways, power of Commissioners to name or rename 7–106, 7–107
Jury box, names in 11–1411
Maiden or prior name restored in divorce decree 16–414
Misspelling on negotiable instrument 28–314
Mutual fire, casualty, and marine insurance companies 35–1328
Partnership, use of in 41–117, 41–119
Pleadings, use in 13–203
Reciprocal fire, casualty, and marine insurance companies 35–1328
Signing by mark 1–315
Streets and other ways, changing of 7–106, 7–107
Trade names 48–101—48–403

NARCOTIC DRUGS
See Food and Drugs
Administering, unauthorized, is unlawful 33–402
Apothecaries to keep prescribed records 33–411
"Apothecary" defined 33–401
Authorized uses 33–407
"Board of Pharmacy" defined 33–401
Board of Pharmacy to license manufacturers 33–403
Board of Pharmacy to license wholesalers 33–403
"Cannabis" defined 33–401
"Coca leaves" defined 33–401
Compounding, unauthorized, is unlawful 33–402
Construction of statute 33–425
Control, unauthorized, is unlawful 33–402
Conviction of violating narcotic law, notice to licensing board 33–418
Corporations exempted 33–415
Definitions 33–401
"Dentist" defined 33–401
Dentists to keep prescribed records 33–411
"Dispense" defined 33–401
Dispensing, unauthorized, is unlawful 33–402
Disposal of forfeited drugs 33–417
Divulging record information 33–419
Enforcement 33–422
Exempted preparations, conditions 33–410
False or forged labels, orders or prescriptions 33–420

NARCOTIC DRUGS—Continued
False personation in procuring 33–420
"Federal Narcotic Laws" defined 33–401
"Hospital" defined 33–401
Information divulged to physician in obtaining, not privileged communication 33–420
Inspection of records 33–419
Introducing into penal institutions 22–2603
Labels 33–412
"Laboratory" defined 33–401
"Lawful possession" defined 33–406
Licenses, qualifications 33–404
"Manufacturer" defined 33–401
Manufacturers to be licensed 33–403
Manufacturers to keep prescribed records 33–411
Manufacturer, unauthorized, is unlawful 33–402
"Narcotic drugs" defined 33–401
Obtaining unlawfully 33–420
"Official written order" defined 33–401
"Opium" defined 33–401
Paregoric 33–410
Penalties 33–423
"Person" defined 33–401
Persons exempted 33–415
"Physician" defined 33–401
Physicians to keep prescribed records 33–411
Places where drug addicts resort or purchase declared common nuisances 33–416
Possession by individual, when authorized 33–413
Possession, unauthorized, is unlawful 33–402
Prescribing, unauthorized, is unlawful 33–402
Prescriptions not to be refilled 33–408
Professional use, return of unused drugs 33–409
Prosecutions 33–421
Barred by acquittal under Federal narcotic laws 33–424
Barred by conviction under Federal narcotic laws 33–424
Exceptions, burden of proof on defendant 33–421
Excuses, burden of proof on defendant 33–421
Exemption, burden of proof on defendant 33–421
Proviso, burden of proof on defendant 33–421
Provisions severable 33–425
Record of forfeited drugs 33–417
Records, keeping, form and preservation 33–411
"Registry number" defined 33–401
Rules and regulations 33–405
Sale, barter or exchange without written order 33–405
"Sale" defined 33–401
Sale on written orders, vendees 33–406
Sales by apothecaries 33–408
Saving clause on unconstitutionality 33–425
Search warrants 33–414
Suspension and revocation of licenses 33–404
Unauthorized sales declared unlawful 33–402
Uniform law 33–401—33–425
Unlawful acts 33–402
Use of official written orders 33–405
Vendors of exempted preparations to keep prescribed records 33–411
"Veterinarian" defined 33–401
Veterinarians to keep prescribed records 33–411

NARCOTIC DRUGS—Continued
"Wholesaler" defined 33–401
Wholesalers to be licensed 33–403

NATIONAL ACADEMY OF SCIENCES
Exemption from taxation 47–801a

NATIONAL AIRPORT
See AIRPORT

NATIONAL BANKS
See BANKS AND OTHER FINANCIAL INSTITUTIONS
Excise tax 47–1701

NATIONAL CAPITAL PARK AND PLANNING COMMISSION
See PARKS AND PLAYGROUNDS
Abandonment or readjustment of streets, approval of plat 7–113
Abolition of National Capital Park Commission 8–101
Acquisition of land for park and playground purposes 8–102—8–106
Alley dwellings, slum-clearance plans and plats, approval 5–104
Annual report to Congress 8–107
Budget estimate 8–107
Citizen members 8–101
Congressional member 8–101
Cooperation with Maryland and Virginia 8–101
Creation 8–101
Designation of member of Zoning Advisory Council 5–417
Duties enumerated 8–101
Engineers, architects, technical experts and others, right to employ 8–101
Executive and disbursing officer 8–101
Federal public buildings, approval of plans 5–428
Garbage reduction sites, approval 6–505
Lease of lands and buildings pending need for use 8–105
Members of commission 8–101
New highway plans, approval 7–122
Parking facilities, recommendations concerning 40–804
Permanent Highway Plan, approval 7–109
Philadelphia, Baltimore, and Washington Railroad Company, branch tracks or sidings, construction, approval 7–1218
Plats of restricted areas, preparation 5–411
Public off-street parking facilities
Powers and duties 40–807
Purposes in creating commission 8–101
Qualification of appointive member 8–101
Readjustment of streets and ways, recommendation 7–401
Recreation Board, designation of property utilized by 8–210
Recreation Board, member of 8–202
Representation on Board of Zoning Adjustment 5–420
Sale of land belonging to District, approval 9–301
Sale of lands by Secretary of Interior, approval 9–304
Term of office of appointive members 8–101
Theodore Roosevelt Memorial, approval of plans 8–166

NATIONAL CAPITAL PARK AND PLANNING COMMISSION—Continued
Title to land in dispute, approval of settlement 8–104
Vacancies filled for unexpired term 8–101

NATIONAL COMMISSION OF FINE ARTS
Theodore Roosevelt Memorial, approval of plans 8–166

NATIONAL EDUCATION ASSOCIATION
Property exempted from taxation 47–829

NATIONAL GEOGRAPHIC SOCIETIES
Exemption of buildings from taxation 47–801a

NATIONAL GUARD
See MILITIA
Active military duty 39–601—39–608
Armament, equipment, supplies 39–501—39–517
Commissioned officers 39–201—39–214
Composition, organization, control 39–106—39–112
Courts-martial 39–701—39–709
Enlisted personnel 39–401—39–405
Miscellaneous provisions 39–901—39–906
Noncommissioned officers 39–301
Pay and allowances 39–801—39–806

NATIONAL GUARD ARMORY
Acquisition of equipment, restriction 2–1706
Concessions, restriction 2–1706
D. C. Armory Board
Alternates 2–1702
Establishment and composition 2–1702
Jurisdiction 2–1703
Liability insurance 2–1706
Manager 2–1709
Operation of canteen 2–1707
Parking areas 2–1704
Rent, etc., of armory 2–1706
Report to Congress 2–1710
Use of Armory by militia 2–1705
Working capital fund
Appropriation authorized 2–1708
Expenditures 2–1708
Transfer of funds 2–1708

NATIONAL GUARD RESERVE CORPS
See MILITIA

NATIONAL LUTHERAN HOME
Exemption of buildings from taxation 47–801a

NATIONAL PARK SERVICE
Canal, filling in, jurisdiction of director 8–145
Control over park system of District 8–108
Director
Member of National Capital Park and Planning Commission 8–101
Member of Zoning Commission 5–412
Gas mains, laying in street, permit required 7–1204
Lease of lands and buildings pending need for use 8–105
Obstructions in streets, duty to have removed 7–1207
Permits for extension of buildings beyond building line, approval 5–204
Public grounds, rules and regulations for care and management, power to adopt 8–143

NATIONAL PARK SERVICE—Continued
Recreation Board
Act not to abridge powers 8–216
Agreement with for maintenance and improvement of facilities 8–217
Rules and regulations for government and care, power to adopt 8–143
Sale of lands by Secretary of Interior 9–304—9–306
Sidewalks in public ground, powers over 8–144
Snow and ice, removal from sidewalk adjacent to federal buildings 7–803
Special police, appointment 4–208
Streets torn up in performance of public works, duty to replace 7–1208

NATIONAL TRAINING SCHOOL FOR BOYS
See Prisons and Prisoners
Annual report to Attorney General 32–807
Annual report to Commissioners of District 32–813
Apprenticing inmates 32–819
Board of trustees 32–802—32–810
A commissioner of the District to be a member 32–803
Appointment by President 32–802
By-laws, rules and regulations 32–806
Consulting trustees 32–804
Contracts and purchases 32–807
Corporate name and powers 32–805
Discretionary parole of inmates 32–821
Employees, appointment 32–808
Examination of superintendent's books 32–812
President 32–802, 32–807
Superintendent, appointment 32–808
Treasurer, appointment and bond 32–809
Boys under 17, commitment 32–815
Commitment by courts 32–815
Contracts for maintenance of boys 3–110
Duties of employees 32–811
Employees, appointment 32–808
Enticing boys from school, penalty 32–818
Harboring escaped boys, penalty 32–818
Inmates, instruction and employment of 32–819
Juvenile Court, commitments 32–815
Number of boys limited, court to be notified 32–817
Parole 32–820, 32–821
Period of detention 32–816
Reform school of the District 32–801
Superintendent 32–808, 32–810—32–812
Appointment 32–808
Bond 32–810
Duties and powers 32–811, 32–812
Monthly report of cost of support of inmates 32–822
Register of boys, contents 32–812
Support of boys committed 32–812
Support of boys from District not less than $4.50 per week 32–822

NATIONAL TRAINING SCHOOL FOR GIRLS
See Prisons and Prisoners
Authority of Board of Public Welfare 32–902, 32–903
Board of Public Welfare
Appointment of officers and employees 32–905
Control over inmates 32–906
Fixing compensation of officials and employees 32–905

NATIONAL TRAINING SCHOOL FOR GIRLS—Continued
Board of Public Welfare—Continued
Parole 32–911
Power identical to that of board of trustees of National Training School for Boys 32–903
Release of girls 32–904
Succeeds to authority of former board of trustees 32–902
Board of Trustees abolished 3–101
Powers and duties transferred to Board of Public Welfare 3–122
By-laws, rules and regulations 32–904
Commitment by Juvenile Court 32–908
Disbursement of appropriations 32–912
Employees and officials 32–905
Inmates, control over 32–906
Parole 32–910, 32–911
Approval of Attorney General, when required 32–911
By Board of Public Welfare 32–911
Grounds 32–910
Period of detention 32–909
Provisions of law relating to National Training School for Boys made applicable 32–907
Reform school for the District 32–901
Right to alter, amend, or repeal provisions reserved by Congress 32–913
Salary of superintendent 32–905a
Segregation of white and colored girls made mandatory 32–906

NATIONAL ZOOLOGICAL PARK
Bridges, plans, supervision by engineer of bridges 8–134
Buildings fronting, plans, approval by Commission of Fine Arts 5–410
Buildings, plans, supervision by municipal architect 8–134
Parkway connecting with Potomac and Rock Creek Park 8–158—8–160

NATURALIZATION
Dentistry, alien practitioners 2–307
Podiatry licensee 2–705

NATUROPATHY
See Healing Arts Practice Act
Board of Examiners 2–106
Examination of applicants for license 2–106, 2–114—2–117

NAVAL BATTALION
See Militia

NAVAL OBSERVATORY
Massachusetts Avenue as laid out through grounds declared public street 7–121
Streets and other ways, construction on grounds, restriction 7–120
Free tuition for chilren of men in naval service 31–305

NAVY RELIEF ASSOCIATIONS
Exemption from insurance company taxes 47–1808

NAVY YARD
Railroad track, sale and transfer to Philadelphia, Baltimore, and Washington Railroad Company 7–1217

NECESSARIES
Definition, Uniform Sales Act 28–1102
Liability of husband for wife's debts 30–211
Sales to infants under Uniform Sales Act 28–1102

NEGLECTED CHILDREN
See DEPENDENT AND NEGLECTED CHILDREN

NEGLIGENCE
Common Carrier Employers' Liability Act 44–401—44–405
Homicide 40–606
Income tax law, violation by 47–1589e
Settlement of claims against District 1–902

NEGLIGENCE CAUSING DEATH
Cause of action established 16–1201
Damages, limit 12–1201
Definition 16–1201
Distribution of damages 16–1203
Limitation for bringing action 16–1202
Parties defendant 16–1201
Party plaintiff 16–1202
Reckless homicide, motor vehicles 40–606, 40–607

NEGLIGENT HOMICIDE
Vehicle operator 40–606, 40–607

NEGOTIABLE INSTRUMENTS
See WAREHOUSE RECEIPTS
Acceptance
- Definition 28–101
- Failure to give notice of nonacceptance, effect 28–729
- Notice of dishonor by nonacceptance given, notice of dishonor by nonpayment unnecessary 28–728

Acceptance of bill for honor 28–937—28–946
- Contract of acceptor 28–941
- Different persons entitled to accept 28–937
- Dishonor of bill by acceptor for honor, protest 28–946
- Excusable delay in presenting bill for payment 28–945
- Liability of acceptor 28–940
- Maturity of sight bill after acceptance 28–942
- Method of making 28–938
- Partial acceptance 28–937
- Presentment for payment to acceptor 28–944
- Presumption of acceptance for honor of drawer 28–939
- Protested bill 28–937
- Protest for nonpayment prior to presentment to acceptor for honor or referee 28–943

Acceptance of bill of exchange 28–907—28–917
- Acceptance by separate instrument, effect 28–909
- Acceptance on face of bill, right to require 28–908
- Assent or dissent to qualified acceptance 28–917
- Bills in a set 28–957, 28–958
- Dates from day of presentation 28–911
- Definition 28–907
- Destruction of bill by drawee, effect 28–912
- Discharge of drawer and indorser by qualified acceptance 28–917
- Dishonored bill 28–913
- General acceptances 28–914, 28–915
- Incomplete bill 28–913
- Method of making qualified acceptance 28–916
- Overdue bill 28–913
- Promise to pay money required 28–907
- Qualified acceptance 28–914, 28–916
- Required to be written 28–907
- Retention of bill by drawee, effect 28–912
- Rights of parties, qualified acceptance 28–917
- Sight bills 28–913
- Time allowed drawee to accept 28–911
- Unconditional promise to accept, before bill drawn, effect 28–910

Acceptor of instruments 28–503
- Liabilities and warranties 28–503

Accommodation indorsers, liability 28–505
Accommodation paper, presentment to indorser unnecessary 28–611
Accommodation party 28–206
- Liability to holder for value 28–206

"Action" defined 28–101
Agent indorsing, negating personal liability 28–315
Agent negotiating, liability 28–510
Agent signing 28–120, 28–121
- Liability of agent 28–121
- No particular form of appointment necessary 28–120
- Principal undisclosed, liability 28–121
- Proof of authority 28–120
- Signature by procuration, effect 28–121

Alteration 28–806, 28–807
- Holder in due course, right to enforce according to original tenor 28–806
- Material alteration enumerated 28–807
- Unauthorized, effect 28–806

Ambiguous instruments 28–118
- Rules of construction 28–118

Ante-dated instrument 28–113
- Acquisition of title as of date of delivery 28–113
- Validity 28–113

Assumed name used in signing, liability 28–119
"Bank" defined 28–101
"Bearer" defined 28–101
"Bill" defined 28–101
Bills in a set 28–954—28–959
- Acceptance, method 28–957
- Constitute one bill 28–954
- Different parts negotiated, rights of holders 28–955
- Drawee accepting more than one part, liability 28–957
- Effect of discharging one part of bill 28–959
- Holder indorsing two or more parts to different persons, liability 28–956
- Holder whose title first accrues considered true owner 28–955

NEGOTIABLE INSTRUMENTS—Continued
Bills in a set—Continued
Indorsement of two or more parts to different persons, liability 28–956
Payment by acceptor without requiring surrender, liability 28–958
Bills of exchange 28–901—28–959
Acceptance 28–907
Acceptance as satisfaction of former debt 28–920
Acceptance by drawee necessary 28–902
Acceptance for honor 28–937—28–946
Acceptance of bill for honor, persons entitled to accept 28–937
Alternative drawees prohibited 28–903
Bills not accepted, rights of holder 28–927
Definition 28–901
Destruction of bill by drawee, effect 28–912
Dishonoring by nonacceptance 28–925—28–927
Drawee fictitious person or under disability, right to treat as promissory note 28–905
Drawee not liable until acceptance 28–902
Drawer and drawee same person, right to treat as promissory note 28–905
Excusable delay in presenting 28–923
"Foreign bill" defined 28–904
Funds in hands of drawee not assigned 28–902
Grounds for treating as dishonored, without presentment 28–925
"Inland bill" defined 28–904
Joint drawees 28–903
Lost, drawer to issue duplicate, indemnity 28–410
Miscarried, drawer to issue duplicate, indemnity 28–410
Nonacceptance, duty of holder to treat as dishonored 28–926
Option of holder to resort to referee in case of need 28–906
Order for payment of money addressed to another 28–901
Payment of bill for honor 28–947—28–953
Presentment for acceptance 28–918—28–927
Protest 28–928—28–936
Referee in case of need 28–906
Retention by drawee, effect 28–912
Right of holder to treat as foreign bill 28–904
Right of holder to treat as inland bill 28–904
Successive drawees prohibited 28–903
Blank in instrument
Delivery essential to render valid 28–116
Extent of authority to complete 28–115
Holder's right to complete instrument 28–115
Negotiable after completion 28–115
Blank indorsements 28–305, 28–306
Conversion into special indorsement 28–306
Instrument payable to bearer 28–305
Negotiation by delivery 28–305
No indorsee specified 28–305
Prior to delivery of instrument, liability 28–505
Blank in instrument 28–114, 28–115
Broker negotiating, liability 28–510
Cancellation 28–805
Signature cancelled, burden to prove mistake 28–805
Unintentional or under mistake inoperative 28–805
Cashier or other fiscal officer made payee 28–313
Indorsement by bank or corporation 28–313
Certainty required 28–102, 28–103, 28–105
Sum payable 28–103
Time 28–102, 28–105
Check 28–1002—28–1010
Application of law concerning bills of exchange 28–1002
Certification equivalent to acceptance 28–1005
Definition 28–1002
Drawers and indorsers discharged by certification 28–1006
Funds not assigned until acceptance or certification 28–1007
Liability of bank for nonpayment in error 28–1009
Liability of bank on altered, forged or raised checks 28–1008
Not presented for payment in one year, effect of 28–1004
Presentation for payment within reasonable time required 28–1003
Stop-payment orders 28–1011
Check, draft or order, making, drawing, uttering with insufficient funds 22–1410
Collateral security, sale authorized 28–106
Computation of time 28–617
Conclusive presumption of delivery, holder in due course 28–117
Conditional indorsement 28–310
Instrument held subject to rights of conditional indorser 28–310
Payment of instrument without regard to condition 28–310
Conditional promises to pay, particular fund on account for payment indicated 28–104
Confession of judgment authorized 28–106
Consideration 28–201—28–206
Antecedent debt 28–202
Not recited 28–107
Preexisting debt 28–202
Valuable consideration presumed 28–201
Want of, when a defense 28–205
Continuance of negotiable character 28–318
Until discharge by payment or otherwise 28–318
Until restrictive indorsement 28–318
Corporation indorsing, effect 28–123
Date of instruments 28–107, 28–112
Omission does not defeat negotiability 28–107
Presumed true date 28–112
Date payable 28–616, 28–617
Exclusion of first day, inclusion of last 28–617
Falling due on Sunday or holiday 28–616
Instruments due on Saturday 28–616
"Day for act" interpreted 28–101
Days of grace abolished 28–616
Defective title to instrument 28–405, 28–406
Acts giving rise to 28–405
Notice of defect 28–406

NEGOTIABLE INSTRUMENTS—Continued
Definitions 28–101
"Acceptance" 28–101
"Action" 28–101
"Bank" 28–101
"Bearer" 28–101
"Bill" 28–101
"Delivery" 28–101
"Holder" 28–101
"Indorsement" 28–101
"Instrument" 28–101
"Issue" 28–101
"Note" 28–101
"Person" 28–101
"Primarily" 28–101
"Reasonable time" 28–101
"Secondarily" 28–101
"Unreasonable time" 28–101
"Value" 28–101
"Written" 28–101
Delivery 28–116, 28–117
Authority to deliver 28–117
Conditional delivery 28–117
Definition 28–101
Essential to validity 28–117
Holder in due course, delivery presumed 28–117
Incomplete instruments, completion and negotiation without authority 28–116
Instruments payable to bearer 28–311
Instruments reversible until delivery 28–117
Making for special purpose 28–117
Negotiation by delivery, warranties 28–506
Presumption concerning 28–117
Demand instruments 28–108
Express provision for payment on demand or at sight 28–108
Issuance, acceptance or indorsement when overdue 28–108
Negotiation unreasonable length of time after issuance, effect 28–403
No time for payment expressed 28–108
Destroyed bill of exchange, protest 28–936
Determination of time for payment 28–617
Discharge 28–401, 28–801—28–807
By payment in due course to holder 28–401
Methods of discharging 28–801
Dishonor by nonpayment 28–614, 28–615
Presentation and refusal of payment 28–614
Presentment excused, instrument overdue and unpaid 28–614
Recourse against parties secondarily liable 28–615
Dishonored instruments 28–925—28–927
Bills of exchange 28–925, 28–926
Dishonoring bill by nonacceptance 28–925—28–927
Doubt as to capacity in which signed, signer deemed indorser 28–118
Doubt as to whether bill or note, election by holder 28–118
Drawer 28–502, 28–610, 28–701, 28–726
Grounds for not giving notice of dishonor 28–726
Liabilities and warranties 28–502
Limiting liability to holder 28–502
NEGOTIABLE INSTRUMENTS—Continued
Drawer—Continued
Notice of dishonor required 28–701
Presentment for payment unnecessary 28–610
Due date fixed by event bound to occur 28–105
Enjoinders, ambiguity as to capacity in which instrument signed 28–118
Essential requisites 28–102
Fiduciary receiving and indorsing, liability of parties 28–2304
Figures controlled by words 28–118
Foreign bills of exchange
Presentation for acceptance and payment by notary authorized 1–508
Protest for nonpayment or nonacceptance 1–508
Forged signature, instrument unenforceable, estoppel 28–123, 28–124
Form immaterial 28–111
General indorsers, warranties and liabilities 28–507
"Holder" defined 28–101
Holder for value 28–203, 28–204
Holder in due course 28–402
Burden of proof, transferee with defective title 28–409
Demand instrument 28–403
Enforcement of instrument 28–407
Essential elements 28–402
Indorsement to one with notice, rights of transferee 28–408
Notice of infirmity before fully paying for instrument 28–404
Presumption 28–409
Rights 28–407
Title of transferor defective, burden of proof 28–409
Warranties of general indorser 28–507
Holder not in due course
Acquisition from holder in due course, effect 28–408
Takes subject to defenses 28–408
Holder of instruments given an election 28–106
Holidays, presentment for payment on 28–616
Incomplete instruments 28–114—28–116
Bills of exchange, acceptance 28–913
Blank date, right to fill in 28–114
Completion by holder, extent of authority 28–115
Delivery essential 28–116, 28–117
Negotiation after completion, effect 28–115
Indication of account to be debited, effect 28–104
Indication of fund out of which reimbursement to be made, effect 28–104
Indorsee of usurious negotiable instrument 28–2705
Indorsement 28–302—28–318
Bearing date later than maturity date 28–316
Blank indorsement 28–305, 28–306
Conditional indorsement 28–310
Corporation indorsing, effect 28–123
Definition 28–101
Entire instrument transferred 28–303
Fiduciaries indorsing, liability of parties 28–2304
Holder's right to strike out indorsement 28–319
Instrument payable to two or more persons 28–312

NEGOTIABLE INSTRUMENTS—Continued
Indorsement—Continued
Instruments payable to bearer 28–311
Irregular 28–505
Method of indorsing 28–302
Minor indorsing, effect 28–123
Name of payee or indorsee misspelled 28–314
Partially paid instruments, indorsement as to residue 28–303
Place of indorsement, presumption 28–317
Qualified indorsement 28–309
Representative indorsing, negating personal liability 28–315
Restrictive indorsement 28–307, 28–308
Several indorsements, effect 28–303
Special indorsement 28–305, 28–306
Transfer of part only of amount payable 28–303
"Without recourse" 28–309
Indorsers 28–504—28–509
Bills in a set, liability 28–956
Excuses for not notifying of dishonor 28–727
General indorsers, warranties 28–507
Given notice of dishonor 28–701
Instrument negotiable by delivery, liability 28–508
Irregular indorsers, liability 28–505
Joint indorsers, liability 28–509
Order in which liable 28–509
Persons deemed indorsers 28–504
Presentment of instrument for payment, when unnecessary 28–610
Signing in blank before delivery, liability 28–505
Infirmity in instruments 28–404, 28–406
Knowledge of acquired before fully paying for instrument, effect 28–404
Notice of infirmity 28–406
Inland bills of exchange 1–509
Notary failing to comply with law in protesting, penalty 1–509
Notary's right to demand acceptance and payment 1–509
Protest by notary, form and content 1–509
Instrument addressed to drawee, naming required 28–102
"Instrument" defined 28–101
Instrument dishonored in hands of agent, giving of notice of dishonor 28–706
Instrument payable on contingency, nonnegotiable 28–105
Instrument secured by mortgage 28–106
Intentional cancellation, discharge 28–801
Interest, date begins to run, no date fixed 28–118
Interest rate 28–2702
Irregular indorsers 28–505
"Issued" defined 28–101
Joint and several liability, "I promise to pay" two or more signers 28–118
Joint debtor, presentment of instrument for payment 28–609
Joint indorsers, liability 28–509
Joint parties, giving notice of dishonor 28–712
Kinds of indorsement 28–304
Last day for doing act, falling on holiday 28–101
Law merchant, when applies 28–101

NEGOTIABLE INSTRUMENTS—Continued
Liability of forwarding bank where payor bank fails to account for proceeds 28–1010
Liability of parties 28–501—28–510
Lost bill of exchange, protest 28–936
Lost instruments as basis for action 13–204
Maker of instrument 28–501
Liabilities 28–501
Warranties by making 28–501
Maturity date payable 28–616
Minor indorsing, effect 28–123
Name misspelled or wrongly given, indorsement 28–314
Negotiation 28–301—28–321
Definition 28–301
Indorsement 28–302—28–318
Method 28–301
Negotiation back to prior party, reissuance 28–321
Presumably negotiated before maturity 28–316
Transfer without indorsement, effect 28–320
"Note" defined 28–101
Notice of dishonor 28–701—28–730
Address to which sent 28–720
Agent's right to give 28–703
Antecedent party, giving notice, time limit 28–719
Bankrupt or insolvent 28–713
Deceased person 28–710
Depositing in post-office, effect 28–717, 28–718
Dishonor of demand items by banks 28–714a
Drawers and indorsers notified 28–701
Effect of giving on behalf of holder 28–704
Embodying waiver in instrument, effect 28–722
Excuses for delay in giving 28–725
Excuses for not giving to indorser 28–727
Failure to give notice of nonacceptance, effect 28–729
Giving either to principal or agent sufficient 28–709
Grounds for dispensing with notice 28–724
Grounds for not notifying drawer 28–726
Instrument dishonored in hands of agent 28–706
Joint parties 28–712
Method of giving notice 28–708
Misdescription of instrument, effect 28–707
Notice actually received, effect 28–720
Notice given by party entitled thereto, effect 28–705
Notice of nonacceptance given, notice of dishonor by nonpayment, unnecessary 28–728
Parties residing in different places, time allowed for giving 28–716
Parties residing in same place, time allowed for giving 28–715
Partnership, giving notice to firm 28–711
Personal representative of deceased 28–710
Persons entitled to give 28–702
Protest waived, effect 28–723
Sufficiency of notice 28–707
Time within which must be given 28–714
Waiver 28–721
Written or oral authorized 28–708

NEGOTIABLE INSTRUMENTS—Continued
Notice of dishonor—Continued
Written waiver above signature of endorser, application 28–722
Notice of infirmity before fully paying for instrument, effect 28–404
Omission not affecting negotiability 28–107
Order in which indorsers liable, power to change by agreement 28–509
Order to pay out of particular funds not unconditional 28–104
Particular kinds of currency designated for payment 28–107
Parties secondarily liable, reissuance of instruments after paying 28–803
Partnership obligation
Presentment after dissolution 28–608
Presentment for payment 28–608
Payable at bank
Presentment for payment 28–606
Right to charge to account of principal debtor 28–618
Payable at fixed rate period after date or sight 28–105
Payable on or before fixed future time 28–105
Payable to bearer 28–110
Instrument expressly so providing 28–110
Instrument payable to fictitious or nonexisting person 28–110
Last indorsement in blank 28–110
Payable to living person without interest in instrument 28–110
Special indorsers, liability 28–311
Payable to order 28–109
Certainty as to payee required 28–109
Instruments payable to specified person 28–109
Parties to whom may be drawn 28–109
Payable to order or bearer essential 28–102
Payable to two or more persons 28–312
All required to indorse, partnerships excepted 28–312
All required to indorse, unless one is authorized for all 28–312
Payment as discharge 28–801
Payment in due course, definition 28–619
Payment of bill for honor
Attestation by notarial act 28–948
Effect of payment 28–951
Holder refusing payment, effect 28–952
Method of making payment 28–948
More than one person offering payment, preference 28–950
Party's subsequent discharge 28–951
Payer entitled to incidental expenses 28–953
Payment supra protest 28–947
Persons entitled to pay for honor 28–947
Subrogation of payer for honor 28–951
Payment supra protest refused, effect 28–952
Payment to holder, discharge of instruments 28–401
"Person" defined 28–101
Persons secondarily liable 28–802, 28–803
Act sufficient to discharge from liability 28–802
Extension of time of payment, discharge 28–802
Payment of instrument, right 28–803
Release of principal debtor 28–802

NEGOTIABLE INSTRUMENTS—Continued
Place of indorsement, presumption 28–317
Place of payment or drawing not specified 28–107
Post-dated instrument 28–113
Acquisition of title as of date of delivery 28–113
Validity 28–113
Presentment for payment 28–601—28–619
Bills of exchange 28–602
Circumstances rendering unnecessary 28–613
Delay in making, valid excuses 28–612
Demand instruments 28–602
Drawers and indorsers 28–601
Exhibition of instrument required 28–605
Instrument payable at bank 28–606
Instrument payable on specified date 28–602
Joint debtors, presentment to all 28–609
Joint debtors primarily liable 28–609
Necessity for making presentation 28–601, 28–602
Necessity for presenting to drawer 28–610
Partnership obligation 28–608
Persons primarily liable 28–601
Place of presentment 28–604
Principal debtor dead 28–607
Sufficiency of presentment 28–603
Waiver 28–613
Presentment of bill for payment to acceptor for honor 28–944
Presentment of bill of exchange for acceptance 28–918—28–927
Bill not accepted, rights of holder 28–927
Days upon which made 28–922
Drawee dead 28–921
Drawer, release by failure to present 28–919
Duty of holder, bill not accepted 28–926
Duty of holder to present or negotiate 28–919
Excusable delay in presenting 28–923
Excuses for not presenting bill 28–924
Indorsers, release by failure to present 28–919
Insolvent or bankrupt drawees 28–921
Joint drawee 28–921
Method of presenting 28–921
Necessity for presentment 28–918
Time presented 28–921
Presumption concerning date of instrument 28–112
Presumption of negotiation before maturity 28–316
Primary liability, definition 28–101
Principal debtor becoming holder at or after maturity, effect 28–801
Promise to pay out of particular funds not unconditional 28–104
Promissory note 28–905, 28–1001
Bill of exchange, one may be treated as 28–905
Definition 28–1001
Protest by notary
Fee 1–514
Notice of protest, fee 1–514
Protest of bill 28–928—28–936
Acceptance supra protest 28–937, 28–938
Acceptor for honor dishonoring bill 28–946
Acceptor of bill of exchange insolvent 28–934
Annexation to bill 28–929
Cases in which necessary 28–928
Circumstances rendering unnecessary 28–935
Contents 28–929

NEGOTIABLE INSTRUMENTS—Continued
Protest of bill—Continued
Day on which made 28–931
Excusable delays 28–935
Failure to protest when necessary, effect 28–928
Foreign bill 28–928
Inland bill 28–928
Lost or destroyed bills 28–936
Nonacceptance, subsequent protests for nonpayment 28–933
Noting at time and subsequent day extending 28–931
Persons entitled to protest 28–930
Place of protest 28–932
Prior to presentment to acceptor for honor or referee 28–943
Protest for better security, acceptor insolvent 28–934
Protesting in presence of witnesses 28–930
Protest of dishonored instrument 28–730
May be given on any instrument 28–730
Required only on foreign bills of exchange 28–730
Provisions not affecting negotiability 28–106
Qualified indorsement 28–309
Effect 28–309
Method of evidencing 28–309
Warranties of indorser 28–506
Reasonable time, method of determining 28–101
Recourse against parties secondarily liable 28–615
Referee in case of need
Excusable delay in presenting bill for payment 28–945
Protest for nonpayment prior to presentment to referee 28–943
Reissuance of instrument 28–321
Negotiated back to prior party 28–321
Right to enforce against intervening party limited 28–321
Renunciation of rights by holder 28–804
Force and effect 28–804
Required to be in writing and delivered 28–804
Required to be in writing 28–102
Restrictive indorsement 28–307, 28–308
Effect 28–308
Effect on continuance of negotiable character 28–318
Method of evidencing 28–307
Rights of indorsee 28–308
Right of holder 28–401—28–409
Rules of law, when applied 28–101
Seal does not affect negotiability 28–107
Secondary liability, definition 28–101
Sight bill, acceptance by honor, maturity date 28–942
Signature by maker or drawer required 28–102
Signatures in general 28–119—28–124
Agent signing on behalf of principal 28–120, 28–121
Assumed name used, liability 28–119
Necessity for name to appear on instrument 28–119
Trade name signed, liability 28–119
Words descriptive of person used, liability 28–121

NEGOTIABLE INSTRUMENTS—Continued
Special indorsement 28–305, 23–306
Conversion of blank indorsement into special 28–306
Definition 28–305
Further indorsement of transfer necessary 28–305
Instruments payable to bearer 28–311
Statutes requiring statement of nature of consideration unaffected 28–107
Striking out indorsement 28–319
Effect to relieve subsequent indorsers 28–319
Right of holder 28–319
Sufficiency of language used 28–111
Sum certain must be payable 28–102
Sum payable required to be certain
Attorney's fee provided for 28–103
Costs of collection recoverable 28–103
Instruments payable in installments 28–103
Instruments payable with exchange 28–103
Interest-bearing instrument 28–103
Surrender of instrument on payment 28–605
Transfer without indorsement
Effect 28–320
Time when subsequent indorsement takes effect 28–320
Unconditional promise required 28–102
Unconditional promise to pay 28–104
Order or promise to pay out of particular fund 28–104
Statement of transaction giving rise to interest 28–104
Undated instrument
Filling in wrong date, effect 28–114
Presumed to date from time of issuance 28–118
Right to fill in date 28–113
Unreasonable time, method of determining 28–101
Usury 28–2705
"Value" defined 28–101, 28–202
Waiver of benefit of law authorized 28–106
Waiver of protest, effect to waive presentment and notice of dishonor 28–723
Want of consideration 28–205
Defense, holders not in due course 28–205
Partial failure, when defense pro tanto 28–205
Warranties, negotiation by delivery or qualified indorsement 28–506
Warranties of general indorsers 28–507
Words control over figures 28–118
Written control printed provisions 28–118
"Written" defined 28–101
Wrongly detained bill of exchange, protest 28–936

NEW TRIAL
See PLEADINGS
Motion for new trial 13–221
Probate Court 11–519

NEWSBOY
Unemployment Compensation Act excluding 46–301

NEXT FRIEND
Minors suing by 21–117

NOISES
Power to regulate and prohibit 1–224

NONAGE
Annulment of marriage 16–403

NON COMPOS MENTIS
See INSANE PERSONS
Guardian ad litem, appointment 13–107

NONNEGOTIABLE INSTRUMENTS
Instruments payable on contingency 28–105

NONPERFORMANCE
Conditions, under Uniform Sales Act 28–1111

NONPROFIT CORPORATIONS
See CORPORATIONS NOT FOR PROFIT

NONRESIDENTS
Actions against, bringing within District, restriction 11–308
Admission of children to District schools 31–301—31–305
Business-chance brokers and salesmen 45–1410
Depositions 14–201
Employers under Unemployment Compensation Act 46–305
Indigent parties, return to place of residence 3–110
Judges of Municipal Court for District of Columbia 11–753
Municipal Court witnesses 11–741
Nonresidence, unsafe structure and excavations, notice to abate conditions 5–505
Operating motor vehicles 40–303
Plaintiffs in Municipal Court 11–719
Real estate brokers and salesmen 45–1410
Service of process by publication 13–108
Service of process outside District 13–108
Sewer and watermain connections, notice requiring 6–404
Wife and minor children, penalty 22–903

NOTARIES PUBLIC
See BANKS AND OTHER FINANCIAL INSTITUTIONS
Acknowledgment, power to take 1–501
Admission to practice before department of federal government 1–501
Appointment by Commissioners 1–501
Appointment by President 1–501
Bond 1–504
Certification of papers, exception 1–501
Death or resignation, custody of records and papers 1–516
Deeds, power to take and certify acknowledgements 1–511, 45–402
Demand for acceptance or payment, notary's fee 1–514
Depositions, power to take 1–511
Documents and papers for use outside District 1–510
  Powers of notary 1–510
Employees of banks, trust companies 26–110
Extra-territorial legality of acts 1–510
False certification of recordable instruments, penalty 22–1308
False personation before 22–1303
Fees 1–514, 1–515
  Penalty for taking higher fees 1–515
Foreign bills of exchange 1–508
  Authority to demand acceptance and payment 1–508
  General powers of notary 1–508
  Protesting for nonacceptance or nonpayment 1–508
Inland bills of exchange 1–509
  Authority to demand acceptance and payment 1–509
  Failure to comply with law, penalty 1–509
  Protest 1–509
Jury service 11–1420
License fee 1–501
Married women, power to take acknowledgments of and administer oaths or to 1–511
Oaths 1–504
  Power to administer, exception 1–501
Official document exempt from execution 1–507
Payment for honor
  Attestation by notarial act 28–948
  Declaration of payer for honor 28–949
Performance of official act in connection with employment prohibited 1–501
Powers of attorney, power to take and certify acknowledgment 1–511
Property clerk vested with powers of 4–154
Protest of bills and notes 1–508, 1–509
  Copy of record as evidence 1–513
Protest of bills of exchange 28–930
Record of official act 1–512, 1–513
  Duty to keep 1–512
Removal from office, custody of records and papers 1–516
Residence requirement 1–501
Right to represent client before department of United States Government 1–501
Seal 1–505—1–507
  Deposit of impression with clerk of District Court 1–506
  Exempt from execution 1–507
Signature, filing with clerk of District Court required 1–506
Term of office 1–502
Vacation of office, custody of records and papers 1–516
Written instruments in general, power to take and certify acknowledgments 1–511

NOTE BROKERS
Definition 47–1708
Taxation 47–1708

NOTES
See NEGOTIABLE INSTRUMENTS

NOTICE OF DISHONOR
Effect of giving on behalf of holder 28–704

NOTICES
See NEGOTIABLE INSTRUMENTS; PUBLICATION OF NOTICE
Adoption, notice of petition 16–201
Alleys or minor streets, condemnation proceedings, one owner without notice, effect, correcting error 7–327

NOTICES—Continued
Anatomical Board claiming bodies of deceased indigents 2–202
Architects, proceedings to revoke certificate 2–1027, 2–1028
Attachment and garnishment 16–301
Barbed-wire fences, removal 7–1103
Before delivery 2–203
Child-Placing Agencies, suspension or revocation of license 32–787
Closing and readjusting streets and highways 7–402
Decrees confirming sales as notice 15–109
Depositions, notice required 14–201
Duties and powers of Commissioner 1–214
Electrical wiring, defective or dangerous condition 1–720
Eminent domain
Alleys and minor streets, opening, widening, or straightening 7–314
Assessment of land no part of which taken 7–221
Exemptions, claim of 15–403
Fire escapes and safety provisions, requiring construction 5–309, 5–310, 5–315
Fire protection appliances, etc., notice to furnish 5–318—5–322
Firemen resigning from force 4–407
Healing arts, examination of applicants for license 2–114
Insanitary buildings, condemnation 5–603
Methods of service 5–610
Notice to show cause 5–603
Notice to vacate 5–605
Occupation of building after notice prohibited 5–604
Order of condemnation 5–603
Property in litigation 5–608
Juvenile Court 11–909
Permanent Highway Plan, property owners, hearing 7–115
New highway plans proposed 7–122
Plumbing regulations, violation 1–725
Podiatry Board Examiners, rules and regulations, adoption 2–719
Policeman, giving of intention to resign 4–125
Probate Court, trial of issues not relating to wills 11–517
Public contracts, advertisement for bids 1–808, 1–809
Sewer and water-main connections, notice to make 6–402—6–404
Streets and other improvements
Notice of assessment 7–608
Notice of intention 7–608
Tax exempt property owners 47–801f
Unsafe structures and excavation 5–504
Abatement as nuisance 5–504
Contents of notice 5–505
Notice to remedy conditions 5–501
Service of notice 5–505
Warehouseman's lien, sale of goods to satisfy 28–1927
Weeds, notice to cut 6–901, 6–902
Zoning regulation, amendment, notice of hearing 5–415

NUISANCES
Boiler, unauthorized use 1–713
Buildings erected in violation of law 5–408
Penalties 5–408
Drug-addict resorts 33–416
Houses of prostitution 22–2713
Abating by injunction 22–2714, 22–2715
Bond for abatement 22–2719
Granting immunity to witnesses 22–2721
Order of abatement 22–2717
Proceeds of sale 22–2718
Taxing premises used 22–2720
Violating injunctions 22–2716
Special assessments for removal, payment 47–1105
Unsafe structures or excavations 5–504, 5–505
Notice
Contents 5–505
Service of 5–505

NUNCUPATIVE WILLS
Validity 19–102

NURSERIES
Diseased or insect-infested plants, transportation prohibited, penalty 6–904, 6–905

NURSES
Application for examination and registration 2–404
Fee 2–404
Filing of false diploma, certificate, or credential prohibited 2–407
Proof of qualifications 2–404
Denial of registration or reregistration 2–406
Appeal to Court of Appeals 2–406
Review for United States District Court 2–406
Educational requirements 2–404
Examination for registration 2–403
Held annually 2–403
Notice given 2–403
Examining Board 2–402
Annual report to Commissioners 2–408
Appointment by Commissioners of District 2–402
Audit of accounts 2–408
By-laws, power to adopt and amend 2–403
Disbursement of funds 2–408
Nominees for appointment 2–402
Number of members 2–402
Oath of office 2–402
Organization meeting 2–403
Per diem of members 2–408
President 2–403
Records kept by secretary 2–403
Secretary 2–403
Term of office 2–402
Treasurer 2–403
Vacancies, method of filling 2–402
Vice president 2–403
Expenses incident to administering regulatory law, payment 2–408
Fees for registration and reregistration paid treasurer of board 2–408
Inspection of schools of nursing 2–403
Minimum age 2–404
Nonregistered nurses, right to practice as such 2–410

NURSES—Continued
Nurses' registry
Definition 47–2101
License law 47–2101—47–2111
Penalty for violating regulatory law 2–409
Proof of good moral character required 2–404
Providence Hospital, authority to conduct school for 32–316a
Qualifications for registration 2–404
Registration of 2–404
Registration required 2–401
Nurses from other states, reciprocity 2–405
Register maintained 2–403
Training schools for nurses 2–403
Reregistration annually 2–406
Application 2–406
Failure to reregister, cancelation of registration 2–406
Fee 2–406
Revocation or suspension of certificate 2–407
Appeal to Court of Appeals 2–407
District attorney to conduct proceedings 2–407
Duration, determination by court 2–407
Grounds 2–407
Jurisdiction of United States District Court 2–407
Petition, verification 2–407
"She" construed to include the word "he" 2–411
Student nurse excluded from Unemployment Compensation Act 46–301
Training school 2–404
Annual reregistration fee 2–406
Registration fee 2–406
Registration, requirements 2–404
Schools outside District, recognition of diplomas 2–405

NUX VOMICA
Poison, sale, restrictions 2–612

OAK HILL CEMETERY COMPANY
Cemetery property exempted from taxation 47–808
Property inalienable 47–808

OATHS
Administered by district attorney 11–1002
False swearing, penalties 11–1002
Administration in taking depositions 14–201
Affirmation may be substituted for 49–206
Assistant surveyor of District 1–604
Attorneys 11–1301
Authority to administer
Agents of Public Utilities Commission 43–418
Assessor 47–606
Board of equalization and review 47–606
Commissioners of District 4–123
Corporation counsel 1–303
District attorney 11–1002
Juvenile Court judges 11–904
Major and superintendent of police 4–123
Members of board of assistant assessors 47–606
Minimum Wage and Industrial Safety Board 36–435
Notary public 1–511
Personal property tax appraisers 47–1203
Police Court clerk 11–622

OATHS—Continued
Authority to administer—Continued
Police Court judges 11–608
Police Department Trial Board chairman 4–122
Public utilities commissioners 43–418
Real Estate Commission 45–1411
Board of Cosmetology members 2–1302
Board of Examiners and Registrars of Architects, oath of office 2–1004
Board of Optometry members 2–503
Board of Pharmacy members 2–607
Boiler inspector 1–704
Civil officers of District 1–308
Subscribed, certified, and recorded 1–308
Collectors 20–402
Commissioned officers of militia 39–206
Commissioner of deeds, power to administer 1–401
Commissioners of District
Oath of office 1–208
Power to administer, matters connected with Police Department 4–123
Corporation counsel and assistants, power to administer 1–303
Executors 20–301
False personation, penalty 22–1303
Judges
Municipal Court for District of Columbia 11–753
Municipal Court of Appeals for District of Columbia 11–771
Jurors, eminent domain proceedings
Land for streets 7–205
Opening, widening, or straightening alleys 7–315
Juvenile Court 11–904
Juvenile Court judge 11–920
Major and superintendent of police, power to administer 4–123
Municipal Court 11–712
Judges 11–701
National guard enlisted personnel 39–402
Notaries public 1–504
Power to administer 1–511
Exception 1–501
Fee 1–514
Married women 1–511
Nurses' Examining Board members 2–402
Police Department members 4–104
Police Department Trial Board chairman, power to administer 4–122
Property clerk's power to administer 4–155
Public utilities commissioners 43–201
Referee 16–1702
Register of wills 19–401
Superintendent of insurance 35–401
Superintendent of weights, measures, and markets 10–102
Surveyor of District 1–602
Deposited with Commissioners of District 1–602
Trial boards of Police and Fire Departments 4–604
Unemployment Compensation Board, power to take 46–313

OATHS—Continued
United States District Court judges 11–303
Witnesses 14–101

OBLIGATIONS
See CONTRACTS; NEGOTIABLE INSTRUMENTS; SALES, UNIFORM ACT
Assignment 28–2502
Fiduciary's bond or undertaking 28–2403
Indorsement of payments on instrument, effect of Statute of Frauds 12–305
Interest rate 28–2702
Joint obligations
Consolidation of several actions 13–401
Parties 13–401
New promise to pay, effect of Statute of Frauds 12–305
Transfer in fraud of creditors 12–401

OBSTRUCTING JUSTICE
Definition, penalty 22–703

OBSTRUCTION IN STREET
Capitol grounds, improper use 9–120
Criminal penalty for 22–3120, 22–3121
Fines collected in name of United States 22–3122
Failure to remove after notice, penalty 7–1204
Notice for removal 7–1204
Suits for removal, prosecution by district attorney 7–1207

OFFICE BUILDINGS
See FIRE ESCAPES AND SAFETY PROVISIONS
Fire escapes and safety provisions 5–301—5–316

OFFICE OF CIVIL DEFENSE
See CIVIL DEFENSE

OFFICERS AND EMPLOYEES OF DISTRICT
See COMMISSIONERS OF DISTRICT OF COLUMBIA; DIRECTOR OF PUBLIC HEALTH; DISTRICT ATTORNEY; ELECTRICAL ENGINEER; FIRE DEPARTMENT; INSPECTORS; LEAVES OF ABSENCE; MARSHAL; PARK POLICE; POLICE DEPARTMENT; SUPERINTENDENT OF POLICE; SURVEYORS
Appointment and removal by Commissioners 1–216
Assistant inspector of buildings, powers and duties 1–729
Assistant inspectors of electrical wiring 1–721
Assistant superintendent of machinery, Fire Department 4–404
Auditor of District 2–408, 11–627, 11–940
Bailiffs 11–623
Becoming surety for contractors prohibited 1–210
Boiler inspector 1–703, 1–704
Bonds of officers and employees of District 1–213
Bribery, conviction of, disqualified from holding office 1–316
Capitol police 9–126
Chief of engineers 8–101, 9–101
Fire Department 4–402, 4–404, 4–405
Children's right to free schooling 31–303
Civil Service, application to employees, school officers and teachers excepted 1–217
Commissioners of deeds 1–401, 1–402

OFFICERS AND EMPLOYEES OF DISTRICT—Continued
Commissioners' power to abolish offices 1–216
Commissioning of appointive officers 1–220
Compensation of injured employees of District 1–311
Budget estimate 1–311
Federal law made applicable 1–311
Members of Police and Fire Department, exception, pension or pensionable 1–311
Payment of award 1–311
Conviction of certain crimes renders ineligible to office 1–316
Coroner 11–1201—11–1208
Corporation counsel 1–301
Corruptly influencing, penalty 22–704
Costs, not required to pay 11–1519
Custodians of property, report, content 1–309
Deputy chief engineers, Fire Department 4–402, 4–404, 4–405
Deputy fire marshals 4–404, 4–405
Detective agency employees, employment by District prohibited 1–317
Director of public health 6–101
Director of public welfare 3–105
Director of social work 11–922
Electrical engineer 1–721
Electrical inspector 1–723
Embezzlers of public funds, disqualification from holding office 1–316
Employee having custody of property 1–309
Employment required to be authorized by law 1–310
False personation before 22–1303
False personation of 22–1304
Fidelity bonds 1–213
Fire marshals 4–404, 4–405
Infamous crime, conviction of, disqualification from holding office 1–316
Inspector of asphalt and cement 1–307
Inspectors, draftsmen, etc., employment 7–1235
Jury service, eligibility for 11–1420
Lapsed salaries, reversion to Treasury 1–310
Leaves of absence 1–312
Holidays, per diem employees, leave with pay 1–314
Members of Police and Fire Department excepted 1–312
Per diem employees 1–313
Public school officers, teachers, and employees excepted 1–312
Regular annual employees 1–312
Marine engineers 4–404, 4–405
Marine firemen 4–404, 4–405
Municipal architect 1–306
Notaries public 1–501—1–518
Oaths of civil officers, subscribed, certified, and recorded 1–308
Paid only for services rendered 1–310
Pay rolls, signature by mark, witnesses 1–315
Perjury, conviction of, disqualification from holding office 1–316
Pinkerton Detective Agency, employees of, employment prohibited 1–317
Playgrounds, volunteer services, acceptance authorized 8–132

OFFICERS AND EMPLOYEES OF DISTRICT—Continued
Plumbing inspector 1–724, 1–727
Principal assistant inspector of buildings, powers and duties 1–728
Promotions, increase in salaries 1–310a
Property clerk 4–151—4–167
Purchasing officer of District 1–304, 1–305
Reallocation of positions, increase in salary 1–310a
Receiving pay from professional bondsmen prohibited 23–603
Register of wills 19–401—19–411
Secretary of District 1–803
Special policemen 4–115, 4–133
Superintendent of machinery 4–404, 4–405
Superintendent of public schools 31–105
Superintendent of weights, measures, and markets 10–101—10–103
Surveyor 1–601—1–629, 7–113, 7–124, 7–125, 7–130
Teachers, public school 1–217, 22–3002, 31–601—31–699b
Temporary employees, authority of Commissioners 7–1236
Unemployment Compensation Act, exclusion from 46–301
Unused appropriation for salaries, reversion to Treasury 1–310
Usurpation of office, remedy 16–1601—16–1611
Volunteer services, acceptance prohibited, exception 1–215
Water registrar 43–1506
Weighmasters 10–128
White House Police 4–301—4–306

OFFICERS' RESERVE CORPS
Government employee members to be granted leaves of absence 39–109
Government employee members to be restored to positions when relieved from duty 39–110

OFFICES
Commissioners' power to abolish 1–216
Consolidation by Commissioner 1–216

OFF-STREET PARKING FACILITIES
See Public Off-Street Parking Facilities

OIL
See Gasoline and Oil

OLD-AGE ASSISTANCE
Administering agency 46–203
Aid declared inalienable 46–204
Aid exempted from levy or execution 46–204
Amount of aid 46–203
Application under oath 46–206
Appropriations and estimates 46–213
"Assistance" defined 46–201
Authority of Commissioners of the District 46–203
Board of Public Welfare, powers and duties 3–110
Charge or suspension 46–208
Cooperation with Federal Social Security Board 46–215
Definitions 46–201
Denial of relief, review 46–203
Disbursements for expenses 46–214
Eligibility, requirements for 46–202

OLD-AGE ASSISTANCE—Continued
Funeral expenses on death of recipient 46–205
Home for Aged and Infirm 3–106
Improperly obtained, investigation and cancellation 46–209
Investigation of applicant 46–207
Liability of recipient's estate 46–212
Liability of relatives for support 46–211
Obtaining by fraud, penalty 46–210
Recipients not to receive other public aid except medical, surgical, or nursing care 46–202
Recovery from estates of recipients, one-half payable to United States 46–212
Reference of applicants to Board of Public Welfare 46–203
Revocation 46–208
Transfer of recipient's property to Commissioners of the District 46–212

OLIVE OIL
Sale by other than pharmacist 2–601

ONIONS
Sale by bunch authorized 10–115
Standard crate, dimensions 10–115

OPERA HOUSES
License fee 47–2320
Prerequisites to license 47–2302
Revocation of license for violation of decency regulations 47–2302

OPERATING ENGINEERS
See Steam and Other Operating Engineers

OPERATOR COSMETOLOGIST
Definition 2–1301

OPERATORS' PERMIT
See Motor Vehicles

OPINIONS
Court of Appeals 11–206
Cost per volume 11–207

OPIUM
See Narcotic Drugs
Definition 33–401
Exempted medical preparations 33–410
Record kept of receipts and sales 33–411
Sale by manufacturer or wholesaler, written orders 33–405
Sale, prescription 2–610, 2–611

OPTOMETRY
Application for license, filing 2–513
Board of Optometry 2–503—2–508
Adjournment for want of quorum 2–504
Annual report to Commissioners 2–508
Appointment by Commissioners 2–503
By-laws and regulations, power to adopt 2–505
Certified copies of record, prima facie evidence 2–508
Compensation 2–507
Expenses not to exceed receipts 2–507
Meetings 2–504
Membership 2–503

OPTOMETRY—Continued
Board of Optometry—Continued
Number of members 2–503
Oath of office 2–503
Office quarters 2–515
Organization meeting 2–504
President 2–504
Quorum 2–504
Record of proceedings kept 2–508
Records open to inspection 2–508
Removal from office, ground 2–503
Seal 2–515
Secretary-treasurer 2–504, 2–506, 2–507
Term of office 2–503
Vacancy filled for unexpired term 2–503
Vice president 2–504
Certified copy of license, prima facie evidence 2–513
Charges preferred against licensee 2–517
Determination by board 2–517
Notice, hearing, witnesses 2–517
Constitutionality of act, provisions separable 2–522
Criminal offenses 2–502
Definition 2–501
Design for license 2–515
Display of certificate to practice 2–513
Doctor of medicine, right to use title 2–519
Examination of applicant for license 2–509, 2–511, 2–513
Educational qualifications 2–511
Educational standards, power to change 2–512
Failure to pass 2–513
Held twice yearly 2–513
Limited examination for existing practitioners 2–510
Persons qualified to take examination 2–511
Place held 2–515
Required unless otherwise provided 2–509
Special examination, subjects 2–510
Standard examination, subjects 2–511
Taking standard examination when optional, failure to pass, effect 2–510
Exceptions from act 2–520
Fees under regulatory law 2–513, 2–514
Clerk fees, for recording license 2–513
Examination for license 2–514
Failure to pay renewal fee, penalty 2–514
Practitioners from other states, licensing 2–518
Reinstatement after failure to pay renewal fee 2–514
Renewal of registration 2–514
Issuance of license to practice 2–513
License recorded with clerk of District Court 2–513
Fee for recording 2–513
Masculine gender construed to include feminine 2–521
Persons selling spectacles excepted from act 2–520
Physicians and surgeons excepted from act 2–520
Practitioners from other States, licensing, fee, reciprocity 2–518
Prescription, right to write limited 2–519
Re-entering practice after retirement 2–514
Refusal of license, ground 2–516
Register 2–508
Registration of licenses 2–513
OPTOMETRY—Continued
Revocation or suspension of license 2–516
Failure to pay registration renewal fee 2–514
Ground 2–516
Right to use titles and degrees limited 2–519
Secretary-treasurer of board 2–504, 2–506, 2–507
Bond 2–506
Compensation 2–507
Election 2–504
Singular number construed to include plural 2–521

ORAL SURGERY
Dentist, examination for license 2–308

ORDERS
See JUDGMENTS AND DECREES
Juvenile Court 11–930

ORDINANCES AND REGULATIONS
See MUNICIPAL ORDINANCES AND REGULATIONS

ORPHAN'S COURT
Replaced by Probate Court

ORTHODONTIA
Dentist, examination for license 2–308

ORTHOPEDIC PODIATRY
Podiatry license examination 2–705

OSTEOPATHY
See MEDICINE AND OSTEOPATHY

OUNCE
Liquid ounce, dimension 10–119

OUSTER
See QUO WARRANTO

OUTDOOR SIGNS
Commissioners' power to regulate 1–231
Force and effect of regulations 1–231
Fee for license 1–232
License required 1–232
Penal provision of regulations, effective date 1–233
Penalty for violating regulations 1–233
Publication of regulations 1–233
Real estate, for sale or rental signs 7–1001
Rejection of application 1–232
Revocation of license 1–232

OUTSIDE TOILETS
See PRIVIES

OVERSEERS
Sewers, etc., employment 7–1235

OVERTIME
Females employed for longer period than 8 hours 36–301

OWNER
Stock certificate 28–2921

OYSTERS
Sale by count authorized 10–120
Shucked oysters, sale by liquid measures 10–120

PACKAGES
Forging brands and labels, penalty 22–1402

PALMISTS
See FORTUNE TELLERS

PANDERING
See ASSIGNATION; HOUSES OF PROSTITUTION; LEWDNESS; PROSTITUTION
Compelling female 22–2705, 22–2706
Immoral purposes, to reside for 22–2705
Prostitution, to reside for 22–2706
To marry 22–2705
Detaining female for 22–2706, 22–2709
Debt contracted in house of prostitution 22–2709
Prostitution 22–2706
Sexual intercourse 22–2706
Parent, guardian, consent to taking female 22–2705
Placing female for prostitution 22–2705, 22–2710
In charge of custody of another 22–2705
In house of prostitution 22–2705
Receiving consideration for 22–2710
To reside with another 22–2705
Procuring female 22–2705, 22–2710
For house of prostitution 22–2705
For immoral purposes 22–2705
For prostitution 22–2705
Receiving consideration for 22–2710
Receiving consideration for 22–2710—22–2712
Place of prostitution 22–2712
Furnishing 22–2712
Servicing 22–2712
Placing female in charge of another for 22–2711
Debauchery 22–2711
Immoral purposes 22–2711
Prostitution 22–2711
Placing female in house of prostitution 22–2710
Receiving consideration from female for 22–2707
Debauchery 22–2707
Immoral acts 22–2707
Prostitution 22–2707
Wife 22–2708
House of prostitution, placing in 22–2708
Prostitution, to lead life of 22–2708

PARACHUTES
Flying, penalty 22–1117

PARADES
Capitol Grounds 9–124

PARAPET
Height regulated 5–407

PARDONS
Commissioners' power to grant 1–220

PAREGORIC
See NARCOTIC DRUGS
Retail sales, prescription required 33–410
Sale by manufacturers and wholesalers, written orders 33–410

PARENT AND CHILD
See CHILDREN; DEPENDENT AND NEGLECTED CHILDREN; DESERTION
Assignment of transfer of parental rights 32–786
Marriage of child, consent to 30–111
Paternity, jurisdiction of Juvenile Court 11–907

PARENT AND CHILD—Continued
Prostitution of female child, consent of parent, penalty 22–2705
Religious faith considered in placing children 11–918
Right of parent to be heard in Juvenile Court 11–915

PARIS GREEN
Sale, restrictions 2–612

PARK POLICE
Age retirement allowance, conditions 4–507
Appointment to White House Police
Appointment to lower grade prohibited 4–303
Filling of vacancies 4–302
Appropriation to carry on act authorized 4–306
Death benefits payable to widow and children, conditions 4–507
Death while in service, repayment of contributions to relief fund 4–504
Director of National Park Service given exclusive control 4–202
First sergeant 4–202
Funeral expenses, amount contributed from relief fund 4–509
Leaves of absence 4–207
Number of days allowed annually 4–207
Sick leave 4–207
Lieutenant 4–202
Medical attendance 4–206
Motorcycle police, extra compensation 4–204
Organization 4–202
Privates, number and grade 4–202
Reappointment, redeposit of refund in relief fund 4–504
Refund from relief fund on separation from force 4–504
Refund of payments to retirement fund 4–205
Relief fund, salary deductions, refunds 4–503, 4–504
Retirement law made applicable, contributions to fund 4–515
Retirement, period of service with White House Police counted 4–305
Retiring and Relief Board, powers and duties, report of findings 4–510, 4–511
Salaries 4–203
Adjustment 4–803—4–805
Sergeant, number, rank 4–202
Special police, appointment authorized, powers and duties 4–208
Superintendent 4–204
Army officer detailed as 4–204
Extra compensation 4–204
Transportation furnished 4–204
Temporary disability allowance 4–506
Total disability allowance, conditions 4–507
Transfer from White House Police 4–305
Refunds and payments into retirement fund 4–305
Uniforms and equipment 4–204
Vested with powers and duties of Metropolitan Police 4–201
Voluntary retirement, payment of benefits, conditions 4–508
Watchmen provided by United States Government known as 4–201

PARKING
See PUBLIC OFF-STREET PARKING FACILITIES
Motor vehicles 40–804, 40–810, 40–811
Zoning Commission's power to require facilities 5–413

PARKING METERS
See MOTOR VEHICLES
Authority to install 40–616
Fees, collection and deposit 40–616
Power to prescribe 40–804
Location 40–804
Rules and regulations 40–616

PARKING SPACE
Congressional tags, appropriation for expenses 40–603b
Congressmen, public buildings 40–604

PARKINGS
For sale or for rent sign, placing on prohibited, penalty 7–1001
Jurisdiction and control vested in Commissioners 8–110
Sewers and water mains, right to lay in, streets dedicated by landowners 7–117
Sidewalks, right to lay on, streets dedicated by landowners 7–117
Space between street lines and buildings restriction lines 7–117
Turning over care to private owners 8–108
Use, business streets 8–108

PARKS AND PLAYGROUNDS
See NATIONAL CAPITAL PARK AND PLANNING COMMISSION; NATIONAL PARK SERVICE
Acquisition of land by commission 8–102—8–106
Advice of Commission of Fine Arts 8–102
Appropriation authorized 8–106
Approval by President of agreement with Maryland and Virginia 8–103
Contracts reserving limited rights to grantor, approval by President 8–103
Eminent domain authorized 8–102
Reservation of limited right by grantor authorized 8–103
Right to acquire in Maryland and Virginia 8–102
Anacostia Park 8–161
Anacostia River, land along, clearing title of United States 8–104
Appropriation for acquisition 8–106
Areas between sidewalk line, minimum size 8–108
Assignment of control to Commissioners of District 8–106
Bathing pools and beaches 8–168—8–171
Bathing beach and dressing room, tidal reservoir 8–168
Construction authorized 8–169
Cost of construction limited 8–169
Fee for use and enjoyment 8–170
Management and control 8–170
Number authorized 8–169
Operation through welfare and recreational association, special fund 8–171

PARKS AND PLAYGROUNDS—Continued
Beach Parkway 8–121—8–123
Dedication and transfer of exchanged land 8–122
Exchange of land between United States and private owners 8–121
Extension northward, purposes 8–121
Secretary of Interior, exchange of land 8–121, 8–123
Buildings
Construction, authorization by Congress required 8–133
Plans, preparation, supervision 8–134
Business streets
Designation by Commissioners 8–108
Use of sidewalks for business purposes 8–108
Canals, filling in, jurisdiction over land 8–145
Commissioners of District, transfer of jurisdiction to Director of National Park Service 8–135
Director 8–108
Transfers of jurisdiction to Commissioners of District 8–135
District authorities transferring jurisdiction to Federal authorities 8–115, 8–116
Eminent domain 7–218, 8–102
Amount of cost and expenses assessed as benefits 7–218
Federal authorities transferring jurisdiction to District authorities 8–115, 8–116
Fort Davis made part of park system 8–125
Fort Dupont made part of park system 8–125
Georgetown Reservoir, transfer of jurisdiction to Commissioners 8–142
Glover Parkway and Children's Playground 8–162, 8–163
Acceptance of dedicated land 8–162
Made part of park system 8–163
Improvement of unimproved public spaces, restrictions 8–108
Land acquired for, lease pending need for use 8–105
Life interest, grantor of land reserving 8–103
Meridian Hill Park 8–112
Montrose Park 8–113
National Capital Park and Planning Commission 8–101
Annual report to Congress 8–107
Budget estimate 8–107
Creation, powers and duties 8–101
Highway commission abolished, powers and duties transferred 8–108
Members of Commission and personnel 8–101
National Capital Park Commission abolished and duties transferred 8–101
National Zoological Park 8–134
Plans and specifications for buildings and bridges, supervision 8–134
"Park system" defined 8–108
Parkway connecting Potomac, Zoological, and Rock Creek Parks 8–158—8–160
Acquisition of additional land authorized 8–159
Acquisition of land 8–158
Amount to be expended limited 8–158, 8–159
Exclusion of land authorized 8–159
Part of park system 8–160

PARKS AND PLAYGROUNDS—Continued
Parkway connecting Potomac, Zoological, and Rock Creek Parks—Continued
Reimbursement of Federal Treasury, interest 8–158
Piney Branch Parkway part of system 8–152
Playgrounds
Public ground, use 8–128
Volunteer services, acceptance authorized, condition 8–132
Washington Aqueduct, use in part as playground 8–130
Potomac Park 8–153—8–157
Artificial body of water, expenditure of funds for construction prohibited 8–155
Boathouses, licensing 8–157
Control by Director of National Park Service 8–154
Department of Agriculture, temporary occupancy 8–156
Establishment 8–153
Lagoon, expenditure of appropriation for construction prohibited 8–155
Speedway, construction, authorization by Congress required 8–155
Potomac River, lands along, clearing title of United States 8–104
Regulations, power of President to prescribe 8–108
Reservation part of system 8–108
Reservation
Number 8 transferred to Commissioners of District, purpose 8–138
Number 32, jurisdiction transferred to Commissioners 8–136
Number 185, use for park purposes authorized 8–126
Number 290, jurisdiction transferred to Commissioners 8–137
Widening of roadway of street or avenue 8–127
Rock Creek, lands along, clearing title of United States 8–104
Rock Creek Park 8–146—8–151
Acceptance of dedication of land 8–150
Arable ground, rental 8–149
Area 8–146, 8–147
Buildings in grounds, rental 8–149
Dedication of land 8–146
Director of National Park Service, control over 8–148
Establishment 8–146
Part of park system 8–148
Pathways 8–148
Roadway 8–148
Rock Creek, protection of flow of water 8–151
Rules and regulations for government and care, power to adopt 8–131, 8–143
Sidewalks, rules and regulations, power to adopt 8–144
Square 612, 613 made part of system 8–124
Streets, setting aside portion for use as parks 7–1206
Temporary structures, licensing 8–129
Theodore Roosevelt Island 8–164—8–167
Acceptance of gift authorized 8–164
Administered by Director of National Park Service 8–164
PARKS AND PLAYGROUNDS—Continued
Theodore Roosevelt Island—Continued
Designation in documents, records and maps 8–167
Maintenance and development 8–164
Means of access, provision for 8–165
Monument, erection, approval of plan 8–166
Traffic, enforcement of regulations by director 8–109
Vehicles, enforcement of regulations by director 8–109
Water Street 8–114
Closing for park purposes, consent of property owners 8–114
Right of entry to repair sewers 8–114
Whitehaven Parkway 8–117—8–120
Abandonment of highway or alley 8–117
Adjustment of boundaries, purposes 8–117
Exchange of land with property owners authorized 8–119
Plats—preparation, approval and recordation 8–120
Using lands in parcel "B" for street and highway purposes 8–118
Widening of roadways 8–127

PARLOR-CAR COMPANIES
Taxation of rolling stock 47–1215

PAROLE
See INDETERMINATE SENTENCE AND PAROLE, PRISONERS
From District Training School 32–626
From National Training School for Boys 32–820, 32–821

PARSONAGES
Exemption from taxation 47–801a

PARTIES
See ABATEMENT AND REVIVOR; PROCESS
Bonds and undertakings in District Court 28–2403
Competency as witnesses 14–301
Death of, abatement and revivor 12–101
Ejectment 16–501
Joint obligations 13–401
Consolidation of several actions 13–401
Joinder 13–401
Jurisdiction, parties presiding in different districts 11–306
Partition 16–1301
Publication to heirs where death is uncertain 13–113
Public contractor's bond, actions on 1–804
Quo warranto 16–1601
Required to testify regarding usurious payments 28–2706
Substitution of, abatement and revivor 12–102
Third party made defendant in interpleader 13–217
Uncertainty as to death
Publication to those who would be devisees 13–113
Publication to those who would be heirs 13–112
Service by publication 13–113
United States as party, United States District Court 11–306
Wrongful death actions 16–1201

PARTITION
Accounting by tenant in common 16–1301
Disability of parties, effect 16–1301
Dower
Assignment of 16–1302
Laying off 16–1302
Sale of land encumbered by 16–1305
Granting 16–1301
Parties 16–1301
Sale of indivisible property, discharge from dower 16–1306
Widow of tenant in common 16–1303
Wife of tenant in common protected 16–1304

PARTNERS
Competency as witnesses 14–304
Sales between, under Uniform Sales Act 28–1101

PARTNERSHIPS
Actions 41–126—41–129
Against special partners, may be brought after judgment against general partners 41–128
Brought against general partners 41–118, 41–126
Merger of debts in judgment 41–129
Acts which are deemed a dissolution 41–115
Architects, certificate of registration 2–1016
Assignment with preferences, void as to creditors 41–123
Capital 41–107, 41–121, 41–122
Affidavit of payment by special partners 41–107
Reduction of, to be made good by special partners 41–122
Withdrawal by special partners 41–121
Certified Public Accountant 2–901
Composition with creditors by one partner 41–201—41–204
Debts not merged in judgment against one or more partners 41–129
Definition of "person" includes 49–204
Dentistry, practicing 2–311
Dissolution and payment of debts 41–201—41–204
Separate composition with creditor 41–201
Discharges maker 41–201
Does not affect other partners' right of contribution 41–204
Does not discharge other partners 41–203
Memorandum of exoneration 41–202
Dissolution by acts of parties 41–130
General partners 41–101—41–131
Accounting to general and special partners 41–131
Actions to be in name of 41–126
Conduct of business in name of 41–117
Liability 41–102
Transaction of business by 41–120
Giving notice of dishonor 28–711
Income tax 47–1564a
Income tax, information returns 47–1564
Insolvency, dissolution by 41–130
Limited partnerships 41–101—41–131
Affidavit, contents and filing 41–107
Assignments with preferences void as to creditors 41–122

PARTNERSHIPS—Continued
Limited partnerships—Continued
Certificate of partnership 41–105, 41–106
Acknowledgment 41–106
Contents 41–105
Recording 41–106
Creditors preferred over special partners 41–125
Dissolution 41–115, 41–116, 41–130
Acts after, deemed those of general partnership 41–116
Acts constituting 41–115
False statements render all generally liable 41–109
General partners as defendants 41–118
"General partners", defined 41–102
General partners' liability 41–102
General partners, liability to each other and to special partners for management 41–131
Judgments prima facie evidence of debt 41–129
Management, liability of general partners for 41–131
Merger of partnership debts in judgments 41–129
Names to be used 41–117
Prerequisites to formation 41–108
Publication of terms 41–110
Affidavit of publication, filing 41–112
Failure to publish renders it a general partnership 41–111
Where published 41–110
Purpose of forming 41–101
Reduction of capital, amount to be restored 41–122
Renewal, requirements 41–113
Failure to renew, effect of 41–114
Special partners 41–102—41–104
Assenting to assignments with preferences, effect 41–124
Becoming general partners, joinder in suits 41–126
Creditors preferred over 41–125
Dividends 41–121
Drawing interest when capital is not reduced thereby 41–121
Failure to restore interest or profits which impair capital, effect 41–124
Joined in suits, recovery of costs when not liable 41–127
Liability 41–104
Liability to suit after suit against general partners 41–128
Number 41–103
Right to advise as to management 41–120
Right to examine 41–120
Transacting business, effect 41–120
Use of name in firm, effect 41–119
Withdrawal of investment prohibited 41–121
Suits against general and special partners 41–127
Voluntary dissolution, grounds and requirements 41–130
Limited partners, "special partners" defined 41–102

PARTNERSHIPS—Continued
Name 41–117, 41–119
For conduct of limited partnership 41–117
Use of special partner's, effect 41–119
Plumber's licenses 2–1405
Podiatry practitioners 2–707
Preferences void in insolvency 41–123
Presentment of negotiable instrument for payment 28–608
Priority of claims on insolvency 41–125
Unemployment Compensation Act, employing unit within 46–301

PARTY WALLS
Certificate of location, admissibility in evidence 1–628
Certification and recording of location by surveyor 1–627
Less than 7 inches of adjacent ground occupied, payment for ground occupied 1–625
Locating and placing by surveyor 1–628
Wall extending over line more than 7 inches, payment for ground occupied 1–626

PASSENGER MOTOR VEHICLES FOR HIRE
See Public Utilities
Blanket bond in lieu of insurance 44–301
Bonding 44–301
Employers' Liability Act 44–401—44–405
Insurance required 44–301
Licenses 47–2331
Operations on regular routes exempt from insurance requirements 44–301
Sinking fund in lieu of insurance 44–301
Violation of insurance requirements, penalty 44–301

PASTEURIZATION
See Milk and Milk Products

PASTORAL RESIDENCES
Exemption from taxation 47–801a

PATENT MEDICINES
Sellers subject to druggist license 47–2308

PATERNITY
Jurisdiction of Juvenile Court 11–907

PATHOLOGY
Dentist, examination for license 2–308
Examination of applicants for certain licenses 2–108
Podiatry license, examinations in 2–705

PAUPERS
See Poor Persons
Delivery of bodies to medical and dental schools 2–203—2–207
Residence in district less than 1 year, care 32–321

PAVING
See Streets and Other Ways

PAWNBROKERS
Commissioners' power to provide for inspection 1–224
Police Department, power and duties 4–147—4–150
Examination of books and premises 4–148
Pawned or pledged property, right of examination 4–149

PAWNBROKERS—Continued
Police Department, power and duties—Con.
Penalty for interfering with officer 4–150
Property taken from pawnbrokers delivered to property clerk 4–159
Supervision and inspection 4–147

PAYMENT
See Payment of Money Into Court
Creditors' claims, decedents' estates 18–519
Indorsing on obligations, effect of Statute of Frauds 12–305
Payment of judgment stays execution 15–111
Pleading in bar 13–218
Tax payments to show adverse possession 16–515

PAYMENT OF MONEY INTO COURT
Cases in which permitted 16–1401
Judgment for defendant 16–1402
Payment as compensation or amends 16–1401
Payment of costs incurred 16–1401
Payment on account of claim 16–1401
Pleading no greater debt or damage 16–1401
Rights of plaintiff 16–1402

PAY ROLL
Employee of District signing by mark, witnesses 1–315

PEACE OFFICERS
See Police Department

PEARS
Standard box, dimensions 10–115

PEAS
Shelled peas, standard container 10–115

PECK
Fruit and vegetable container, standard dimension 10–115

PEDDLERS
Badge 47–2336
Drugs and medicines, vending prohibited 2–615
License 47–2336
Weighing and measuring devices, duty to have tested 10–103

PENALTIES AND FORFEITURES
See Criminal Offenses
Doubled in certain cases 6–1005
Jurisdiction of United States District Court 11–306
Limitation of actions 12–201
Plural breaches, pleading 13–205
Unwholesome food, sale of 22–3421
Vagrancy 22–3304

PENITENTIARY
See Indeterminate Sentence and Parole; Prisons and Prisoners

PENNSYLVANIA AVENUE
Buildings fronting, plans, approval by Commission of Fine Arts 5–410
Height of building 5–405

PENNSYLVANIA AVENUE BRIDGE
Maintenance and repair, apportionment of cost 7–504

PENNSYLVANIA RAILROAD COMPANY
Operating lessee of Philadelphia, Baltimore, and Washington Railroad Company 7–1225
Switches and sidings, construction authorized 7–1225—7–1229
Grade crossing elimination law unaffected 7–1228
Grade crossings, approval of Commissioners 7–1227
Overhead bridge required over proposed street 7–1227
Plan subject to approval of Commissioners 7–1226
Right to amend or repeal law reserved 7–1229

PENSIONS
See Police and Firemen's Relief Fund
Exemption from judicial process 15–403

PEOPLE'S COUNSEL
See Public Utilities
Appointment by President 43–205
Counsel of Public Utilities Commission 43–205

PERISHABLE PROPERTY
Sale in attachment and garnishment 16–314
Sale or delivery to owner by property clerk 4–162, 4–164

PERJURY
See Statute of Frauds
Board of Assistant Assessors 47–606
Board of Equalization and Review 47–606
Building association reports 26–404
Conviction of, disqualification from holding office 1–316
Criminal offense, penalty 22–2501
Definition 14–102
Fraternal benefit associations, death claims in 35–913
Healing Arts Practice Act, to evade provision of 2–128
Indictment, sufficiency of 23–204
Marriage license, in obtaining 30–110
Oaths administered by district attorney 11–1002
Personal property tax return affidavit 47–1203
Police and Firemen's Retiring and Relief Board, before 4–510
Public Utilities Commission 43–712
Subornation of, penalty 22–2501
Indictment, sufficiency 23–205
Trial boards of Police and Fire Departments, before 4–602
Trust, title, and indemnity companies 26–320

PERMITS
See Building Lines; Buildings
Barbed-wire fences, construction outside fire limit 7–1102
Boxing or training exhibitions 2–1213—2–1217, 2–1223
Building
Cancelation for nonuse, refund of fee 5–430
Certificates and transcripts, fees for issuing determined by Commissioners 5–429
Employment of females for longer period than 8 hours 36–301

PERMITS—Continued
Erection, construction, reconstruction, or alteration of buildings or structures 5–422
Gas mains, laying in street 7–1204
Sewer, gas, and water connections 1–726
Street improvements under permit system 7–608, 7–609
Trenches, cutting in streets and highways 7–615, 7–616
Tunnels 1–244
Waiver of fees of persons in military service 1–244

PERPETUITIES
Freeholds 45–104
Real property 45–102, 45–103

PERSON
Definition
Boiler Inspection Act 1–702
Negotiable instruments law 28–101

PERSONAL INJURIES
District employees, payment of compensation 1–311

PERSONAL PROPERTY
See Property; Taxation and Fiscal Affairs
Appeal of assessments 47–2403
Artisan's lien 38–124—38–126
"Die without issue" meaning in deed or will 45–205
"Die without leaving issue" meaning in deed or will 45–205
Intangible, situs under inheritance and estate tax laws 47–1629
"Have no issue," meaning in deed or will 45–205
Mechanic's lien 38–124—38–126
Real property provisions made applicable 45–823
Estate 45–801, 45–823
Perpetuities 45–102—45–104
Posthumous children 45–204
Recordation of instruments 42–101—42–103
Acknowledgments 42–101
Bills of sale 42–101
Chattel mortgages 42–101
Conditional sales contracts 42–103
Effect of 42–103
Manner of 42–103
Minimum purchase price where recording required 42–103
Deeds of trust to secure debt of chattels 42–101
Effect of 42–101
Fees 42–102, 42–103
Filing and indexing sufficient 42–102
Need not be transcribed 42–102
Public inspection 42–102
Time for 42–101
Sale for personal property taxes 47–1301, 47–1302
Taxation of personal property 47–1201—47–1214

PETITIONS
See Pleadings
Adoption 16–201
Appeal from Municipal Court of Appeals for District of Columbia 11–773
Claimant to attached property 16–318
Counter security, petition of surety 16–2001
Divorce 16–416

PETITIONS—Continued
Juvenile Court 11–908
Mandamus 16–1001
Sureties, relief from suretyship 16–2001

PETIT LARCENY
See LARCENY

PETTY LOANS
See BANKS AND OTHER FINANCIAL INSTITUTIONS; CREDIT UNIONS
Agent for service of process 26–601
Annual statement to Commissioners of the District 26–604
Attorneys' fees on foreclosure limited 26–608
Bond 26–603
  Suits on 26–603
  Sureties 26–603
Commissioners of the District to make rules and regulations 26–611
Complaints against lenders 26–606
  Hearings 26–606
Enforcement by Commissioners of the District 26–611
Firms exempted from regulation 26–610
Licenses 26–601
  Application, contents 26–602
  Date and expiration 26–602
  Refusal to grant 26–606
  Residence requirement 26–601
  Revocation 26–606
  Tax 26–601
Maximum interest 26–605
  Includes all fees and expenses 26–605
  Not to be deducted in advance 26–605
  Penalty for excessive interest 26–605
Maximum loan $200 26–605
Notice of application, publication 26–602
Penalties 26–607
Penalties in contracts prohibited 26–609
Protest and hearings on applications 26–602
Register of loans 26–604
Rules and regulations 26–611
Statement to borrower, contents 26–605
Unlicensed lending at more than 6 percent per annum unlawful 26–601

PHARMACY
See NARCOTIC DRUGS
Application for license 2–602
  Filing required, verification 2–602
  Proof of qualification 2–602
Bicarbonate of soda, exception from act 2–601
Board of Pharmacy 2–607—2–609
  Annual report to Commissioners 2–608
  Bond of treasurer 2–607
  Compensation of members 2–609
  Examination of applicants for license 2–607
  Expenses of board, payment 2–609
  General grant of powers and duties 2–608
  Hearings before 2–606
  Meetings 2–607
  Number of members 2–607
  Oath of office 2–607
  President 2–607
  Qualifications of members 2–607

PHARMACY—Continued
Board of Pharmacy—Continued
  Recognition of schools and colleges 2–602
  Record, duty to keep, prima facie evidence 2–608
  Removal of members by Commissioners 2–607
  Seal 2–607
  Secretary 2–607
  Term of office, expiration date 2–607
  Treasurer 2–607
Borax, exception from act 2–601
Concentrated lye, exception from act 2–601
Corporation counsel, duty to enforce regulatory law 2–617
Cream of tartar, exception from act 2–601
Credit for attending school or college of pharmacy 2–602
Dentists excepted from law 2–601
Directions for use of drug on label 2–614
Display of permit or license 2–606
Drug stores 2–601
  Licensed pharmacists, employment required 2–601
  Sale of drugs regulated 2–601
Druggist license 47–2308
Educational requirement 2–602
Examination as to qualifications 2–602
Exceptions from act 2–601
Fees under licensing law 2–609
  Examination for license 2–609
  Licensing pharmacist from other jurisdiction 2–604
  Paid to treasurer of board 2–609
  Permit for sale of poisons 2–609
  Renewal of license 2–609
Fraudulent representation to obtain drugs prohibited 2–613
Hearings before board 2–606
  Appeal to Court of Appeals 2–606
  Books and papers, power to compel production 2–606
  Disobedient witnesses, punishment for contempt 2–606
  Report of findings to Commissioners 2–606
  Revocation of license or permit 2–606
  Witnesses, power to call and examine 2–606
Household ammonia, exception from act 2–601
Labels, directions for use of drug on 2–614
License, issuance of
  Fraud in obtaining 2–606
License, renewal of
  Refusal to 2–606
Medicine
  Compounder's license 47–2308
  Dispenser's license 47–2308
Minimum age 2–602
Narcotics, selling, restrictions 2–610, 2–611
Olive oil, exception from act 2–601
Patent medicines, exception from act 2–601
Penalty for violating law 2–617
Permits to sell drugs and poisons 2–601
  Duration 2–601
  Registration of sale 2–601
  Renewal 2–606
  Sale to minors under 18 prohibited 2–601

PHARMACY—Continued
"Pharmacists," use of title by unlicensed person prohibited 2–616
Physicians and surgeons excepted from law 2–601
Poisons covered by act enumerated 2–612
Poisons, sale, regulation, conditions and exceptions 2–601
Practicing without license prohibited 2–601
Practitioners from other states or countries 2–604
Licensing, condition 2–604
Prescriptions
Open to inspection 2–614
Preservation of 2–614
Proprietary medicines, exceptions from act 2–601
Refusal to renew licenses, permits 2–606
Hearing 2–606
Record kept of reason 2–606
Renewal of licenses 2–606
Revocation of license 2–605
Ground 2–605
Hearing by Board of Pharmacy 2–605
Procedure 2–606
Sal ammoniac, exception from act 2–601
Sal soda, exception from act 2–601
Superintendent of police, duty to enforce regulatory law 2–617
Treasurer of board 2–607, 2–608
Bond 2–607
Financial report to Commissioners 2–608
Selection 2–607
Veterinarians, excepted from law 2–601
Wholesalers, excepted from law 2–601

PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY
Assessment of real property 47–718
Branch tracks, spurs, or sidings, construction authorized 7–1218
Approval by National Capital Park and Planning Commission 7–1218
Plats or charts filed 7–1218
Buzzards Point, extension for development 7–1216
Compensation for use of facilities, powers of Interstate Commerce Commission 7–1223
Construction of tracks through public ground and streets, restriction 7–1219
Cost of paving or repairing street, payment 7–1222
Eminent domain proceedings to acquire property authorized 7–1221
Grade Crossing Act unaffected 7–1220
Navy Yard tracks, sale and transfer to company 7–1217
Pennsylvania Railroad Company operating lessee 7–1225
Reservation of right to repeal or amend law 7–1224
Switches, extensions, and turnouts authorized 7–1216
Use of facilities by other railroads 7–1223

PHILIPPINE COMMONWEALTH
Exemption of realty from taxation 47–801a

PHOSPHORUS
Poisonous compounds, sale, restrictions 2–612

PHOTOGRAPH
Dental hygienists applying for license 2–323
Dentist applying for license 2–307

PHRASES
See DEFINITIONS

PHRENOLOGISTS
See FORTUNE TELLERS

PHYSICIANS AND SURGEONS
See HEALING ARTS PRACTICE ACT; INTERNES MEDICINE AND OSTEOPATHY
Birth reports 6–301—6–304
Blindness in new-born child, preventative treatment 6–201—6–204
Board of Examiners 2–106, 2–109, 2–110
Examination of applicants for license 2–114—2–117
Commissioners may accept voluntary medical service for charitable institutions 32–1006
Competency as witnesses 14–308
Definition under uniform narcotic drugs law 33–401
Examination as basis for licensing to practice 2–122
Educational requirements 2–122
Proof required of applicant 2–122
Examining children, in Juvenile Court 11–926
False statements regarding life insurance applications 35–719
Fire Department 4–404
Information divulged to, in unlawfully obtaining narcotic drugs, not privileged communication 33–420
Jury service, exemptions 11–1420
Licenses to practice 2–119—2–122
Relicensing under prior law 2–120
Medical officers in federal service, exemption from Healing Arts Practice Act 2–119
Narcotic drugs, prescription 2–610, 2–611
Contents 2–610
Giving to drug addicts prohibited 2–611
Improper issuance, evidence 2–611
Narcotic drugs, professional use 33–409
Optometry Licensing Act, exception from 2–520
Park police, medical attendance 4–206
Pharmacy law, exception from 2–601
Physicians to poor, maximum compensation 32–1005
Police surgeons 4–106, 4–124
Number appointed 4–106
Qualifications and duties 4–124
Reciprocity as basis for license to practice 2–121

PHYSIOLOGY
Dentist, examination for license 2–308
Healing arts, examination of applicants for license 2–108
Podiatry license examinations 2–705

PIANOS
District trading in old pianos 1–819

PICKETING
Right not abrogated 22–3306

PILOTS
Fire Department 4–404
Salary 4–405

PINEY BRANCH PARKWAY
Part of park system of District 8–152

PINKERTON DETECTIVE AGENCY
Employees of, employment prohibited 1–317

PINNACLES
Height, fireproof construction 5–405

PINT
Liquid half-pint, dimension 10–119
Liquid pint, dimension 10–119

PIPE-LINES
See PUBLIC UTILITIES
"Pipe-line company" defined 43–121

PLACE
Protest of bill of exchange 28–932

PLACES OF AMUSEMENT
Inspection, fees fixed by Commissioners 5–316

PLACES OF ASSEMBLAGE
Fireproof construction, when required 5–403
Unlawful assembly, penalty 22–1107

PLANNING COMMISSION
See NATIONAL CAPITAL PARK AND PLANNING-COMMISSION; ZONING REGULATIONS

PLANTS
Cutting down, destroying, penalty 22–3108
Boundary trees 22–3109
Growing crops 22–3108
Trees 22–3108
Trees on public grounds 22–3110
Diseases of
Common carriers transporting plants, liability limited 6–905
Control measures 6–904
Penalty for violating control law 6–905
Powers of Secretary of Agriculture 6–904
Weed control 6–901, 6–903

PLATS
See STREETS AND OTHER WAYS
Abandonment or readjustment of streets 7–113
Alley dwellings, slum-clearance and improvement work, approval of plan 5–104
Alleys and minor streets, condemnation proceedings 7–313, 7–326
Cost of making, payment 7–326
Approval by Commissioners 1–613
Building lots surveyed, certification, witnesses 1–620
Certification, conditions precedent to recording 1–616
Closing and changing alleyways within square on petition of property owners 7–306
Closing and readjusting of streets and highways 7–403, 7–404
Preparation, contents 7–403
Recording in office of surveyor 7–404
Closing of streets and other ways 7–124
Deeds and other documents, description of property 1–622

PLATS—Continued
Deficiency or excess in number of feet in lot or lots, apportionment, procedure 1–624
Existing alleys closed by dedication of new alleys 7–303
Landowners laying out highways, approval of plat 7–109
Lines of subdivisions of squares shown 1–610
Michigan Avenue, abandoned and relocated portions 7–130
Order of survey, execution by surveyor 1–617
Philadelphia, Baltimore, and Washington Railroad Company, branch tracks and spurs 7–1218
Private surveys, certification 1–618
Proceedings to establish building lines 5–201, 5–202
Property of District 1–106
Records of surveyor's office 1–605
Regulation of planning and subdividing of land by Commissioners 1–613
Restricted areas, plans submitted to Commission of Fine Arts 5–411
Preparation by Commissioners and National Capital Park and Planning Commission 5–411
Scale on which drawn 1–610
Squares or lots belonging to United States 1–612
Square used for business enterprise, closing of alleys 7–305
Streets and other public ways, dedication 1–614
Whitehaven Parkway 8–120

PLAYGROUNDS
See PARKS AND PLAYGROUNDS

PLAYING IN STREETS
Penalty 22–1108

PLEADINGS
See ABATEMENT AND REVIVOR; JOINT CONTRACTS; PARTIES; PETITIONS; PROCESS
Abbreviations commonly used, permissible 13–203
Actions at law, transfer from equity 13–215
Actions in equity, transfer from law court 13–215
Actions to recover fines, etc., under adopted Maryland laws 13–222
Admission of part of claim 13–216
Final judgment to be entered 13–216
Trial and judgment on remainder 13–216
Amendment 13–301
After judgment, generally 13–305
After judgment, on verdict 13–306
As basis for continuance 13–302
Certification of record 13–309
Costs 13–303
Generally 13–301
Marriage of party 12–112
Mistakes of clerk, limitation 13–308
Petty errors by clerk 13–304
Same form only, rule 13–307
Substituted affidavits 13–301
Supplemental affidavits 13–301
Writs of error 13–312

PLEADINGS—Continued
Answers
Affidavits in attachment and garnishment proceedings 16–307
Garnishee's answer 16–317
Immaterial, harmless error 13–206
Return to writ of habeas corpus 16–807
Barring res judicata 13–220
Criminal matters, limitation 13–319
Damages, equitable actions 13–219
Defects after verdict, harmless error 13–316, 13–317
Demurrers 13–205—13–207, 13–209
Denial of another's official character to be under oath 13–213
Dilatory pleas to be verified 13–210
Eminent domain proceedings, land for streets 7–203
Amendments, power of court 7–212
Petition, contents 7–203
English language required 13–201
Equitable defenses in actions at law 13–214
Interpleader 13–217
Affidavit required 13–217
Order of court 13–217
Safekeeping of subject 13–217
Where applicable 13–217
Joinder of counts 13–208
Liquidated and unliquidated claims 13–208
Tort and contract relating to single transaction 13–208
Joinder of parties, joint obligations 13–401
Judgment on demurrer 13–206
Criminal causes exempted 13–206
Form disregarded, exception 13–206
Immaterial traverses disregarded, exception 13–206
Lack of profert, exception 13–206
Jurisdiction mistaken, transfer to proper court 13–215
Amendments to be made 13–215
Testimony to stand, if preserved 13–215
Lost instruments, actions at law 13–204
Bond as in equity required 13–204
Mandamus 13–320
Mistakes
After judgments, effect 13–313
Variance after verdict 13–314
When not cause for reversal 13–310
Motion for new trial 13–221
Basis for 13–221
Municipal Court for District of Columbia, power to prescribe form 11–756
Municipal Court of Appeals for District of Columbia, form prescribed by 11–774
Names and technical words commonly used, permissible 13–203
Non est factum to be verified, exception 13–211
Payment pleaded, as bar 13–218
Penalty for failure to use English language 13–202
Perfection, demurrer joined 13–207
Petty mistakes 13–311
Pleading over does not waive demurrer 13–209
Plural breaches 13–205
Bonds 13–205

PLEADINGS—Continued
Plural breaches—Continued
Damages to be determined by jury 13–205
Judgment on demurrer, confession, nihil dicit 13–205
Penal sums 13–205
Plural pleas permitted 13–212
Proceedings
After verdict, mistakes 13–315
To be in common, legible hand or printing 13–203
Quo warranto 13–320
Replevin 16–1808—16–1810
Replevin suits, Muncipal Court 11–728
Res judicata, barring 13–220
Set-off 16–1902
Supplemental affidavits 13–301

PLEDGES
See PAWNBROKERS
Corporate stock 29–222
Stock, warranty by pledge accepting payment of debt 28–2912
Unemployment compensation benefits 46–318

PLUMBERS
Bond 1–241
Licenses 1–241

PLUMBING
Applicants for license 2–1403
Certificate of good moral character 2–1403
Qualifications 2–1403
Bond of plumbers 2–1404
Amount 2–1404
Power of Commissioners to require 2–1404
Corporate licenses 2–1405
Criminal offenses 1–725
Violation of regulations, penalty 1–725
Employment of unlicensed plumber or gas fitter prohibited 2–1407
Examination of applicants for license 2–1402
Gas fitter 2–1402
Master plumber 2–1402
Examination upon application of owner, occupant, or complainant 1–727
Excavations, permits 1–726
Fees for connection, payment to tax collector 1–726
Fees for licenses and renewals thereof 2–1405
License issued for part of year 2–1405
Maximum and minimum amount 2–1405
Inspector 1–724
Appointment by Commissioners 1–724
Duties 1–724
Duties vested in Director of Inspection 1–246
Enforcement of regulations 1–727
Inspection of houses in course of erection 1–727
Under direction of Commissioners 1–727
License
Issuance of 2–1402
License required 2–1406
Minimum age 2–1403
Partnership license 2–1405
Penalty for violating licensing law 2–1408

PLUMBING—Continued
Permits for connection 1–726
Fees, Commissioners' power to fix 1–726
Remission of fees to Federal Treasury 1–726
Sewer, gas and water 1–726
Plumbing board 2–1401
Employee of District of Columbia to be member 2–1401
Journeyman plumber member 2–1401
Master plumber member 2–1401
Quorum 2–1401
Regulations
Commissioners' power to adopt 1–725
Issuance of 2–1402
Sale or exchange of copies 49–110
Revocation or suspension of license 2–1405
Sewers, regulations, powers of Commissioners 1–725

PODIATRY
"Advertising" defined 2–718
Altering diploma, certificate or license, penalty 2–714
Annual registration of podiatrists 2–710
Application for license 2–705
Contents 2–705
Proof of qualifications 2–705
Board of Podiatry Examiners 2–701—2–704
Annual report to Commissioners 2–702
Appointment 2–701
Books and papers, power to compel production 2–703
Director of Public Health ex-officio member 2–701
Expenses not to exceed receipts 2–709
Investigator, right to employ 2–704
Nominations for appointive member 2–701
Per diem of members 2–709
President 2–702
Qualifications of members 2–701
Quorum 2–702
Record of proceedings and action 2–702
Rules and regulations, power to adopt 2–702
Seal 2–702
Secretary-treasurer 2–702
Term of office 2–701
Vacancy filled for unexpired term 2–701
Witnesses, power to call and examine 2–703
Corporate name, practicing under prohibited 2–707
Corporation counsel, duties 2–704
Definitions 2–711, 2–718
Diploma, selling or offering to sell, penalty 2–714
Display of license and registration card required, penalty 2–713
Examination of applicants for license 2–705
Subjects in which examined 2–705
Exemptions from act 2–712
Expenses of administering law, funds for payment 2–709
False or assumed name, practicing under prohibited 2–707
False representation concerning degree 2–715
Fees under licensing law 2–709
Annual registration 2–710
Certificates issued by Board 2–709

PODIATRY—Continued
Fees under licensing law—Continued
Delinquent annual registration, penalty 2–710
Duplicate license, issuance 2–709
Examination fee 2–709
License issued by reciprocity 2–709
Reentry of practice 2–710
Impersonating another, penalty 2–715
License, issuance of 2–705, 2–706
License, revocation or suspension of 2–707, 2–708
Advertising podiatrists 2–707
Appeal to Court of Appeals 2–708
Decision of courts based on evidence 2–708
Duration, determination by court 2–708
Ground 2–707
Petition, verification 2–708
Procedure 2–708
United States District Court, jurisdiction 2–707
License, selling or offering to sell, penalty 2–714
Physicians and surgeons, exception from act 2–712
Police Court, jurisdiction over violations of law 2–704
Postgraduate classes or schools 2–716
Approval by Board 2–716
Operating without approval, penalty 2–716
"Practice of" defined 2–711
Practicing under false name, penalty 2–715
Practicing under true name required 2–707
Practicing without license, penalty 2–717
Practitioners from other states or countries
Exception concerning 2–712
Licensing without examination, reciprocity 2–705
Record of credentials of licensee 2–702
Register of practitioners 2–710
Registration of licenses with director of public health 2–706
Reinstatement of podiatrists 2–710
Rules and regulations adopted by Board 2–719
Notice given 2–719
Publication 2–719
Secretary-treasurer of Board 2–702
Bond 2–702
Enforcement of law 2–704
Subpenas, power to issue 2–703
Student of podiatry, exception concerning 2–712
Superintendent of police, investigation and prosecution, duties 2–704
"Unprofessional conduct" defined 2–707
Violations of law, general penal provisions 2–717

POISONS
See Food and Drugs; Narcotic Drugs
Antidote given on label 2–612
Application of pharmacist licensing law 2–601
Concentrated lye, sale 2–601
Display of permit or license to sell 2–606
Enumerated under act 2–612
Fraudulent representations to obtain prohibited 2–613
Household ammonia, sale 2–601
Label, content 2–612
Labels on containers 2–601
Minors under 18, sales to, restrictions 2–601, 2–612
Permits to sell, duration 2–601

POISONS—Continued
Prescription of physician, poison label 2–612
Registration of sale 2–601
Regulation of sales under pharmacy law 2–601
Sale of poisonous compounds and combinations 2–612
Calomel, exception concerning 2–612
Enumeration of poisons covered by act 2–612
Inquiry as to purposes for which purchased 2–612
Liniments, exception concerning 2–612
Notice given of poisonous character 2–612
Ointment, exception concerning 2–612
Oxide or carbonate of zinc, exception 2–612
Paregoric, exception concerning 2–612
Preservation of record of sales 2–612
Record kept, exception 2–612
Sale to physicians, dentists, and veterinarians excepted 2–612
Sulphide of antimony, exception 2–612
Sale to minors under 18 prohibited 2–601
Selling or compounding, licensed pharmacist 2–601

POLICE AND FIREMEN'S RELIEF FUND
Accounting for expenditures 4–503
Age retirement 4–507
Amount of benefits, conditions 4–507
Amount of pension relief, determination by Commissioners 4–505
Apportionment of appropriations between District and Federal Government 4–516
Appropriations from fund, purposes 4–503
Arrears of pension, granting prohibited 4–517
Collections paid to collector of taxes 4–502
Creation 4–501
Death benefits for dependents 4–507
Children under 16, monthly allowance 4–507
Marriage after retirement, widow and children excluded 4–507
Remarriage of widow, determination 4–507
Widow's monthly allowance 4–507
Death while in service, repayment of contributions 4–504
Deductions from salaries of members 4–503, 4–504
Refunds and redeposits 4–503, 4–504
Deficiencies in fund, making good from Treasury 4–503
Deposited in Treasury to credit of District 4–502
Discontinuance of allowance, grounds 4–513
Donations to fund 4–503
Equalization of allowances 4–517
Fines imposed on members, part of 4–503
Funeral expenses, amount contributed toward payment 4–509
Medical examination of pensioners 4–512
Discretion of Commissioners, powers 4–512
Failure to appear after notice, reduction or discontinuance of relief 4–512
Park police brought within provisions 4–515
Reappointment to force, redeposit of refund 4–504
Reduction or discontinuance of allowance, basis for 4–513
Refund, separation from force other than by retirement 4–504

POLICE AND FIREMEN'S RELIEF FUND—Continued
Retired member, active service during emergencies, power to require 4–514
Retiring and relief board 4–510
Applications for relief of widows and children 4–510
Certification of physical condition to board 4–510
Consideration of retirement and relief cases 4–510
Corporation counsel made member 4–510
Creation 4–510
False swearing before, perjury 4–510
Notice given member to appear before board 4–510
Oaths, power to administer 4–510
One member from each department 4–510
Park Police member retiring 4–511
Powers of Commissioners 4–510
Power to call witnesses 4–510
Report of finding to Commissioners, approval or disapproval 4–510
White House Police being retired 4–511
Rewards, disposing of for benefit of fund 4–129
Rewards, when part of relief fund 4–503
Sources of fund 4–503
Temporary disability allowance 4–506
Hospitalization 4–506
Injury or disease in course of employment 4–506
Total disability allowance 4–507
Amount, conditions 4–507
Unclaimed balances in hands of property clerk 4–159, 4–160
Proceeds of auction sales 4–160
Property of decedents 4–159
Unclaimed property in hands of property clerk, proceeds of sales 4–503
Voluntary retirement 4–508
Age and service requirements 4–508
Member of Secret Service division, transfer of funds 4–508
Retirement compensation, amount 4–508
White House Police, participation in fund 4–304
Contributions to fund, percentage of basic salary 4–304
Retirement, service with Metropolitan or Park Police forces counted 4–304

POLICE COURT
Alley dwelling law violations, jurisdiction 5–102
Anatomical Law, violations, prosecution, jurisdiction 2–209
Apportionment of business 11–601
Appropriations 11–777
Available for Municipal Court for District of Columbia 11–754
Attachés prohibited from receiving pay from professional bondsmen 23–603
Bailiffs 11–623
Birth returns law, violation, prosecution, jurisdiction 6–304
Black-out regulations, violation of 6–1010
Boiler Inspection Act violations, jurisdiction 1–714

POLICE COURT—Continued
Building, construction, public-work loan 9–204, 9–208
Clerk 11–620
Administering oaths and affirmations 11–622
Appointment 11–620
Audit of accounts quarterly 11–627
Bond 11–620
No fees for services 11–620
To deposit collections weekly 11–625
To pay over to collector unclaimed funds 11–626
To receive fines, penalties, costs, forfeitures 11–625
To render itemized statements of deposits 11–625
Commitment in lieu of fine payment 11–616
Dentistry Law, violations, jurisdiction 2–305
Deputy clerks 11–621
Administering oaths and affirmations 11–622
Appointment 11–621
Number 11–621
Electrical Wiring Inspection Law, jurisdiction and violations 1–720
Employees to continue as employees of Municipal Court for District of Columbia 11–754
For sale or rent sign, prosecution of violations of law 7–1001
Inferior Court of District 11–101
Judges
Acts to be deemed those of court 11–601
Administering oaths, taking acknowledgments 11–608
Appointment by President 11–601
Authority to take acknowledgment of deeds 45–402
Number 11–601
Qualifications 11–601
Removal for cause 11–601
Salaries 11–601
Search warrants for narcotic drugs 33–414
Term 11–601
Vacancies filled by District Court 11–610
Judges to be judges of Municipal Courts for the District of Columbia 11–752
Judgment final, exception 11–619
Juries, impaneling 11–1407
Jurisdiction 11–602
Affrays, concurrent with District Court 11–604
Assault, concurrent with District Court 11–605
Bawdy-houses, concurrent with District Court 11–604
Cruelty to children or animals 11–603
Witness fees 11–603
Disorderly houses, concurrent with District Court 11–604
Exceptions 11–602
Noncapital crimes and offenses, concurrent with District Court 11–602
Offenses against municipal ordinances 11–602
Offenses against regulations 11–602
Parking without consent 40–810, 40–811
Prosecutions for violating public auction permit law 47–2207
Prosecutions under minimum wage law 36–420

POLICE COURT—Continued
Jurisdiction—Continued
Traffic regulation violations 40–603
Violation of license requirements 47–2346
Violation of personal property tax laws 47–1303
Jury 11–617
Compensation 11–617
Deficiencies in panels 11–618
Eligibility of juror 11–618
Marshal to have charge 11–618
Qualifications 11–617
Tenure 11–617
Jury trials, waiver 11–616
Mattress Law violations, jurisdiction 6–605
Minor employees 11–623
Nuisances, unsafe condition, abatement, jurisdiction 5–504
Podiatry Law violation, jurisdiction 2–704
Police officer to be authorized to take bail when clerks not available 23–610
Powers 11–606
Bonds 11–606
Contempt, penalties 11–606
Execution on forfeited recognizances 11–607
Issue process 11–606
Punish embezzlers of bond money 11–606
Power to examine, hold, commit to bail 11–602
In cases cognizable in District Court 11–602
In cases cognizable therein 11–602
Probation officers, appointment 24–101
Process
Attestation 11–613
Return 11–611
Seal 11–613
Service
Fees 11–614
In cases cognizable in District Court 11–612
In ordinance violations 11–611
Prosecutions by information 11–616
Quarters and equipment 11–601
Reports of Court of Appeals, copies furnished judges 11–206
Salaries 11–624
Seal 11–608
Sessions, hours 11–601
Steam and Other Operating Engineers Licensing Law, violation, jurisdiction 2–1506
Trial by court, effect 11–616
Unclaimed funds 11–626
Vagrancy prosecutions 22–3305
Warrants issued by Municipal Court judge 11–705
Weeds, failure to cut after notice, prosecutions, jurisdiction 6–903
Weights and Measures Law violation, jurisdiction of prosecution 10–134
Witness fees 11–615

POLICE DEPARTMENT
See DETECTIVES; PARK POLICE; POLICE AND FIREMEN'S RELIEF FUND; WHITE HOUSE POLICE
Age limits on original appointments, determination 4–107
Age retirement allowance, conditions 4–507

POLICE DEPARTMENT—Continued
Appointment of personnel 4–103
Power vested in Commissioners of District 4–103
Arrears of pension, granting prohibited 4–517
Arrest 4–138, 4–140—4–143
Felony suspected, right of entry 4–141
Making without warrant 4–140
Neglect to make arrest, penalty 4–143
Notice given to lieutenant 4–142
Unnecessary force, use of prohibited 4–176
Warrants for, execution 4–138
Written return by lieutenant 4–142
Arrest on civil process, exemption from 4–128
Assignment to duty, power vested in Commissioners of District 4–103
Assistant superintendent 4–106
Bond 4–109
Exception from Civil Service Act 4–103
Rank 4–106
Salary 4–108
Selected from among captains 4–103
Assistant to inspector commanding detective bureau 4–106a
Austioneers of watches and jewelry, supervisory powers over 4–147, 4–148, 4–150
Awards for meritorious service 4–701—4–704
Awards made 4–701
Appropriation for medals 4–704
Committee to make awards, members, service without compensation 4–702
Holders of medals, preference in promotion 4–703
Board of assistant assessors, subpoenas, service 47–606
Board of equalization and review, subpoenas, service 47–606
Bond, when required of officers 4–109
Captains 4–106
Bond 4–109
Command police precincts 4–106
Duties 4–106
Number 4–106
Salary 4–108
Charges against members 4–121
Preferred by major and superintendent 4–121
Civil-service rules applicable to personnel 4–103
Exceptions 4–103
Classification of officers 4–106
Classification of privates 4–103, 4–106
Class 2, two years' service 4–103
Class 3, privates of over three years' service 4–103
Probationary period, one year 4–103
Vacancies in classes 2 and 3, promotions from class 1 4–103
Commissioners, board of, duty of 4–119
Compromise of felony or unlawful act prohibited, penalty 4–175
Conspiracy to obstruct conduct or operation of force, penalty 4–125
Constables, police to have common-law powers of, exception 4–136
Control of traffic, use of motor fuel tax proceeds, limitation 47–1901

POLICE DEPARTMENT—Continued
Crossing policemen 4–112—4–414
Detailing special police to street railway crossings and intersections required 4–112
Made members of Metropolitan police force 4–113
Substitution of other members of force for crossing duty 4–414
Death benefits for widow and children, conditions 4–507
Death while in service, repayment of contributions to relief fund 4–504
Detectives, private, specific appointment required 4–168
Detective work, detailing privates for 4–110
Discontinuance of relief allowance, grounds 4–512, 4–513
Dismissal of member, grounds, powers of Commissioners 4–121
Equalization of relief allowances 4–517
False personation as police officer 22–1306
Felony suspected, right of entry 4–141
Fine of police officers, power to levy 4–121
Free transportation of policemen by street railways 44–213
Funeral expenses of deceased member, amount contributed from relief fund 4–509
Gaming-houses, complaints, right of entry, searches and seizures 4–145
Hackmen and cartmen, supervisory powers 4–147, 4–150
Houses of ill-fame, complaints, right of entry, searches and seizures 4–145
Inspectors 4–106
Duties 4–106
Exception from Civil Service Act 4–103
Number 4–106
Salary 4–108
Selected from among captains 4–103
Intelligence office keepers, supervisory powers 4–147, 4–148, 4–150
Jury duty, exemption from 4–128, 11–1420
Leaves of absence 4–179, 4–180
Emergency, cancellation 4–180
Leave in lieu of Sunday 4–180
Number of days allowed with pay 4–179
Sick leave 4–180
Licensed venders, supervisory powers 4–147, 4–148, 4–150
Lieutenants 4–106
Bond 4–109
Number 4–106
One designated as harbor master 4–106
Salary 4–108
Written return of arrest 4–142
Lotteries, complaints, right of entry, searches and seizures 4–145
Major and superintendent 4–106
Advances to by disbursing officer 47–114
Bond 4–109
Cartridges for shooting galleries, prescribing 47–2322
Civil service rules, excepted from 4–103
Dental law, enforcement, duties 2–305

POLICE DEPARTMENT—Continued
Major and superintendent—Continued
Duty of force to respect and obey 4–126
Firearms, caliber for shooting galleries, prescribing 47–2322
Healing Arts Practice Act, duty to enforce 2–137
Healing arts practitioner, petition for revocation of license 2–123
Healing arts, unlawful practice, petition to enjoin 2–132
Licenses requiring approval
Auctioneer licenses 47–2309
Billiard parlors 47–2321
Bowling alleys 47–2321
Dealers in firearms, deadly weapons 47–2340
Detective agencies 47–2341
Guides 47–2338
Massage establishments 47–2311
Medicated bath establishments 47–2311
Pool halls 47–2321
Private detectives 47–2341
Russian bath establishments 47–2311
Turkish bath establishments 47–2311
Nurses, petition for revocation or suspension of certificate 2–407
Oaths, power to take and administer 4–123
Persons and property seized in raids, duties 4–146
Pharmacists' licenses, investigation as to revocability 2–605
Pharmacy Law, duty to enforce 2–617
Podiatry Law, investigations and prosecutions, duties 2–704
Powers and duties 4–106
Preferring of charges against members of board 4–121
Quarterly reports to Commissioners, contents 4–127
Salary 4–108
Matrons 4–116—4–118
Duties 4–117
Number appointed 4–116
Qualifications and requirements 4–118
Medical examination of pensioners 4–512
Discretion of Commissioners 4–512
Failure to appear after notice, penalty 4–512
Memorial fountain to members 4–901
Metropolitan police, appointment to White House police
Appointment to lower grade prohibited 4–303
Filling of vacancies 4–302
Metropolitan Police district 4–101, 4–102
Coextensive with District of Columbia 4–102
Creation 4–101
Precincts 4–102
Subdivisions 4–102
Military duty, exemption from 4–128
Motor vehicles not to be transferred to other departments 40–504
Mounted inspectors 4–106
Municipal building, detailing policeman as watchman prohibited 4–111

POLICE DEPARTMENT—Continued
Oath of office 4–104
Officers or members, power of Commissioners to dismiss, grounds 4–121
Ordinance discriminating between persons in administration of justice, nonenforcement 4–139
Park police 4–201—4–208
Pawnbrokers, supervisory powers 4–147—4–150
Pensioners, medical examination of 4–512
Permitting suspect to escape arrest 4–175
Personal injuries, compensation, exceptions 1–311
Police Code 4–177, 4–178
Force and effect 4–178
Police report, as notice of injury 12–208
Precincts, commanded by captains 4–106
Bond 4–169—4–171
Duty on making arrest 4–172
Law governing 4–168—4–174
Penalty for acting without complying with law 4–173
Police laws and regulations applicable 4–174
Reports 4–174
Privates
Annual increase in salary 4–108
Basic salary 4–108
Classification 4–103
Detailing for detective work 4–110
Increase in salary denied, service unsatisfactory 4–802
Outstanding efficiency, additional pay 4–802
Removal for inefficiency 4–802
Salary schedule 4–801
Probationary period 4–103
Counted in determining eligibility for promotion, retirement and pension 4–105
Retention of probationer in service, effect 4–105
Unsatisfactory probationers, discharge 4–105
Promotions, medal-holders, preference 4–703
Property clerk 4–151—4–159
Accused acquitted, return of property seized 4–157
Custody of stolen, lost, or abandoned property 4–152
Decedents' property, custody, sale, disposition of proceeds 4–159
Depositions, power to certify 4–155
Liability 4–156
Lost or abandoned property 4–152
Oaths, power to administer 4–155
Office created 4–151
Perishable property, sale or delivery to owner 4–162, 4–164
Property coming into possession of police 4–159
Property taken from pawnbrokers 4–159
Property uncalled for within year deemed abandoned 4–167
Record of lost, stolen, or abandoned property, contents 4–153
Record of property turned over by police 4–159
Return of property on proof of ownership 4–156
Return of property to owner pending trial, security 4–163—4–165

POLICE DEPARTMENT—Continued
Property clerk—Continued
Sale at auction of unclaimed property 4–160, 4–161
Animals, notice 4–161
Motor vehicles 4–160
Notice, publication 4–160
Property unclaimed within six months 4–160
Unclaimed balances paid into policemen's fund 4–160
Sale of unclaimed property, notice 4–160, 4–161
Stolen property 4–152
Third persons claiming property, custody pending acquittal or conviction of accused 4–158
Unclaimed animals, sale 4–161
Use of property as evidence 4–166
Vested with powers of notary public 4–154
Public property belonging to United States, protection 4–120
Reappointment of removed member prohibited 4–121
Reappointment to force, redeposit of refund in relief fund 4–504
Receiving compensation from person arrested or liable to arrest prohibited 4–175
Record books 4–134
Complaint-books, contents, name and residence of complainant 4–134
Lost, missing, or stolen property 4–134
Service records of members of force, contents 4–134
Records kept
Open to public inspection 4–135
Reports of police kept and bound 4–137
Reduction of relief allowance, grounds 4–512, 4–513
Refund from relief fund on separation from force 4–504
Residence of members 4–132
Living outside District, telephone required 4–132
Maximum distance from Capital Building 4–132
Resignation from
Notice of 4–125
Permission of Commissioners required 4–125
Retired member, active service during emergencies, power to require 4–514
Retirement and relief board, members, powers and duties, report of findings 4–510
Rewards for police services, acceptance prohibited, exception 4–129
Rules and regulations 4–121
Salaries
Adjustment 4–803, 4–804, 4–806
Increase denied, service unsatisfactory 4–802
Privates 4–801
Salaries of officers and privates 4–108
Searches and seizures 4–145
Destruction of property seized 4–146
Duties of major and superintendent 4–146
Prosecution of persons arrested 4–146
Search warrants, execution 4–138

POLICE DEPARTMENT—Continued
Second-hand dealers, supervisory powers 4–147, 4–148, 4–150
Sergeants 4–106
Salary 4–108
Special police appointed during war 6–1006
Special policemen 4–115
Appointment to guard corporate or individual property 4–115
Crossing policemen 4–112—4–114
Emergencies, appointment without pay, powers and duties 4–133
Park Police, appointment, powers and duties 4–208
Strikes, membership in organizations advocating prohibited 4–125
Subpenas in civil cases, exemption from 4–128
Supervisory powers over certain businesses 4–147—4–150
Surgeons 4–124
Duties 4–124
Number 4–106
Qualifications 4–124
Subject to rules and regulations 4–124
Suspected private banking-houses, supervisory powers 4–147, 4–148, 4–150
Suspension of members with or without pay, power of Commissioners 4–121
Telephone, maintenance, when required 4–132
Temporary disability allowance 4–506
Medical, surgical, or hospital services 4–506
Sickness or injury in course of employment 4–506
Total disability retirement allowance, conditions 4–507
Trial board 4–121, 4–122, 4–601—4–604
Amendment or alteration of charges preferred 4–121
Appeals from 4–122
Books and papers, power to compel production 4–601
Commissioners' power 4–122
Compelling obedience to process by witness 4–603
Conclusiveness of findings 4–122
Existing rules and regulations continued in effect 4–122
False swearing before, prejury 4–602
Fees of witnesses 4–601
Oath of members 4–604
Oaths, power of chairman to administer 4–122
Purposes for which created 4–122
Subpoenas, power to issue 4–601
Time limit for appeal from finding 4–122
Witnesses, power to compel attendance 4–601
Uniforms 4–130, 4–131
Appropriations for 4–131
Rules for uniform clothing 4–130
War Department furnishing worn mounted equipment 4–181
Veterinarian's place of business, right to inspect 2–807

POLICE DEPARTMENT—Continued
Voluntary retirement 4–508
Age and service requirements 4–508
Limitation on aggregate retirement during fiscal year 4–508
Member of Secret Service Division 4–508
Retirement benefits payable, amount 4–508
Warrants for arrest, execution 4–138
White House police 4–301—4–306
Withdrawal from force, restrictions 4–125
Withholding information of crime prohibited 4–175
Witnesses in criminal proceedings, detention of 4–144

POLICE POWER
Alleys, powers of Commissioners 1–623
Commissioners of District 1–224

POLICE REGULATIONS
Building regulations 1–228
Dogs, muzzling 1–230
Domestic animals, impounding 1–230
Elevators, regulations for construction and operation, penalty 1–229
Firearms, explosives, and weapons 1–227
Outdoor signs 1–231
Penalty for violation, effective date 1–225
Protection of life, health and property 1–226
Publication 1–225
Punishment for violating 1–224a
Sale and exchange of copies 49–110
Violation, power of Commissioners to provide penalties 1–224

POOL HALLS
Hours when operation is prohibited 47–2321
License 47–2321

POOLS
Gambling 22–1508
Bookmaking 22–1508
Election 22–1508
Racing 22–1508
Included in definition of "partnership" under income tax law 47–1564a

POOR PERSONS
See PAUPERS
Legal residents, indigent parties, return to District 3–110
Medical care and treatment 3–110
Nonresident indigent persons, return to place of residence 3–110
Residence in district less than one year, care 32–321

POSTHUMOUS CHILDREN
Birth defeats future estate dependent on parents' death without heirs, issue or children 45–204
Take as though living at ancestor's death 45–204

POSTMASTERS
Jury service 11–1420

POTATOES
Mislabeling 22–3409—22–3412
Accurate grading 22–3409
Penalty 22–3412

POTATOES—Continued
Mislabeling—Continued
Seed potatoes, not applicable to 22–3411
Sign to show grade 22–3410

POTOMAC PARK
Artificial body of water, expenditure of funds for construction prohibited 8–155
Boathouses, licensing 8–157
Buildings fronting, plans, approval by Commission of Fine Arts 5–410
Control by Director of National Park Service 8–154
Department of Agriculture, temporary occupancy 8–156
Establishment 8–153
Lagoon, expenditure of appropriation for construction prohibited 8–155
Parkway connecting with Zoological and Rock Creek Park 8–158, 8–160
Speedway, construction, authorization by Congress required 8–155

POTOMAC RIVER
Chief of Engineers of United States Army, Potomac River bank, control in part 9–101, 9–102
Drawbridges, submarine cables, use of 7–1231
Jurisdiction over 1–101
Lands adjoining, clearing title of United States 8–104
Throwing or depositing matter into, penalty 22–1702

POULTRY
Garbage, use in feeding 6–503
Keeping and running at large, power to regulate 1–224
Sale by weight 10–120

POUNDMASTER
Authority to make arrests 47–2008
Impounding dogs 47–2003
Sale of impounded dogs 47–2008

POWER OF ATTORNEY
Deeds not to be executed or acknowledged by attorney 45–401
Fiduciary, nonresident, to give power to Register of Wills 20–118
Notary's power to take and certify acknowledgment of 1–511
Fee 1–514
Married women 1–511
Stock certificate, transfer of 28–2920
Transfer of stock certificate 28–2901, 28–2902, 28–2904

POWERS
See REAL PROPERTY

PRECINCTS
Metropolitan Police district 4–102
Captains commanding 4–106

PRESCRIPTIONS
Copy when furnished 2–614
Directions for use 2–614
Narcotics 2–610, 2–611
Open to inspection 2–614
Preservation by druggist 2–614

PRESENTMENT FOR PAYMENT

See NEGOTIABLE INSTRUMENTS

PRESIDENT OF BOARD OF COMMISSIONERS

Board of Commissioners of District 1–207

PRESIDENT OF UNITED STATES

Alley dwellings, power to purchase, condemn, or acquire lands and buildings, purpose 5–103
Delegation of authority 5–104
Commissioners of deeds, appointment 1–401
Commissioners of District, appointment 1–201
Contracts acquiring land for parks, grantor reserving limited rights, approval 8–103
Judges for Municipal Court for District of Columbia, appointed by 11–752
Judges of Municipal Court of Appeals for District of Columbia, appointed by 11–771
Land acquired from Maryland and Virginia for park purposes, approval of contract 8–102
National Capital Park and Planning Commission, citizen member, appointment 8–101
Notaries public, appointment 1–501
Park system of District, regulations, power to prescribe 8–108
Subdivision of squares and lots belonging to United States 1–612
Suspension of prevailing wage rate law 1–815

PRESUMPTION

Bulk sales law, effect of 28–1705
Consideration supporting negotiable instruments 28–201
Corporation stock book entries 29–226
Negotiable instruments 28–117
Date of 28–112
Delivery of 28–117
Holding in due course 28–409
Indorsement, place where 28–317
Negotiation before maturity 28–316

PRESUMPTION OF DEATH

Absence for seven years 14–501
Person presumed dead found living, effect 14–502

PRETENSES

See FALSE PRETENSES

PRETZELS

Exception from weight regulations concerning bread 10–113

PRICE FIXING

Cooperative association operations 29–842

PRICES

Commodities, restrictions 10–107
Industrial enterprises at workhouse and reformatory, purchase of products 47–131
Markets, investigation by Superintendent of Weights, Measures, and Markets 10–130

PRIMA FACIE EVIDENCE

See EVIDENCE

PRINCE GEORGES COUNTY, MARYLAND

Garbage incinerators of District, use, terms and conditions 6–511

PRINTING

Appropriations for printing list of supplies where contract awarded for furnishing 1–242
Records and briefs on appeal to Municipal Court of Appeals for District of Columbia 11–772

PRIORITIES

Unemployment compensation contributions 46–304

PRISON BREACH

See CRIMINAL OFFENSES

PRISONERS

Board of Parole, rules and regulations 24–201a, 24–201b, 24–208
Introduction of contraband into prisons 22–2603
Parole authorized 24–204
Revocation of parole 24–206
Sentence, application for reduction of minimum 24–201c

PRISONS AND PRISONERS

See DEPARTMENT OF CORRECTIONS; INDETERMINATE SENTENCE AND PAROLE; INSANE CRIMINALS; PROBATION

Board of Public Welfare
Control over Washington Asylum and Jail, reformatory, workhouse 24–409
Supervision of employees of Washington Asylum and Jail 24–411
Supervision of employees of workhouse, reformatory 24–419
Supervisory powers 3–106, 3–107
Visitorial powers 3–111
Commitment of prisoners by marshal 24–413
Commutation of fines 24–404
Cost of care of District convicts in Federal penitentiaries 24–424
Deduction of time for good conduct 24–405
Delivery of prisoners to marshal 24–414
Detention of United States prisoners 24–410
District Training School, control and management by Board of Public Welfare 3–106
Employment of prisoners 24–412
Escape, penalty 22–2601
Industrial Home Schools, control and management by Board of Public Welfare 3–106
Inmates of workhouse and reformatory to be released in District 24–406
Investigation of institutions by Board of Public Welfare 3-112
Commissioners of District ordering 3–112
Jail officers and employees, corrupt conduct, penalty 22–2602
Jurisdiction of prosecutions 24–401
Maintenance of District of Columbia inmates 24–423
Payments to be "miscellaneous receipts" 24–423
Reimbursement of United States 24–423
Maintenance of jail 24–422
National Training Schools
Binding out or apprenticing of children 3–117
Commitment of children under 17 3–121
National Training School for Boys, contracts for maintenance of boys 3–110
National Training School for Girls, management and control by Board of Public Welfare 3–106

PRISONS AND PRISONERS—Continued
New institutions, submission of plans to Board of Public Welfare 3–112
Place of imprisonment 24–401
Cumulative sentences, rule 24–401
Designation by Attorney General 24–425
Reformatory of the District 24–402
Jurisdiction by Commissioners of District 24–402
Transfers to by Attorney General 24–402
Term between six months and one year, jail 24–401
Term not exceeding six months, workhouse or jail 24–401
Term over one year, designation by Attorney General 24–402
Term over one year, penitentiary 24–401
Police matrons, duties of 4–117
Professional bondsmen, right to communicate with 23–606
Reformatory, management and control of 3–106
Registration records 3–109
Sale of products of workhouse, reformatory 24–418
Subsistence of federal prisoners by Attorney General 24–421
Superintendent 3–106, 3–107
System of accounts 3–109
Transfers
Attorney General's authority 24–425
Jail to workhouse, 24–403
Penitentiary to reformatory, 24–402
Washington Asylum and Jail 24–407
Jail and asylum combined into one institution 24–407
Management and control by Board of Public Welfare 3–106
Superintendent 24–411
Accountable for safe-keeping of prisoners 24–415
Annual report to Attorney General 24–416
Delivery of prisoners to marshal 24–414
Failure of Congress to appropriate for does not repeal authority 24–417
To execute judgments in capital cases 24–417
Workhouse, management and control by Board of Public Welfare 3–106

PRIVATE BANKS
See Banks and Other Financial Institutions

PRIVATE CONDUITS
Conditions for laying 43–1301
Congressional reservation of right to alter, amend or repeal provisions relating to conduits 43–1303
Failure to remove unlawfully placed conduits, penalty 43–1302

PRIVATE DETECTIVES
See Detective Agencies; Detectives

PRIVATE EMPLOYMENT AGENCIES
See Employment Agencies
Definition 47–2101
License law 47–2101—47–2111

PRIVIES
Penalty for violation of law 6–704
Regulation of construction and maintenance by Commissioners authorized 6–703
Sewer connections, when obligatory 6–701
Unconnected with sewer, permit for maintenance 6–702

PRIZE FIGHTS
See Boxing Exhibitions
Penalty 22–1105
"Pugilistic encounter" defined 22–1106

PROBATE
See Wills

PROBATE COURT TERM
Appeal, proceedings not stayed, when 11–511
Appointing Association for Works of Mercy as guardian of girl under 18 32–104
Approval of custody and control by Association for Works of Mercy 32–101
Arbitration 11–520
Award conclusive 11–520
Consent of parties 11–520
Association for Works of Mercy, appointment as guardian 32–103
Authority to take acknowledgment of deed 45–402
Bonds and undertakings 28–2403
Clerk, Register of Wills 19–409
Compelling performance of duties 11–514
Revocation of letters 11–514
Summons 11–514
Decree admitting will to probate as evidence 11–519
Depositions 11–519
Enforcement of orders, judgments and decrees 11–516
Fees and costs 11–1503
Fiduciary's bond or undertaking 28–2403
Investment of funds 11–513
Court's power to order 11–513
Issues not relating to wills 11–517
Notice of trial 11–517
Judgment for costs
Authority to render 11–518
Execution 11–518
Judgment or decree, enforcement by attachment, sequestration 11–512
Jurisdiction 11–501
Limitation 11–512
Jurisdiction, plenary 11–503
New trial 11–519
Orders, enforcement by attachment, sequestration 11–512
Orphans' Court, replaces 11–501
Plenary proceedings 11–509
Attachment and sequestration 11–510
Costs 11–510
Issues 11–510
Judgment or decree 11–510
Regulation 11–509
Powers 11–501, 11–504
Enforce distributions 11–504
Enforce rendition of inventories and accounts 11–504
Jurisdiction over wills 11–504

PROBATE COURT TERM—Continued
Powers—Continued
Letters ad colligendum, grant and revocation 11–504
Letters of administration, grants and revocation 11–504
Letters of guardianship, grant and revocation 11–504
Letters testamentary, grant and revocation 11–504
Not exclusive of equity court 11–504
Settlement of accounts prima facie evidence 11–504
Property in hands of property clerk, administration 4–159
Revocation of letters, accounting, failure to make 11–515
Seal for court 11–505
Seal for register of wills 11–505
Sessions, weekly 11–502
Special term of United States District Court 11–501
Summons
Failure to appear, penalty 11–506
Failure to appear, sequestration
Accounting 11–508
Allowance 11–508
Bond 11–508
Return of property 11–508
Failure to make return 11–507
Failure to serve process 11–507
Power to issue 11–506
Return 11–508
Service 11–507
Witnesses, refusal to give evidence, penalty 11–506

PROBATION
See Indeterminate Sentence and Parole
Continuance of 24–104
Department of, Juvenile Court 11–924
Discharge from 24–104
Fire department, appointment to force as private 4–405
Modification of order 24–104
Police department appointees, probationary period 4–103
Probationers 24–102
Observing rules prescribed for conduct 24–102
Receiving statement of conditions of probation 24–102
Reporting to probation officer as directed 24–102
Probation officers 24–101
Appointment by District Court 24–101
Appointment by Police Court 24–101
Investigations, report 24–103
Juvenile Court 11–922
Probation officers, Municipal Court for District of Columbia 11–754
Quarters, supplies for officers 24–105
Revocation of order 24–104
Rules for granting 24–102
Supervision of probation, Juvenile Court 11–922

PROCEEDINGS SUPPLEMENTARY
See Executions

PROCESS
See Publication of Notice
Coroner serving in lieu of marshal 11–1208
Corporations, service by publication 13–104
Eminent domain, land for streets 7–204
Lost stock certificate, proceedings for issuance of new certificate 28–2917
Municipal Court for District of Columbia
Form, power to prescribe 11–756
Service 11–755
Municipal Court of Appeals for District of Columbia, form prescribed by 11–774
Persons non compos mentis 13–107
Service 13–107
Police Court 11–611
Attestation 11–613
Return 11–611
Service 11–611
Fees 11–614
In cases cognizable in District Court 11–612
In ordinance violations 11–611
Probate court term 11–506—11–508
Publication 13–108
Absent from District 13–108
Affidavit of absence 13–109
Affidavit of mailing copy 13–111
Claims to property in District 13–108
Divorce 13–108
Form 13–110
Infant, absent or nonresident 13–111
Nonresidents 13–108
Parties, uncertainty as to death 13–113
Diligent search required 13–113
Partition 13–108
Persons non compos mentis 13–112
Return of summons prerequisite 13–109
Unknown heirs, devisees 13–108
Service
Alien fire, casualty or marine insurance company 35–1327
Foreign corporations 13–103
Foreign fire, casualty or marine insurance company 35–1327
Infant defendants 13–105
Personal 13–105
Person with whom he resides 13–105
Evading, effect 13–106
Persons secreting to evade, liability 13–106
Inmate of District Training School 32–627
Municipal Court for District of Columbia 11–755
Municipal Court of Appeals for District of Columbia 11–774
Nonresidents, personal service without District 13–108
Sunday service 13–102
Liability of server 13–102
Service by coroner in lieu of marshal 11–1208
Service on District, method 1–901
Service on unauthorized fire, casualty or marine insurance company 35–1327
Summons 13–101
Form 13–101
Unemployment Compensation Act, service on nonresident employers 46–305

PROCESS—Continued
Validity of service on superintendent of insurance 35–423

PROCTORS
See ATTORNEYS
Fees and costs 11–1501

PROCURATION
Agent signing by, effect, negotiable instruments 28–122

PRODUCERS MARKET
Farmers produce market 10–136, 10–137
Location, charges for space 10–136

PROFERT
Lack in pleadings 13–206

PROFESSIONAL BONDSMEN
See CRIMINAL PROCEDURE

PROFITS
Taxation of exempt properties sold at profit 47–801a

PROHIBITION
Writ of, District Court authorized to issue 11–315

PROJECTILES
Regulations relative to, power to adopt 1–227

PROMISSORY NOTES
See NEGOTIABLE INSTRUMENTS
Definition 28–1001
Interest rate 28–2702
Negotiable instruments, referee in case of need, bills of exchange 28–906
Nonnegotiable, assignment 28–2503
Presentation for payment by notaries public 1–509
Protest by notaries public 1–509

PROOF
See EVIDENCE
Divorce decree, requirements 16–419
Ejectment 16–505
Will for probate 19–305, 19–306

PROPERTY
See BUILDINGS; LOST PROPERTY; PERSONAL PROPERTY; PUBLIC BUILDINGS AND WORKS; REAL PROPERTY; STOLEN PROPERTY; TRESPASS; UNSAFE STRUCTURES; ZONING REGULATIONS
Claims to attached property 16–318
Conditional sale, removing property subject to, penalty 22–1406
Damage, limitation of actions 12–201
Detention, limitation of actions 12–201
District, injuring, penalty 22–3111
Electric company, tampering with, penalty 22–3115
Injuries to, criminal offenses 22–3101—22–3122
Mortgaged, removing from District, penalty 22–1209
Orders and decrees in equity for delivery, enforcement 11–328
Preceding corporations, property vested in District 1–104
Preservation of attached property 16–314

PROPERTY—Continued
Property on which fieri facias may be levied 15–210
Property rights
  Effect of annulment of marriage 16–409
  Effect of divorce 16–409
Recovering specific personalty by attachment 16–301
Recovery, limitation of actions 12–201
Search warrants, property subject to 23–301—23–304
Stolen
  Destroying, penalty 22–2208
  Receiving, penalty 22–2205
    District, property of, penalty 22–2207
Subject to attachment and garnishment 16–308
Taking and carrying away another's, penalty 22–1211
Trespass to, criminal offenses 22–3101—22–3122
United States, injuring, penalty 23–3111
Unlawful entry on private, penalty 22–3102
Vandalism, penalty 22–3112

PROPERTY CLERK
Accused acquitted, return of property 4–157
Custody of stolen, lost, or abandoned property 4–152
  Record kept, contents 4–153
Delivery of property to owner pending trial 4–163—4–165
  Animals or other property 4–163
  Bond required 4–163
  Commissioners' power to authorize 4–163
  Large quantities of goods held for sale by owner, amount retained by clerk 4–165
  Money excepted 4–163
  Perishable property, bond 4–164
Depositions, power to certify 4–155
Liability 4–156
Oaths, power to administer 4–155
Office created 4–151
Pawnbrokers, property taken from 4–159
Perishable property, sale or delivery to owner 4–162, 4–164
Property coming into possession of police delivered to clerk 4–159
Property of decedent coming into possession of clerk 4–159
  Unclaimed balances credited to police and firemen's relief fund 4–159
Property uncalled for within year deemed abandoned 4–167
Record of property turned over by police 4–159
Return of property on proof of ownership 4–156
Sales at auction 4–160, 4–161
  Motor vehicles unclaimed for three months 4–160
  Property unclaimed within six months 4–160
  Publication of notice 4–160
  Unclaimed animals, notice 4–161
  Unclaimed balances paid into policemen's fund 4–160
Third-party claimants, custody of property pending acquittal or conviction of accused 4–158
Use of property as evidence in trial of cause 4–166
Vested with powers of notary public 4–154
Contents of reports 1–309

PROPERTY CLERK—Continued
Property consumed in use, statement concerning 1–309
Reports and returns to Commissioners of District 1–309

PROPERTY YARD
Reservation No. 185 8–126

PROSECUTIONS
See CRIMINAL PROCEDURE
Criminal offenses 22–109
Informations in Police Court 11–616

PROSTHETIC DENTISTRY
See DENTISTRY
Dentist, examination for license 2–308

PROSTITUTION
See ASSIGNATION; HOUSES OF PROSTITUTION; LEWDNESS; NUISANCES; PANDERING
Females under 16 22–2704
House of 4–145, 4–146, 11–604, 22–2701—22–2722
Inviting 22–2701
Pandering 22–2705—22–2712
Penalty 22–2701
Suspension of sentence 22–2703
Premises occupied for, nuisance 22–2713—22–2722
Vagrancy
Suspension of sentence 22–2703
Wife, causing to practice 22–2708

PROTEST
See NEGOTIABLE INSTRUMENTS
Bills and notes by notary, fee 1–514
Certified copy, notaries record, evidence 1–513
Dishonored negotiable instrument 28–730
Foreign bills of exchange by notary 1–508
Inland bills of exchange by notary 1–509
Failure to comply with law, penalty 1–509
Form and content 1–509
Notice of protest, fee 1–514
Street assessment by aggrieved party 7–631
Adjustment of assessment by Commissioners 7–631

PROVIDENCE HOSPITAL
See HOSPITALS AND ASYLUMS

PSYCHIATRISTS
Examining children in Juvenile Court 11–926

PSYCHOLOGISTS
Examining children in Juvenile Court 11–926

PUBLIC ACCOUNTANT
See ACCOUNTANTS
Definition 2–902

PUBLIC AUCTIONS
See AUCTIONEERS; AUCTIONS
Permits for public auctions 47–2201—47–2208
Sales under authority of law, exemption from permit law 47–2201

PUBLIC BATH ESTABLISHMENTS
License 47–2312

PUBLIC BUILDINGS
Names, power of Commissioners 1–244

PUBLIC BUILDINGS AND WORKS
See BUILDINGS; CAPITOL GROUNDS; PUBLIC IMPROVEMENTS
Adjacent parking zones at public buildings for members of Congress 40–604
Advertisement for bids 1–808, 1–809
Affidavit of contractor as to completion of work and payment of claim 1–804
Bond of contractor
Actions on 1–804
Amount of 1–804
Claims for labor or materials 1–804
Notice of suit on, publication 1–804
Purchase of supplies and materials, cost not in excess of one thousand dollars 1–806
Terms and conditions of 1–804
Waiver, work or material not in excess of $1,000 1–805, 1–806
Borrowing power for construction of building, limited 9–212
Building or street materials, injuries to, penalty 22–3113
Capitol grounds, protection of buildings and property 9–105
Construction of buildings 9–204—9–207
Advancement of funds by government 9–208
Amount of reimbursement in any one year 9–206
Anticipation of revenues by District 9–206
Report of Commissioners to Congress 9–207
Tax levy for repayment of loan 9–207
Contract for construction 1–804
Bond of contractor 1–804
Formal contract not required, amount involved less than one thousand dollars 1–806
Court of Appeals building, Clerk of Court custodian 11–211
District property, injuring, penalty 22–3111
Eight-Hour Law, laborers and mechanics 22–3407, 22–3408
Penalty 22–3408
Electric light and power plants, construction, restriction 9–203
Federal buildings 5–428
Exception from Zoning Regulatory Law 5–428
Plans, approval by National Capitol Park and Planning Commission 5–428
Judiciary Square, federal loan for construction of building 9–204, 9–208
Amount of loan 9–204, 9–208
Appurtenances, furnishings and equipment, installation 9–209
Commissioners authorized to accept advancement 9–208
Contracts and agreements 9–209
Location of buildings 9–208
Period of amortization of loan 9–204
Preparation of plans, estimates, and model 9–209
Purposes for which funds used 9–209
Repayment of loan, annual budget 9–210
Report of Commissioners to Congress 9–211

PUBLIC BUILDINGS AND WORKS—Con.

Judiciary Square, heat furnished from Central Heating Plant 9–103
Connection with Government main 9–103
Payment for heat 9–103
Juvenile Court, building, construction, public works loan 9–204, 9–208
Lease of lands pending need for use 8–105
Limitation of hours of laborers and mechanics 22–3407, 22–3408
Loans to District for construction of buildings 9–212—9–214
Amendment of existing contracts and agreements authorized 9–213
Interest rate determined by Secretary of Treasury 9–214
Limitation on borrowing power 9–212
Police protection 4–120
Retention of percentage of final payment 1–807
Deposit with treasurer of United States 1–807
Interest 1–807
Investment, discretion of treasurer 1–807
Length of time for which held 1–807
Sale of land by Commissioners of District 9–301—9–303
Sale of land by Secretary of Interior 9–304—9–306
School buildings, use 31–801—31–809
Separate contracts for materials and for labor 1–810
Sites for schools and other buildings 1–812
Use of agents in purchasing 1–812
Snow and ice, removal from sidewalk 7–802, 7–803
Splitting of contract to avoid giving bond prohibited 1–805
Streets to be improved, arrangement of schedule by Commissioners 7–607
Tearing up streets, failure to restore, penalty 7–1208
Testing of building materials 1–813, 1–814
Bureau of Standards 1–813
Utilization of laboratory of Highway Department 1–814
Wages of laborers and mechanics 1–815
Prevailing wage rate paid 1–815
Wharf property, control and regulation, leases and rent 9–101, 9–102

PUBLIC CABS

As common carriers 43–111
Loitering 40–617
Traffic regulations 40–617

PUBLIC CONTRACTS

See PUBLIC BUILDINGS AND WORKS; STREETS AND OTHER WAYS
Advertisement for bids 1–808, 1–809
Immediate delivery not required 1–808
Amount involved not in excess of $100 1–808
Appropriation condition precedent 1–808
Authorization by law required 1–808
Board of Public Welfare, members and employees, personal interest prohibited 3–113
Bond of public contractor 1–804
Contractors becoming surety for District officers prohibited 1–210

PUBLIC CONTRACTS—Continued

Dependent children, contracts for care of 3–115
Emergency purchases 1–808
Garbage, collection and disposal 6–502
Jury service by contractors 11–1420
Prevailing wage rate, payment 1–815
Recording and signing by Commissioners 7–602
Separate contracts for materials and for labor 1–810
Sewers of District, use by Maryland 1–817
Street improvements
Advertising for bids 7–601
Exceeding appropriations prohibited 7–620
Maximum duration, subject to appropriations by Congress 7–621

PUBLIC CONVENIENCE STATIONS

See COMFORT STATIONS

PUBLIC CREMATORY

See CEMETERIES AND CREMATORIES

PUBLIC FUNDS

"Conversion of inhabited alleys fund" defined 5–105

PUBLIC GROUNDS

See PARKS AND PLAYGROUNDS; PUBLIC BUILDINGS AND WORKS; RESERVATIONS
Buildings, construction, authorization by Congress required 8–133
Philadelphia, Baltimore and Washington Railroad Company, extension of tracks 7–1219
Rules and regulations for government and care, power to adopt 8–143
Sidewalks, rules and regulations concerning, power to adopt 8–144
Use as playground 8–128

PUBLIC HACKS

Drivers, license 47–2331
Licenses 47–2331
Loitering 40–617
Stands 47–2331
Traffic regulations 40–617

PUBLIC IMPROVEMENTS

See PUBLIC BUILDINGS AND WORKS; STREETS AND OTHER WAYS
Contractor's bond 7–603
Letting of contracts
Advertising for bids 7–601
Unanimous consent of Commissioners 7–602
Liability of contractor for inferior work and repairs 7–603
Street improvements, assessment of cost 7–622—7–633
Streets and other ways
Front foot rule of assessment 7–611, 7–612
Permit system of improvement 7–608, 7–609

PUBLIC LANDS

See EMINENT DOMAIN; REAL PROPERTY

PUBLIC LIBRARIES

Acceptance of gifts 37–101
Advancement of funds for monthly purchases 37–110
Authority of Commissioners of the District 37–101

PUBLIC LIBRARIES—Continued
Board of trustees 37–104
Annual report on management 37–105
Appointing librarian 37–105
Appointment 37–104
Duties 37–104, 37–105
Regulations 37–104
Tenure 37–104
Branch libraries 37–102
Buildings exempted from taxation 47–801a
Central library and branches 37–101
Establishment 37–101
Government publications, depository for 37–111
Librarian 37–105
Advances to by disbursing officer 47–118
Appointment 37–105
Appointment of assistants 37–105
Maintenance and building cost to be included in District estimates 37–106
Personal property exempted from taxation 47–1208
Persons entitled to use 37–103
Permanent residents 37–103
Residents of adjoining counties, fees 37–103
Temporary residents 37–103
Recovery of penalties 37–101
Supplement of public educational system 37–101
Transfer of miscellaneous books to 37–109

PUBLIC MARKETS
See Weights, Measures, and Markets
Stands for food and food products, license 47–2327

PUBLIC OFFICERS
See Officers and Employees of District

PUBLIC OFF-STREET PARKING FACILITIES
Acquisition of property 40–804
Agency defined 40–803
Appropriations from highway fund 40–809
Commissioner defined 40–803
Commissioner's powers 40–804
Condemnation of property 40–804
Construction 40–804
Contracts for construction 40–804
Deposit of money with Federal Treasurer 40–808
Director 40–809
Discrimination in rates or privileges 40–804
District defined 40–803
Employees 40–809
Exchange of property 40–804
Expenses 40–809
Fees, deposit in Federal Treasury 40–808
Highway fund
Appropriations from 40–809
Reimbursement 40–808
Highway Planning Survey Unit, powers and duties 40–807
Lease for operation 40–804
Location 40–806
Motor-Vehicle Parking Agency 40–805
National Capital Park and Planning Commission
Powers and duties 40–807
Recommendations 40–804
Operation 40–804

PUBLIC OFF-STREET PARKING FACILITIES—Continued
Purpose and necessity 40–802
Qualifications of members of motor vehicles parking agency 40–805
Rates 40–804
Reimbursement of highway fund 40–808
Repair 40–804
Rules and regulations 40–804
Salaries
Employees 40–809
Members of Motor Vehicle Parking Agency 40–809
Sale of property acquired 40–804
Term of office of motor vehicle parking agency member 40–805
Vacancy in membership of Motor Vehicle Parking Agency 40–805
Zoning Commission's consent to location 40–806

PUBLIC-OWNED VEHICLES
Application of provision to District of Columbia 40–503
Fire and police motor vehicles not to be transferred to other departments 40–504
Uniform color, lettering 40–501
Vehicles for personal or official use, restrictions 40–502

PUBLIC PARKS
See Parks and Playgrounds

PUBLIC PLAYGROUNDS
Employees' salaries payable out of District revenues only 47–133

PUBLIC PRINTING
Notices, printing, rates 1–809
Reports of Commissioners of District 1–238—1–240

PUBLIC RECORDS
Destroying, defacing, penalty 22–3107
Open to public inspection without charge 45–705
Surveyor's records 1–608

PUBLIC SCHOOLS
See Education

PUBLIC SCHOOL TEACHERS
See Education; Teachers

PUBLIC SERVICE CORPORATION
Electric light and power companies, exemption from wiring inspection law 1–719

PUBLIC UTILITIES
See Railroads; Water Department
Accidents on premises, reporting 43–1001
Accounts 43–309—43–316
Allocation of items 43–314
Books and records to remain in District 43–312
Construction account 43–316
Contents 43–318
Copy of verified balance sheet to be transmitted to Congress 43–313
Depreciation account 43–315
Application of 43–315
Rates of depreciation 43–315

PUBLIC UTILITIES—Continued
Accounts—Continued
Examination and audit 43–314
Failure to keep, penalty 43–905
Keeping records in general office outside District 43–312
Public utilities commission to furnish blank forms 43–311
Public utilities commission to prescribe forms 43–310
Rendering to public utilities commission 43–309
Separate accounts for other business 43–309
Sliding scale of rates and dividends 43–317
To be closed annually 43–313
Uniform accounts of all business transacted 43–309
Acts of prior commission validated 43–203
Antimerger law 43–502
Appeals from orders of public utilities commission 43–705
Decrees 43–705
Pleadings 43–705
Appliances for measuring utility products 43–321, 43–322
Entry on premises of utility to test 43–322
Right of consumer to have test 43–321
Testing fees 43–321
Consumer to pay 43–321
Application of provisions 43–122
Construed to be free from conflict with interstate commerce laws 43–122
Transportation of—
Freight 43–122
Passengers 43–122
Property 43–122
Assignment of franchise, approval of public utilities commission required 43–501
Authority of Commissioners of District to continue 43–209
Boards of directors 43–1004
Number of directors limited 43–1004
Stockholders determining number of directors 43–1004
Boiler Inspection Act, exemption 1–709
Bus lines
Competitive street car and bus lines 44–201
Certificate of convenience and necessity 44–201
Establishment 44–201
"Commission" defined 43–101
"Commissioner" defined 43–102
"Common carrier" defined 43–111
Common carriers, Employers' Liability Act 44–401—44–405
Complaints 43–408—43–410
Hearing 43–410
Hearings to precede orders 43–408
Separate hearings 43–413
Utility may make 43–417
Utility to be notified 43–409
Conflict between ordinances and regulations and orders of public utilities commission 43–209
Congressional reservation of right to alter, amend or repeal public utilities laws 43–1007
Consolidation, issuance of securities 43–805

PUBLIC UTILITIES—Continued
Construction 43–316
"Corporation" defined 43–105
Corporations subject to provisions 43–123
Formed to acquire properties subject 43–123
Formed to transact business subject 43–123
Franchises not yet exercised 43–123
Definitions 43–101—43–121
Dissolution for violation of antimerger law 43–502
Dividends, stock dividends prohibited 43–804
Each day's violation to be separate offense 43–910
"Electrical corporation" defined 43–115
Electric companies, additional lines on or over streets prohibited 43–1401
Electric corporations 43–601—43–606
Electric meters, inspection necessary 43–603
Electric plants, permission and approval required before construction 43–602
General powers of Public Utilities Commission 43–601
Suit to collect charges, excessive rate as defense 43–604
Electric light and power companies 43–1101—43–1109
Additional lines on or over streets prohibited 43–1401
Annual reports to Congress, contents 43–1109
Certain conduits and overhead wires legalized 43–1103
Conduits and overhead wires prohibited 43–1102
Ducts for fire and police wires 43–1107
Extension of conduits 43–1107
Extension of overhead wires in Georgetown 43–1101
Extension of underground conduits in Mount Pleasant 43–1101
House connections authorized 43–1102
Joint use of certain conduits 43–1108
Overhead electric lighting wires east of Rock Creek 43–1104
Penalty for failure to pay bills on time 43–1107
Permits for repair, extension and enlargement of conduits 43–1106
Price for current 43–1107
Reservation of ducts for United States and District 43–1106
Special acts relating to 43–1101—43–1109
Electric light companies, excise tax 47–1701
"Electric plant" defined 43–114
Electric power and light companies 43–1101—43–1109
Excise tax 47–1701
Existing laws remain in force, exception 43–1005
"Extension or extensions" defined 43–108
Failure or refusal to perform lawful duty, penalty 43–910
Failure or reprisal to obey public utilities commission, penalty 43–906
Failure to furnish information required, penalty 43–905
False information, furnishing, penalty 43–905
Fines, penalties, and forfeitures, payment to Treasury 43–912
Furnishing data required by Public Utilities Commission 43–407

PUBLIC UTILITIES—Continued
Gas and electric corporations 43–601—43–606
General powers of Public Utilities Commission 43–601
Gas companies
Additional charge for nonpayment of bills 43–1207
Additional laboratories for gas testing 43–1202
Annual report to Congress, contents 43–1206
Daily inspections 43–1204
Excise tax 47–1701
Inspection of meters, fees payable into Treasury 47–127
Laboratory for testing gas 43–1201
Maximum rates for gas 43–1207
Removal of gas meters for failure to pay for service 43–1205
Representation at testing of gas 43–1203
Special acts relating to 43–1201—43–1207
"Gas corporation" defined 43–113
Gas corporations 43–601—43–606
Gas meters, inspection 43–603
Gas meters, uninspected, use forbidden 43–603
Gas plant, permission and approval required before construction 43–602
General powers of Public Utilities Commission 43–601
Meter inspection, providing place and apparatus 43–603
Suit to collect charges, excessive rate as defense 43–604
"Gas plant" defined 43–112
Immunity of witnesses 43–712
Investigations, utility to bear cost 40–412
Issuance of securities 43–801—43–808
Application of proceeds of sale 43–806
Certificate of authority required 43–802
False statements in securing approval, penalty 43–901
For reorganization or consolidation 43–805
Approval of Public Utilities Commission required 43–805
Approval of terms of consolidation required 43–805
Issuance contrary to law, penalty 43–808
Issuing with knowledge of fraud in obtaining approval, penalty 43–901
Misapplication of proceeds, penalty 43–808
Receiving money for before recording certificate of authority 43–803
Recording certificate of authority 43–803
Securities void if issued contrary to law 43–807
Stock dividends prohibited 43–804
Joint board 40–603—43–908
Joint board's rules, orders, regulations 43–907
Penalty for violating 43–907
Prosecutions 43–907
"Joint rates" defined 43–107
Liberal construction of public utilities laws required 43–1003
Light and power companies 43–1101—43–1109
Lighting of streets 7–701—7–710
Litigation, utility to bear cost 43–412
Motor vehicles for hire, Employers' Liability Act 44–401—44–405

PUBLIC UTILITIES—Continued
Office to be maintained in District 43–312
Orders of Public Utilities Commission
Alteration, modification, amendment after appeal is filed, effect 43–709
Appeals limited to questions of law 43–706
Appeals to District Court 43–705
Certification of question to Court of Appeals 43–708
Precedence over other civil matters 43–705
Procedure 43–705
Taxation of costs 43–705
Application for reconsideration 43–704
Certified copies to be furnished 43–713
Each day's violation to be separate offense 43–910
Effect of reconsideration 43–704
Exclusive method of review 43–704—43–710
Failure or refusal to obey, penalty 43–906
Findings of fact conclusive on appeal, exception 43–706
Prosecutions for violation 43–907
Rescission after appeal is filed, effect 43–709
Rescission, alteration, amendment 43–702
Reconsideration 43–704
Remain in force pending appeal 43–706
Right to appeal 43–705
Saving clause 43–711
Schedules to conform with 43–701
Suspension by District Court 43–706
Valuation orders, appeal 43–705
Passenger motor vehicles for hire 44–301
Blanket bond in lieu of insurance 44–301
Bonding 44–301
Insurance required, exceptions 44–301
Sinking fund in lieu of insurance 44–301
Penalties and forfeitures are cumulative 43–913
"Person" defined 43–106
"Pipe-line company" defined 43–121
Power and light companies 43–1101—43–1109
Private conduits 43–1301—43–1304
Conditions for laying 43–1301
Congressional reservation of right to alter, amend or repeal provisions 43–1303
Construction of tunnels and structures in Anacostia River 43–1304
Permission to lay 43–1301
Refusal to remove unlawful conduits, penalty 43–1302
Production of incriminating evidence compellable 43–712
Proposed changes in law to be submitted to public service commission 43–304
Public Service Commission
Conflicts with authority of Commissioners of the District 43–209
Filing valuation statement 43–307
Hearing on valuation 43–307
Investigation of inadequate services 43–408
Keeping informed on conduct of utility business 43–403
Street railways, enforcing service requirements 44–202
Value of properties at time of evaluation 43–306

PUBLIC UTILITIES—Continued
Public Utilities Commission 43–201—43–209
Accidents on utility's premises 43–1001
Reports to be made 43–1001
Additional compensation of corporation counsel 43–204
Adopting rules and regulations 43–402
Alternative methods of enforcement 43–908
Annual report 43–319
Contents 43–319
Valuation data to be included 43–305
Apparatus or appliances, destruction, penalty 43–909
Approval of consolidations prior to issuance of securities 43–805
Attendance of witnesses 43–405
Bus lines, approving licenses 47–2331
Chairman, election of 43–201
Compelling compliance with laws and ordinances 43–303
Compensation of employees 43–206
Competitive street car and bus lines, certificates of convenience and necessity 44–201
Complaints, hearing to precede order 43–408
Corporation counsel to be general counsel 43–204
Deposit for costs of investigations 43–412
Depositions 43–420
Destroying apparatus or appliances of 43–909
Discriminatory rates, power to regulate 43–911
Disobedience of subpoenas, procedure 43–405
Each day's violation to be separate offense 43–910
Electric corporations, general powers 43–601
Employees 43–206
Employment of additional attorneys 43–204
Entry on premises of utility to test measuring appliances 43–322
Examination and audit of utility accounts 43–314
Examination and test of measuring appliances 43–321
Expenses 43–206
Failure or refusal to obey, penalty 43–906
Failure to follow its directions in accounting, penalty 43–905
Failure to furnish information required by, penalty 43–905
False information to, penalty 43–905
Fines, penalties and forfeitures, payment to treasury 43–912
Fixing standards of utility products 43–320
Fixing unreasonable or discriminatory rates 43–911
Franchise assignments must be approved by 43–501
Furnishing blank forms to utilities 43–311
Gas corporations, general powers 43–601
Gas meters, inspection 43–603
Hearings on complaints 43–410
Hearings on proposed changes in law 43–304
Immunity for judgment for damages 43–705
Immunity of employees for judgment for damages 43–705
Implied and incidental powers granted 43–1003

PUBLIC UTILITIES—Continued
Public Utilities Commission—Continued
Inquiries by one Commissioner 43–202
Inspection of electric meters 43–603
Appointment of inspectors 43–603
Duties of inspectors 43–603
Inspection of gas meters 43–603
Appointment of inspectors 43–603, 43–605
Duties of inspectors 43–603
Removal of inspector 43–605
Transfer of old inspection records 43–606
Use of uninspected meters forbidden 43–603
Instructions on evaluation, application to District Court for 43–704
Investigating agents 43–406
Appointment 43–406
Duties 43–406
Power to administer oaths 43–418
Powers 43–406
Investigation of unjust rates 43–408
Investigations by one Commissioner 43–202
Issuance of securities, power over 43–801
Issuing certificate of authority to issue securities 43–802
Issuing subpoenas 43–418
Liability for costs in appeals 43–705
Liability for injury to utility 43–705
Limitation on cost of investigations 43–412
Mandamus by 43–204
Material for testing measuring appliances 43–322
Members 43–201
Engineer Commissioner 43–201
Oaths 43–201
Qualifications 43–201
Salaries 43–201
Terms 43–201
Two appointed by President 43–201
Neglect or violation of law by utilities, inquiries 43–1002
New construction by utilities 43–316
Oaths, power to administer 43–418
Obtaining information for utilities 43–403
Ordering changes and repairs in utility services 43–208
Ordering separate hearings on complaints 43–413
Orders
Appeals to District Court 43–705
Failure or refusal to obey, penalty 43–906
Furnishing certified copies 43–713
Not void where there is substantial compliance with legal provisions 43–1003
Prosecutions for violations 43–907
Rescission, alteration, amendment 43–702
Reconsideration, application for and effect of 43–704
Orders regarding rates, effect of 43–701
Rescission, alteration, amendment 43–702
Orders superior to municipal ordinances 43–209
Passenger motor vehicles for hire, requiring insurance 44–301

PUBLIC UTILITIES—Continued
Public Utilities Commission—Continued
People's counsel 43–205
Appointment by President 43–205
Duties 43–205
Qualifications 43–205
Salary 43–205
Power over creating liens on corporate properties 43–801
Power to enforce public utilities law 43–1002
Prescribing forms of books, records, accounts 43–310
Proceedings to punish contempt of 43–418
Production of utility's records 43–405
Penalty for refusal to comply with subpoena 43–405
Proposed changes in law to be submitted 43–304
Prosecutions for violation of rules, orders, regulations 43–907
Purchase of competitors' securities must be approved by 43–501
Quorum 43–202
Rate changes 43–401
Rate schedules 43–323—43–330
Rates, tolls and charges prima facie reasonable 43–703
Reasonable rates may be ordered 43–411
Recommending proposed changes in law to Congress 43–304
Record of proceedings 43–421
Revaluations 43–308
Right to examine utility's officers and books 43–404
Setting conditions and compensation for joint use of equipment 43–302
Sightseeing vehicle certificate 47–2331
Special powers not to exclude other powers 43–1003
Summary investigations 43–414
Grounds 43–414
Hearing 43–415
Procedure on hearing 43–416
Taxicabs and hacks, power to regulate 47–2331
Testimony to be taken stenographically 43–421
Transcript of testimony as evidence 43–422
Unreasonable rates, power to regulate 43–911
Utilities to furnish requested data 43–407
Utility may make complaint 43–417
Utility to bear cost of proceedings 43–412
Valuation of public utilities 43–305
Vested with powers withdrawn from Interstate Commerce Commission 43–207
Witness fees 43–419
Public utilities corporation
Electric plants, approving construction 43–602
Gas plants, approving construction 43–602
"Public utility" defined 43–103
Purchase of competitor's securities, approval of public utilities commission required 43–501
Railroads
Philadelphia, Baltimore and Washington R. R. Co. 44–104—44–107
Sale of unclaimed freight 44–101—44–103

PUBLIC UTILITIES—Continued
Rates and dividends 43–317
Approval of public utilities commission 43–317
Sliding scale permitted 43–317
Rates, tolls and charges 43–323—43–330
Appeals from rulings to District Court 43–401
Application for advance or discontinuance 43–401
Change after order to be approved by public utilities commission 43–701
Change in schedule, notice 43–327
Consumer furnishing equipment not to have rates reduced 43–903
Discriminatory rates, investigation 43–408
Existing rates continued 43–401
Existing rates to remain until set aside 43–323
Hearing on application for change 43–401
New schedules to be filed in stations, offices 43–328
Not to be reduced because consumer furnishes equipment 43–903
Orders on complaints, hearing required 43–408
Prima facie reasonable when fixed by public utilities commission 43–703
Rates in excess of printed schedules declared unlawful 43–329
Rebates, penalty 43–904
Replacing unjust rates 43–411
Rules and regulations to be filed 43–324
Schedule, change in form 43–330
Schedule of joint rates to be filed 43–326
Schedules to be filed in stations and offices 43–325
Schedule to be filed with public utilities commission 43–323
Schedule to conform to orders of public utilities commission 43–701
Separate hearing on complaints 43–413
Unjust discrimination, penalties 43–902
Unjust rates, investigation 43–408
Reorganization, issuance of securities 43–805
Required to obey lawful orders of public utilities commission 43–301
Sale and merger 43–501—43–503
Acquisition of stock or bonds of competitor 43–501
Antimerger law 43–502
Assignment of franchise 43–501
Express authority of Congress required 43–502
Foreign holding company not to buy 43–502
Foreign public utility corporation not to buy 43–502
Issuance of securities for consolidation 43–805
Issuance of securities for reorganization 43–805
Local holding company not to buy 43–502
Public utilities commission 43–501
Franchise assignments invalid without approval 43–501
Purchase of competitor's securities invalid without approval 43–501
Street car mergers exempt from antimerger law 43–502

PUBLIC UTILITIES—Continued
Sale and merger—Continued
Street railways 43–503
Joint resolution of Congress required 43–503
Permission to merge 43–503
Unauthorized sale void 43–502
Saving clause 43–913
Saving clause on constitutionality 43–1003
Saving clause on prosecutions and proceedings 43–1006
Schedule of rates 43–323—43–330
Sections separable in case of unconstitutionality 43–1003
Service and facilities 43–301
Charges to be reasonable, just, nondiscriminatory 43–301
Safe and adequate service required 43–301
"Service" defined 43–104
Standards 43–320
Fixing by public utilities commission 43–320
Measurement of utility products 43–320
Meters 43–320
Quality of utility products 43–320
Regulations for testing products 43–320
Street lighting, schedule of charges 7–701
"Street railroad corporation" defined 43–110
"Street railroad" defined 43–109
Street railways
Annual report to Congress, contents 44–215
Competitive street car and bus lines 44–201
Certificate of convenience and necessity 44–201
Establishment 44–201
Congressional approval of mergers required 43–503
Duct lines, construction authorized 44–206
Excise tax 47–1701
Failure to supply glass vestibules for motormen, penalty 44–205
Fenders required on street cars 44–204
Free transportation of policemen and firemen 44–213
Glass vestibules required for motormen 44–205
Joint use of underground tracks permitted only where motive power is identical 44–210
Merger 43–503
Power, equipment, appliance and service requirements 44–202
Public Utilities Commission power on services 44–202
Rails, type required specified 44–209
Reciprocal trackage agreements required 44–208
Reduced fares for school children 44–214
Removal of disused tracks 44–211
Rolling stock, taxation of 47–1215
Rules and regulations on services 44–202
Service requirements, prosecution of violations 44–203
Sufficient cars to be provided 44–202
Transfers 44–207
Free transfers when joint use of tracks is denied 44–212
Issuance 44–207
Misuse, penalty 44–207

PUBLIC UTILITIES—Continued
Street railways—Continued
Transfers—Continued
Prosecutions for misuse 44–203
Reciprocal agreements required 44–208
Underground tracks, reciprocal trackage agreements permitted only where motive power is identical 44–210
Violation of service requirements, penalty 44–202
Summary investigation 43–414
Tax appeal board's rules, orders, regulations 43–907
Penalty for violation 43–907
Prosecutions 43–907
Taxicabs 44–301
Telegraph companies
Additional lines on or over streets prohibited 43–1401
Conditions for construction of conduits 43–1410
Conduits in public parks or reservations 43–1413
Conduits replacing poles and wires 43–1409
Congressional reservation of right to alter, amend or repeal stated provisions 43–1416
Ducts for telegraph, fire alarm and police patrol wires of government 43–1414
Erection and maintenance of poles in alleys 43–1412
Failure to remove certain poles and wires, penalty 43–1411
Purchase or condemnation by government, rights for conduits not to be paid for 43–1417
Regulations for inspection of lines 43–1414
Removal of poles and wires 43–1409
Repair and renewal of conduits 43–1415
"Telegraph corporation" defined 43–119
Telephone companies
Additional lines on or over streets prohibited 43–1401
Congressional reservation of right to alter, amend or repeal certain provisions 43–1408
Construction of conduits, conditions 43–1403
Ducts for fire-alarm or police-patrol wires 43–1407
Erection and maintenance of poles in alleys 43–1405
Excise tax 47–1701
Extension of conduits 43–1402
Regulations for inspections of lines and conduits 43–1406
Removal of overhead wires, penalty for failure 43–1404
Removal of poles and wires in certain area 43–1402
"Telephone corporation" defined 43–117
"Telephone line" defined 43–118
To report accidents on premises 43–1001
"Unjust discrimination" defined 43–902
Use of other companies' equipment 43–302
Application to public utilities commission in disagreements 43–302
Right to use for reasonable compensation 43–302
Valuation 43–305
By public utilities commission 43–305
Cost of construction 43–305
Hearing, notice and procedure 43–307

PUBLIC UTILITIES—Continued
Valuation—Continued
Outstanding stock 43–305
Publication in annual report of public utilities commission 43–305
Public utilities commission may apply to District Court for instructions 43–704
Replacement value 43–305
Revaluation 43–308
Utility to bear cost 40–412
Valued at time of evaluation 43–306
Violation of public utilities law, general penalty 43–910
Water department 43–1501—43–1540
Assessments for service sewers 43–1511
Assessments for water mains 43–1511
Chief of Engineers shutting off water to prevent waste 43–1507
Chief of Engineers to report unlawful tapping of water pipes 43–1535
Damage or defacement of water pipes, penalty 43–1536
District Commissioners, power to erect fire plugs and hydrants 43–1501
Diversion of water beyond District 43–1529—43–1531a
Acquisition of land and right-of-way for pipelines to Virginia 43–1532
Contracts with Arlington County Sanitary District for diverting to Virginia 43–1531
Contracts with Washington Suburban Sanitary District for diverting to Maryland 43–1530
Prohibition, exceptions 43–1529
Erection of water mains and service sewers 43–1510
Expenses to be included in budget estimates 47–210
Fire-plug tax 43–1525—43–1528
Levy on buildings without water service 43–1525
Levy on discontinuance of water service 43–1528
Rates 43–1526
To cease on introduction of water 43–1527
Fiscal year 43–1504
Large quantity users to erect and maintain meters 43–1509
Power of District Commissioners to lay water mains and pipes 43–1501
Prevention of water waste 43–1507
"Service sewer" defined 43–1517
Service sewers, erection 43–1510
Assessment collections to be credited to appropriations 43–1516
Assessment of abutting property 43–1510, 43–1511
Assessments payable in three installments 43–1513
Discretion of Commissioners of the District 43–1510
Notice of assessment 43–1512
Relevy of assessments 43–1515

PUBLIC UTILITIES—Continued
Water department—Continued
Subject to control of Commissioners of the District 43–1502
Supplying water to charitable institutions and churches 43–1533
Unauthorized opening of water mains and pipes, penalty 43–1538
Under direction of engineer's office 43–1502
Unlawful tapping of water pipe, penalty 43–1534
Use of Potomac water for private mechanical and manufacturing purposes, or fountains 43–1508
Water mains, erection 43–1510
Assessment collections to be credited to appropriations 43–1516
Assessment of abutting property 43–1510, 43–1511
Assessments payable in three installments 43–1513
Discretion of Commissioners of the District 43–1510
District to pay for all but those supplying government property 43–1537
Notice of assessments 43–1512
Refund of overpaid assessments 43–1518
Relevy of assessments 43–1515
Water-main taxes to be uniform 43–1505
Water registrar 43–1506
Duties 43–1506
Authority to collect in advance 43–1521
Authority to stop service on failure to pay 43–1521
Constitute fund for maintenance, management and repair of water supply system 43–1522, 43–1523
From Washington aqueduct to be applied to its improvement 43–1524
Not to be source of revenue 43–1522
Rates 43–1520, 43–1520a
Refund when erroneously paid 43–1519
To be uniform 43–1505
Water supply, rules and regulations 43–1503
"Water-power company" defined 43–116

PUBLIC UTILITIES COMMISSION
See Public Utilities

PUBLIC WAYS
See Streets and Other Ways

PUBLIC WELFARE
See Board of Public Welfare

PUBLIC WORKS
See Public Buildings and Works

PUBLICATION
See Process; Publication of Notice
Beverage bottle registrations 48–101
Corporations, annual report 29–213
Delinquent tax list, advertisement 47–1001
District budget estimates 47–212
Insurance companies' annual reports 35–103
Land levied upon for personal taxes, notice of sale 47–1301
Libel, sufficiency of 22–2302

PUBLICATION—Continued
Milk-beverage container registration 48–302
Milk container registrations 48–201
Order to appear in enforcement of real property tax liens 47–1012
Regulations adopted by Commissioners 1–225
Regulations issued under Boiler Inspection Act 1–718
Rules and regulations for protection of milk, cream and ice cream supply 33–307
Special charter application 29–102
Standards of classification for employers under unemployment compensation 46–303
Terms of limited partnership agreements 41–110
Traffic regulations 40–603
Zoning regulations 5–421

PUBLICATION OF NOTICE
See NOTICES; PROCESS; PUBLICATION
Absentees' and absconders' estates 20–704
Actions for enforcement of liens 13–108
Actions to establish title to real property 13–108
Affidavit of absence as prerequisite 13–109
Affidavit of mailing copy 13–111
Alley dwellings, intention to demolish, remove, or have vacated 5–108
Annulment actions 13–108
Attachment and garnishment 16–302
Barbed-wire fences, removal 7–1105
Bill of revivor 12–116
Board of Podiatry Examiners, rules and regulations, adoption 2–719
Certified Public Accountant examination 2–905
Charter alteration, notice of intent 29–102
Chattels distrained for taxes, notice of sale 47–1301
Citation and notice, eminent domain proceedings 16–623
Closing and readjusting streets and highways 7–402
  Publication and serving of order 7–404
Corporations, serving process on 13–104
Deceased indigent, intentions to deliver body to medical school or board 2–203
Dental board, rules and regulations, publication 2–331
Divorce suits 13–108
Eminent domain proceedings
  Alleys and minor streets, opening, widening, or straightening 7–314
  Assessment of land no part of which taken 7–221
  Land for streets 7–204
Fire escapes and safety provisions, requiring construction, service of notice 5–310
Fire protection, notice requiring furnishing of 5–321
Foreclosure actions 13–108
Form 13–110
Healing arts, examination of applicants for license 2–114
Insanitary buildings, proceedings for condemnation 5–610
Juvenile Court 11–910
Notice before enforcement of liens for unpaid real property taxes 47–1012

PUBLICATION OF NOTICE—Continued
Notice of
  Annual meeting of board of equalization and review 47–708
  Assessment for service sewer 43–1512
  Assessment for water main 43–1512
  Levy of special assessments 47–1103
  Publication of delinquent tax list 47–1001
  Sale of unclaimed freight 44–101
  Sale to enforce lien for real property tax 47–1013
  Sessions of board of personal tax appeals 47–1213
Partition actions 13–108
Paving or completely resurfacing street 7–612
Prerequisites
  Affidavit of absence 13–109
  Return of summons "not found" 13–109
Printers' rates 1–809
Process 13–108, 13–113
Property clerk, auction sales 4–160, 4–161
Public contractor's bonds, notice to creditors 1–804
Quieting title obtained by adverse possession 16–1501
Quo warranto proceedings 16–1605
Real property tax sales, notice 47–1001
Replevin, publication to defendant absent when goods are seized 16–1806
Replevin suits, Municipal Court 11–727
Return of summons as prerequisite 13–109
Service of process on absentee and nonresident parties 13–108
Service of process on insane persons 13–112
Sewer and water main connections, notice requiring, nonresident owners 6–404
Street and other public improvement assessment under permit system 7–608
Street and sewer improvements, advertising for bids 7–601
Unsafe structures and excavations, abatement 5–505
Zoning regulations, amendment, notice of hearing 5–415

PUMP
Automatic measuring pump 10–122
  "Out of use" sign, posting required 10–122
  Subject to inspection and approval or condemnation 10–122

PURCHASE-MONEY MORTGAGES
When superior to judgment liens 15–108

PURCHASER
Intent to defraud 12–402
Purchaser with notice, fraudulent conveyances 12–402

PURCHASING OFFICER
Bond 1–304
Deputies 1–305
  Duties 1–305
  Giving of bonds, right to require 1–305
Supervision over purchase and distribution of supplies and materials 1–304
Under direction of Commissioners of District 1–304

PYROXYLIN
Storage license 47–2315
Approval of fire marshal 47–2315
Fee 47–2315

QUALIFIED INDORSEMENT
See NEGOTIABLE INSTRUMENTS

QUARANTINE
Rabies 1–230

QUARRY
Operation by District 1–811
Bids for operation 1–811
Duration of contract 1–811

QUART
Liquid quart, dimension 10–119

QUIETING TITLE OBTAINED BY ADVERSE POSSESSION
Bill to quiet title, content, sufficiency 16–1501
Decree 16–1501
Parties 16–1501
Process, service, publication 16–1501
Rights of those under legal disability, limitation 16–1501

QUORUM
Accountancy, Board of 2–903
Architects, Board of Examiners and Registrars 2–1007
Commissioners of District 1–211
Condemnation of Insanitary Buildings, Board for 5–602
Cosmetology, Board of 2–1302
Municipal Court of Appeals for District of Columbia, Judges of 11–771
Optometry, Board of 2–504
Plumbing Board 2–1401
Podiatry Examiners, Board of 2–702

QUO WARRANTO
See COOPERATIVE ASSOCIATIONS
Corporations, dissolution 29–719—29–724
Default 16–1606
Institutions of learning 29–413
Notice to defendants 16–1605
Personal service 16–1605
Service by publication 16–1605
Parties 16–1601
Pleadings 13–320, 16–1607
Recovery of damages for ouster 16–1611
Refusal to institute 16–1603
Relator claiming office to set forth facts 16–1604
To dissolve corporations 29–719—29–724
Trial by jury on request 16–1607
Usurpation of corporate franchise, injunction 16–1609
Usurpation of corporate office 16–1610
Usurpation of office, ouster 16–1608
Who may institute 16–1602

RABBITS
See GAME AND FISH LAWS

RABIES
Commissioners authorized to prevent spread 1–230

RACES
Betting, penalty 22–1508

RADIOS
Exemption from judicial process 15–401

RAIDS
Police making on complaint, character of places raided 4–145, 4–146

RAILROAD TRACKS
Streets to be over or under 7–1214

RAILROADS
See PUBLIC UTILITIES
Anacostia Bridge, cost of maintenance and repair, payment 7–505
Baltimore and Ohio Railroad Company 7–1212
Extension of tracks, authority conferred 7–1212
Grade crossings, construction prohibited 7–1212
Switches and sidings, construction authorized 7–1212
Terminal station
Authority to establish and maintain conferred 7–1212
Baltimore and Potomac Railroad Company
Application by owner of lot for branch tracks or sidings 7–1211
Sidetracks and sidings, permission to lay 7–1210
Sidings and switches, power to construct 7–1210, 7–1211
Boiler Inspection Act, exemption 1–709
Cars, endangering passage of, penalty 22–3119
Electrification 7–1230—7–1234
Approval of plans and issuance of permit 7–1230
Cable and drawbridge opening 7–1230
Commissioners of District, jurisdiction not abridged 7–1233
Conduit systems, construction, permit 7–1232
Interstate Commerce Commission, jurisdiction not abridged 7–1233
Liability for personal injury 7–1234
Overhead and underground structures and equipment 7–1230
War Department jurisdiction not abridged 7–1233
Employers' liability act 44–401—44–405
Francis Scott Key Bridge 7–511
Locomotives, endangering passage of, penalty 22–3119
Long Bridge, use and maintenance 7–508
Michigan Avenue Viaduct, construction, payment of share of cost 7–520
Pennsylvania Avenue Bridge, maintenance and repair, apportionment of cost 7–504
Pennsylvania Railroad Company 7–1225—7–1229
Switches and sidings, construction authorized, restrictions, and conditions 7–1225—7–1229
Philadelphia, Baltimore and Washington Railroad Company
Abandonment of substation authorized 44–104
Branch tracks, spurs, or sidings, construction, restrictions and conditions 7–1218

RAILROADS—Continued
Philadelphia, Baltimore and Washington Railroad Company—Continued
Congressional reservation of right to amend, alter or repeal applicable provisions 44–107
Eminent domain proceedings, authority conferred 7–1221
Extension of tracks through public ground, restriction and condition 7–1219
Grade Crossing Act unaffected 7–1220
Navy Yard tracks
Acquisition and operation 7–1217
Sale or transfer to railroad company 7–1217
Paving between tracks, payment of cost 7–1222
Pennsylvania Railroad Company operating lessee 7–1225
Reversion of substation property to District 44–106
Switches, extensions, and turnouts, construction authorized 7–1216
Use of facilities by other carriers, compensation 7–1223
Waiting room on platform authorized 44–105
Rock Creek Bridge, use, cost of maintenance and repair, apportionment 7–503
Rolling stock, taxation 47–1215
Sale of unclaimed freight 44–101—44–103
At public auction 44–101
Conditions precedent to sale 44–101
Disposition of proceeds 44–103
Perishable property 44–102
Order for sale 44–102
Strangers and travelers at stations, protection by Commissioners 4–119
Street lighting, payment for 7–709
Track elevation 7–1212, 7–1214, 7–1215
Union Station 7–1213
Joint use by various railroads authorized 7–1213
Rates for use, establishment by United States District Court 7–1213
Viaducts, construction over 7–502

RAPE
Definition, penalty 22–2801
Killing while perpetrating, murder in the first degree 22–2401

RATES
Public off-street parking facilities 40–804
Street lighting, schedule of charges 7–701
Taxicab and other public vehicles, power to determine 1–222, 1–223

RATIFICATIONS
Children making new promise to pay, effect of Statute of Frauds 12–306

RATING BUREAU
See INSURANCE AND INSURANCE COMPANIES

READJUSTMENT OF STREETS
See STREETS AND OTHER WAYS
Street Readjustment Act 7–401—7–410

REAL ESTATE AGENT
Unemployment Compensation Act excluding 46–301

REAL ESTATE AND BUSINESS BROKERS' LICENSING ACT
Acting without license prohibited 45–1401
Application for license 45–1405
Contents of 45–1405
Bonds 45–1405
Brokers 45–1405
Conditions 45–1405
For renewal of license 45–1417
Replacement 45–1405
Salesmen 45–1405
Sureties 45–1405
Brokers required to have office in District 45–1407
Brokers to display license 45–1407
Business-chance broker
Definition 45–1402
Requirements for real estate brokers made applicable 45–1402
Business-chance salesman
Definition 45–1402
Requirements for real estate salesmen made applicable 45–1402
Definitions 45–1402
Enactment clause 45–1401
Exemptions and exceptions 45–1412
Fees 45–1407
Broker's license 45–1407
Salesman's license 45–1407
Fraudulent transfers and loans prohibited 45–1414
License, contents of 45–1407
Nonresident brokers and salesmen, provisions applicable 45–1410
Penalties and prosecutions 45–1416
Persons exempted 45–1402
Persons ineligible for license 45–1415
Qualifications for license 45–1404
"Real estate broker" defined 45–1402
Real Estate Commission 45–1403
Annual audit 45–1403
Authority of Commissioners of District 45–1403
Authority over licenses and licensees 45–1404, 45–1409
Compensation of members 45–1403
Establishment 45–1403
List of licensees to be published 45–1413
Membership 45–1403
Officers 45–1403
Power to obtain evidence 45–1411
Records 45–1403
Seal 45–1403
Subpoenas by 45–1409
Suspensions and revocations to be included in published list of licensees 45–1413
"Real estate salesman" defined 45–1402
Refusal to issue license, hearing 45–1406
Regulations 45–1403
Reissuing licenses 45–1407
Renewal of license annually 45–1407
Return of salesmen's licenses at end of employment 45–1407
Revocation of broker's license suspends those of his salesmen 45–1407
Revocation of license for conviction of crime 45–1415
Salesman terminating employment to notify Commission 45–1407

REAL ESTATE AND BUSINESS BROKERS' LICENSING ACT—Continued
Saving clause 45–1418
Suits to collect commission, plaintiff must prove his license 45–1407
Suspension of license on indictment for crime 45–1415
Suspension or revocation of license 45–1408, 45–1409
Acting for opposing parties without their knowledge 45–1408
Acting without written consent of client 45–1408
Appeal from review 45–1409
Causes 45–1408
Failure to account for money, documents or property 45–1408
Failing to restore bond after recovery on it 45–1408
False promises as inducements 45–1408
Fraudulent or dishonest dealing 45–1408
Guaranteeing profits on resale 45–1408
Hearing before suspension or revocation 45–1409
Obtaining license by fraud 45–1408
Purchase from client without his knowledge 45–1408
Review in District Court 45–1409
Salesman accepting commissions unlawfully 45–1408
Salesman acting for another principal without knowledge of employer 45–1408
Unworthiness or incompetency 45–1408
Use of name or insignia of real estate association when not a member 45–1408
Transactions within act 45–1402

REAL ESTATE BOARDS
Income tax, exemption 47–1554

REAL ESTATE BROKERS AND AGENTS
Definition 45–1402
Employment to acquire site for school and other public buildings 1–812
Licensing act 45–1401—45–1418

REAL ESTATE COMMISSION
See Real Estate and Business Brokers' Licensing Act

REAL PROPERTY
See Abutting Owners; Decedents' Estates; Deed; Eminent Domain; Leases; Partition; Rent Control; Streets and Other Ways; Surveyors; Taxation and Fiscal Affairs
Acknowledgments 45–401—45–412
Acknowledgments to deeds of corporations 45–302
After-acquired realty as subject to will 19–205
Alienation, rule against restraint 45–102
Assessment 47–701—47–723
Designation of property for 47–401—47–409
Expenses to be included in budget estimates 47–209
Attachment 16–308
Bonds and contracts relating to land, recording 45–505
Brokers 45–1401—45–1418

REAL PROPERTY—Continued
Certain provisions made applicable to personal property 45–823
Chattels real, rule against perpetuities applicable 45–103
Contingent interests, sale 45–1101—45–1103
Contracts of purchase and sale, effect of Statute of Frauds 12–301
Conveyable estates and methods of conveyance 45–101—45–106
Chattels real conveyable by deed or will 45–104
Contingent estates conveyable by will or deed 45–101
Estates good as executory devise, conveyable by deed 45–101
Freehold estates conveyable by deed or will 45–104
Future estates conveyable by deed or will 45–101
Future estates, rule against perpetuities 45–102
Land held adversly is conveyable 45–105
Life estates, conveyable by deed or will 45–106
Life estates, creating in terms for years 45–104
Present estates, conveyable by deed or will 45–101
Remainder on life estates created in terms for years 45–104
Rule against perpetuities 45–102
Vested estates conveyable by deed or will 45–101
Conveyance in fraud of creditors 12–401
"Covenant," effect in deeds 45–303
Covenants 45–303—45–309
Against having encumbered 45–307
Effect of "covenant" in deed 45–303
For further assurances 45–308
General warranty 45–304
Quiet enjoyment 45–306
Special warranty 45–305
Warranty by life tenant, void as to heir 45–309
Damage to, limitation of actions 12–201
Deeds
Corporate deeds, requisites 45–302
Effective date 45–501
Execution 45–106
Not to be executed or acknowledged by attorney 45–401
Priority 45–502
Record as evidence 45–504
When not to be recorded 45–503
District property, injuring, penalty 22–3111
District use, condemnation 16–601
Electric company property, tampering, penalty 22–3115
Estates 45–801—45–822
Classification 45–806
Conditions precedent 45–804
Conditions subsequent 45–804
Coparcenary estates abolished 45–817
Fee simple 45–802, 45–803
Future estates 45–810—45–813
Joint tenancy 45–816
Life estates 45–801
"Reversion" defined 45–809

REAL PROPERTY—Continued
Estates—Continued
Tenancy by the entireties 45–816
Tenancy in common 45–816
Estates at will 45–801, 45–804, 45–822
Chattel interests 45–804
Creation 45–822
Description 45–822
Not liable to sale under execution as chattel interests 45–804
Tenant after sale under mortgage, trust deed or execution without lease 45–822
Termination 45–822
Estates by sufferance 45–801
Chattel interests 45–804
Description of 45–820
Not liable to sale under execution as chattel interests 45–804
Estates by the month 45–821
Estates by the quarter 45–821
Estates for the life of a third person 45–805
Estates for years 45–801
Chattels real 45–804
Description of 45–818
Estates from month to month 45–821
Estates from quarter to quarter 45–821
Estates from year to year, good for only one year 45–819
Estates in expectancy 45–808
Alienable 45–815
Alienation by intermediate owner does not defeat 45–814
Alienation by preceding owner does not defeat 45–814
Descendible 45–815
Destruction by disseizin does not defeat 45–814
Destruction by forfeiture does not defeat 45–814
Destruction by merger does not defeat 45–814
Destruction by surrender does not defeat 45–814
Divisible 45–815
Future estates 45–808
Not avoid in creation for liability to defeat 45–814
Reversion 45–808
Estates in possession 45–807
Estates of inheritance 45–801
Fee simple estates 45–802
Freehold estates 45–804
Estates pur autre vie 45–805
Chattel real after death of grantee or devisee 45–805
Freeholds during life of grantee or devisee 45–805
Estates tail abolished 45–802
Fee simple estates 45–802, 45–803
Absolute 45–803
Estates of inheritance 45–802
Qualified 45–803
Fieri facias, levy 15–210
Forms for instruments 45–301
Deeds of corporations 45–302
Deeds of trust for particular purposes 45–301
Executor's deed 45–301
Fee simple deed 45–301
Lease 45–301

REAL PROPERTY—Continued
Forms for instruments—Continued
Life estate deed 45–301
Mortgage, with or without power of sale 45–301
For sale or for rent sign 7–1001
Placing on property, regulations, number limited 7–1001
Removal, Commissioners' power to require 7–1001
Future estates 45–810
Alienation 45–813
Chattels real, application of rule against perpetuities 45–103
Conditional limitation 45–811
Contingent 45–812
Definition 45–810
Freeholds 45–104
Remainder 45–811
Vested 45–812
Improvements, recovery for in ejectment 16–519
Injuries, criminal offenses 22–3101—22–3122
Institutions of learning 29–407
Reversion of unsold excess 29–408
Sale of excess 29–407
Interpretation of instruments 45–201—45–205
"Bargain and sell" pass whole estate in absence of contrary showing 45–202
Conveyance construed to pass fee simple estate unless contrary intention appears 45–201
"Covenant", effect when used in deeds 45–303
"Die without issue", meaning in deed or will 45–205
"Die without leaving issue", meaning in deed or will 45–205
Fee simple estate created unless contrary intention appears 45–201
Future estate dependent on person's death without heirs, issue or children defeated by birth of his posthumous children 45–204
"Grant" passes whole estate in absence of contrary showing 45–202
"Have no issue", meaning in deed or will 45–205
Posthumous children 45–204
Remainder to heirs of life tenant 45–203
Rule in Shelley's case abolished 45–203
"That he has done no act to encumber the land," effect in deed 45–307
"That he will execute such further assurances of said land as may be requisite", effect in deed 45–308
"That he will warrant generally the property hereby conveyed," effect in deed 45–304
"That he will warrant specially the property hereby conveyed," effect in deed 45–305
"That the said grantee shall quietly enjoy said land," effect in deed 45–306
Warranty by life tenant, void as to heir 45–309
"With general warranty," effect in deed 45–304
"With special warranty," effect in deed 45–305
Words of inheritance unnecessary to create fee simple estate 45–201
Joint tenants, liability between for waste 45–1304

REAL PROPERTY—Continued
Land for United States use 16–619
Land in excess of District needs 16–612—16–618
Landlord and tenant 45–901—45–934
Levy on in attachment and garnishment 16–309
Life estates 45–801
Freeholds 45–804
Maps not to be recorded 45–506
Mortgages 45–601—45–620
Acknowledgment 45–601
Conveyance by non compos mentis mortgagee 45–620
Defenses against foreclosure 45–612
Deficiency decree in personam on sale of property 45–616
Estate of mortgagee, construing 45–603
Execution 45–601
Expense and commission on sale 45–618
Foreclosure, decree without hearing on motion of defendant 45–606
Infant mortgagee, compelling conveyance 45–609
Infant mortgagee may convey under court order 45–608
Joint mortgagees, survival of title and trust 45–604
Manner of recording 45–602
Mortgagee may redeem prior mortgage 45–610
Mortgagee takes qualified fee simple 45–603
Payment into court not permitted, when 45–607
Recording 45–601
Redemption by subsequent mortgagee 45–610
Release after death of mortgagee 45–619
Release on payment into court after suit 45–605
Replacement of deceased trustee 45–613
Terms of sale of property 45–615
Trustee, appointment on death of mortgagee 45–611
Notice to quit 45–901—45–906
Ownership by aliens 45–1501—45–1505
Alien corporations 45–1502
Alien individuals 45–1502
Corporations controlled by aliens 45–1503
Effect of treaties 45–1502
Federal law extended to District 45–1501
Forfeiture of illegal holdings 45–1504
Inheritance 45–1502
Legations and residences of foreign governments and their officials exempted 45–1505
Partition proceedings 16–1301—16–1306
Plats not to be recorded 45–506
Powers 45–1001—45–1019
Absolute power of disposition 45–1005—45–1007
To owner of particular estate for life or years, effect 45–1005
To person to whom no particular estate is limited, effect 45–1006
Where no remainder is limited to grantee, effect 45–1007
Beneficial power 45–1004
Liability in equity 45–1010
Definition 45–1001
General and beneficial power to devise, effect 45–1008

REAL PROPERTY—Continued
Powers—Continued
General power 45–1002
Definition 45–1002
General power in trust described 45–1011
When a beneficial power 45–1004
Instruments executed by grantee of power, presumption of validity 45–1019
Manner of executing 45–1017
Power to dispose by devise or will, will must be used 45–1018
Power to dispose by grant cannot be executed by will 45–1018
Reservation of power by grantor 45–1009
Special and beneficial powers, liability in equity 45–1010
Special power 45–1003
Definition 45–1003
Liability in equity 45–1010
Special powers in trust classified 45–1012
When a beneficial power 45–1004
Trust powers 45–1011—45–1016
Execution for benefit of creditors or assignees 45–1016
General powers in trust 45–1011
Group of beneficiaries to take equally, exception 45–1015
Imperative and compellable in equity 45–1013
Right to select does not change imperative nature 45–1014
Special powers in trust 45–1012
Trustee with discretionary authority 45–1015
Preceding corporations, property of, vested in District 1–104
Preservation of attached property 16–314
Proceedings supplementary to execution 15–313
Real estate brokers 45–1401—45–1418
Real estate salesmen 45–1401—45–1418
Recorder of Deeds 45–701—45–713
Recovery
Ejectment 16–501
Improvements in ejectment 16–519
Limitation of actions 12–201
Religious societies holding 29–501—29–516
Reversion described 45–809
Sale by Commissioners of District 9–301—9–306
Approval of National Capital Park and Planning Commission required 9–301
Authority conferred 9–301
Deeds, execution 9–301—9–303
Expenses, payment 9–302
Property no longer required for public purposes 9–301
Sale by executor, administrators, additional bond 20–104
Sale directed in will 18–604
Sale of contingent interests 45–1101—45–1103
Contingent limitation to issue of life tenants 45–1101—45–1103
Application by bill in equity 45–1102
Power of court of equity 45–1101
Proceeds deemed real estate 45–1103

REAL PROPERTY—Continued
Sale of land under jurisdiction of National Park Service 9–304—9–306
Abutting owners, preference 9–305
Call for bid 9–305
Cash or credit authorized 9–304
Expenses of sale, payment 9–305
Land no longer needed 9–304
Sale price 9–304, 9–305
Secretary of Interior authorized to sell 9–304
Sale of limited estate and interests therein 45–1104
Application for decrease of sale 45–1104
Contingent remainders to issue of life tenants 45–1101—45–1103
Investment of proceeds 45–1104
Power of court of equity 45–1104
Salesmen 45–1401—45–1418
Sale when encumbered by dower 16–1305, 16–1306
School purposes, acquisition for by District 1–105
Search warrants 23–301—23–304
Service by publication on nonresident owners 13–108
Subjecting to sale for personal property taxes 47–1301—47–1305
Surveyor of District 1–601—1–629
Tax sales 47–1001—47–1015
Exemptions 47–801a—47–801f
Tenancies
Agreement regarding notice 45–908
Notice to quit 45–901—45–906
Refusal to quit after notice, double rent for 45–907
Tenants in common, liability between for waste 45–1304
Trespass to, criminal offenses 22–3101—22–3122
Trust deeds 45–601—45–620
Acknowledgment 45–601
Appointment of new trustee on death of trustee 45–611
Conveyance by non compos mentis trustee 45–620
Creditor buying at sale, rights 45–617
Defenses against enforcement 45–612
Deficiency decree in personam on sale of property 45–616
Estate of trustee, construing 45–603
Execution 45–601
Expense and commission on sale 45–618
Infant trustee, compelling conveyance by 45–609
Infant trustee may convey under court order 45–608
Joint trustees, survival of title and trust 45–604
Recording 45–601, 45–602
Release after death of trustee 45–619
Replacement of deceased new trustee 45–613
Terms of sale of property 45–615
Trustee failing to act, appointment of new trustee 45–614
Trustee takes qualified fee simple 45–603
United States property, injuring, penalty 22–3111
Unlawful entry on private property, penalty 22–3102
Use of public school buildings 31–801—31–809
Uses and trusts 45–1201—45–1203
Cestui que use takes legal title in passive trusts 45–1201
Dry trusts, beneficiary takes legal title 45–1201

REAL PROPERTY—Continued
Uses and trusts—Continued
Express trusts not contained in conveyance to trustee, effect on purchaser for value without notice 45–1203
Implied and resulting trusts, effect on purchaser for value without notice 45–1203
Nominal trusts, beneficiary takes legal title 45–1201
Passive trusts, beneficiary takes legal title 45–1201
Statue of uses 45–1201
Uses to any of joint trustees gives them legal title 45–1201
Vandalism, penalty 22–3112
Vendor's lien, deficiency decree in personam on sale of property 45–616
Warranties 45–304, 45–305
Warranty by life tenant void as to heir 45–309
Waste 45–1301—45–1304
Forfeiture of lease 45–1301
Joint tenant committing, liability to other joint tenants 45–1304
License in writing required 45–1302
Reversioner forfeiting lease for waste of tenant who has assigned interest 45–1303
Tenant in common committing, liability to other tenants 45–1304
Treble damages 45–1301
Writ of 45–1301
Widow of tenant in common, assignment of dower 16–1303

RECEIVERS
See FIDUCIARIES
Absconders' estates 20–701
Absentees' estates 20–701
Appointment in attachment and garnishment 16–314
As fiduciaries under income tax law 47–1551c
Bonds and undertakings in District Court 28–2403
Bulk sales law, exemption 28–1704
Corporate income tax returns 47–1564a
Income tax, information returns 47–1564a
Involuntary dissolution of corporation at suit of creditors 29–727
Suit by United States to forfeit charter of corporation 29–722
Unemployment Compensation Act, employing unit within 46–301
Voluntary dissolution of corporation 29–706—29–713

RECEIVING EMBEZZLED PROPERTY
See EMBEZZLEMENT
Penalty 22–1204, 22–1207

RECEIVING STOLEN GOODS
See STOLEN PROPERTY

RECIPROCITY
Certified Public Accountant of other states, certification 2–906
Cosmetologists, applicants from another state or country 2–1316
Dental hygiene, practitioner from another state, admission to practice 2–326

RECIPROCITY—Continued
Dentist from other state, admission to practice 2–308
Healing arts, issuance of license to practice 2–119, 2–121
Indigent insane, return to place of residence 3–110
Indigent persons, return to place of residence 3–110
License to practice healing arts 2–121
Notaries public of District, states, and foreign countries 1–510
Nurses from other states, registration 2–405
Optometry, practitioners from other states, licensing in District 2–518
Pharmacy, practitioners from other States 2–604
Podiatry, practitioners from other States and countries 2–705
Veterinarians from other States, licensing 2–804

RECKLESS DRIVING
Penalty 40–605

RECORD ON APPEAL
Municipal Court of Appeals for District of Columbia 11–772

RECORDATION
Bills of sale 42–101, 42–102
Indexing 42–102
Inspection by public permitted 42–102
Required 42–101
Bonds and contracts in relation to land 45–505
Business enterprise covering two-thirds of square, order obliterating subdivision and alleys, filing and recording 7–308
Chattel mortgages or trusts
Fee 42–102
Indexing 42–102
Inspection by public permitted 42–102
Required, when 42–101
Transcription on recordation not required 42–102
Closing and readjusting streets and highways, recording of order and plats 7–404
Conditional sales 42–103
Fee for filing 42–103
Indexing 42–103
Required, when 42–103
Contracts for public improvements 7–602
Deeds 45–501—45–506
Dental hygienist, registration of license 2–324
Dentistry, license to practice registered with health officer 2–309
District opening or closing alleys on own land, maps 7–312
False certification of recordable instruments, penalty 22–1308
License to practice healing art 2–118
Liens on motor vehicles, fee 40–712
Maps and plats not to be recorded 45–506
Michigan Avenue, plat showing abandonment and relocated portions 7–130
Mortgages 45–601
Motor vehicle liens 40–701—40–715

RECORDATION—Continued
Opening and closing of alleys and minor streets 7–303, 7–305, 7–307
Business enterprise covering two-thirds of square, closing of alleys 7–305, 7–308
Dedication of new ways by property-owners 7–306
Order accepting dedication 7–303, 7–307
Petition by property-owners for change in location and closing of old alleys 7–306, 7–307
Permanent Highway Plan, recordation with surveyor 7–109
Personal property 42–101—42–103
Plats not to be recorded 45–506
Recordation of deed, contract, or conveyance with intent to extort money 22–1302
Recorder of deeds 45–701—45–713
Streets, abandonment or readjustment, recording of plats 7–113
Subdivisions outside city of Washington, recording of plans 7–125
Trust deeds 45–601

RECORDER OF DEEDS
See DEEDS
Appointment by President 45–701
Appointments by 45–702, 45–703
Employees 45–703
First deputy recorder 45–702
Second deputy recorder 45–702
Appropriations authorized 45–710
Authority to take acknowledgment of deeds 45–402
Cooperative associations 29–806, 29–834, 29–835
Filing and recording of articles of incorporation 29–806
Filing annual reports 29–834, 29–835
Issuing certificate of incorporation 29–806
Deputy recorders 45–702, 45–703
Filling office of recorder in vacancy 45–704
First deputy 45–702
Appointment 45–702
Duties 45–702
Second deputy 45–703
Appointment 45–703
Duties 45–703
Duties 45–701
Employees 45–701b, 45–702, 45–703
Appointment 45–701b, 45–703
Fixing compensation 45–701b, 45–703
Estimates to be included in District estimate 45–710
False certification of recordable instruments, penalty 22–1308
Fees 45–708, 45–709
Enumeration 45–708
Payment to collector of taxes 45–709
Office closed on Saturdays 45–712
Personnel to operate equipment 45–701b
Purchase of machines and equipment 45–701b
Recording certificates of incorporation, duty 45–708
Records 45–705—45–707
Open to public inspection without charge 45–705
Recopying certain records, expense 45–707
Typewritten records legalized 45–706
Typewritten records preferred 45–706

RECORDER OF DEEDS—Continued
Report of tax sales, collector of taxes filing 47–1006
Salary 45–701a
Time extended for recording writings 45–713
Typewriters, purchase authorized 45–706

RECORDS
Adoption proceedings, inspection on court order only 16–206
Amending certification of record 13–309
Board of Cosmetology 2–1302
Board of Dental Examiners 2–303
Board of Examiners and Registrars of Architects 2–1024
Board of Examiners in Veterinary Medicine 2–802
Board of Optometry 2–508
Board of Podiatry Examiners 2–702
Board of Public Welfare, confidential 3–118
Board of Zoning Adjustment 5–420
Boiler inspection 1–712
Dependent children, application for assistance 32–757
Documentary evidence 14–401
Insurance companies, examination by superintendent 35–1407
Insurance rates 35–1406
Juvenile Court 11–929
Minutes of Board of Commissioners of District 1–214
Narcotic drug sales 33–411
Notary public 1–512, 1–513
Parental rights, relinquishment 32–786
Poisons, sale 2–612
Police Department records 4–134
  Open to public inspection 4–135
  Reports and returns of police kept and bound 4–137
  Service records of members of force 4–134
Property of District 1–106
Public, defacing, destroying, penalty 22–3107
Superintendent of Weights, Measures, and Markets, record of inspection 10–106
Surveyor of District 1–605—1–609
  Field notes 1–616
  Indexing 1–607
  Labeling of maps, charts, plats, and other drawings 1–607
  Plats and subdivisions 1–605
  Preservation of maps, charts, and records and papers generally 1–606
  Property of District 1–608
  Public records 1–608
  Transcript, prima facie evidence 1–611
  Transfer to successor in office 1–608
  Transmission to successor in office 1–616
  Typewritten records authorized 1–609
Veterans' discharge certificates 45–711

RECOUPMENT
Unemployment compensation benefits from future benefits 46–319

RECREATION BOARD
Administrative responsibilities 8–208—8–213
Agreement for maintenance and improvement of facilities 8–217

RECREATION BOARD—Continued
Appointment
  Members 8–202
  Superintendent of Recreation 8–209
Appropriations
  Community Center and Playground Department transferred to 8–214
  Supervision of 8–208
Audit of trust funds 8–211
Board of Commissioners to select member 8–202
Board of Education
  Agreement for maintenance and improvement of facilities 8–217
  Facilities made available 8–209
  Powers not abridged 8–216
  Selection of member 8–202
Budget 8–212
Buildings and property, agreements as to control 8–215
Chairman 8–206
Commissioners of District of Columbia
  Agreement for maintenance and improvement of facilities 8–217
  Appointment of members by 8–202
  Powers not abridged 8–216
Community Center and Playgrounds Department
  Employees continued 8–209
  Equipment and supplies transferred to 8–219
  Functions transferred 8–214
Compensation
  Members 8–205
  Superintendent and employees 8–209
Costs, liability of members 8–203
Creation 8–201
Deposit of fees and receipts 8–211
Employees 8–209
Functions 8–208—8–213
Leases not affected by the creation of board 8–210
Maintenance and improvement of facilities, agreements 8–217
Meetings 8–207
Membership 8–202—8–207
National Park Service
  Agreement for maintenance and improvement of facilities 8–217
  Powers not abridged 8–216
Number of members 8–202
Part-time employees 8–209
Personal liability of members 8–203
Personnel 8–209
Powers and duties 8–208—8–213
Program of recreation adopted by 8–210
Properties utilized by 8–210
Qualifications
  Members 8–202
  Superintendent of Recreation 8–209
Relationship to other agencies 8–214—8–219
Report 8–213
Residence of members 8–202
Rules and regulations, power to adopt 8–206
Secretary 8–206
Security for costs on appeal, exemption 8–203
Services performed by other agencies 8–218
Special employees 8–209

RECREATION BOARD—Continued
Superintendent of National Capital Parks as ex-officio member 8–202
Superintendent of Recreation 8–209
Supersedeas bond, exemption 8–203
Suspension of employees 8–209
Term of office 8–202
Transfer of funds, equipment and personnel to other agencies 8–217
Trust fund 8–211
Community Center and Playgrounds Department transferred to 8–214
Vacancies 8–204

RECREATION CENTERS
Rules and regulations, power of Commissioners to adopt 8–131

RECTIFICATION
Definition of "manufacture" includes 25–103

REDEMPTION
Tax sale 47–1003

REDUCTION PLANTS
See GARBAGE

RE-ENTRY
By life tenant after ejectment proceedings held in absence 16–529

REFEREE
See REFERENCE OF QUESTIONS OF LAW AND FACT
Fees 16–1715
Powers 16–1703

REFEREE IN CASE OF NEED
Negotiable instrument, payment of bill for honor 28–947—28–953
Protest of bill for nonpayment condition precedent 28–943

REFERENCE OF QUESTIONS OF LAW AND FACT
Accounts, actions on, reference to auditor 16–102, 16–103
Appeals in common-law cases 16–1712
Appeals in equity causes 16–1709
At law 16–1701
Award 16–1705
Form 16–1706
Modification, causes 16–1707
Notice to parties 16–1705
Setting aside, motion, causes 16–1707
Time for filing 16–1705
Bill of exceptions 16–1711
Consent of all parties required 16–1701
Death of party, effect 16–1717
Ending reference 16–1705
Exceptions are part of record on appeal 16–1713
Exceptions to rulings of referee on questions of law 16–1710
In admiralty 16–1701
In equity 16–1701
Judgment or decree, effect 16–1708
Not to be made in divorce 16–1701

REFERENCE OF QUESTIONS OF LAW AND FACT—Continued
Not to be made where party is under legal disability 16–1701
Referee 16–1702
Additional powers in equity cases 16–1704
Death 16–1718
Disability or refusal, rescinding reference 16–1714
Fees 16–1715
Misconduct, rescinding reference 16–1714
Oath 16–1702
Powers 16–1703
To fix time for hearing 16–1702
Reference to arbitrator as at common law not affected 16–1719
Several referees, must be odd number 16–1716

REFORMATORY
See PRISONS AND PRISONERS
Appropriations for realty by Congress to be lien 32–1003
Working capital for industrial enterprises 47–131

REFRIGERATOR-CAR COMPANIES
Taxation of rolling stock 47–1215

REFUNDS
Fees
Applications to practice healing art 2–119
Building permit fees 5–430
Fees collected under Barber's Registration Law 2–1111
Park police, payments to retirement fund, refund 4–205
Police and firemen's contributions to relief fund 4–504
Street improvement assessment levied under prior laws 7–632
Taxes by Commissioners of District 1–903
Taxes on exempt realty 47–801d

REFUSE
See GARBAGE

REGISTER OF WILLS
Acts as clerk of Probate Court 19–409
Appointment and oath 19–401
Bond 19–402
Deputies 19–403
Fees, as clerk of Probate Court 11–1503
Monthly report of estate qualifications to assessor 47–1617
Not to practice law 19–410
Penalty for charging excessive fees 19–408
Penalty for charging for advice 19–411
Penalty for failure to post table of fees 19–407
Powers 19–403
Proof of wills, taking testimony 19–306
Table of fees to be posted 19–406
Wills recorded with, as evidence 14–403

REGISTERED HOLDER
Stock 28–2903

REGISTERED MAIL
Notice under Unemployment Compensation Act sent to nonresident employers by 46–305

REGISTERED MAIL—Continued
Service of notice requiring furnishing of fire protection appliances 5–321

REGISTRAR OF TITLES AND TAGS
Employee of Department of Vehicles and Traffic 40–603a

REGISTRATION
See ACCOUNTANTS; ARCHITECTS; DENTISTS; HEALING ACTS PRACTICE ACT; NURSES; OPTOMETRY; PHARMACY

REGULATIONS
See BOILER INSPECTION; PLUMBING
Black-outs 6–1001
Child labor, penalties for violating 36–215
Consideration and adoption by Commissioners 1–214
Rental control 45–1607
Unwholesome food 22–3419
Work permits for minors 36–207a

REHABILITATION OF ALCOHOLICS 24–501—24–514
See ALCOHOLICS

RELATOR
See QUO WARRANTO

RELEASE
District executing, procedure 1–214
Lien for unpaid contributions under Unemployment Compensation Act 46–304
Under writ of habeas corpus 16–806

RELIGIOUS FAITH
Consideration in appointing guardians 11–918
Consideration in placement of children 11–918

RELIGIOUS MEETINGS
Disturbing, penalty 22–1107, 22–1114

RELIGIOUS SOCIETIES AND INSTITUTIONS
See CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS; CORPORATIONS IN GENERAL
Authority to acquire land 29–501
Certificate of trustees 29–503
Recording with recorder of deeds 29–503
Conveyances of realty not void for want of trustees 29–513
Corporate powers granted trustees 29–507
Directors 29–502—29–510
Dissolution 29–701—29–729
Not effected by failure to elect trustees 29–506
Realty reverts 29–511
District charitable funds not to be given 32–1008
Exemptions from taxation 47–801a
General provisions 29–101, 29–105
Income tax exemption 47–1554
Incorporation 29–601—29–606
Name 29–502
Policy of government not to appropriate for 32–1008
Private schools for religious purposes included 29–512
Real property 29–501, 29–508—29–516
Appointment of trustees by District Court to receive conveyances 29–514
Conveyances, limitation 29–509

RELIGIOUS SOCIETIES AND INSTITUTIONS—Continued
Real property—Continued
Conveyances not void for want of trustees 29–513
Limitation on use 29–516
Power to execute leases 29–510
Power to execute mortgages 29–510
Reversion on dissolution 29–511
Title to vest in trustees 29–508
Trustees 29–502—29–510
Appointment by District Court 29–514
Certificate 29–503
Failure to elect does not effect dissolution 29–506
Removal 29–504
Successors to file certificates 29–505
Suits by and against 29–515
Tenure 29–504
To be vested with title to realty 29–508
To have corporate power 29–507
Vacancies, filling 29–504
Want of, effect on conveyances 29–513
Unemployment Compensation Act excluding employees 46–301

RENT
See LEASES; RENT CONTROL
Ejectment 16–513
Limitation on rentals to be paid by district 1–243
Property exempt from taxation 47–801b
Real property for sale or rent, sign regulation, penalty 7–1001
Rock Creek Park buildings and grounds 8–149
Vaults under sidewalk 7–901
Wharf property 9–102

RENT CONTROL
Adjustment of maximum rent ceilings 45–1603
Petition for 45–1604
Administrator 45–1606, 45–1607
Appointment 45–1606
Powers and duties 45–1607
Report 45–1606
Salary 45–1607
Court review 45–1609
Definitions 45–1611
Enforcement 45–1610
Exemptions 45–1602
Injunction 45–1610
Maximum rent ceilings 45–1602
Adjustment 45–1603
Hotels 45–1602
Housing accommodations other than hotels 45–1602
Minimum service standards 45–1602
Adjustment 45–1603, 45–1604
Hotels 45–1602
Housing accommodations other than hotels 45–1602
Nonapplicability of certain provisions 45–1602
Penalties 45–1610
Petition for review 45–1609
Possession, action to recover 45–1605
Procedure 45–1608
Prohibitions 45–1605

RENT CONTROL—Continued
Purposes 45–1601
Rules and regulations 45–1607
Time limit 45–1601

RENUNCIATION
Executor refusing to serve 20–308
Holder of negotiable instrument renouncing right, effect 28–804
Of devises, effect on dower rights 18–211

REORGANIZATION
Employing unit under Unemployment Compensation Act 46–303

REPAIRS
See STREETS AND OTHER WAYS
Streets, payment of cost 7–611

REPLACEMENT
Assessment for replacing curbs and gutters 7–612a

REPLEVIN
Affidavit, content 16–1803
Declaration, form 16–1802
Default 16–1807
Demand for possession unnecessary 16–1801
Failure of officer to obtain possession, effect 16–1805
Judgment for defendant, return of goods 16–1812
Judgment for plaintiff 16–1813
Measure of damages 16–1811
Motion for return of property 16–1809
Notice to officer of intent to move, effect 16–1810
Objection to sufficiency of surety 16–1809
Procedure 16–1809
Municipal Court 11–725—11–732
Affidavit 11–725
Damages 11–731, 11–732
Declaration, form of 11–725
Defendant not found, publication 11–727
Motion for return of property 11–730
Pleading, not guilty or special plea 11–728
Property not found, procedure 11–726
Quashing writ 11–729
Renewal of writ 11–726
Retention by marshal 11–729
Return of property 11–727
Sufficiency of undertaking 11–729
Undertaking 11–725
Orders for decrees in equity for delivery of chattel, enforcement 11–328
Pleading by defendant 16–1808
Publication to defendant when not found 16–1806
Undertaking 16–1804

REPORTER
Court of Appeals 11–206

REPORTS
Accidents of employment 36–433, 36–438
Alley Dwelling Authority 5–106, 5–107
Auditor's 16–102—16–105
Board of Accountancy 2–908
Board of Barber Examiners 2–1103
Board of Dental Examiners 2–306
Board of Examiners and Registrars of Architects 2–1010
Board of Examiners in veterinary medicine 2–802
Board of Optometry 2–508
Board of Pharmacy 2–608
Board of Public Welfare 3–123
Commissioners of District, annual report to Congress
Illustrations, use prohibited 1–239
Original copy kept on file 1–240
Commissioners of District, special reports, original kept on file 1–240
Commission on Licensure to Practice the Healing Art 2–138
Court of Appeals 11–206
Cost per volume 11–207
Dependent children 32–754
Director of Public Health to Commissioners 6–106
District Boxing Commission 2–1210
Insurance companies, duty to furnish 35–1407
Judges of Municipal Court for District of Columbia 11–754
Major and superintendent of police 4–127
Minimum Wage and Industrial Safety Board 36–441
National Capital Park and Planning Commission 8–107
Nurses' Examining Board 2–408
Property custodian 1–309
Public buildings, construction, report of Commissioners to Congress 9–207
Recreation Board 8–213
Sanitary inspectors 6–105
Settlement of claims against District by Commissioners 1–904
Tax exempt property, report of use 47–801c

RESCISSION
Stock transfer 28–2907, 28–2908

RESERVATIONS
Buildings, construction, authorization by Congress required 8–133
Cutting trenches or removing material from, permit required, penalty 7–615, 7–616
Encroachments, duty of Secretary of Interior to prevent, property belonging to United States 7–1209
Improvement, contracts in excess of appropriations prohibited 7–620
Names, powers of Commissioners 7–107, 7–112
Number 8 transferred to Commissioners, purpose 8–138
Number 13, transfer for use as burial ground for indigent dead 8–141
Number 32, jurisdiction transferred to Commissioners, purpose 8–136
Number 185 8–126
Use as property yard, reservations 8–126
Use for park purposes authorized 8–126
Number 290 transferred to Commissioners of District 8–137
Parking space for congressmen 40–604
Part of park system 8–108
Public convenience station established, transfer of jurisdiction 8–139
Snow and ice, cleaning from sidewalk 7–802
Widening of roadways 8–127

RESERVOIR ROAD
Widening, use of land owned by United States authorized 7–126

RESIDENCES
See DWELLINGS
Care of persons in district less than one year 32–321
Civilian Commissioners of District 1–206
Dependent child, aid 32–753
Divorce actions, requirement in 16–401
Fire Department members 4–409
Judges of Municipal Court of Appeals for District of Columbia 11–771
Police Department members 4–132
Recreation Board members 8–202

RESIGNATION
Firemen from force 4–407
Policemen 4–125

RES JUDICATA
Pleadings to bar 13–220

RESPITES
Commissioners' power to grant 1–220

RESTAURANTS
Apartment house, license 47–2329
Definition 47–2327
Defrauding, penalty 22–1301
Fire protection 5–317
Government restaurants, health regulations applicable 6–1101
Horse meat or horse-meat products, sale of 33–501—33–503
License 47–2327
Lien on baggage of patron 34–103—34–105

RESTRAINT OF TRADE
Cooperative association operations 29–842

RESTRICTIVE INDORSEMENT
See NEGOTIABLE INSTRUMENTS

RESURFACING
See STREETS AND OTHER WAYS

RETENTS
Public contracts, retention of percentage of final payment 1–807

RETIREMENT
See POLICE AND FIREMEN'S RELIEF FUND
Exemption of benefits from judicial process 15–403
Judges of Municipal Courts 11–776
Park Police 4–305
Park Police brought within retirement law 4–515
Public school teachers 31–721—31–739
White House Police 4–305

RETIRING AND RELIEF BOARD
See POLICE AND FIREMEN'S RELIEF FUND

REVENUE
Credit or revenue required to be proportioned to district and United States 47–130a
Water rates used exclusively for maintenance and repair of water system 43–1522, 43–1523

REVERSION
Alley not an original alley closed 7–302
Alleys closed by dedication of new alleys 7–303
Alleys less than 10 feet wide, closing, title to land 7–304
Closing and readjusting of streets 7–401
  Title to closed street, when reverts to abutting owners 7–401
Closing of streets and highways, reversion of title, abutting owners 7–123
District of Columbia acquiring land and closing alleys 7–309
Highways and streets abandoned under Permanent Highway Plan 7–118

REVIEW
See APPEALS

REVOCATION
Cosmetologist's license or certificate 2–1304
Decree for legal separation 16–404
Dentist's license to practice 2–311, 2–312
Letters of administration 20–106
Letters testamentary 20–106
License of foreign corporation 47–1591d
License to practice healing arts 2–123
  Conviction of felony, appeal, effect 2–131
Plumber's licenses, ground 2–1405
Steam and other operating engineers' licenses, ground 2–1505
Wills 19–103

REWARDS
Police and Firemen's Relief Fund 4–503
Police receiving compensation from person arrested or liable to arrest prohibited 4–175
Police services 4–129
  Meritorious and extraordinary services 4–129

RHUBARB
Sale by bunch authorized 10–115

RIGHT OF ACCESS
District of Columbia acquiring land and closing alleys 7–309

RIGHT OF ACTION
Survival despite death 12–101
  Suits by and against executors and administrators 20–501
  Tort actions 12–101, 20–501

RIGHT OF ENTRY
Board for Condemnation of Insanitary Buildings 5–601
Fire escapes and safety provisions, correction 5–314
Police, felony suspected 4–141

RIGHTS OF WAY
Streets and other public ways through cemeteries 1–615

ROADS
See HIGHWAYS

ROADWAY
Improvement, assessments for curbs and gutters 7–623

ROBBERY
Attempted, penalty 22–2902
Definition 22–2901
Grave robbery 2–206, 22–3103
Killing while perpetrating, murder in the first degree 22–2401
Penalty 22–2901

ROCK CREEK
Lands along, clearing title of United States 8–104
Protection against injury or diminution of flow of water 8–151
Protection against pollution and obstruction 8–158

ROCK CREEK AND POTOMAC PARKWAY
Buildings fronting, plans, approval by Commission of Fine Arts 5–410

ROCK CREEK BRIDGE
Maintenance and repair, apportionment of cost 7–503

ROCK CREEK PARK
Acceptance of dedicated land 8–150
Arable land, rental 9–149
Area 8–146, 8–147
Bridle paths 8–148
Buildings fronting, plans, approval by Commission of Fine Arts 5–410
Buildings within grounds, rental 8–149
Dedication of land 8–146
Director of National Park Service, control over 8–148
Establishment 8–146
Footways 8–148
Parkway connecting with Potomac and Zoological Parks 8–158—8–160
Part of District park system 8–148
Roadway 8–148
Rock Creek, protection of flow of water 8–151

ROLLS
Exception from weight regulations concerning bread 10–113

RODMEN
Sewers etc., employment 7–1235

ROLLING STOCK
Railroads, taxation 47–1215

ROOMING-HOUSE
Definition 5–312

ROOSEVELT MEMORIAL ASSOCIATION
Theodore Roosevelt Island, acceptance of gift by National Park Service 8–164

RUBBISH
Accumulation prohibited 6–801

RULE IN SHELLEY'S CASE
Abolished 45–203

RULES AND REGULATIONS
Commissioners of District, general authority to make 1–224—1–231
Juvenile Court 11–930
Municipal Court 11–722
Small Claims and Conciliation Branch, Municipal Court 11–815

RULES OF COURT
Municipal Court for District of Columbia 11–756
Municipal Court of Appeals for District of Columbia 11–722, 11–774

RUM
Definition of "spirits" includes 25–103

RUSSIAN BATH ESTABLISHMENTS
License 47–2311
Approval by major and superintendent of police 47–2311
Fee 47–2311
Revocation for unlawful acts 47–2311
Unlawful acts enumerated 47–2311

SAFE DEPOSIT BOXES
See Banks and Other Financial Institutions

SAFETY DEVICES
See Fire Escapes and Safety Provisions
Steam Boilers, prohibiting operation, devices not in working order 1–706

SAINT ELIZABETH'S HOSPITAL
See Hospitals and Asylums

SAL AMMONIAC
Sale by other than pharmacist 2–601

SALARIES
Administrative promotions 1–310a
Assignment 28–2505
Assistant probation officer of Municipal Court for District of Columbia 11–754
Board of tax appeals 47–2402
Board of Zoning Adjustment 5–426
Boxing commissioners and employees 2–1210, 2–1211, 2–1219
Chief judge of Municipal Court for District of Columbia 11–754
Clerk
Municipal Court for District of Columbia 11–754
Municipal Court of Appeals for District of Columbia 11–771
Corporation counsel, additional compensation as general counsel of Public Utilities Commission 43–204
Custodial employees of Board of Education 31–631a
Deputy clerk of Municipal Court for District of Columbia 11–754
Director of social work, Juvenile Court 11–922
District boxing commissioners 2–1210
District Boxing Commissioners and employees 2–1211
Employees
Board of Recreation 8–209
Clerk of Municipal Court of Appeals for District of Columbia 11–771
Public off-street parking facilities 40–809
Engineer Commissioner 1–204
Exemption from process 15–403
Fire department
Adjustment 4–802—4–804, 4–806
Members, deductions for relief fund 4–503, 4–504
Personnel 4–405
Privates 4–801, 4–802
Salary schedule 4–801
Temporary increases 4–803—4–806

SALARIES—Continued
Juvenile Court Judge 11–920
Juvenile Court judges on retirement 11–776
Motor Vehicle Parking Agency members 40–809
Municipal Court for District of Columbia, salary of judge on retirement 11–776
Municipal Court of Appeals for District of Columbia, judge of 11–771
Retired judges 11–776
Not assignable 28–2503
Park police 4–203, 4–204
Motorcycle police, extra compensation 4–204
Superintendent, extra compensation 4–204
Park police, temporary increases 4–803—4–806
Payment in advance to prevent levy of process 16–312
People's counsel, Public Utilities Commission 43–205
Police Court 11–624
Judges 11–601
Police Department
Adjustment 4–802—4–804, 4–806
Members, deductions for relief fund 4–503, 4–504
Officers and privates 4–108
Privates 4–801, 4–802
Salary schedule 4–801
Temporary increases 4–803—4–806
Probation officer of Municipal Court for District of Columbia 11–754
Public utilities commissioners 43–201
Reallocation of positions 1–310a
Recorder of deeds 45–701a
Recreation Board members 8–205
Second deputy recorder of deeds 45–703
Secretary of Board of Cosmetology 2–1302
Secretary of Nurses' Board of Examiners 2–408
Secretary-treasurer of Optometry Board 2–507
Sewer, road work, etc., temporary employees 7–1236
Superintendent of National Training School for Girls 32–905a
Superintendent of Recreation 8–209
Surveyor of District 1–601
Teachers, school officials, employees 31–659—31–679
United States Park Police, adjustment 4–802—4–804, 4–806
Unused appropriation, reversion to treasury 1–310
White House police
Adjustment 4–802—4–804, 4–806
Temporary increases 4–803—4–806

SALES
See Bulk Sales; Property Clerk; Real Property; Sales, Uniform Act
Absolute, under Uniform Sales Act 28–1101
Alcoholic beverages
Intoxicated persons 25–121
Minors 25–121
Alley Dwelling Authority, receipts covered into treasury 5–105a
Automatic vending devices, regulations concerning 10–109
Bread, regulations concerning sale 10–113
Charcoal, sale by weight required, regulation 10–111

SALES—Continued
Coal, sale by weight required, regulations 10–111
Coke, sale by weight required, regulations 10–111
Conditional, under Uniform Sales Act 28–1101
Definition, Uniform Sales Act 28–1101
Effect of Statute of Frauds 12–304
Horse meat or horse-meat product 33–501—33–503
Ice, sale by weight, regulation 10–112
Milk and cream, regulations concerning 10–114
Narcotic drugs, unauthorized sales of 33–402
Net weight 10–108
Prices, restrictions 10–107
Products of District Training School 32–606
Products of industrial enterprises of workhouse and reformatory 47–131
Property of District unfit for service, proceeds credited to appropriation 1–818
Proration of price with reference to quantity sold 10–123
Public auction permit law 47–2201—47–2208
Sales ticket, duty to furnish, content 10–110
Sales to infants under Uniform Sales Act 28–1102
Sales to mental incompetents under Uniform Sales Act 28–1102
Selling merchandise to minors for public resale, penalty 36–223
Unclaimed freight, by common carrier 44–101—44–103
Warranties, under Uniform Sales Act 28–1111—28–1116

SALES TAX
See Taxation and Fiscal Affairs

SALES, UNIFORM ACT
Absolute sale 28–1101
"Acceptance" defined 28–1308
Acceptance of goods 28–1301
Agents, effect of statute of frauds 28–1104
Auction sales 28–1205
Each lot is subject to separate contract 28–1205
Grounds for rescission for fraud 28–1205
Reservation of right to bid by seller 28–1205
When complete 28–1205
Bill of lading, effect on transfer of property 28–1204
Breach of conditions 28–1111
Buyer, option when goods have been destroyed 28–1107
Buyer's remedites 28–1501—28–1508
Action for damages for breach 28–1502
Action for damages for nondelivery 28–1505
Action for specific performance 28–1506
For breach of warranty 28–1507
Keep goods, set up recoupment for breach 28–1507
Recovery of interest, special damages 28–1508
Refusal to accept on account of breach 28–1507
Rescission for breach of warranty 28–1507
Capacity to buy and sell 28–1102
Cases not provided for 28–1603
Conditional sale 28–1101
Conditions not performed, remedies of parties 28–1111

SALES, UNIFORM ACT—Continued
Contracts
Acquisition of goods based on contingency 28–1105
Contingency determining sellers' acquisition 28–1105
Form 28–1103
Value of $500 or over 28–1104
Contract to sell
Between part owners 28–1101
Definition 28–1101
Fungible goods 28–1106
May be absolute 28–1101
May be conditional 28–1101
Undivided shares 28–1106
Definitions
Acceptance 28–1308
Action 28–1606
Buyer 28–1606
Defendant 28–1606
Deliverable state 28–1606
Delivery 28–1606
Divisible contract to sell or sale 28–1606
Document of title to goods 28–1606
Existing goods 28–1105
Express warranty 28–1112
Fault 28–1606
Fungible goods 28–1606
Future goods 28–1105, 28–1606
Goods 28–1606
In good faith 28–1606
Insolvent person 28–1606
Necessaries 28–1102
Negotiable document of title 28–1211
Order 28–1606
Person 28–1606
Plaintiff 28–1606
Property 28–1606
Purchaser 28–1606
Purchases 28–1606
Quality of goods 28–1606
Sale 28–1606
Seller 28–1606
Specific goods 28–1606
Unpaid seller 28–1401
Value 28–1606
Delivery and acceptance of goods 28–1301—28–1311
Acceptance, definition 28–1308
Acceptance does not bar action for damages or breach of warranty 28–1309
Buyer's liability for non-acceptance 28–1311
Delivery 28–1303
Delivery and payment generally concurrent conditions 28–1302
Delivery, mixed with other goods 28–1304
Delivery of wrong quantity 28–1304
Delivery to carrier on behalf of buyer 28–1306
Seller's obligation to give notice to insure 28–1306
Seller's obligation to make reasonable contract 28–1306
Demand for delivery 28–1303
Duty of buyer to accept and pay for 28–1301
Duty of seller to deliver 28–1301

SALES, UNIFORM ACT—Continued
Delivery and acceptance of goods—Continued
Expense of delivery 28–1303
Installment delivery 28–1305
Manner of delivery 28–1303
Place of delivery 28–1303
Rightful rejection, buyer not bound to return 28–1310
Right of buyer to examine 28–1307
Sellers' rights when buyer wrongfully rejects 28–1311
Time for delivery 28–1303
Delivery to infants 28–1102
Delivery to mental incompetents 28–1102
Destruction of goods contracted to be sold
Option of buyer 28–1108
When contract is void 28–1108
Documents of title, rights of transferee 28–1218
Documents of title, warranties on sale 28–1220
Effect on prior contracts 28–1607
Enforcement of rights 28–1602
Existing goods 28–1105
"Express warranty" defined 28–1112
Formation of contract 28–1101—28–1116
Form of contract 28–1103
Fungible goods, contract and sale 28–1106
Future goods 28–1105
Present sale as contract to sell 28–1105
Implied obligations, variation 28–1601
Infants, liability for necessaries 28–1102
Insane persons, liability for necessaries 28–1102
Interpretation 28–1601—28–1608
Cases not provided for 28–1603
Definitions 28–1606
Effecting purpose of uniformity 28–1604
Enforcement of rights 28–1602
Variation of implied obligations 28–1601
Negotiable document of title 28–1211
Attachment of subject goods only when negotiation is stopped 12–1223
Creditor's remedies to reach 12–1224
Definitions 28–1211
Holder may negotiate 28–1216
Liability of endorser, limitation 28–1221
Marked "not negotiable," character unchanged 28–1214
Negotiation by delivery 28–1212
Negotiation by endorsement 28–1213
Negotiation to bona fide purchaser of tainted document 12–1222
Rights and title of person to whom negotiated 28–1217
Transfer without endorsement 28–1219
Warranties on sale 28–1220
Nonnegotiable document of title
Transfer 28–1215
Warranties on sale 28–1220
Not applicable to mortgages 28–1605
Obligations, implied, variation 28–1601
Option of buyer when goods have been destroyed 28–1107
Price 28–1109
Determined by course of dealing 28–1109
Fixed by contract 28–1109

SALES, UNIFORM ACT—Continued
Price—Continued
Later agreement 28–1109
Payable in personalty 28–1109
Payable in realty, exempt from act 28–1109
To be fixed by third party who fails 28–1110
To be fixed by third party, whom party prevents 28–1110
When "reasonable price" 28–1109
Remedy of buyer, conditions not performed 28–1111
Remedy of seller, conditions not performed 28–1111
Reservation of right to possession 28–1204
Risk of loss 28–1206
Sale by description, implied warranty 28–1114
Sale by sample, implied warranties 28–1114, 28–1116
Bulk corresponds with sample 28–1116
No defects rendering unmerchantable unless apparent on examination of sample 28–1116
Reasonable opportunity to compare bulk and sample 28–1116
"Sale" defined 28–1101
Sales
Absolute 28–1101
Auction 28–1205
Between part owners 28–1101
Conditional 28–1101
Fungible goods 28–1106
To infants 28–1102
Undivided share 28–1106
Seller's remedies 28–1401—28–1411
Action for conversion 28–1504
Action for damages for nonacceptance 28–1502
Action for detention 28–1504
Action for price 28–1501
Effect of negotiable document of title 28–1411
Insolvency of buyer, stoppage in transit 28–1406
Lien after partial delivery 28–1404
Lien on goods still possessed, for nonpayment 28–1402
Lien, when exercised 28–1403
Lien, when lost 28–1405
Notice of rescission 28–1503
Recovery of interest, special damages 28–1508
Resale of goods 28–1409
Right to resell 28–1409
Validity of sale 28–1409
Rescission of transfer of title 28–1410
Right of resale for nonpayment 28–1402
Right to rescind for nonpayment 28–1402
Stoppage in transit
Insolvency of buyer 28–1402
Ways of exercising right 28–1408
When goods are in transit 28–1407
"Unpaid seller" defined 28–1401
Short title 28–1608
Statement of value or opinion is not warranty 28–1112
Statute of frauds 28–1104
"Acceptance" defined 28–1104
Application 28–1104
Stoppage in transit 28–1406
SALES, UNIFORM ACT—Continued
Transfer of property 28–1201—28–1206
Intention of parties, determination 28–1202
Appropriation of goods to contract for unascertained or future goods with assent 28–1203
Contract requiring delivery, transfer when delivery is made 28–1203
Delivery on approval, trial, satisfaction, transfer on acceptance or failure to reject 28–1203
Sale on option to return, transfer on delivery, with right to revest 28–1203
Specific goods, not ready for delivery, transfer when made deliverable 28–1203
Specific goods ready for delivery, transfer with contract 28–1203
Property in specific goods, intention of parties determines passing 28–1202
Property passes only when goods are ascertained 28–1201
Specific goods 28–1202
Unascertained goods 28–1201
Sale by person not the owner, no better title 28–1207
Sale by person with voidable title, good title transferred 28–1208
Second sale where goods remain with seller, good title transferred 28–1209
Seller's retention fraudulent, creditor may treat sale as void 28–1210
Undivided shares, contract and sale 28–1106
"Unpaid seller" defined 28–1401
Variation of implied obligations 28–1601
Warranties 28–1112
"Express" defined 28–1112
Express warranty, effect on implied warranty 28–1115
Implied warranties 28–1113
Express warranty does not negative generally 28–1115
Free from encumbrance 28–1113
In sale by sample 28–1115
Merchantable quality when sold by description 28–1115
None when inspection is made, unless defects are hidden 28–1115
None when sold under patent name 28–1115
None when sold under trade name 28–1115
Quality or fitness, usage of trade 28–1115
Quiet possession 28–1113
Reasonable fitness when sold for purpose 28–1115
Reliance on seller's skill or knowledge 28–1115
Right to sell 28–1113
Sale by description 28–1114
Sale by sample 28–1114

SAL SODA
Sale by other than pharmacist 2–601

SANATORIUMS
See HOSPITALS AND ASYLUMS

SAND
Placing on icy sidewalk 7–802—7–804

SANITARY INSPECTORS
See Inspectors

SANITATION
See Insanitary Buildings; Mattresses

SATURDAY
Negotiable instrument becoming due on, date payable 28–616
Presentment of bill of exchange 28–922

SAVINGS BANKS
See Banks and Other Financial Institutions

SAVINGS COMPANIES
See Banks and Other Financial Institutions

SCALE
Plats and squares and subdivisions of city 1–610

SCALES
See Weights, Measures, and Markets
Public scales, licensing and locating 10–128
Sale or interest in sale by superintendent of weights and measures prohibited 10–125
Specifications, power of Commissioners of District to establish 10–127
Weighmasters, appointment by Commissioner, fees 10–128

SCHOOL BUILDINGS
Acquisition of sites 1–812
Employment of agents in purchasing 1–812
Payment of commission to more than one person or firm prohibited 1–812
Regard had for future enlargement 1–812
Custodial employees, compensation 31–631a
Exemption from taxation 47–801a
Fire protection 5–317
New buildings, regard had for future enlargement 1–812

SCHOOL LIBRARIAN
Salary 31–659, 31–664, 31–667

SCHOOLS
See Education; Institutions of Learning
Boxing contests 2–1212, 2–1213
Civil Service, exception of school officers and teachers 1–217
Definition, Healing Arts Practice Act 2–102
Free tuition, children of men in military service, etc. 31–305
Real estate for school purposes, power to acquire 1–105
Religious schools 29–512
Seduction of pupil by teacher, penalty 22–3002
Sightseeing vehicles operated by 47–2331

SCIENCE
Corporations for 29–601

SCIENTIFIC INSTITUTIONS
Income tax exemption 47–1554
Personal property exempted from taxation 47–1208

SCIENTIFIC SOCIETIES
Exemption from taxation 47–801a

SCIRE FACIAS
See Judgments and Decrees
Decree in equity for payment of money, revival 15–218
Election to issue on judgment 15–205
Indorsement of writ 15–207
Issuance on judgment 15–204
Levy on money, procedure 15–211
Proceedings in aid of execution 15–302
Property subject to levy 15–210

SCONES
Exception from weight regulations concerning bread 10–113

SCOTT SQUARE
Street fronting, railroads prohibited 7–1202

SEA FOODS
Wholesale dealers, license 47–2327

SEALS
Board of Cosmetology 2–1302
Board of Optometry 2–508, 2–515
Board of Pharmacy 2–607
Board of Podiatry Examiners 2–702
Commission on Licensure to Practice the Healing Art 2–103
Counterfeiting seal prohibited 2–126
Department of Insurance 35–401
District of Columbia 2–102
Juvenile Court 11–904
License seal 47–2301
Municipal Court of Appeals for District of Columbia 11–771
Municipal Court for District of Columbia 11–752
Negotiability of instruments unaffected 28–107
Notaries public 1–505—1–507, 1–514
Authentication of official act 1–505
Deposit of impression with clerk of District Court 1–506
Exemption from execution 1–507
Fee for certificate of seal 1–514
Required to obtain 1–505
Police Court 11–608
Probate Court 11–505
Real Estate Commission 45–1403
Register of Wills 11–505
Unemployment Compensation Board 46–315

SEARCHES AND SEIZURES
Accused acquitted, return of property 23–304
Alcoholic beverages, tax not paid 25–124
Delivery of property to and safekeeping of property by marshal 23–302, 23–303
Destruction of property seized 4–146, 23–304
False weights and measures 10–103
Fishing nets and appliances, confiscation on conviction of owner 22–1608
Gaming-houses 4–145
Houses of ill-fame 4–145
Lewd and obscene public amusement places 4–145
Lotteries 4–145
Mattresses manufactured or renovated in violation of law 6–607, 6–608
Destruction, order 6–608
Investigations and inspections 6–607

SEARCH WARRANTS
See CRIMINAL PROCEDURE
Affidavit, form 23–301
Alcoholic beverages, unlawful manufacture or sale 25–129
Complaint for issuance 23–301
Cruelty to animals, complaint 22–805
Discovery of registered milk containers 48–205
Execution by police 4–138
Game laws, inspection of premises for violations 22–1616
Grounds for issuing 23–301
Jurisdiction to issue 23–301
Narcotic drugs 33–414
Resisting officer serving warrant 33–414
Plants infested with insects or disease infected 6–904

SECOND-HAND CLOTHING STORES
Commissioners' power to provide for inspection 1–224

SECOND-HAND DEALERS
Definition 47–2339
License 47–2339
Fee 47–2339
Revocation for buying stolen goods 47–2339
Police Department, powers and duties 4–147, 4–148, 4–150
Examination of books and premises 4–148
Interfering with officer, penalty 4–150
Supervision and inspection 4–147

SECRETARY OF AGRICULTURE
Plant disease and insect pests, control, powers and duties 6–904

SECRETARY OF DISTRICT
Contracts filed with 1–803

SECRETARY OF INTERIOR
Assessing and collecting costs of improvement of streets about Capitol 47–1107
Beach Parkway, exchange of land 8–121, 8–123
Columbia Institution for the Deaf, supervising 31–1022
Encroachments upon streets, square, or reservations belonging to United States 7–1209
Duty to prevent 7–1209
Prevention of erection of building 7–1209
Report to Congress 7–1209
Freedmen's Hospital, direction 32–317
Heat from Central Heating Plant, furnishing to District building 9–103, 9–104
Lands along Potomac and Anacostia River and Rock Creek Park, clearing title 8–104
Motor Vehicle Parking Agency, member designated by 40–805
Providing education for indigent blind 31–1019
Sale of real estate under National Park Service 9–304—9–306
Transfer of feeble-minded mutes to state institutions 31–1009
Valuation of United States property in District 47–723

SECRETARY OF LABOR
Prevailing wage rate, determination 1–815

SECRETARY OF TREASURY
Advancing funds on requisition of Commissioners of District 47–2501
Public Works Administration loan to District, interest rate, determination 9–214

SECURITIES
See BONDS AND OTHER SECURITIES

SEDUCTION
Definition, penalty 22–3001
Teacher, of pupil by 22–3002

SEIZURE
Exemption of property from 15–401, 15–403

SENATE
Sergeant at Arms, Capitol Building and grounds, powers 9–105

SENTENCE
See PRISONERS

SEPARATE MAINTENANCE
See DIVORCE

SEPARATION
Voluntary separation 16–403
Divorce 16–403
Legal separation 16–403

SEPARATION FROM BED AND BOARD
See DIVORCE

SEQUESTRATION
See DIVORCE
Divorce actions 16–410
Enforcement of decrees in equity 11–326
Orders of Probate Court, enforcement by sequestration 11–512
Probate Court 11–510, 11–512

SERGEANTS
Fire Department 4–404
Salary 4–405

SERVICE OF NOTICE
See NOTICES; PUBLICATION OF NOTICE

SERVICE OF PROCESS
See NOTICES; PROCESS; PUBLICATION OF NOTICE
Actions against District 1–901
Eminent domain, land for streets 7–204
Fire escapes and safety provisions, notice requiring construction 5–310, 5–315
Juvenile Court 11–910
Municipal Court for District of Columbia 11–755
Municipal Court of Appeals for District of Columbia 11–774
Nonresident employers under Unemployment Compensation Act 46–305
Order closing streets and highways 7–404

SERVICE PIPES
Permit system of public improvement, assessment of costs 7–608
Police Department, members of force 4–134
Open to public inspection 4–135

SERVICE SEWERS
See WATER DEPARTMENT
Defined 43–1517

SERVICE STATIONS
License 47–2334

SERVICEMEN'S READJUSTMENT
Minority, disability of, removed 45–1701

SET-BACK LINES
See BUILDING LINES

SET-OFF
Action by or against executor, administrator 16–1908
Benefits against damages, eminent domain, land for streets 7–211
Deemed an action by defendant 16–1903
Effect of assignment 16–1904
Form of plea 16–1902
In actions against principal and surety 16–1906
Judgments 16–1909
Part only set-off 16–1905
Plaintiff may not dismiss, but has additional defenses 16–1903
Small claims and conciliation branch, Municipal Court 11–809
What can be set off 16–1901
Where plaintiff is trustee 16–1907

SEWERS
Agreement for use of District sewers by Maryland 1–817
Payment of share of cost by Maryland 1–817
Purpose of agreement 1–817
Building and lot connections 6–401—6–404
Certification of necessity 6–401
Conditions requiring connections 6–401
Duty to make connections 6–401
Failure to make connections after notice, penalty 6–403
Nonresident owners, making at public expense, cost taxed against premises 6–404
Work done in accordance with regulations 6–402
Commissioners of District, control over and repair 7–101
Fee for making connection 1–726
Horses and vehicles, purchase 7–1237
Inspection of ventilation by Plumbing Inspector 1–727
Inspectors, draftsmen, etc., employment 7–1235
Letting of contracts 7–601, 7–602
Advertising for bids, when required 7–601
Lowest responsible bid accepted 7–601
Recording and signing by Commissioners 7–602
Right to reject bids 7–601
Splitting of contract to avoid calling for bids prohibited 7–601
Unanimous consent of Commissioners required 7–602
Maintenance and employee costs to be included in annual budget estimates 47–206
Making connection before street improved 7–605
Notice to make connections 6–402
Given by Commissioners 6–402
Nonresident owners 6–404

SEWERS—Continued
Outside toilets, sewer connections 6–701—6–704
Permit system of improvement 7–608, 7–609
Application and deposit of half of estimated cost 7–608
Assessments against property 7–608
Discretion of Commissioners 7–608
Notice given 7–608
Objections and hearings 7–608
Permit fund, distribution 7–608
Repayment from permit fund 7–608, 7–609
Regulations concerning, Commissioners' power to adopt 1–725
Request for improvement under permit system 7–608
Retention of percentage of final payment due contractor 1–807
Deposit with treasurer of United States 1–807
Interest, sum in excess of $100 1–807
Period of retention 1–807
Sewage disposal plant, public works loan for construction 9–204
Street improvements, service connections, assessment of cost 7–610
Streets dedicated by landowners, right to lay in parking 7–117
Temporary employees, commissioners authorized to employ 7–1236

SEWING MACHINES
Exemption from judicial process 15–401

SEXUAL PSYCHOPATH
Commitment to Saint Elizabeths Hospital 22–3508
Criminal law unchanged 22–3511
Definitions 22–3503
Examination by psychiatrists
Filing of report 22–3506
Filing of statement
Time limitation 22–3504
Hearing, when required 22–3507
Parole, discharge 22–3509
Right to counsel 22–3505
Stay of criminal proceedings 22–3510

SHAD
See GAME AND FISH LAWS

SHARES
Defined 28–2922

SHELLEY'S CASE
Rule abolished 45–203

SHERBET
Standard measures and their capacity 10–119

SHINGLE SHOPS
Licenses 47–2310

SHOOTING GALLERIES
License 47–2322
Major and superintendent of police, duties 47–2322

SICK LEAVE
Fire Department 4–409
Metropolitan police force members 4–180
Park police 4–207

SIDEWALKS
Alley dwellings, width of sidewalk 5–101
Business streets, use for business purposes 7–1205, 8–108
Deposit of refuse or litter, power to prohibit 1–224
For sale or rent sign, placing on sidewalk prohibited, penalty 7–1001
Obstructions, removal, duty of National Park Service 7–1207
Permit system of improvement 7–608, 7–609
Application and deposit of half of estimated cost 7–608
Assessments against property 7–608
Discretion of Commissioners 7–608
Notice given 7–608
Objections and hearings 7–608
Permit fund, distribution 7–608
Repayment from permit fund 7–608, 7–609
Public grounds, rules and regulations concerning, power to adopt 8–144
Request for improvement under permit system 7–608
Snow and ice, removal 7–801—7–806
Ashes, temporary use 7–802—7–804
Building owned or leased by United States 7–803
Commissioners removing at expense of owner or occupant 7–805, 7–806
Fire limits of District 7–801
Owners and occupants, duty to remove 7–801
Property owned or leased by District 7–802
Public buildings, squares and reservations 7–802
Sand, temporary use 7–802—7–804
Street improvement, assessment against abutting property 7–606
Streets dedicated by landowners, right to lay on parking 7–117
Use of space under, rental 7–901
Vault under, rental 7–901

SIGHT-SEEING BUSES
Authority of Commissioners of District 47–2331
Authority of Public Utilities Commission 47–2331
Drivers 47–2331
License 47–2331

SIGNATURE
Notaries public required to file with clerk of District Court 1–506

SIGNATURE BY MARK
Pay roll, witnesses 1–315

SIGNS
See Outdoor Signs
Real estate for sale or rent, regulation, violation, penalty 7–1001

SILVER
Poisonous compounds, sale, restrictions 2–612

SKATING RINKS
License fee 47–2320
Revocation of license for violation of decency regulations 47–2303

SLAUGHTERHOUSES
License 47–2316
Approval of director of public health 47–2316
Compliance with location laws 47–2316
Fee 47–2316

SLEEPING-CAR COMPANIES
Taxation of rolling stock 47–1215

SLEET
Removal from sidewalk by owner or at owner's expense 7–801—7–806

SLOT MACHINES
Placard on machine, contents 10–109
Refreshment dispensing machine license 47–2319
Required to be in perfect working order 10–109
Slug, operating with, penalty 22–1407
Use regulated 10–109
Weighing machine license 47–2319

SLUGS
Coin machine, operating with, penalty 22–1407
Issuing 22–1408
Manufacturing 22–1408
Possession 22–1408

SLUM CLEARANCE
See Alley Dwellings
Alley Dwelling Law 5–103—5–116

SMALL CLAIMS AND CONCILIATION BRANCH OF MUNICIPAL COURT
See Municipal Court

SMALL LOANS
See Petty Loans
Small money lenders' law 26–601—26–611

SMALL MONEY LENDERS
See Pawnbrokers

SMALLPOX
Compulsory vaccination of school children 31–1102
Hospitals 32–306

SMOKE PREVENTION
Appropriations for enforcement of law 6–804
Discharge of dense smoke prohibited 6–801
Enforcement officers 6–804
Penalty for violating law 6–803
Person liable for violation of law 6–801
Regulations, power of Commissioners to adopt 6–802
Smoke consumers, regulation for installation and operation 6–802
Violations, prosecution by information 6–803

SMOKE SCREEN DEVICE
Use or possession of, penalty 40–610

SMOKESTACKS
See Chimneys

SNOW AND ICE
See Ice; Sidewalks
Removal from sidewalk by owner or at owner's expense 7–801—7–806
Streetcar company, duty to remove from tracks 7–614

SOCIAL AGENCIES
See BOARD OF PUBLIC WELFARE
Cooperation with Juvenile Court 11–931
Investigating adoption petitions 16–201

SOCIAL CLUBS
Income tax, when exempted 47–1554

SOCIAL SECURITY
See BLIND PERSONS; OLD-AGE ASSISTANCE; UNEMPLOYMENT COMPENSATION
Care of blind persons 46–101—46–116
Old-age assistance 46–201—46–215
Unemployment compensation act 46–301—46–325

SOCIAL SECURITY BOARD
Dependent children
Cooperation with Board of Public Welfare 32–762
Reports by Board of Public Welfare 32–754

SOCIETY OF THE CINCINNATI
Property exempted from taxation 47–830

SODA FOUNTAINS
License 47–2327

SODOMY
Bill of particulars 22–3502
Penalty 22–3502

SOFT-DRINK ESTABLISHMENTS
License 47–2327

SOLDIERS AND SAILORS
Admission without tuition to District schools for special instruction 31–304
Children of, admitted to schools 31–305

SOLICITORS
See ATTORNEYS
Fees and costs 11–1501
House to house 47–2337
Bond 47–2337
Definition 47–2337
License 47–2337

SONS OF THE AMERICAN REVOLUTION
Property exempted from taxation 47–827

SOOTHSAYERS
See FORTUNE TELLERS

SOUTH DAKOTA AVENUE
Widening, use of land owned by United States authorized 7–126

SOUTH DAKOTA AVENUE BRIDGE
Street railways using, payment of share of cost 7–512

SPECIAL ASSESSMENT
See STREETS AND OTHER WAYS

SPECIAL ENDORSEMENTS
Stock certificate 28–2921

SPECIAL POLICEMEN
See CROSSING POLICEMEN; PARK POLICE; POLICE DEPARTMENT
Appointment to guard private property 4–115

SPECIAL POLICEMEN—Continued
Commissioners to appoint during war 6–1006
Emergency appointments 4–133
Appointment without pay 4–133
Powers and duties 4–133

SPECIAL REMEDIES
See ACCOUNTS AND ACCOUNTING; ADOPTION; ATTACHMENT AND GARNISHMENT; DIVORCE; EJECTMENT; EMINENT DOMAIN; GAMBLING AND GAMING TRANSACTIONS; HABEAS CORPUS; JOINT CONTRACTS; MANDAMUS; NAMES; NEGLIGENCE CAUSING DEATH; PARTITION; PAYMENT OF MONEY INTO COURT; QUIETING TITLE OBTAINED BY ADVERSE POSSESSION; QUO WARRANTO; REFERENCE OF QUESTIONS OF LAW AND FACT; REPLEVIN; SET-OFF; SURETIES

SPEEDING
Criminal offense 40–605

SPEEDWAY
Construction in Potomac Park, authorization by Congress required 8–155

SPINACH
Sale by net weight authorized 10–115

SPIRES
Height, fireproof construction 5–404, 5–405

SPIRIT OF WINE
Definition of "alcohol" includes 25–103

SPIRITS
Definition 25–103

SQUARES
Business enterprise covering two-thirds of area, closing of alleys 7–305
Closing and changing of alleyways on petition of property owners 7–306
Closing of alleys and minor streets, square owned by one person, tenants in common, or partners 7–308
Encroachments, duty of Secretary of Interior to prevent, property belonging to United States 7–1209
612 and 613 made part of park system 8–124

STABLES
Sewer connections 6–401

STAIRWAY LIGHTS
Fire protection 5–317—5–323

STAIRWAYS
See FIRE ESCAPE AND SAFETY PROVISIONS
Failure to provide lights, penalty 5–308
Fireproof door 5–305
Fire resisting 5–301, 5–302
Buildings in which required 5–301, 5–302
Dimensions 5–301, 5–302
Doors 5–301
Stairway lights 5–303
Obstruction prohibited 5–306

STANDPIPES
Definition 5–312
Failure to provide after notice, penalty 5–308

STANDPIPES—Continued
Fire protection 5–317—5–323
Installing in buildings, when required 5–303

STATES
Acts of notary of District, legality 1–510

STATISTICS
See VITAL STATISTICS

STATUTE OF FRAUDS
See SALES, UNIFORM ACT
Contracts for sale of goods 12–304
Accepting partial delivery, effect 12–304
In writing, effect 12–304
Less than $50.00 12–304
Part payment, effect 12–304
Void, when 12–304
Contracts made void
Conveyance in trust 12–303
Trust property 12–303
Contracts required to be in writing 12–302—12–306
Conveyance of trusts 12–303
Debt or default of another 12–302
In consideration of marriage 12–302
Not to be performed within year 12–302
Sale of land 12–302
Trust property 12–303
Endorsement of payments on written promises, effect 12–305
Estates by sufferance 12–301
Estates created by other than deeds, effect 12–301
Estates created by parole, effect 12–301
Infant, new promise after reaching majority 12–306
Ratification by conduct 12–306
Written acknowledgment 12–306
New promise on simple contracts 12–305
By a joint contractor, effect 12–305
By a joint executor or administrator 12–305
Part payment, effect 12–305
Writing necessary to avoid limitation 12–305
Trusts implied in law, exception 12–303
Under Uniform Sales Act 28–1104

STATUTE OF JEOFAIL
See PLEADINGS

STATUTE OF LIMITATIONS
See LIMITATION OF ACTIONS

STATUTE OF USES
Provisions 45–1201

STEAM AND OTHER OPERATING ENGINEERS
Application for license 2–1503
Certificate of good moral character 2–1503
Qualifications of applicant 2–1503
Board of Examiners 2–1502
Appointive members, appointment by Commissioners 2–1502
Boiler inspector ex officio member 2–1502
Members of board 2–1502
Term of office 2–1502
Vacancies filled for unexpired term 2–1502
Employment of unlicensed operator, penalty, gravity boilers excepted 2–1506
Engineers employed by United States Government or licensed by other states excepted 2–1507
Examinations for license 2–1502
Fee for license 2–1504
Intoxication, suspension or revocation of license 2–1505
First and subsequent offenses 2–1505
Licensing required 2–1501
Testing of boilers 2–1502

STEAM BOILERS
See BOILER INSPECTION

STEAMSHIP LINES
Employers' Liability Act 44–401—44–405

STOCK
Transfer 28–2901—28–2923

STOLEN PROPERTY
See EMBEZZLEMENT
Destroying, penalty 22–2208
Police Department records, open to public inspection 4–135
Police registry book 4–134
Property clerk made custodian 4–152
Record kept of property, contents 4–153
Receiving 22–2205, 22–2207
District, property of, penalty 22–2207
Penalty 22–2205
Second-hand dealers, purchasing, revocation of license 47–2339

STONES
Throwing in streets, penalty 22–1109

STORAGE
Licenses 47–2313—47–2315
Motor vehicles on property of another 40–810, 40–811

STORES
See FIRE ESCAPES AND SAFETY PROVISIONS

STREET LIGHTING
Adoption of lighting method 7–701
Contract for gas or electric lights not required 7–704
Design and quality of equipment, approval by Commissioners 7–701
Discontinuance of lamps on orders of Commission 7–701
Electric light, schedule of rates 7–701
Erection of lamp 7–701
Facilities for testing amount of illumination furnished, duty of companies to provide 7–703
Failure to furnish and set up equipment, penalty 7–705
Failure to furnish required illumination, deductions from charges 7–703
Flat-flame burner, rate per lamp 7–701
Gas mains, extension for street lights 7–706
Lamps not burning, deductions from amount of bill 7–703
Mantle gas lamp, schedule of rates 7–701
Number of lights, power to increase 7–710

STREET LIGHTING—Continued
Overhead wires prohibited 7–702
Purchase or construction of equipment by Commissioners, condition 7–701
Railroads, payment for light 7–709
Enforcing payment 7–709
Regulation of hours by Commissioner 7–707
Removal and readjustment of lamps, schedule of charges 7–701
Removal of fixtures on orders of commission 7–701
Schedule of rates 7–701
Washington Terminal Company 7–708
Enforcing payment for street light charges 7–708
Payment for street lights, maximum charges 7–708

STREET ORATORS
Speaking on Capitol grounds prohibited 9–123

STREET RAILWAYS
See PUBLIC UTILITIES
Annual report to Congress, contents 44–215
Benning Bridge, use, share of cost, payment 7–514
Calvert Street Bridge, use, conditions 7–524
Cars, endangering passage of, penalty 22–3119
Cedar Street Underpass, use, payment of share of cost 7–519
Competitive streetcar and bus lines 44–201
Certificate of convenience and necessity required 44–201
Jurisdiction of Public Utilities Commission 44–201
Connecticut Avenue Bridge over Klingle Valley, use, conditions 7–513
Constructing in street, consent of Congress 7–1203
Definition 43–109
Duct lines, construction authorized 44–206
Easement over Michigan Avenue 7–131
Eastern Avenue Viaduct, use by street railway, payment of share of cost 7–515
Employers' liability act 44–401—44–405
Excise tax on companies 47–1701
Exemption from Boiler Inspection Act 1–709
Fenders required on streetcars 44–204
Francis Scott Key Bridge, use, conditions 7–511
Free transportation of policemen and firemen 44–213
Glass vestibules for motormen required 44–205
Joint use of underground tracks permitted only where motive power is identical 44–210
Michigan Avenue Viaduct, use, payment of share of cost 7–520
Monroe Street Viaduct, use, conditions 7–510
Paving between tracks 7–624
Power, equipment, appliance and service requirements 44–202
Public Utilities Commission, power on services 44–202
Rails, type required specified 44–209
Reciprocal trackage agreements required 44–208
Reduced fares for school children 44–214
Removal of disused tracks 44–211
Rules and regulations on services 44–202

STREET RAILWAYS—Continued
Service requirements, prosecution of violations 44–203
Snow and ice, removal from track 7–614
South Dakota Avenue Bridge, use, conditions 7–512
Street improvement assessments and costs 7–611, 7–612
Street intersections 4–112, 4–113
Bringing car to full stop required 4–112
Crossing policemen 4–112, 4–113
"Street railroad corporation" defined 43–110
Sufficient cars to be provided 44–202
Transfers 44–207
Free transfers when joint use of tracks is denied 44–212
Issuance 44–207
Misuse, penalty 44–207
Prosecutions for misuse 44–203
Reciprocal agreements required 44–208
Underground tracks, reciprocal trackage agreements permitted only where motive power is identical 44–210
Van Buren Street Underpass, use, payment of share of cost 7–517
Violation of service requirements, penalty 44–202

STREETS
See HIGHWAYS; STREETS AND OTHER WAYS

STREETS AND OTHER WAYS
See ABUTTING OWNERS; ALLEY DWELLINGS; EMINENT DOMAIN; PARKS AND PLAYGROUNDS; STREET LIGHTING
Abandonment 7–113, 7–114, 7–118, 7–123
Assessment of damages 7–114
Closing of various streets and highways authorized 7–123
Consent of property owners 7–123
Maintenance pending actual abandonment 7–114
Power to change existing subdivisions not conferred 7–113
Providing grounds for educational, religious, or similar institutions 7–113
Reversion to abutting owners, abandonment under permanent highway plan 7–118
Alley dwellings, width of roadway 5–101
Eminent domain, opening, widening, or straightening alleys or minor streets 7–313—7–333
Existing alleys, legalizing act 7–328
Land owned by district 7–309—7–312
Laying out in building lots subdivision 1–620
Police regulations, powers of Commissioners 1–623
Previously closed by subdivision, legalizing act 7–329
Alleys and minor streets 7–301
Commissioners, authority to open, extend, widen, or straighten, conditions 7–301
Director of Public Health certifying necessity of opening, extending, widening, or straightening 7–301
Petition to open, extend, widen, or straighten 7–301

STREETS AND OTHER WAYS—Continued
Allotment for improvement, unexpended balances, carrying over into succeeding year 7–619
Appropriations, exceeding prohibited 7–620
Around the Capitol 47–1107
Improvements 47–1107
Private property assessments 47–1107
Assessments for curbs and gutters 7–612a—7–612d
Baltimore and Ohio Railroad Company, construction and expansion of tracks 7–1212
Baltimore and Potomac Railroad Company, siding and switches, power to construct 7–1210, 7–1211
Barbed-wire fences, construction or maintenance, restriction, penalties 7–1101—7–1105
Beatty and Hawkins' addition to Georgetown, inclusion in permanent highway plan 7–116
Building lines 5–201—5–206
Building or street materials, injuries to, penalty 22–3113
Buildings, height governed by width and character of street 5–405
Basis of measurement 5–407
Business streets 7–1205, 8–108
Designation by Commissioners 7–1205, 8–108
Use of sidewalk for business purposes 7–1205
Cemeteries, rights of way through 1–615
Change in names 7–106, 7–107
Commissioners' right to name or rename streets and highways 7–107
Two streets with same name 7–106
Cleaning and sweeping 1–235, 1–236
Payment of costs 1–235
Sale of street sweepings authorized 1–236
Temporary employees, commissioners authorized to employ 7–1236
Closing alleys 7–302—7–309
Closing and changing of alleyways on petition of property owners 7–306, 7–307
All owners of all or part of square petitioning for closing 7–306
Approval of petition by Commissioners 7–306
Dedication of new alleyways 7–306
Filing of plat 7–306
Future ownership of closed alleys 7–306, 7–307
Recording of copy of order 7–307
Closing and readjustment of streets 7–401—7–410
Authority vested in Commissioners 7–401
Collection of benefit assessments 7–406
Compensation of abutting owners for land or structures 7–401
Condemnation proceedings, objections filed 7–405—7–407
Dedication in connection with closing 7–403
Dismissal of proceedings by Commissioners, after verdict 7–407
Existing laws unrepealed 7–409
Hearing, notice given 7–402
Name of act 7–410
Notice of intention given 7–402
Notice of order closing, publication 7–404
Objections filed, assessment of benefits and damages 7–405
Payment of damage awards 7–406
Petitions by property-owners for closing 7–408

STREETS AND OTHER WAYS—Continued
Closing and readjustment of streets—Con.
Plats, contents 7–403
Recording of order and plats 7–404
Reference to National Capital Park and Planning Commission for recommendation 7–401
Reverting of title to abutting owners 7–401
Service of order on property-owners 7–404
Time allowed for objecting to order 7–404
Title to land in United States, Commissioners authorized to dispose of 7–401
Closing, municipal center, streets and alleys 9–201
Closing of alleys and minor streets 7–302—7–309
Acceptance of dedication of new alleys, closing of old alleys 7–303
Alley less than ten feet in width, application of abutting owners 7–304
Alley not an original alley, reversion of title to abutting owners 7–302
Alley rendered useless by opening of other ways 7–302
Application of property-owners 7–303
Assessment of benefits against reverting lands 7–302
Business enterprise covering two-thirds of square 7–305, 7–308
District acquiring lands for municipal purposes, property-owner's right of access preserved 7–309
Future ownership of alleys closed by dedication of other ways 7–303
Original alley, sale of land 7–302
Square owned by one person, tenants in common, or partners 7–308
Improvement 7–305
Use of square for purpose of some business enterprise 7–305
Closing of certain streets authorized 7–123, 7–124
Apportionment of property among abutting owners 7–124
Assessment for taxation 7–124
Plat, preparation and approval 7–124
Reversion of title to abutting owners 7–123
Commissioners of District, control over 7–101
Conduit Road, jurisdiction and control vested in Commissioner 7–1201
Cost of opening 7–1214
Curbing, assessment against abutting property 7–606
Curbings, replacement cost, exemption from assessment 7–626
Curbs, assessments for 7–612a—7–612d
Dedication by plat 1–614
Dedication by property-owners 7–117
Acceptance by Commissioners 7–117
Building restriction lines 7–117
Sewers and water-mains, right to lay through parking 7–117
Sidewalks, right to lay on parking 7–117
Space between street lines and building restriction lines, use 7–117
Width of streets 7–117
Deposit of refuse or litter in streets, power to prohibit 1–224

STREETS AND OTHER WAYS—Continued
District owning land 7–309—7–312
Closing alleys, conditions 7–309
Hearing afforded property-owners, closing or opening of alleys 7–311
Maps, preparation and recordation, opening and closing of alleys 7–312
Notice given, opening or closing of alleys 7–311
Setting aside land for new alleys 7–310
Disturbing or removing public works or material, permit required 7–615
Penalty for violating act 7–616
Dogs, urging to fight in streets 22–1110
Drinking in, penalty 25–128
Eminent domain 7–201—7–221
Dismissal of action, damages exceeding benefits 7–219
Street extensions, cost and expenses assessed as benefits 7–218
Encroachments, duty of Secretary of Interior to prevent 7–1209
Excavations, permit, fee 1–726
Gas main
Laying before street improved 7–605
Laying, permit, replacing street 7–1204
Grounds for educational, religious, or similar institutions 7–113
Gutters, assessments for 7–612a—7–612d
Gutters, replacement cost, exemption from assessment 7–626
Horses and vehicles, purchase for maintenance and repair 7–1237
Ice
Removal from sidewalk 7–801—7–806
Removal from track by streetcar company 7–614
Improvement, annual schedule arranged by Commissioners 7–607
Lighting of streets 7–701—7–710
Maintenance 7–1214
Maintenance, payment of cost 7–611
Materials for making or repairing, condemnation 7–332
Michigan Avenue 7–127, 7–129—7–131
Milestones, removing, penalty 22–3120
"Minor street" defined 7–301
Motor fuel tax
Effect of 47–1917
Proceeds, use of for 47–1901
Names 7–106, 7–107, 7–112
Permanent highway plan adopted, powers of Commissioners 7–112
Streets outside city limits 7–107
Streets with same name, change 7–106
Naval Observatory grounds 7–120, 7–121
Massachusetts Avenue 7–121
Restrictions on construction 7–120
Obstructing, penalty 22–3120, 22–3121
Fines collected in name of United States 22–3122
Obstructions, removal 7–1204, 7–1207
Parking space, reservation for congressmen 40–604
Parkings, control vested in Commissioners 8–110
Parks, setting aside part of street for park purposes 7–1206

STREETS AND OTHER WAYS—Continued
Paving and repairing 7–601—7–634
Advertisement for proposals, when required 7–601
Apportionment of costs 7–604
Best material, use required 7–603
Bond of contractor 7–603
Consent required 7–602
Intersections, apportionment of cost 7–604
Liability of contractor for defects and repairs 7–603
Payment of cost 7–604
Recording and signing of contracts by Commissioners 7–602
Retention of cash to guarantee repairs not required 7–603
Right to reject any and all bids 7–601
Splitting of contract so as to avoid advertising for bids prohibited 7–601
Paving or completely resurfacing 7–611, 7–612, 7–617, 7–619, 7–622—7–634
Adjustment of assessment by Commissioners 7–631
Area included 7–612
Assessment levied obtained, exemptions from replacement assessment 7–626
Assessment of cost against abutting property 7–611, 7–622
Bituminous macadam, use authorized 7–617
Cancelation of prior assessment 7–632
Collection of assessments, law governing 7–630
Constitutionality of Act, provisions separable 7–633
Curbs, assessment of cost 7–623
Delinquent assessments, interest 7–630
Depth to which land assessed, unsubdivided land 7–625
Division of cost between property on each side of street 7–612
Exceptions from assessment of cost against abutting owners 7–612, 7–624
Exemptions from reassessments made inapplicable, original improvement made prior to 1885 7–634
Front foot assessment, limitation on amount 7–625
Front foot rule of assessment 7–611, 7–622
Gutters, assessment of cost 7–623
Heater method used, payment of costs 7–628
Improving under appropriations made by Congress 7–611, 7–622
Interest on assessment 7–630
Intersection 7–611, 7–624
Notice of intention, roadway improvement excepted 7–612
One-half of street only improved 7–622
One side only improved, assessment of costs 7–622
Owner constructing original pavement under permit, exemption from assessments inapplicable, improvement made prior to 1885 7–634
Philadelphia, Baltimore and Washington Railroad Company, cost of paving between tracks, payment 7–1222

STREETS AND OTHER WAYS—Continued
Paving or completely resurfacing—Continued
Prior improvement made at owner's cost, exemption from assessment 7–627
Property abutting on two or more streets
Limitation on aggregate assessment 7–629
Limitation on assessment, exemption inapplicable, improvement made prior to 1885 7–634
Protests against assessment 7–631
Reassessment of cost of improvement made under prior laws 7–632
Refund of assessments paid under prior laws 7–632
Replacement exemption inapplicable, assessment levied prior to 1885 7–634
"Roadway" defined 7–623
Streetcar tracks in street 7–611
Street railways, paving between tracks 7–624
Total assessment limited 7–625
Unexpended allotment made available for succeeding year 7–619
Unsubdivided property, computation of assessment 7–625
Width of improvement assessed against adjoining property 7–624
Width of pavement 7–613
Pennsylvania Railroad Company, switches and sidings 7–1225—7–1229
Permanent Highway Plan 7–108—7–112
Eminent domain authorized, procedure, law governing 7–201—7–221
New plans, adoption by Commissioners, approval 7–122
Permit system of improvement 7–608, 7–609
Application and deposit of half of estimated cost 7–608
Assessments against property 7–608
Bituminous macadam, use authorized 7–617
Discretion of Commissioners 7–608
Objections and hearings 7–608
Permit fund, distribution 7–608
Repaving, exemption from assessment 7–627
Repayment from permit fund 7–608, 7–609
Service connections with water mains and sewers, assessment of cost 7–608
Width of pavement of street 7–613
Playing in streets, penalty 22–1108
Portable asphalt plant, use in improving streets authorized 7–618
Protest against improvement assessment 7–631
Railroad crossings 7–1214
Railroads prohibited in certain streets 7–1202
Readjustment 7–113
Approval of plat by National Capital Park and Planning Commission 7–113
Grounds for educational, religious, or similar institutions 7–113
Power to change existing subdivisions not conferred 7–113
Recording of plat 7–113
Repairs 7–611, 7–621
Contract for repairing pavements, maximum duration 7–621
Payment of cost 7–611
STREETS AND OTHER WAYS—Continued
Request for improvement under permit system 7–608
Resubdivision of property, permanent highway plan adopted 7–119
Resurfacing by heater method 7–628
Retention of percentage of final payment of contractor 1–807
Interest, sum in excess of $100 1–807
Investments, discretion of United States Treasurer 1–807
Period for which retained 1–807
Sale of lands in which United States interested, disposition of proceeds 7–330
Service pipes, laying before street improved 7–605
Sewer connections 7–605, 7–610
Assessment of cost 7–610
Making before street improved 7–605
Sidewalks, improvement of streets, assessment against abutting property 7–606
Small parks at street intersection, part of park system 8–111
Snow
Removal from sidewalk 7–801—7–806
Removal from track by streetcar company 7–614
Street parkings, control by Commissioner 5–205
Street railroad, laying in street, consent of Congress 7–1203
Street trades, child labor 36–217, 36–224
Subdivisions outside city of Washington, approval by Commissioners, recording with Surveyor 7–125
Temporary employees, commissioners authorized to employ 7–1236
Trenches, cutting in, permit required 7–615, 7–616
Penalty for violating act 7–616
United States Soldiers' Home, vacation of part of grounds authorized 7–127, 7–128
Water mains 7–605, 7–610
Laying before improvement of street 7–605
Service connection, assessment of cost 7–610
Water Street, closing for park purposes 8–114
Widening of certain streets, use of land owned by United States authorized 7–126
Width of pavement 7–613

STREET SWEEPINGS
Burning in incinerator 6–506

STREET VENDORS
Commissioners' power to regulate 1–224

STRIKES
Firemen prohibited from engaging in 4–407
Police, membership in organizations advocating prohibited 4–125
Right to, not abrogated 22–3306
Unemployment compensation benefits denied to strikers 46–310

STRIKING STATIONS
Fire protection 5–317—5–323

STRUCK JURY
Civil cases, United States District Court 11–319

STUDENT NURSE
Unemployment Compensation Act, exclusion from 46–301

SUBDIVISIONS
Approval by Commissioners 1–613
Boundaries marked by surveyor 1–619
Building lots plat 1–620
Certification by surveyor and witnesses 1–620
Preparation by surveyor 1–620
Certificate describing dimensions of boundaries 1–619
Certification of plat by surveyor, owner and witnesses 1–618
Changing of boundaries 1–618
Certification by surveyor, owner, and witnesses 1–618
Deficiency or excess in number of feet in lot or lots 1–624
Apportionment, method 1–624
Description of property in deeds and other documents, reference to plats 1–622
Description of property in will or deed 7–110
Eminent domain, streets through unsubdivided part of plat 7–216, 7–217
Land outside limits of city of Washington 7–125
Approval of plan by Commissioners of District 7–125
Recording of plan with surveyor 7–125
Metropolitan Police District 4–102
Permanent Highway Plan 7–109
Adoption of subdivision by reference in will or deed 7–110
Records of, surveyor's office 1–605
Regulatory powers of Commissioners 1–613
Resubdivision of property affected by Permanent Highway Plan 7–119
Resurvey to determine accuracy 1–621
Certification by surveyor 1–621
Recording, order for by Commissioners required 1–621
Scale of plats 1–610
Squares or lots belonging to United States 1–612

SUBORNATION OF PERJURY
See PERJURY
Definition, penalty 22–2501
Indictment, sufficiency of 23–205

SUBPOENAS
District Boxing Commission, power to issue 2–1221
Minimum Wage and Industrial Safety Board, issuance by 36–435
Police Department members, civil cases, exemption while on duty 4–128
Unemployment Compensation Board, power to issue 46–313

SUBROGATION
Payer of bill for honor 28–951

SUBSTITUTES
Meat, lard, butter, sale by weight 10–120

SUGGESTION OF DEATH
See ABATEMENT AND REVIVOR

SUIT MONEY
In divorce 16–410

SUMMONS
See PROCESS
Juvenile Court 11–909, 11–910
Probate Court 11–506—11–508, 11–514
Failure of fiduciary to appear, attachment and sequestration of property 11–508
Failure to make return 11–507
Failure to serve process 11–507
Fiduciaries, power of court to compel performance of duties 11–514
Power to issue 11–506
Return 11–508
Service 11–507
Witness refusing to testify, punishment 11–506
Service on institutions of learning 29–412

SUNDAY
Enforcement of Sunday observance laws by Commissioners 4–119
Fire Department members, leaves of absence 4–410
Last day for doing act, as 28–101
Negotiable instruments falling due on, date payable 28–616
Police, leaves of absence 4–180
Service of process on Sunday 13–102

SUPERINTENDENT
See WEIGHTS, MEASURES, AND MARKETS
Weights, measures, and markets 10–101—10–103

SUPERINTENDENT OF DOCUMENTS
Distribution of the D. C. Code 49–104, 49–106
Government publications supplied to libraries by 37–111

SUPERINTENDENT OF INSURANCE
See INSURANCE AND INSURANCE COMPANIES

SUPERINTENDENT OF MACHINERY
Fire Department 4–404
Salary 4–405

SUPERINTENDENT OF NATIONAL TRAINING SCHOOL FOR GIRLS
Salary 32–905a

SUPERINTENDENT OF POLICE
See POLICE DEPARTMENT
Advances to by disbursing officer 47–114
Bond 4–109
Dental law, enforcement, duties 2–305
Duty of force to respect and obey 4–126
Firearms
Report of sales to 47–2340
Shooting galleries, prescribing caliber for 47–2322
Healing Arts Practice Act, duty to enforce 2–137
Healing arts practitioner, petition for revocation of license 2–123
Healing arts, unlawful practice, petition to enjoin 2–132
Licenses requiring approval
Auctioneer 47–2309
Billiard parlors 47–2321

SUPERINTENDENT OF POLICE—Continued
Licenses requiring approval—Continued
Bowling alleys 47–2321
Deadly weapons, dealers in 47–2340
Detective agencies 47–2341
Firearms, dealers in 47–2340
Guides 47–2338
Massage establishments 47–2311
Medicated bath establishments 47–2311
Pool halls 47–2321
Private detectives 47–2341
Russian bath establishments 47–2311
Turkish baths 47–2311
Nurses, petition for revocation or suspension of certificate 2–407
Oaths, power to take and administer 4–123
Office created 4–106
Persons and property seized in raids, duties 4–146
Pharmacists' licenses, investigation as to revocability 2–605
Pharmacy Law, duty to enforce 2–617
Podiatry Law, investigations and prosecutions, duties 2–704
Powers and duties 4–106
Preferring of charges against members of board 4–121
Quarterly reports to Commissioners, contents 4–127
Salary 4–108
Shooting galleries, prescribing cartridges for 47–2322

SUPERINTENDENT OF PUBLIC SCHOOLS
See EDUCATION
Ex officio member of Healing Arts Licensure Commission 2–103

SUPERINTENDENT OF RECREATION
Powers and duties 8–209

SUPERSEDEAS
Healing arts licensee, conviction of felony, appeal, effect 2–131

SUPERSEDEAS BONDS
Recreation Board member exempted from giving 8–203

SUPREME COURT OF UNITED STATES
Appeals from public utilities commission orders 43–705
"Mandate" defined, review of decisions of Board of Tax Appeals 47–2404
Review of Decisions of Board of Tax Appeals 47–2404
Superior Court of District 11–101

SURETIES
Bonds and undertakings in District Court 28–2403
Bonds in penal sum with avoidance condition, limit of liability 28–2405
Commissioners becoming surety on bond given District prohibited 1–210
Petition for counter security, effect 16–2001
Petition to be relieved from suretyship, effect 16–2001
Subrogation 16–2002

SURGERY
See HEALING ARTS PRACTICE ACT; PHYSICIANS AND SURGEONS
Podiatry license examination 2–705

SURPLUS ARTICLES OF GOVERNMENT
Educational Agency for Surplus Property 31–1301—31–1303
Purchase 1–241

SURVEYORS
Abandonment or readjustment of streets, recording of plats 7–113
Laying out 1–620
Alleys
Police regulations, power of Commissioners 1–623
Shown on plats, dedication 1–614
Appointment 1–601
Assistant surveyor 1–603, 1–604
Appointment 1–603
Duties 1–604
Oath of office 1–604
Avenues shown on plats, dedication 1–614
Building lot plats, preparation 1–620
Certification of plat and surveys 1–616
Charts, preservation 1–606
Closing of streets and ways, preparation of plat 7–124
Custodian of record of plats and subdivisions 1–605, 1–606
Deficiency or excess in number of feet in lot or lots, apportionment 1–624
Designations of property for assessments and taxation, duties 47–401—47–408
Employees 1–603
Fees
Commissioners authorized to prescribe 1–629
Paid to collector of taxes 1–616
Payable into Treasury 47–126
Posting of schedule in office 1–629
Transmitted to Treasury of United States 1–616
Field notes, preservation 1–616
Houses, adjustment of line of front to line of street 1–628
Indexing of records, maps, and charts 1–607
Instruments, preservation 1–606
Labeling of maps, charts, plans, and other drawings I–607
Legal office of record of plats and subdivisions 1–605
Lines of subdivisions of squares shown on plats 1–610
Maps, preservation 1–606
Michigan Avenue, plat of abandoned and relocated portions 7–130
Oath of office 1–602
Deposited with Commissioners of District 1–602
Order of survey, execution 1–617
Return of true plat duly certified 1–617
Party-walls 1–625—1–628
Certificate of location, admissibility and evidence 1–628
Certification and recording of location 1–627
Payment for ground occupied 1–625, 1–626

SURVEYORS—Continued
Party-walls—Continued
Wall extending over line less than 7 inches 1–625
Wall extending over line more than 7 inches 1–626
Permanent highway plan
Entry on property for purposes of survey 7–111
Recorded with 7–109
Plats of squares and lots belonging to United States 1–612
Recorded by surveyor 1–612
Preservation of maps, charts, surveys, and records 1–605, 1–606
Private property, legal office of record 1–605
Record rule 1–606
Records of divisions of squares and lots 1–607
Records property of District 1–608
Regulatory powers of Commissioners over plats and subdivisions 1–613
Salary 1–601
Scale of plats and subdivisions 1–610
Streets shown on plats, dedication 1–614
Subdivisions outside city of Washington, recording of plan 7–125
Surveys for District 1–616
Surveys for private owners 1–618—1–622
Alteration of boundaries of subdivisions or tracts 1–618
Certificates describing dimensions of boundaries 1–619
Certification 1–618
Certification of building lots, plats 1–620
Changes in surveys 1–618
Execution of order for survey 1–617
Marking of boundaries 1–619
Planning of building lots 1–620
Recording of resurvey, order for by Commissioners 1–621
Resurvey to determine accuracy 1–621
Subdivision of tract or parcel of land 1–618
Witnesses 1–618
Term of office 1–601
Transcript of records, prima facie evidence 1–611
Transfer of records to successor in office 1–608, 1–616
Typewritten records authorized 1–609
Under direction and control of Commissioner 1–601

SUSPENSION OF LICENSES
See LICENSES
Cosmetologist's license or certificate 2–1304
Dentist's license to practice 2–311, 2–312
License to practice Healing Arts 2–123
Conviction of felony, appeal, effect 2–131
Plumber's licenses, ground 2–1405
Veterinarians 2–810

SWIMMING POOLS
Indoors, license 47–2324
Outdoors, license 47–2324

SWITCHES AND BRANCH TRACKS
Baltimore and Potomac Railroad Company 7–1210, 7–1211

TAGS
Congressional tags, appropriations 40–603b

TAKOMA PARK
Branch library 37–107, 37–108

TANK-CAR COMPANIES
Taxation of rolling stock 47–1215

TARGETS
Use of animals as, prohibited 47–2343
Use of persons as, prohibited 47–2343

TAXATION AND FISCAL AFFAIRS
See ASSESSMENT; ASSESSOR; BUDGETS; ESTATE TAX; INCOME TAXES; INHERITANCE TAX; MOTOR FUEL TAX
Abattoir license 47–2316
Accounting for contingent expense appropriations 47–107
Advance of funds by Secretary of Treasury on requisition of Commissioners of District 47–2501
Agent, notice of real estate taxes mailed to 47–1001a
Amusement park grounds license 47–2323
Anticipation by Commissioners prohibited 1–219
Antideficiency Act made applicable to District 47–105
Apartment house license 47–2329
Apothecary license 47–2308
Apportionment of appropriations to prevent deficits 47–106
Appropriations and revenue funds 47–310
Deposit with Treasury 47–310
Monthly audit of disbursements 47–310
Requisition by Treasurer 47–310
Requisitions of Commissioners of the District 47–310
Appropriations, permanent 47–108—47–110
Assessments
Collection and disbursement 47–301—47–311
Designation of property for 47–401—47–408
Expenses to be included in budget estimates 47–209
Motor vehicles 47–1210
Not to be enjoined 47–2410
Personal property 47–1201—47–1214
Real property 47–701—47–723
Service sewers 43–1510—43–1517
Special 47–1101—47–1107
Statement of total 47–601
Water mains 43–1510—43–1518
Assessor 47–601—47–606
Assessor, mailing notice of amount of real estate tax by 47–1001a
Athletic exhibition grounds license 47–2323
Auctioneer licenses 47–2309
Auditor 47–120—47–123
Auditing all accounts, exceptions 47–123
Bond 47–120
Chief clerk of auditor's office 47–122
Claims against "outstanding liabilities" account 47–125
Countersigning checks 47–121
Duties 47–120
Authority to appropriate for District expenses 47–134

TAXATION AND FISCAL AFFAIRS—Con.
Automobile rental agency license 47–2332
Bakery license 47–2327
Ballroom license 47–2320
Barber shop license 47–2310
Baseball grounds license 47–2323
Beauty parlor license 47–2310
Billiard parlor license 47–2321
Board of assistant assessors 47–604—47–606, 47–704—47–708, 47–710—47–712, 47–716, 47–717, 47–1201
Annual tabulated report of property assessed 47–706
Appeal of reassessment and redistribution on subdivisions to Board of Tax Appeals 47–716
Appeal of reassessment where assessment is voided to Board of Tax Appeals 47–712
Appointment 47–604
As members of Board of Equalization and Review 47–605
As members of Board of Personal Tax Appeals 47–605
Assessing new structures 47–711
Assessing omitted property 47–712
Clerk, appointment 47–604
Connivance in evasion of assessments, penalty 47–707
Conveyance to view property for assessment 47–704
Determining dimensions of tracts 47–705
Determining separately value of tracts and improvements 47–705
Duties 47–605
Improvements to old structures, annual return 47–710
Maps, books, surveys and plats 47–704
Commissioners of District to furnish 47–704
Deposit with assessor 47–704
Inspection by taxpayers 47–704
Neglect of duty, penalty 47–707
New structures erected or roofed, annual return 47–710
Oath 47–604
Perjury on part of witness, penalty 47–606
Personal property, three members to assess 47–1201
Qualifications 47–604
Real property becoming subject to taxation, annual list 47–710
Reassessment and redistribution of assessments 47–717
Reassessment and redistribution on subdivisions 47–712
Reassessment where prior assessment is voided 47–712
Reducing assessment when improvements are damaged or destroyed 47–710
Replacement of members 47–604
Subpoenas 47–606
Issuance by chairman 47–606
Service by police officer 47–606
Three of members to assess real property 47–605
Witness fees 47–606

TAXATION AND FISCAL AFFAIRS—Con.
Board of Equalization and Review 47–605, 47–606, 47–708—47–711
Annual meeting 47–708
Publication of notice 47–708
Required 47–708
Appeal of new structure assessments to Board of Tax Appeals 47–711
Appeals from assessment, equalization, or valuation by, to Board of Tax Appeals 47–709
Appeals from assessment to Board of Tax Appeals 47–710
Authority to raise and lower valuations 47–708
Date for completion of valuation and equalization 47–709
Duty to equalize value of real property 47–708
Hearing complaints on assessments 47–708
Membership 47–605
Perjury by witness, penalty 47–606
Reviewing assessments of new property 47–710
Reviewing new structure assessments 47–711
Reviews real property assessments 47–605
Subpoenas, issuance and service 47–606
Valuations, approval by Commissioners of District 47–709
Witness fees 47–606
Board of personal tax appeals 47–605, 47–1203, 47–1213, 47–1214
Appeal from rejection of sworn return 47–1203
Appeals within thirty days after notice of assessment 47–1213
Constitution of board 47–1213
Membership 47–605
Notice of sessions publication 47–1213
Power to increase or diminish assessments 47–1213
Review of personal property assessments 47–605
Sessions, time for 47–1213
Board of personal tax appraisers 47–1213, 47–1214
Assessment of omitted property 47–1213
Clerk and assistant, appointment by Commissioners of District 47–1214
Inspectors, appointment and duties 47–1214
Board of tax appeals 47–2402—47–2412
Appeal by person claiming exemption 47–801e
Appeal from board of assistant assessors 47–2405
Appeal from board of equalization and review 47–2405
Appeal from personalty assessments 47–2403
Appeal from real property assessments 47–2405
Appeal from tax involuntarily paid 47–2406
Authority to affirm, cancel, reduce or increase assessments 47–2403
Business-privilege tax assessments, appeal 47–2403
Compelling attendance of witnesses 47–2409
Court of Appeals modifying or reversing decision, effect 47–2404
Court of Appeals remanding for hearing, effect 47–2404
Decision 47–2403
Review by Court of Appeals 47–2404
Definitions 47–2401

TAXATION AND FISCAL AFFAIRS—Con.
Board of tax appeals—Continued
Establishment 47–2402
Estate tax assessments, appeal 47–2403
Examination of witnesses and records 47–2409
Fee for comparing transcript of record 47–2404
Fee for preparing transcript of record 47–2404
Fee for supplying documents 47–2404
Finding of facts 47–2403
Gross-earnings assessment, appeal 47–2403
Gross-receipts assessment, appeal 47–2403
Hearings 47–2403
Income tax assessments, appeal 47–2403
Inheritance tax assessments, appeal 47–2403
Insurance-premium tax assessments, appeal 47–2403
"Mandate" defined 47–2404
Manner of serving notice 47–2411
Motor-vehicle-fuel tax assessments, appeal 47–2403
Payment of personal taxes under protest required before appeal 47–2403
Personal property assessments, appeal 47–2403
Petition for review of decisions 47–2404
Filing by District 47–2404
Filing by taxpayer 47–2404
Regulation of form by Board of Tax Appeals 47–2404
Time limit for filing 47–2404
To be filed with Board of Tax Appeals 47–2404
Qualifications 47–2402
Reference of taxation questions by Commissioners of District 47–2412
Review of decisions by courts 47–2404
Board's finding of fact, effect 47–2404
Conduct of proceedings 47–2404
Exclusive jurisdiction 47–2404
Rules of procedure, adoption and promulgation 47–2408
Salary 47–2402
Summons 47–2409
Power to issue 47–2409
Service by police officer 47–2409
Supreme Court modifying or reversing decision, effect 47–2404
Supreme Court ordering rehearing, effect 47–2404
Taxes erroneously paid 47–2407
Determination 47–2407
Refund 47–2407
When decision is final 47–2404
Denial of certiorari 47–2404
No petition filed in time allowed 47–2404
Bottling plant license 47–2327
Bowling alley license 47–2321
Budget estimates 47–201—47–212
Burlesque theater license 47–2320
Bus line license 47–2331
Candy factory license 47–2327
Carnival building license 47–2320
Carnivals, outdoor, license 47–2326
Certificates of taxes and assessments due, assessor to furnish 47–603

TAXATION AND FISCAL AFFAIRS—Con.
Cigarette tax 47–2801—47–2810
Administration 47–2808
Collection 47–2802
Definitions 47–2801
Imposition of tax 47–2802
Licenses 47–2805, 47–2806
Suspensions and revocations 47–2806
Types 47–2805
Penalties 47–2810
Prosecutions 47–2810
Rules and regulations 47–2808
Vendors to be licensed 47–2803, 47–2804
Circus licenses 47–2325
Clairvoyant license 47–2342
Collection and disbursement of taxes 47–301—47–311
Audit of disbursement vouchers 47–309
Certifying taxes and assessments due, effect 47–306
Collector of taxes 47–301
Account books, contents and inspection 47–305
Bond 47–302
Cashier of collector's office, duties and bond 47–304
Collections to be deposited in Treasury daily 47–301
Deposits to "miscellaneous trust-fund fund deposits" 47–311
Deputy collector, duties and bond 47–303
Method of disbursement 47–309
Settlement of accounts 47–309
Taxes and assessments omitted from record of assets of District 47–308
Waiver of interest and penalties, grounds 47–307
Collection of delinquent taxes 47–1209
Collection of revenue belonging to United States 47–503
Collection of taxes not to be enjoined 47–2410
Collections under assessment and permit system payable to collector of taxes 47–129
Collector of taxes 47–301—47–306, 47–308, 47–309, 47–311
Duties regarding income tax 47–1551—47–1595
Entering time for family dwelling tax payments 47–902
Purchasing real property at tax sale for District 47–1002
Refunding payments for licenses refused 47–1017
Report of tax sales 47–1006
Statement of total assessment and total taxes 47–601
Commission merchants, food, license 47–2327
Common trust funds 26–702
Compensating use tax 47–2701—47–2710
Assumption of tax by vendor unlawful 47–2709
Collection by vendor 47–2703, 47–2704
Bonds 47–2708
Nonresident vendors 47–2704
Resident vendors 47–2703
Definitions 47–2701
Exemptions 47–2706

TAXATION AND FISCAL AFFAIRS—Con.
Compensating use tax—Continued
Imposition of tax 47–2702
Payment by purchaser 47–2705
Returns 47–2710, 47–2711
Courts declaring tax void, refund 1–903
Dance hall license 47–2320
Delicatessen license 47–2327
Delinquent real estate taxes, notice to show 47–1001a
Deposit of United States revenue to "miscellaneous receipts" 47–503
Designation of property for assessment and taxation 47–401—47–408
In city of Washington 47–401—47–403
Daily transcript of deeds and wills 47–403
Designation to be official 47–402
Numbering squares, lots and parcels 47–401
Record of designation in surveyor's office 47–401
Outside city of Washington
Designation to be official 47–408
Employee of surveyor to make daily transcript of deeds, wills, condemnations 47–407
Numbering blocks, squares, lots, parcels in highway extension plan and subdivisions 47–405
Plat books 47–406
Sufficiency of description 47–404
Detective agency license 47–2341
Disabled American veterans property exemption 47–801a–1
Disbursement of appropriations 47–309
Disbursement of tax revenues 47–301—47–311
Disbursing officer 47–112—47–119
Accounting for funds 47–112, 47–309
Advances from "miscellaneous trust-fund deposits" 47–311
Amount of unpaid checks to be deposited in Treasury 47–124
Appointment 47–112
Audit of accounts 47–112
Bond 47–112
Checks 47–121
Auditor to countersign 47–121
Payment of outstanding checks after amounts have been deposited in Treasury 47–125
Chief probation officer of juvenile court, advances to 47–116
Claims against "outstanding liabilities" account 47–125
Deputy 47–113
Director of public welfare, advances to 47–115
Librarian of public library, advances to 47–118
Major and superintendent of police, advances to 47–114
Objections to allowance of disbursements 47–119
Payment of employees and laborers 47–112
Superintendent of penal institutions, advances to 47–117
Suspension of items in accounts, notice 47–119
District to collect certain United States revenue 47–503

TAXATION AND FISCAL AFFAIRS—Con.
Diversion of funds, penalty 47–104
Divulging information obtained from Bureau of Internal Revenue, penalty 47–2504
Dog tax 47–2001—47–2008
Authority of poundmaster as special police officer 47–2008
Dogs wearing tax tag permitted to run at large, exception 47–2004
Impounding of dogs without tax tag 47–2003
Owner's liability for damage by tagged dog 47–2005
Rate 47–2001
Removing dog's tax tag, penalty 47–2007
Tax tag to be attached to collar 47–2006
Drive-it-yourself agency license 47–2332
Drivers of sight-seeing buses, license 47–2331
Drivers of taxicabs and hacks, license 47–2331
Druggist licenses 47–2308
Dry cleaning establishment licenses 47–2317
Dyeing establishment licenses 47–2317
Entertainment hall license 47–2320
Estate taxes 47–1608—47–1629
Exemptions from taxation 47–801—47–830, 47–1208
Abatement 47–801d
Alley Dwelling Authority property 5–114
American Legion 47–828
American Red Cross 7–801b–1
American Tree Association 47–801a
Appeal by person claiming 47–801e
Benevolent institutions, personal property of 47–1208
Buildings 47–801a
Cemeteries 47–801a
Charitable institutions 47–801a
Chesapeake and Ohio Canal 47–807
Church buildings and grounds 47–801a
Corcoran Gallery of Art 47–809, 47–810
Building and grounds 47–801, 47–809
Endowment fund property 47–810
Works of art 47–809
Daughters of the American Revolution 47–821—47–825
Extension of time for filing report as to use of property 47–801c
Family portraits 47–1208
Foreign legations 47–801a, 47–803
Frederick Douglass Memorial and Historical Association 47–818
General Education Board 47–820
Household goods of public employee when taxed elsewhere 47–1208
Household goods owned by occupant of house where located 47–1208
Howard University 47–811
Income tax 47–1554
Income, using property to obtain 47–801b
Inheritance tax on property for public, etc., use 47–1601
Libraries 47–1208
Louise Home property 47–805
Luther Statue Association 47–812
Mailing notice of contingent tax liability to owners of exempt properties 47–801f
National Education Association 47–829

TAXATION AND FISCAL AFFAIRS—Con.
Exemptions from taxation—Continued
National Society of Colonial Dames of America 47–801a–2
Parsonages 47–801a
Pastoral residences 47–801a
Personal property 47–806, 47–809—47–811, 47–814, 47–820, 47–829, 47–830, 47–1208
Property of District of Columbia 47–801a, 47–803
Property of Oak Hill Cemetery Company 47–808
Property of United States 47–801a, 47–803
Property used for educational purposes 47–801a
Real property 47–801—47–805, 47–807—47–830
Rectories owned by church or congregation 47–801a
Refund 47–801d
Renting exempt property 47–801b
Report
Exempt realty 47–801a
Use of exempt property 47–801c
Rules and regulations 47–801f
Saint Marks Protestant Episcopal Church 47–813
Sale of exempt property at profit 47–801a
Schoolbooks 47–1208
Scientific institutions 47–801a, 47–1208
Sheridan tapestries 47–806
Society of the Cincinnati 47–830
Sons of the American Revolution 47–827
The Edes Home 47–819
Time for filing report 47–801c
United States 47–801b–1
United States Daughters of 1812 47–826
Wearing apparel 47–1208
Young Men's Christian Association 47–817
Young Woman's Christian Home 47–814
Young Women's Christian Association 47–815
Exhibition hall license 47–2320
Expenditures for repairs to schools, statement to be submitted with estimates 47–202
Explosives 47–2314
Sales location license 47–2314
Storage, license 47–2314
Fair building license 47–2320
Fairs, outdoor, license 47–2326
Family dwellings occupied by owner 47–901—47–905
Affidavit of domicile and ownership required 47–905
Extension of time for payment of taxes 47–902
Installment payment of taxes 47–901
Notice before sale for delinquent taxes 47–903
Persons entitled to benefit from provisions 47–905
Sale for taxes invalidated when based on errors in computation 47–904
Statement of taxes 47–901
Fees collected payable into Treasury 47–126
Bathing beach fees 47–126
Building inspection fees 47–126
Building permit fees 47–126
Electrical permit fees 47–126
Harbor master's fees 47–127
Health Department fees 47–126

TAXATION AND FISCAL AFFAIRS—Con.
Fees collected payable into Treasury—Con.
Inspector of meters, fees of 47–127
Motor vehicle wheel tax 47–126
Municipal Court fees 47–126
Nonresident pupils, tuition fees 47–126
Pound fees 47–126
Public convenience station fees 47–126
Railing permits fees 47–126
Reservation lease fees 47–127
Street lease fees 47–127
Superintendent of weights, measures and markets, fees 47–126
Surveyor's office, fees 47–126
Tax certificate fees 47–126
Wharf fees 47–127
Fees, fines and other revenue to be deposited into Treasury and credited in proportion to appropriations 47–130
Financial institution taxes 47–1701—47–1709
Banks 47–1701
Building associations 47–1704
Insolvent building or homestead associations 47–1705
Abatement of personal property taxes 47–1705
Note brokers 47–1708
Annual tax 47–1708
Time for payment 47–1709
Private banks 47–1706
Annual tax 47–1706
Time for payment 47–1709
Savings banks 47–1703
Washington Stock Exchange 47–1707
Firearm dealers, license 47–2340
Fire escapes and safety provisions, failure to erect after notice 5–310, 5–313
Commissioners erecting, assessment of cost against property 5–310
Fire-plug tax 43–1525—43–1528
Fire protection, taxation for costs of installing 5–322
Fiscal year of the District of Columbia 47–101
Football grounds license 47–2323
Fortune teller license 47–2342
Garage license 47–2334
Gasoline station license 47–2314
Gate tax, boxing contests 2–1218
General license law 47–2301—47–2350
Abattoirs 47–2316
Abolition by Commissioners 47–2344
"Agent" defined 47–2307
Ambulances 47–2331
Amusement park grounds 47–2323
Apartment houses 47–2329
Apothecaries, fee 47–2308
Applications for license 47–2301
Assignment of license, fee 47–2301
Athletic exhibition grounds 47–2323
Auctioneers, fee 47–2309
Automobile rental agencies 47–2332
Bakeries 47–2327
Ballrooms 47–2320
Barber shops 47–2310
Baseball grounds 47–2323

TAXATION AND FISCAL AFFAIRS—Con.
General license law—Continued
Beauty parlors 47–2310
Billiard parlors 47–2321
Bottling plants 47–2327
Bowling alleys 47–2321
Burlesque theaters 47–2320
Business, operating without required license prohibited 47–2301
Bus lines 47–2331
Candy factories 47–2327
Carnival building 47–2320
Circuses 47–2325
Clairvoyants 47–2342
Commission merchants, food 47–2327
Construction of terms 47–2307
Contents of license 47–2301
Dance halls 47–2320
Date and expiration of licenses 47–2305
"Dealers" defined 47–2307
Dealers in dangerous weapons 47–2340
Decreasing license fees, authority of Commissioners of District 47–2344
Definition of terms 47–2307
Delicatessens 47–2327
Detective agencies 47–2341
Drive-it-yourself agencies 47–2332
Drivers of ambulances and passenger vehicles 47–2331
Drivers of sight-seeing buses 47–2331
Drivers of taxicabs and hacks 47–2331
Druggists, fee 47–2308
Dry-cleaning establishments 47–2317
Dyeing establishments 47–2317
Each location to be licensed separately 47–2304
Eliminating licenses, authority of Commissioners of District 47–2344
Entertainment halls 47–2320
Exhibiting license to police 47–2306
Exhibition halls 47–2320
Explosive sales locations 47–2314
Explosive storage plants 47–2314
Fair building 47–2320
Firearm dealers 47–2340
Fish dealers, wholesale 47–2327
Food dealers, dual license 47–2327
Football grounds 47–2323
Fortune tellers 47–2342
Garages 47–2334
Gasoline stations 47–2314
Grocery stores 47–2327
Guides 47–2338
Gun dealers 47–2340
Hauling vehicles 47–2333
Hawkers 47–2336
Hotels 47–2302, 47–2328
House to house solicitors 47–2337
Ice cream factories 47–2327
Ice cream parlors 47–2327
Increasing license fees, authority of Commissioners of District 47–2344
Kerosene storage plants 47–2314
Laundries 47–2317
Lecture halls 47–2320
Legitimate theaters 47–2320

TAXATION AND FISCAL AFFAIRS—Con.
General license law—Continued
Licensing additional businesses, authority of Commissioners of District 47–2344
Livery stables 47–2335
Lodginghouses 47–2330
Marine product dealers, wholesale 47–2327
Market stands handling foods 47–2327
Massage establishments 47–2311
Mattress manufacturing or renovating 47–2318
Mattress storage 47–2318
Mattress storage or sale locations 47–2318
Meat shops 47–2327
Medicated baths 47–2311
Mediums 47–2342
"Merchandise" defined 47–2307
Motion picture film storage establishments 47–2313
Motion picture theaters 47–2320
Motor vehicle renting establishments 47–2332
Motor vehicle repair establishments 47–2334
Opera houses 47–2320
Outdoor carnivals 47–2326
Outdoor fairs 47–2326
Palmists 47–2342
Passenger vehicles for hire 47–2331
Patent medicine sellers, fee 47–2308
Peddlers 47–2336
Penalties 47–2347
"Person" defined 47–2307
Phrenologists 47–2342
Pool halls 47–2321
Posting of licenses required 47–2306
Prerequisites to license 47–2301, 47–2302
Certificate of compliance, when required 47–2302
Chief fire officer's certificate of compliance 47–2302
Compliance with building requirements 47–2302
Compliance with fire escape laws 47–2302
Electrical engineer's certificate of compliance 47–2302
Hotels, apartments, lodging houses 47–2302
Inspector of buildings, certificate of compliance 47–2302
Payment of license fee 47–2301
Theatres, public halls, amusement parks 47–2302
Private detectives 47–2341
Profession, operating without required license prohibited 47–2301
Prorating fee for late application 47–2305
Prosecutions 47–2346
Public bath establishments 47–2312
Pyroxylin storage 47–2315
Refund of erroneously paid fees 47–2350
Regulatory powers of Commissioners of District 47–2345
Restaurants 47–2327
Revocation of licenses 47–2345
Routed passenger vehicles for hire 47–2331
Russian baths 47–2311
Saving clause 47–2348
Seal to be impressed on license 47–2301

TAXATION AND FISCAL AFFAIRS—Con.
General license law—Continued
Second-hand dealers 47–2339
Separate license for person's separate businesses 47–2304
Severability of provisions 47–2349
Shooting galleries 47–2322
Sight-seeing buses 47–2331
Skating rink buildings 47–2320
Slaughterhouses 47–2316
Slot machines 47–2319
Soda fountains 47–2327
Soft drink establishments 47–2327
Soothsayers 47–2342
Street sales 47–2336
Swimming pools 47–2324
Taxicabs and hacks 47–2331
Theaters 47–2303, 47–2320
Revocation for failure to comply with decency regulations 47–2303
Trade, operating without required license prohibited 47–2301
Transfer of license, fee 47–2301
Transfer vehicles 47–2333
Turkish baths 47–2311
Use of license by others prohibited 47–2304
Use of persons or animals as targets prohibited 47–2343
Venders 47–2336
Vending machines 47–2319
General provisions 47–101—47–135
Grocery store license 47–2327
Gross sales tax 47–2601—47–2629
Appeals 47–2618
Assumption of tax by vendor unlawful 47–2611
Bulk sales 47–2619
Certificate of registration 47–2623
Collection of tax 47–2610
Definitions 47–2601
Determination of deficiencies 47–2616
Examination of records and witnesses 47–2622
Exemptions 47–2605
Extensions of time 47–2629
Imposition of tax 47–2062
Notices 47–2628
Payment of tax 47–2613
Penalties 47–2624, 47–2625
Personal liability of vendor 47–2608
Prosecutions 47–2627
Preferred claims 47–2609
Rate of tax 47–2604
Refunds 47–2617
Returns 47–2612, 47–2614
Rules and regulations 47–2620
Secrecy of returns 47–2615
Statute of limitations 47–2608
Guaranty company taxes 47–1702
Bonding companies 47–1702
Fidelity companies 47–1702
Title abstractors 47–1702
Title insurors 47–1702
Guide license 47–2338
Gun dealers, license 47–2340
Hauling vehicle license 47–2333
Hawkers, license 47–2336

TAXATION AND FISCAL AFFAIRS—Con.
Health, accident and life insurance companies 35–202
Hotel license 47–2328
House to house solicitors, license 47–2337
Hypothecation of taxes prohibited 1–219
Ice cream factory license 47–2327
Ice cream parlor license 47–2327
Improvement to streets about the Capitol 47–1107
Assessment of private property for 47–1107
Secretary of the Interior to assess and collect costs 47–1107
Income tax 47–1551—47–1595
Indebtedness limited, penalty for increasing 47–102
Inheritance tax 47–1601—47–1607, 47–1616—47–1630
Insanitary buildings 5–607
Demolishing at public expense, assessment of cost 5–607
Insurance companies 35–105, 47–1801—47–1808
Amount added for nonpayment 47–1807
Annual license fee 47–1801
Annual statement filing fee 47–1804
Associations exempted 47–1808
Companies to which applicable 47–1801
Excise tax 47–1806
Failure to file annual statement, revocation of authority 47–1805
Filing of annual statement required 47–1804
Liability for payment 47–1807
"Net premium receipts" defined 47–1806
Operating without license, penalty 47–1802
Penalty clause 47–1802
Prosecution 47–1803
Kerosene storage license 47–2314
Lecture hall license 47–2320
Legitimate theater license 47–2320
License of corporation revoked for failure to pay 47–1591d
License prosecutions 47–2346
Licenses, generally 47–2301—47–2350
Licenses refused, refund of payments 47–1017
Lien of taxes on exempt property sold at profit 47–801a
Liens for unpaid real property taxes 47–1011—47–1014
Alternative methods of enforcing 47–1003, 47–1011
Commissioners of District petitioning for enforcement 47–1011
Court clerk to make and deliver deed 47–1014
Court deed is absolute conveyance 47–1014
Decree for sale by collector of taxes 47–1013
Disbursement of redemption payments 47–1018
Disposition of surplus proceeds of sale 47–1014
Effect of publication of order to appear 47–1012
Notice before enforcement 47–1012
Content 47–1012
Publication 47–1012
Registered mailing to owner 47–1012
Order to appear, publication 47–1012
Penalties uncollectible if there were defects in tax sale 47–1013
Petition to District court for enforcement 47–1011

TAXATION AND FISCAL AFFAIRS—Con.
Liens for unpaid real property taxes—Con.
Publication of notice of sale 47–1013
Redemption before sale to enforce 47–1011
Sales by collector of taxes or his deputy 47–1013
Sales to be reported to court for confirmation 47–1014
Livery stable license 47–2335
Lodging house license 47–2330
Market rents, fees and income payable to collector of taxes 47–128
Market stands handling food 47–2327
Massage establishment licenses 47–2311
Mattress manufacturing license 47–2318
Mattress renovating license 47–2318
Mattress sale location license 47–2318
Mattress storage license 47–2318
Meat shop license 47–2327
Medicated bath licenses 47–2311
Medium license 47–2342
Membership dues of District employees to be specifically authorized 47–111
Miscellaneous trust-fund deposits 47–311
Advances to disbursing officer 47–311
Separate accounts of deposits and payments 47–311
Motion picture film storage license 47–2313
Motion picture theater license 47–2320
Motor fuel tax 47–1901—47–1919
Motor vehicle renting establishment licenses 47–2332
Motor vehicle title certificate excise tax 40–603
Moving van license 47–2333
Notice of amount of real estate tax 47–1001a
Officers to give security 47–103
Opera house license 47–2320
Palmist license 47–2342
Parcels subdivided from January to June 47–714
Date for payment of taxes 47–714
Payment before admission to record 47–714
Validity of reassessment and redistribution 47–716
Parcels subdivided from July to December 47–713
Date for payment of taxes 47–713
Payment before admission to record 47–713
Validity of reassessment and redistribution 47–716
Payment of taxes, personal property 47–1209
Date determining delinquency 47–1209
Date for payment 47–1209
Installment repayment 47–1209
Peddlers, license 47–2336
Permanent appropriations 47–108—47–110
Certain funds continued as trust funds 47–110
Personal property taxes 47–1201—47–1214
Abating on insolvent building or homestead associations 47–1705
Acquisition of lien in collecting 47–1406
Certificate of delinquent personal taxes 47–1406
Certificate to have effect of judgment lien 47–1406
Filing certificate with District court clerk 47–1406
Appeals to board of personal-tax appeals 47–1203

TAXATION AND FISCAL AFFAIRS—Con.
Personal property taxes—Continued
Appraisers administering oaths 47–1203
Appraisers entering cash values on schedules 47–1203
Ascertaining correctness of returns 47–1401
Ascertaining information where returns not made 47–1401
Assessment at full value 47–1202
Assessment by three assistant assessors 47–1201
Assessment of motor vehicles 47–1210
Assessment of omitted property 47–1213
Assessment within two years of return required 47–1408
Assessor certifying want of information to Commissioners of District 47–1209
Assessors summoning witnesses 47–1401
Blanks for scheduling property 47–1203
Board of personal tax appeals 47–1213
Board of personal tax appraisers 47–1213, 47–1214
Collection, enforcing 47–1301—47–1305. 14–1401—47–1412
Collection within three years of assessment on return 47–1408
Date for return of personal property for taxation 47–1206
Distraint of chattels as aid to collection 47–1402
Duties of collector of taxes on sale of chattels 47–1402
Enforcement 47–1301—47–1305, 47–1401—47–1412
Enforcement by distraint of chattels 47–1301, 47–1302
Bidding in for District, when required 47–1302
Collector of taxes to distrain 47–1301
Disposition of surplus from sales 47–1301
Place of sale 47–1302
Posting notice of sale 47–1301
Private sale when bid in for District 47–1302
Publishing notice of sale 47–1301
Report of sale by collector of taxes 47–1301
Safekeeping pending sale 47–1302
Sale at public auction 47–1301, 47–1302
Enforcement by levy on lands 47–1301, 47–1305
Bidding in for District, when required 47–1302
Collector of taxes to make levy 47–1301
Disposition of surplus of sale 47–1301
Dwellings occupied by owner, restrictions on sale 47–903, 47–904
Posting notice of sale 47–1301
Procedure as in sale for real property taxes 47–1301
Publishing notice of sale 47–1301
Report of sale by collector of taxes 47–1301
Sale at auction 47–1301
Sale in equity when bid in for District 47–1305
Enforcing lien by bill in equity in District Court 47–1406
Enumeration of those required to return schedules 47–1203

TAXATION AND FISCAL AFFAIRS—Con.
Personal property taxes—Continued
Examination of books, papers, records 47–1401
Exemptions from taxation 47–1208
Failure to file return on time 47–1408
Penalty and prosecution 47–1410
Failure to include all taxable property in return 47–1408
Failure to obey assessor's summons, procedure 47–1401
False or incorrect return 47–1408
Intangible property, collection of taxes 47–1304
Liability for failure to surrender goods levied upon 47–1404
Lien to enforce payment 47–1406
Mandamus to compel filing of return 47–1209
Motor vehicles 47–1210, 47–1211
Assessment 47–1210
Proration for time in District 47–1211
Obstructing examinations of assessor 47–1401
Payment 47–1209
Penalty for failure to exhibit papers in distraint proceedings 47–1405
Penalty for violating provisions regarding 47–1303
Perjury in affidavits to schedules 47–1203
"Person" defined 47–1411
Persons required to exhibit papers in distraint proceedings 47–1405
Rate of taxation 47–1207
Remedies for collection are additional to earlier sections 47–1409
Remedies for enforcing payment 47–1304
"Resident of the District of Columbia" defined 47–1205
"Return" defined 47–1411
Sale of distrained chattels 47–1402
Schedules
Affidavit required 47–1203
Content 47–1203
Delivery to assistant assessor 47–1203
Delivery upon request 47–1203
Failure to file, effect 47–1203, 47–1209
Mandamus to compel filing 47–1209
Notice that schedules are ready, publication 47–1203
Preparation by assessor 47–1203
Rejection of sworn return, appeal 47–1203
Time for filing 47–1203, 47–1206
Secrecy of returns protected 47–1412
Stocks of new mercantile establishments 47–1212
Assessor to render bill for taxes 47–1212
Auction sale where not redeemed 47–1212
Distraint for nonpayment 47–1212
Owner to state value before doing business 47–1212
Payment of tax, time limit 47–1212
Reassessment when valued too low 47–1212
Redemption of distrained stocks, penalty due 47–1212
Seizure by collector of taxes 47–1212
Surrender of goods levied upon required, exception 47–1403

TAXATION AND FISCAL AFFAIRS—Con.
Personal property taxes—Continued
Tangible personal property in transit exempted 47–1204
Time limitations 47–1408
Vessels, ships and boats of new common carrier 47–1212
Affidavit showing payment of taxes elsewhere 47–1212
Assessor to render tax bill 47–1212
Auction sale where not redeemed 47–1212
Distraint for nonpayment 47–1212
Owner to state value before doing business 47–1212
Payment of tax, time limit 47–1212
Reassessment when valued too low 47–1212
Redemption when distrained, penalty due 47–1212
Wrongful distraints 47–1407
Probable cause for act, District to pay recoveries 47–1407
Recovery in suit against collector of taxes 47–1407
Phrenologist license 47–2342
Pool hall license 47–2321
Priority of taxes over unemployment compensation contributions 46–304
Private detective license 47–2341
Private employment agency licenses 47–2101—47–2111
"Applicant for employment" defined 47–2101
"Applicant for help" defined 47–2101
Bond of licensee 47–2102
Definitions 47–2101
Denial of license 47–2101
Licensee prohibited from taking minor's application 47–2106
License fee 47–2101
"Nurses' registry" defined 47–2101
Operation without license unlawful 47–2101
"Private employment agency" defined 47–2101
Receipts by licensee 47–2104
Register to be kept by licensee 47–2103
Restrictions on location of licensed agency 47–2105
Revocation of license 47–2101
Suspension of license 47–2101
"Theatrical employment agency" defined 47–2101
Writ of error on denial, revocation or suspension 47–2101
Property escaping taxation, liability after assessment 47–712
Property in city of Washington sold by United States to be liable to taxation from day of sale 47–409
Property sold for taxes, list 47–1010
Property sold for taxes, preparation of list by assessor 47–603
Property taxes in arrears on July 1, preparation of list 47–603
Property tax rates 47–501
Authority of Commissioners of District to fix 47–501
Intangibles 47–501

TAXATION AND FISCAL AFFAIRS—Con.
Property tax rates—Continued
Personal property 47–501
Real property 47–501
Proportion of appropriations for District court expenses 47–204
Public auction permits 47–2201—47–2208
Applications 47–2202
Commissioners of District to issue 47–2201
Construction of permit law 47–2208
Jewelry and plated ware, night sales prohibited 47–2205
Misrepresenting merchandise 47–2206
Operation without, unlawful 47–2201
Personal effects, furniture and livestock, when exempted 47–2203
Prosecution of permit law violations 47–2207
Restriction on issuance 47–2201
Sales under authority of law exempted 47–2201
Suspension 47–2204
Violation of permit law, penalty 47–2207
Public bath establishment licenses 47–2312
Public employment agency licenses
Employment contracts of licensees 47–2110
Exceptions from license requirement 47–2109
Fraudulent acts of licensee 47–2108
Inspection of licensee's records 47–2107
Violations by licensee, penalty 47–2111
Public utility taxes 47–1701
Electric lighting companies 47–1701
Gas companies 47–1701
Street railway companies 47–1701
Telephone companies 47–1701
Pyroxylin storage license 47–2315
Railroads, rolling stock 47–1215
Real property, assessment of 47–701—47–723
Annual assessment required 47–702
Annual tabulated report of property assessed 47–706
Appeal of assessments to Board of Tax Appeals 47–710
Assessment at true value 47–713
Assessment in name of deceased person 47–701
Assessment in name of owner 47–701
Assessment in name of trustees of owner 47–701
Baltimore and Ohio Railroad Co 47–718, 47–719
Baltimore and Potomac Railroad Co 47–720
Biennial assessment abolished 47–702
By squares, lots, square feet, or acre 47–703
Date for completion of valuation and equalization 47–709
Equalization 47–708
Inclusion of new buildings 47–711
Maps, books, surveys and plats 47–704
New structures and improvements 47–710
Owner unknown, how assessed 47–701
Parcels subdivided from January to June 47–714
Parcels subdivided from July to December 47–713
Penalties 47–707
Philadelphia, Baltimore and Washington Railroad Co. 47–718
Property omitted 47–712

TAXATION AND FISCAL AFFAIRS—Con.
Real property, assessment of—Continued
Property omitted from regular assessment 47–712
Real property becoming subject to taxation, annual list 47–710
Reassessment and redistribution 47–717
Prior notice to owners 47–717
Right of appeal 47–717
Subdivisions 47–712
Reassessment when assessments are voided by court 47–721
Reassessment where prior assessment is voided 47–712
Reduction on damage or destruction of improvements 47–710
Review 47–708
Review of assessments on new property 47–710
Review of assessments on new structures 47–711
Review of reassessment where assessment is voided 47–712
Subdivisions 47–716
Undivided tracts, redistribution of assessments 47–715
Validity of reassessment and redistribution 47–716
Value of tracts and improvements to be determined separately 47–705
Washington Terminal Company 47–718, 47–719
Real property, exemptions from taxation 47–801a—47–801f
Receipt and disbursement accounts 47–502
Appropriations under which expenditures are made to be shown 47–502
Purpose of expenditure to be shown 47–502
Source of revenue to be shown 47–502
Treasury Department to keep 47–502
Refund of erroneously paid license fees 47–2350
Refund of erroneous payment of taxes 47–1016
Accounting and disbursing officers 40–1016
Certificate of collector of taxes, contents 40–1016
Commissioners of District ordering refund 40–1016
Disbursement 40–1016
Refund of payments for licenses refused 47–1017
Collector of taxes to make 47–1017
Proportionate amount for time used to be deducted 47–1017
Refund of taxes determined by Board of Tax Appeals to have been erroneously paid 47–2407
Refund of taxes on exempt realty 47–801d
Refunds by Commissioners of District 1–903
Remedies for enforcing payment of taxes 47–1304
Repayment of funds advanced from Treasury 47–2501
Report of exempt property 47–801a
Requisition for advance of funds 47–2501
Restaurant license 47–2327
Routed passenger vehicles for hire, license 47–2331
Rules and regulations 47–2502
Authority of Commissioners of District to make 47–2502
Prescribing and publishing 47–2502

TAXATION AND FISCAL AFFAIRS—Con.
Russian bath licenses 47–2311
Salaries of playground employees, payable out of District revenues only 47–133
Sales of animals and materials, proceeds payable to Treasury 47–132
Secondhand dealers, license 47–2339
Separability of provisions, revenue laws of 1937 and 1939 47–2503
Service mains, relevy of assessments 43–1515
Service sewers, assessment of abutting property 43–1510—43–1517
Collections to be credited to appropriations 43–1516
Definition 43–1517
Notice 43–1512
Payable in three installments 43–1513
Rates 43–1511
Unsubdivided land 43–1514
Sewer and water-main connections made at public expense 6–404
Nonresident owners 6–404
Shooting gallery license 47–2322
Sight-seeing bus license 47–2331
Sight seeing vehicle license 47–2331
Skating rink license 47–2320
Slaughterhouse license 47–2316
Slot machine license 47–2319
Soda fountain license 47–2327
Soft drink license 47–2327
Soothsayer license 47–2342
Special assessments 47–1101—47–1107
Abatement, reduction or adjustment 47–1101, 47–1102
Effect on prior assessments 47–1103
For removal of nuisance 47–1105
Interest rate 47–1105
Nonpayment within sixty days, sale of property 47–1105
Hearings upon protests 47–1101
In condemnation proceedings 47–1104
Installment payment 47–1103
Interest rate 47–1103
Nonpayment within two years, sale of property 47–1103
Notice of levy 47–1103
Personal service on owners 47–1103
Service on tenant or agent 47–1103
Payment without interest, period for 47–1103
Protest hearing report 47–1101
Contents 47–1101
Copy to be mailed to protestant 47–1101
Protestant may file exceptions 47–1101
Protesting 47–1101
Protest to Commissioners of District 47–1101
Reassessment where assessment is voided 47–1106
Exceptions to report 47–1106
Hearing 47–1106
Interest on 47–1106
Manner of collection 47–1106
Notice to owner 47–1106
Time limit for making 47–1106
Time limit for protesting 47–1101

TAXATION AND FISCAL AFFAIRS—Con.
Statement of total assessments and total taxes 47–601
Preparation by assessor 47–601
Receipt to auditor 47–601
Receipt to collector of taxes 47–601
Receipt to General Accounting Office 47–601
Responsibility of collector of taxes on bond 47–601
Triplicate receipt by collector of taxes 47–601
Street sale license 47–2336
Surplus funds, distribution 47–503
From taxation, privileges and other sources 47–503
In excess of necessary expenses 47–503
Use succeeding year 47–503
Use to reduce tax rates 47–503
Swimming pool license 47–2324
Tax accounts, preparation and contents 47–603
Tax appeals 47–2401—47–2412
"Appeal" defined 47–2401
"Assessor" defined 47–2401
"Board" defined 47–2401
"Board of equalization and review" defined 47–2401
"Commissioners" defined 47–2401
"Court" defined 47–2401
Definitions 47–2401
"District" defined 47–2401
"Person" defined 47–2401
"Tax" defined 47–2401
Taxation of personal property 47–1201—47–1214
Tax bills, preparation by assessor 47–601, 47–603
Taxes erroneously paid, refund 47–1016
Taxicab and hack licenses 47–2331
Tax sales, real property 47–1001—47–1015
Advertising expense, how charged 47–1008
Application of new interest rates 47–1004
Assessor to furnish information 47–1009
Certificate of sale 47–1003
Commissioners of District not to convey if sale is invalid 47–1007
Day of sale, Commissioners of District to fix 47–1001
Deed of Commissioners of District 47–1003
Delinquent tax list 47–1001
Advertising 47–1001
Preparation by assessor 47–1001
Publication of notice of publication 47–1001
Deposit required 47–1003
Disbursement of redemption payments 47–1018
Disposition of surplus proceeds 47–1006
Effect of decree setting aside conveyance by Commissioners of District 47–1007
Failure of high bidder to pay, offer to second 47–1003
Failure of second bidder to pay, purchase for District 47–1003
Liens for unpaid taxes 47–1011—47–1014
Commissioners of District petitioning for enforcement 47–1011
Confirmation of sale 47–1014
Decree of sale 47–1013
Notice 47–1012

TAXATION AND FISCAL AFFAIRS—Con.
Tax sales, real property—Continued
Liens for unpaid taxes—Continued
Petition to District Court for enforcement 47–1011
Redemption before sale to enforce 47–1011
List of property sold for taxes 47–1010
Assessors to prepare and keep 47–1010
Open to public inspection 47–1010
Method of sale 47–1001
Notice of sale, publication 47–1001
Owner occupied family dwellings 47–903
Restrictions on sale 47–903
Sales invalidated where based on error in computation of taxes 47–904
Payment by purchaser, time limit 47–1003
Period for redemption 47–1003
Property purchased by District remains taxable 47–1003
Purchase for District where other purchasers are lacking 47–1002
Redemption 47–1003
Redemption by minors 47–1003
Redemption by owner 47–1003
Redemption where District purchases 47–1003
Report of tax sale 47–1006
Collector of taxes to make 47–1006
Contents 47–1006
Filing with recorder of deeds 47–1006
Requirements to obtain deed 47–1003
Resale where first sale voided 47–1003
Right of redemption 47–1005
Validity not affected by errors in computation 47–1015
Turkish bath licenses 47–2311
Unsafe structures and excavations, building inspector remedying condition 5–503
Abatement as nuisance, assessment of costs and expenses 5–504
Assessment and collection of costs and expenses 5–503
Valuation, approval by Commissioners, final date 47–709
Valuation of United States property 47–722, 47–723
By appointees of Secretary of Interior 47–723
Public buildings and parks exempted 47–722
Return to President of Senate 47–722
Return to Speaker of the House 47–722
To be made within 5-year periods 47–722
Under regulation of Secretary of Interior 47–723
Venders, license 47–2336
Vending machine license 47–2319
Water mains, assessment of abutting property 43–1510—43–1518
Collections to be credited to appropriations 43–1516
Notice 43–1512
Payable in three installments 43–1513
Rates 43–1511
Refund of overpayment 43–1518
Relevy 43–1515
Unsubdivided land 43–1514
Water-main taxes to be uniform 43–1505
Weapons dealers license 47–2340

TAXATION AND FISCAL AFFAIRS—Con.
Weeds on property, cutting at public expense after notice 6–902
Wholesale fish and marine products, dealers license 47–2327
Working capital for industrial enterprises, workhouse and reformatory 47–131

TAXATION, BOARDS OF
See TAXATION AND FISCAL AFFAIRS
Board of Assistant Assessors 47–604—47–606, 47–704—47–708, 47–710—47–712, 47–716, 47–717, 47–1201.
Board of Equalization and Review 47–605, 47–606, 47–708—47–711
Board of Personal Tax Appraisers 47–1213—47–1214
Board of Tax Appeals 47–2402—47–2412

TAXICABS
Authority of Commissioners of District 47–2331
Authority of Public Utilities Commission 47–2331
Charges of taxis and other public vessels, power to fix 1–223
Drivers 47–2331
Badge 47–2331
License 47–2331
Insurance required 44–301
License 47–2331
Fee 47–2331
Identification tag 47–2331
Loitering 40–617
Stands 47–2331
Traffic regulations 40–617
Violation of insurance requirement, penalty 44–301

TAXICAB STANDS
Establishment and regulation of charges 1–224
Establishment near railroad station 1–222
Powers of Commissioners 1–222
Rates and charges, power to determine 1–222
Power to locate 1–221

TAX SALES
See TAXATION AND FISCAL AFFAIRS

TEACHERS
See EDUCATION
Exception from Civil Service Law 1–217
Retirement of public school teachers 31–701—31–739
Credit for public school service outside District
Deposit payable in instalments 31–708
Deposit to cover 31–708
Deductions from salary to purchase annuities 31–701
Definition of terms 31–714
Deposit of deductions to credit of teacher 31–702
Funds not assignable 31–718
Funds not subject to execution or levy 31–718
Income from funds invested to be credited 31–702
Investment of deposited deductions 31–702
Leave of absence less than two years does not break continuity 31–704

TEACHERS—Continued
Retirement of public school teachers—Con.
Longevity payable from District revenues 31–707
Calculation of annual appropriation 31–707
Certifying appropriation estimate to Budget Bureau 31–707
Investment of reserves 31–707
Minimum service credit in disability retirements 31–706
No salaried official to receive additional pay 31–716
Payment on death of teacher 31–710
Beneficiaries to have been named 31–710
Precedence of payment 31–711
Provisions do not prevent discharge 31–713
Records 31–715
Refund on leaving service 31–709
Reinstatement after withdrawal 31–709
Retirement age 31–703
Retirement for disability after forty-five 31–704
Rules and regulations 31–717
Sabbatical year leaves 31–632—31–637
Salaries 31–659—31–679
Seduction of pupil by, penalty 22–3002
Teachers' Foreign Exchange Program 31–699—31–699b

TEACHERS' COLLEGE
See EDUCATION

TEACHERS' RETIREMENT FUND
Actuarial valuations 31–716a
Appropriations 31–716a

TECHNICAL WORDS
Use in pleadings 13–203

TELEGRAPH
See PUBLIC UTILITIES
"Telegraph corporation" defined 43–119
"Telephone line" defined 43–120

TELEPHONE COMPANIES
Excise tax 47–1701

TELEPHONES
See PUBLIC UTILITIES
Fire Department members 4–409
Police Department member, when required to maintain 4–132
"Telephone corporation" defined 43–117
"Telephone line" defined 43–118

TENANTS IN COMMON
See ESTATES
Accounting in partition 16–1301
Action by or against for accounting 16–101

TENEMENT-HOUSES
See APARTMENT HOUSES
Definition 5–312

TERM TIME
Amendment of pleadings permitted in same term only 13–307

THEATRES AND SHOWS
Fireproof construction required 5–404
Fireproof walls between buildings 5–404
Inspection, fees 5–316
Lewd and obscene entertainment 4–145, 4–146
Complaints, right of entry, searches and seizures 4–145
Prosecution of persons arrested 4–146
Licenses 47–2320
Fees 47–2320
Prerequisites 47–2302
Revocation for violation of decency regulations 47–2303
Licenses, punishment for violating regulations 1–224a
Protection of Public Safety
Assignment of firemen in theatres, permit fee 47–2320
Assignment of police and firemen to baseball, football, athletic exhibitions, amusement parks 47–2323
Assignment of police and firemen to skating rinks, fairs, etc., fees 47–2320
Theatrical employment agency 47–2101

THEODORE ROOSEVELT ISLAND
Acceptance of gift authorized 8–164
Administered by Director of National Park Service 8–164
Designation in documents, records, and maps 8–167
Maintenance and development 8–164
Means of access, provision for 8–165
Monument or memorial, approval of plan 8–166

THERAPEUTICS
Dentist, examination for license 2–308
Podiatry license examination 2–705

TICKETS
Boxing exhibitions 2–1218

TIME
See COMPUTATION OF TIME

TINCTURE OPII CAMPHORATA
See NARCOTIC DRUGS
Sale, restrictions 33–410

TIRES
Purchase by commissioners, exchange of similar equipment 1–250
Theft from vehicle 22–2204a

TITLE ABSTRACT COMPANIES
Excise tax 47–1702

TITLE COMPANIES
See BANKS AND OTHER FINANCIAL INSTITUTIONS
Settlement with owners of realty acquired by District through title companies 1–248

TITLE INSURANCE COMPANIES
Excise tax 47–1702

TOBACCO
Furnishing to minors, penalty 22–1120

TOILETS
See PRIVIES

TOLERANCES
Bread, legal weight 10–113
Food put up in package form 10–117
Weights and measures, power of Commissioners of District to establish 10–127

TON
"Long ton" defined 10–108
Number of pounds comprising 10–108

TOOLS
Exemption from process 15–401, 15–403

TORNADO INSURANCE
Rates, application of act 35–1402

TORTS
Joinder of counts with contract counts 13–208
Settlement of claims against District 1–902
To the person, limitation of actions 12–201
Wife's separate, husband not liable 30–208

TOWERS
Fireproof construction 5–404
Height, fireproof construction 5–405

TRACK ELEVATION
Baltimore and Ohio Railroad Company 7–1212
Grade crossings 7–1214, 7–1215
- Cost of work, payment 7–1214
- Existing crossings, elimination 7–1215
- New streets constructed over or under tracks 7–1214
- Use of underpass or viaduct by railroad, payment of share of cost 7–1215

TRACTION COMPANIES
See COMMON CARRIERS; PUBLIC UTILITIES
Employers' Liability Act 44–401—44–405

TRACTORS
See MOTOR VEHICLES
Purchase by commissioners, exchange of similar item 1–250

TRADE
Married woman's right to engage in 30–208

TRADE-MARKS AND TRADE-NAMES
Beverage bottles 48–101, 48–102
- Manufacturer may register 48–101
- Registration 48–101
  - Beverages allowed by law to be sold in bottles 48–101
  - Contents 48–101
  - Filing with District Court clerk 48–101
  - Publication 48–101
- Use without owner's permission, penalty 48–102
- Vendors may register 48–101

Dentistry, use in practicing prohiibted, penalty 2–316
Forgery of, penalty 22–1402
Labor union labels 48–401—48–403
- Authority to adopt 48–401
- Counterfeiting registered labels prohibited 48–402
- Fee for copies and registration 48–401

TRADE-MARKS AND TRADE-NAMES—Con.
Labor union labels—Continued
- Filing drawing with District Court clerk 48–401
- Injunctive relief by registrants 48–402
- Nonassignable 48–401
- Penalties for violating registration law 48–403
- Registrants' right to damages and profits from unauthorized use 48–402
- Unauthorized use of registered label prohibited 48–402
- Use or possession of counterfeits of registered labels prohibited 48–402

Milk-beverage containers 48–301—48–307
- Definitions 48–301
- Mark 48–301
- Person 48–301
- Police court warrant on registrants' complaint 48–305
- Possession of registered containers by unauthorized person evidences unlawful use 48–304
- Registrants may bring tort actions 48–307
- Registration 48–302
  - Filing description with District Court clerk 48–302
  - Filing sample of original package with District Court clerk 48–302
  - Publication 48–302
- Regulations for filing labels and trademarks 48–306
- Sale of registered containers without owner's consent, penalty 48–303
- Unauthorized use of registered containers, penalty 48–303
- "Vessel" defined 48–301

Milk containers 48–201—48–211
- Acquiring title to registered marks and names 48–206
- Affidavit of publication 48–201
  - Filing copy with health department 48–201
  - Filing with District Court clerk 48–201
- Bottlers may register 48–201
- Containers subject to registration 48–209
- Defacing name on registered container prohibited 48–203
- Distributors may register 48–201
- "Person" defined 48–208
- Proceedings to ascertain violations 48–205
  - Registrants complaint in police court 48–205
  - Search warrants 48–205
- Prosecution of registration law violations 48–210
- Refusal to surrender registered container evidences unlawful use 48–204
- Registrants' right to injunctive relief 48–211
  - Complaint to District Court equity division 48–211
  - Three convictions are prerequisite 48–211
- Registration 48–201
  - Contents 48–201
  - Filing copy with health department 48–201
  - Publication 48–201

TRADE-MARKS AND TRADE-NAMES—Con.
Milk containers—Continued
Registration under prior law, certificate to health department 48–207
Rights under prior registration laws preserved 48–207
Sellers may register 48–201
Unauthorized use of registered containers prohibited 48–202
Violation of registration law, penalty 48–210
No implied warranty when goods are sold under trade name 28–1115
Signature to negotiable instrument by trade name, liability 28–119

TRAFFIC REGULATIONS
See Motor Vehicles
Arterial and boulevard highways 40–603
Citing traffic act 40–601
Congressional tags 40–603
Convictions under certain sections to be reported to Commissioners 40–612
Definitions 40–602
Department of vehicles and traffic established 40–603
Director of vehicles and traffic 40–603
Appointment 40–603
Compensation 40–603
District of Columbia Traffic Act 11–601, 11–616, 11–617, 11–621, 11–623, 11–1407, 40–301—40–303, 40–601—40–603, 40–605, 40–609, 40–610, 40–612, 40–614, 40–615.
Driving while drugged or drunk 40–609
Fleeing from scene of accident 40–609
Definition 40–609
Involving personal injury, penalty 40–609
Involving property damage, penalty 40–609
Garagemen to report cars involved in accidents or struck by bullets 40–611
Immoderate rate of speed not dependent on legal rate 40–608
Inspections, authority of Commissioners 40–603
Jurisdiction of police court 40–603
Loitering by public cabs 40–617
"Motor vehicle" defined 40–602
Movement of traffic, authority of Commissioners 40–603
Negligent homicide 40–606
Definition 40–606
Immoderate rate of speed not dependent on legal rate 40–608
Included in manslaughter 40–607
Penalty 40–606
"Park" defined 40–602
Parking meters 40–616
Authority to install 40–616
Cost 40–616
Fees, collection and deposit 40–616
Rules and regulations 40–616
Parking zones for members of Congress 40–604
Park traffic controlled by National Park Service 40–613
Penalties, authority of Commissioners 40–603
Possession of smoke screen device, penalty 40–610
Possession of vehicle equipped with smoke screen device, penalty 40–610

TRAFFIC REGULATIONS—Continued
Publication 40–603
Public hacks, loitering, penalty 40–617
"Public highway" defined 40–602
Reckless driving 40–605
Definition 40–605
Penalty 40–605
Repeal and saving clause, traffic act 40–614
Rules and regulations, Commissioners authorized to make 40–603
Separability clause, traffic act 40–615
Speeding 40–605
Definition 40–605
Penalty 40–605
Taxicabs, loitering, penalty 40–617
Titling and retitling vehicles, fees 40–603
"Traffic" defined 40–602
Traffic lights 40–603
Use of smoke screen, penalty 40–610
"Vehicle" defined 40–602

TRAILERS
See Motor Vehicles

TRAINING SCHOOL FOR BOYS
See National Training School for Boys

TRAINING SCHOOL FOR GIRLS
See National Training School for Girls
Board of Trustees abolished 3–101
Powers and duties transferred to Board of Public Welfare 3–122

TRANSCRIPTS OF RECORDS
Appeal from Municipal Court of Appeals for District of Columbia 11–773

TRANSFER VEHICLES
License 47–2333
Stands 47–2333

TRANSIENT MERCHANTS
Inspectors of weights and measures, right to stop for purpose of making inspections or tests 10–126
Weighing and measuring devices, duty to have tested 10–103

TRANSPORTATION INSURANCE
Application of act relating to rates 35–1402

TRAVERSES
Affidavits in attachment and garnishment proceedings 16–307
Garnishee's answers 16–317
Immaterial, harmless error 13–206
Return to writ of habeas corpus 16–807

TREASURY OF UNITED STATES
Saint Elizabeths Hospital to deposit moneys with 32–409

TREES
Cutting down, injuring, destroying, penalty 22–3108—22–3110
Boundary trees 22–3109
On another's property 22–3108
On public grounds 22–3110

TRENCHES
Cutting in highways and streets, permit required, exception 7–615
Penalty for violating law 7–616

TRESPASS
See CRIMINAL OFFENSES
Capitol grounds, public travel 9–119
Forcible entry and detainer, Municipal Court jurisdiction 11–735
Municipal Court jurisdiction 11–704

TRIAL BOARDS
See POLICE DEPARTMENT
Appointment, powers, and duties, appeals 4–122
Mandamus 16–1005
Municipal Court 11–715
New trial, motion for, granting 13–221
Pretrial settlement
Small Claims and Conciliation Branch, Municipal Court 11–808
Probate Court, issues not relating to wills 11–517
Trial by court
Municipal Court 11–717
Police Court 11–616
Trial by jury
Attachment and garnishment 16–316
Mandamus proceedings 16–1006
Municipal Court 11–715
Quo warranto 16–1607
Small Claims and Conciliation Branch, Municipal Court 11–818
Waiver in Police Court 11–616

TRUCK LINES
Employers' liability act 44–401—44–405

TRUST ACCOUNTS
See BANKS AND OTHER FINANCIAL INSTITUTIONS

TRUST COMPANIES
See BANKS AND OTHER FINANCIAL INSTITUTIONS
Excise tax 47–1701

TRUST DEEDS
Acknowledgment 45–601
Conveyance by non compos mentis trustees 45–620
Creditor buying at sale, rights 45–617
Deficiency decree in personam on sale of property 45–616
Enforcement, defenses against 45–612
Estate of trustees, construing 45–603
Executions 45–601
Expense and commission on sale 45–618
Form 45–301
Infant trustee
Compelling conveyance by 45–609
May convey under court order 45–608
Joint trustees, survival of title and trust 45–604
Married women authorized to execute 30–204
Recording 45–601, 45–602
Release after death of trustee 45–619
Replacement of deceased new trustee 45–613
Terms of sale of property 45–615

TRUST DEEDS—Continued
Trustee
Decease, appointment of new trustee 45–611
Failing to act, appointment of new trustee 45–614
Takes qualified fee simple 45–603

TRUST FUNDS
Community Center and Playgrounds Department's funds transferred to Recreation Board 8–214
Investment in United States Government Securities 47–135
Recreation Board 8–211

TRUSTEES
See CORPORATIONS FOR PROFIT
Assignments for benefit of creditors 28–2604
Bond 28–2403
Judgment on 28–2403
Not discharged by trustee making payment to self in another capacity 28–2407
Corporate stock, voting 29–221
Deed under decree, form 45–301
Form of deed under decree 45–301
For religious societies 29–501—29–516
Infant trustees under trust deed
Compelling conveyance by 45–609
May convey under court order 45–608
Joint trustee under trust deed, survival 45–604
Married woman's separate estate 30–204
Personally exempt from stockholder's liability 29–220
Real property, assessment in name of 47–701
Religious societies 29–502—29–510
Stock certificate, laws relating to trustees applicable to transfer of 28–2918
Stock, transfer by 28–2902

TRUSTS
See NEGOTIABLE INSTRUMENTS
Application of income tax 47–1577—47–1577i
Deed of trust for particular purposes, form 45–301
Effect of statute of frauds 12–303
Income tax return by fiduciary 47–1564a
Statute of uses 45–1201
Trustees 12–403, 16–1907
Deed under decree, form 45–301
Fraudulent conveyances, suits to vacate 12–403
Set-off 16–1907
Unemployment Compensation Act, employing unit within 46–301
Uses and trusts 45–1201—45–1203

TUBERCULOSIS
See HOSPITALS AND ASYLUMS

TUGBOATS
Operating on Potomac River 7–509
Approval of dimensions by Secretary of War 7–509
Passage under bridges without use of draw 7–509
Smokestack construction 7–509

TUITION
Children of non-residents, admission to schools 31–301—31–305

TUITION—Continued
Free tuition, children of men in military service, etc. 31–305

TUNNELS
Permit to construct 1–244

TURKISH BATH ESTABLISHMENTS
License 47–2311
Approval by major and superintendent of police 47–2311
Fee 47–2311
Revocation for enumerated unlawful acts 47–2311

TURNIPS
Sale by bunch authorized 10–115

TYPEWRITERS
Book typewriters, authorized by surveyor 1–609
Trading in old machines 1–819

ULTRA VIRES
Dissolution of corporation for ultra vires acts 29–719
Injunction against corporations to restrain ultra vires acts 29–725

UNCLAIMED FUNDS
See Property Clerk
Municipal Court 11–710
Police Court 11–626

UNDERPASSES
Acquisition of necessary land 7–1215
Cedar Street, use by street railway company, payment of share of cost 7–519
Chestnut Street Underpass, construction, division of cost 7–523
Construction and maintenance, payment of share of cost 7–1214, 7–1215
Eminent domain proceedings 7–1215
Lighting, payment for by street and steam railroads 7–708, 7–709
Van Buren Street 7–517, 7–518
Closing of grade crossing 7–518
Use by street railway company, payment of share of cost 7–517

UNDERTAKERS
See Licenses

UNEMPLOYMENT COMPENSATION
Account for each contributing employer 46–303
Accounts of fund 46–302
Actions
Against nonresident employer 46–305
Collection of employer contributions 46–304
Adjustment of contributions 46–304
Administration 46–313
Administration expenses 46–314
Agent for claimant of benefits 46–318
Agent for determination of claims for benefits 46–311
Amount and duration of benefits 46–307
"Annual payroll" defined 46–303
Annual report to Congress 46–313

UNEMPLOYMENT COMPENSATION—Con.
Appeal from
Decision of appeal tribunal 46–311
Initial determination of claim 46–311
Appropriations for contributions as employer 46–303a
Assignment of right to benefit invalid 46–318
Audit of contributions paid to board 46–304
Audits by District Auditor 36–322
"Average annual payroll" defined 46–303
"Base period" defined 46–301
"Base period employers" defined 46–303
Base period of trainee 46–307
Benefit account 46–302, 46–308
Benefit experience determining rate of contributions 46–303
Benefit year of trainee 46–307
Benefits, amount and duration 46–307
Benefits
Assignment, pledge or incumbrance 46–318
Determination of 46–311
Employer against whom charged 46–303
Payment 46–308
Payment from District Unemployment Fund 46–302
Repayment of benefits received 46–319
"Benefits" defined 46–301
Benefits exempt from levy, executions or attachment 46–318
Benefits, payment of 46–308
"Benefit year" defined 46–301
"Board" defined 46–301
Board not to charge fees for claims, penalty 46–318
Books and papers, production of 46–313
"Calendar quarter" defined 46–301
Casual labor excluded 46–301
Certifying officer's liability for benefits certified 46–319
Changes in rates of contribution or benefits 46–313
Charging excessive counsel fee, penalty 46–318
Charitable institutions' employees excluded from 46–301
Checks for payment of administrative expenses 46–314
Checks in payment of benefits 46–308
"Child" defined 46–301
Civil service 46–313
Claim for benefits 46–309, 46–311
Classification of employers for determining rate of contributions 46–303
Clearing account 46–302
Collection of employer contributions 46–304
Community Chest employees excluded from 46–301
Compromise of suits 46–304
Comptroller of the Currency, examination of return by 46–313
"Computation date" defined 46–301
Conclusiveness
Determination of rate of contribution 46–303
Findings on appeal from determination of claims for benefits 46–312
Confidential nature of information obtained by board 46–313
Consolidation of employing unit 46–303

UNEMPLOYMENT COMPENSATION—Con.
Contractor of employing unit, report of contractor employed by 46–304
Contributions
Payment into District Unemployment Fund 46–302
Reciprocal agreements with states and federal government 46–316
Cooperation with Federal Social Security Board 46–313
Corporate officers, criminal responsibility 46–319
Corporation counsel to approve compromise of actions 46–304
Counsel for claimant of benefits 46–318
Court review 46–312
Court review of determination of rate of contribution 46–303
Deduction of benefits paid from future benefits 46–319
Definitions 46–301
"Dependent relative" defined 46–301
Dependent's allowance 46–307
Deposit in unemployment trust fund 46–306
Depositions, power to take 46–313
Determination of claims 46–311
Appeal examiner 46–311
Appeal from determining agent 46–311
Appeal from District Court to Court of Appeals 46–312
Appeal tribunal 46–311
Authority to administer oaths 46–311
Authority to issue subpoenas 46–311
Authority to take depositions 46–311
Decision on appeals 46–311
Failure to give testimony, penalty 46–311
Immunity of witnesses 46–311
Record of proceedings, disputed claims 46–311
Review in District Court 46–312
Witness fees 46–311
Determining rate of contribution 46–303
Disbursing officer's liability for benefits certified 46–319
Disclosure of information 46–313, 46–317, 46–319
Disposition of fines 46–320
Disqualification for benefits 46–310
Discharge for misconduct 46–310
Failure to apply for or accept work 46–310
Leaving work without good cause 46–310
Minor failing to take recommended vocational training 46–310
Disqualification for benefits, trainee 46–307
"District" defined 46–301
District Auditor
Approve compromise of actions 46–304
Audit of administrative expenses 46–314
Make audits 46–322
Review of determination of claim for benefit 46–311
District employees excluded 46–301
District Unemployment Compensation Board 46–315
Appeal tribunal appointed by 46–311
Compensation of members 46–315
Duties and authority 46–302—46–304, 46–308—46–318, 46–321

UNEMPLOYMENT COMPENSATION—Con.
District Unemployment Compensation Board—Continued
Executive officer 46–315
Inspection of work records by 46–317
Management of fund by 46–302
Members 46–315
Report to Congress 46–302
Reports 46–313
District unemployment fund 46–302
District unemployment fund, employer contributions paid into 46–304
Domestic service excluded 46–301
"Earnings" defined 46–301
Available and registered for work 46–309
Claim filed 46–309
Minimum wages for base period 46–309
Physically able to work 46–309
Unemployed during waiting period 46–309
Unemployment not due to strike or jurisdictional labor dispute 46–309
Eligibility for benefits 46–309
Trainee 46–307
Employer contributions 46–303, 46–304
Determining rate 46–303
Due date 46–304
Interest on late payments 46–304
Method of paying 46–304
Priority in dissolution and insolvency 46–304
Refund 46–301
Retroactive payments 46–301
Employer deducting contributions from wages, Penalty 46–318
"Employer" defined 46–301
Employers' records and reports 46–317
"Employer's reserve" defined 46–303
Employer to post eligibility regulations 46–309
Employer violating act, penalty 46–319
"Employing unit" defined 46–301
"Employment" defined 46–301
Employment exempted 46–301
"Employment office" defined 46–301
Evidence in proceedings before appeal tribunal 46–311
Excluded service 46–301
Expenses of administration 46–314
Family relationship, employment excluded from act 46–301
Federal employees excluded 46–301
Fraud in obtaining benefits, penalty 46–319
Fraud, repayment of benefits obtained by 46–319
"Fund" defined 46–301
Incumbrance of right to benefits 46–318
Information, disclosure of 46–317, 46–319
Information obtained by board, disclosure of 46–313
Initial determination of claims for benefits 46–311
Inspection of work records 46–317
Interest charges on contributions 46–301
Interest on contributions 46–304
Judicial notice of board 46–315
Labor disputes affecting rights to benefits 46–310
Liability of benefits for debts 46–318
Lien of unpaid contributions 46–304
Limitation on counsel fees 46–318
"Localized service within State" defined 46–301

UNEMPLOYMENT COMPENSATION—Con.
Lockout affecting right to benefits 46–310
Merger of employing unit 46–303
Military service
Benefits after termination of 46–307
Defined 46–307
"Month" defined 46–301
"Most recent employer" defined 46–303
National Banking Association, examination of return of 46–313
Nonresident employers, service of process on 46–305
Notice
Decision of appeal tribunal 46–311
Initial determination of claim for benefits 46–311
Intention to apply for leave to file bond to pay unpaid contributions 46–304
Lien of unpaid contributions 46–304
Rate of contributions 46–303
Oaths and affirmations, power to take 46–313
Offenses 46–313, 46–318, 46–319
Disclosure of information 46–317
Payment of administrative expense 46–314
Payment of benefits 46–308, 46–311
Payment of employer contributions 46–303, 46–304
"Pay period" defined 46–301
Penalties 46–319
Pledge of right to benefits 46–318
Posting regulations 46–311
Priority of employer contributions over other claims 46–304
Process, service on nonresident employers 46–305
Prosecutions 46–321
Protection of rights and benefits 46–318
Public employment service, cooperation with states and federal agencies 46–316
Recipients' names, furnishing to public work agencies 46–317
Reciprocal agreements with states 46–316
Reconsideration of initial determination of claim 46–311
Records and reports 46–317
Refund of contributions 46–301
Payment from District Unemployment Fund 46–302
Refunds, payment 46–308
Refusal to testify 46–313
Regulations 46–313
Appeals from initial determinations 46–311
Posting 46–311
Retroactive effect 46–304
Rehearing of claim for benefits 46–311
Release of lien for unpaid contributions 46–304
Reorganization of employing unit 46–303
Repayment of benefits received 46–319
Reports
Board to Congress 46–302, 46–313, 46–314
Contractor or subcontractor employed by employing unit 46–304
Employing unit to board 46–303
Representation of board in court 46–321
Reservation of right to amend or repeal 46–322
Return of employer 46–304

UNEMPLOYMENT COMPENSATION—Con.
Review of determination of rate of contribution 46–303
Rules and regulations
Punishment for violating 46–319
United States attorney to represent board in enforcement of 46–321
Sale to enforce lien for unpaid contributions 46–304
Saving clause 46–323
Seal of board 46–315
Segregation of employers into classes 46–303
Self-incrimination as not excusing testimony 46–313
Separability of provisions 46–324
Social Security Act, expenditure of money received under 46–314
Special deposit of funds to pay benefits and refunds 46–308
Standard rate of employer compensation 46–303
Standards of classification, publication 46–303
"State" defined 46–301
State employees excluded 46–301
Strikers, disqualification from receiving benefits 46–310
Subcontractor of employing unit, report of subcontractor employed by 46–304
Subpoenas, power to issue 46–313
Successor of employing unit 46–303
Time for making return and paying employer contributions 46–304
"Trainee" defined 46–307
Transfer of certain funds to railroad unemployment insurance account 46–301
Traveling expenses 46–314
Undertaking to secure payment of lien for unpaid contributions 46–304
"Unemployed" defined 46–301
Unemployment benefit table 46–307
Unemployment compensation fund, reimbursement from states or federal government 46–316
"Unemployment trust fund" defined 46–301
Unemployment trust fund
Account 46–302
Requisition of moneys from fund 46–308
United States, reciprocal agreements with 46–316
"Valid claim" defined 46–301
"Wages" defined 46–301
Wages
Reciprocal agreements as to wages as basis of benefits 46–316
Report by employing units 46–317
Waiver of recoupment of benefits received 46–319
Waivers of rights invalid 46–318
"Week" defined 46–301
When person is deemed unemployed 46–301
Witnesses, power to compel attendance 46–313
Work records 46–317

UNIFORM STOCK TRANSFER ACT
Text of act 28–2901—28–2923

UNIFORMED FORCES
Discriminating against 22–3415

UNIFORM LAWS
Bulk sales law 28–1701—28–1705
Common trust fund act 26–701—26–704
Fiduciaries Act 28–2301—28–2314
Fresh pursuit law 23–501—23–504
Narcotic drugs 33–401—33–425
Negotiable instruments law 28–101—28–1011
Sales act 28–1101—28–1608
Warehouse Receipts Act 28–1801—28–2205

UNIFORMS
Fire Department 4–406
Annual clothing allowance 4–406
Park police 4–204
Police Department members 4–130, 4–131
War Department furnishing worn mounted equipment to police 4–181
White House police 4–303

UNION ENGINE-HOUSE
Use authorized 4–412

UNION LABELS
See TRADE-MARKS AND TRADE-NAMES

UNION STATION
Compensation for use, determination by United States District Court 7–1213
Joint use by railroads 7–1213

UNIONTOWN
Name changed to Anacostia 1–108

UNITED STATES
See BONDS AND UNDERTAKINGS; EMINENT DOMAIN
Bonds to United States 28–2406
Claims against, not assignable 28–2503
Closing and readjusting streets, property belonging to United States, disposition made of 7–401
Closing or vacation of streets, sale of lands belonging to United States, disposition of proceeds 7–325, 7–330
Credit or revenue required to be proportioned between district and United States 47–130a
Eminent domain proceedings, alleys or minor streets, sale of lands of United States, surplus paid into Treasury 7–325, 7–330
Payment toward expenses of District 47–2501a
Property exempted from District taxation 47–803
Property of in city of Washington, liable to taxation from day of sale 47–409
Property of in District, valuation 47–722, 47–723
Property used in district, continuance of tax exempt status 47–801b–1
Securities, investment of part of general fund, etc. 47–135
Suing as party plaintiff in District Court 11–306
Limitation of actions, exception 12–204
Surplus article, purchase from 1–247
Unemployment Act excluding employees of 46–301
Unemployment compensation law, reciprocal agreements under 46–316

UNITED STATES ATTORNEY FOR THE DISTRICT OF COLUMBIA
See DISTRICT ATTORNEY

UNITED STATES CLERK
District Court 11–401
Search warrants for narcotic drugs 33–414

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
See COURT OF APPEALS

UNITED STATES DAUGHTERS OF 1812
Property exempted from taxation 47–826

UNITED STATES DISTRICT COURT
See ATTACHMENT AND GARNISHMENT; COURT OF APPEALS; JUVENILE COURT; MARSHAL; MUNICIPAL COURT; POLICE COURT
See U. S. CODE, TITLE 28.
Appeals from public utilities commission orders
Precedence over other civil matters 43–705
Procedure 43–705
Right to 43–705
Appeals to Court of Appeals 17–102
Assistant clerks 11–401
Powers and duties 11–401
Signing of documents, form 11–401
Attorney General, control over building 11–329
Attorneys 11–1301—11–1304
Admission to bar 11–1301
Censure 11–1302
Disbarment, conviction of crime 11–1303
Appeal from 11–1303
Procedure for 11–1304
Expulsion 11–1302
Revocation of admission 11–1302
Suspension 11–1302
Auditor, appointment 11–312
Barbers Registration Law, refusal of certificate, appeal 2–1110
Board of Examiners and Registrars of Architects, disobedient witnesses, punishment for contempt 2–1029
Board of Podiatry Examiners, disobedient witnesses, punishment for contempt 2–703
Bonds and undertakings 28–2403
Building lines, establishment, eminent domain, jurisdiction 5–202, 5–203
Certifying action to Municipal Court for District of Columbia 11–756
Chief judge of U. S. District Court for District of Columbia 11–301
Chief Judge
Assignment of judge to hear condemnation cases 11–301
Clerk 11–401
Authority to take acknowledgment of deeds 45–402
Deeds under sales enforcing liens for real property taxes 47–1014
Deputy 11–401
Hospital lien docket to be provided 38–305

UNITED STATES DISTRICT COURT—Con.
Clerk—Continued
Jury box, custody of 11–1404
Marriage, duties regarding 30–108—30–115
Regulating filing of milk-beverage container registrations 48–306
Common-law jurisdiction 11–306
Compensation of court officers, District of Columbia, taxed as costs 11–1501
Corporations
Dissolution by quo warranto 29–719
Voluntary dissolution 29–701
Criminal Court term
Attachés prohibited from receiving pay from professional bondsmen 23–603
Bail after regular hours, person authorized to take 23–610
Criminal jurisdiction 11–306
Dentistry, license to practice, revocation or suspension 2–311, 2–312
Deputy clerks, assignment 11–401
Fee for docketing judgment of Municipal Court of District of Columbia 11–755
Powers 11–401
Dissolving public utility corporations for violation of antimerger law 43–502
District Court term
Messenger for, appointment 11–312
Docket, separate, for feeble-minded cases 32–623
Eminent domain proceedings 11–301
Employees generally
Appointment 11–312
Enforcement of District liens for real property taxes 47–1011—47–1015
Equitable jurisdiction 11–306
Attachment of persons to enforce decree 11–326
Commitment for contempt to enforce decree 11–326
Delivery of chattels, order for, enforcement 11–328
Enforcement of decrees 11–326
Fieri facias, issuance to enforce decrees 11–326
Interlocutory decrees, enforcement 11–327
Mandatory injunction to enforce decrees 11–326
Money judgment, imprisonment to enforce payment restricted 11–326
Expenses, estimates to be included in District budget 47–204
Feeble minded person, petition for direction of relatives to pay for maintenance at District Training School 32–616
Fees and costs 11–1509
Apportionment between District and United States 11–330
Fiduciary's bond and undertaking 28–2403
Forfeiture, jurisdiction 11–306
Grand juries, impaneling 11–1407
Healing arts
Licenses to practice, suspension or revocation, jurisdiction 2–123
Refusal of license to practice, review 2–129
Unlawful practice, injunction, procedure 2–132
Injunction against use of building violating fire protection regulations 5–323

UNITED STATES DISTRICT COURT—Con.
Interest on principal debt, when included in judgments 28–2707
Interlocutory order, enforcement 11–327
Authority to take acknowledgment of deeds 45–402
Jurisdiction 11–305—11–306
Appeals from public utilities commission orders 43–705
Crime 11–306
Divorce 16–416
Injunctions against medical and dental colleges 31–904
Law and equity 11–306
Penalties and forfeitures 11–306
Residence of parties 11–306
Searches and seizures 11–306
Jurors, fees and costs 11–1512
Jury Commission, appointment of 11–1401
Library of Congress, withdrawal of books 11–102
Mandamus, compelling filing of personal property tax returns 47–1209
Marshal, executing sentences of courts-martial 39–708
Nurses
Denial of registration or reregistration, review 2–406
Revocation or suspension of certificate, jurisdiction 2–407
Oath of justices 11–303
Petition for admission to District Training School 32–608
Petition for voluntary dissolution of corporation 29–701
Petit juries, impaneling 11–1407
Podiatrist, revocation or suspension of license, jurisdiction 2–707, 2–708
Probate Court term, jurisdiction and powers in general 11–507—11–520
Appeal, proceedings not stayed, when 11–511
Arbitration 11–520
Clerk, register of wills 19–409
Compelling performance of duties 11–514
Revocation of letters 11–514
Summons 11–514
Decree admitting will to probate as evidence 11–519
Depositions 11–519
Enforcement of judgments and decrees 11–516
Enforcement of orders 11–516
Exceptions 11–519
Fees and costs 11–1503
Investment of funds 11–513
Courts power to order 11–513
Failure to obey order of court, revocation of letters 11–513
Issues not relating to wills 11–517
Notice of trial 11–517
Time of trial 11–517
Judgment for costs
Authority to render 11–518
Execution 11–518
Judgment or decree, enforcement by attachment, sequestration 11–512

UNITED STATES DISTRICT COURT—Con.
Probate Court term, jurisdiction and powers in general—Continued
Jurisdiction 11–501
Limitation 11–512
Jurisdiction, plenary 11–503
Wills 11–503
Admission to probate 11–503
Devising District of Columbia real estate 11–503
New trial 11–519
Orders, enforcement by attachment, sequestration 11–512
Orphans' Court, replaces 11–501
Plenary proceedings 11–509
Attachment and sequestration 11–510
Costs 11–510
Issues 11–510
Judgment or decree 11–510
Regulation 11–509
Powers 11–501, 11–504
Enforce distributions 11–504
Enforce rendition of inventories and accounts 11–504
Jurisdiction over wills 11–504
Letters ad colligendum, grant and revocation 11–504
Letters of administration, grant and revocation 11–504
Letters of guardianship, grant and revocation 11–504
Letters testamentary, grant and revocation 11–504
Not exclusive of equity court 11–504
Settlement of accounts prima facie evidence 11–504
Property in hands of property clerk, administration 4–159
Religious societies, appointing trustees to receive conveyances 29–514
Revocation of letters, accounting, failure to make 11–515
Seal for court 11–505
Seal for register of wills 11–505
Sessions, weekly 11–502
Summons
Failure to appear, penalty 11–506
Failure to appear, sequestration, accounting 11–508
Allowance 11–508
Bonds 11–508
Return of property 11–508
Failure to make return 11–507
Failure to serve process 11–507
Return 11–508
Power to issue 11–506
Witnesses, refusal to give evidence, penalty 11–506
Probation officers, appointment 24–101
Reports of Circuit Courts of Appeal, copies furnished judges 11–206
Review in rent control cases 45–1609
Seizure, jurisdiction 11–306
Streets and other ways, eminent domain proceedings, jurisdiction 7–202
UNITED STATES DISTRICT COURT—Con.
Superior Court of District 11–101
Trial boards of police and fire departments, compelling attendance of witnesses 4–603
Trial by court of civil cases
Bill of exceptions
Sealing, British Statute 11–321
Trial by jury of civil cases 11–319
Challenge of jurors, right preserved 11–319
Impaneling and swearing of struck jury 11–319
Rights to examine jurors, voir dire 11–319
Striking of names by clerk 11–319
Struck jury, method of selecting 11–319
Submission by parties of names to be omitted from panel 11–319
Unemployment compensation contribution, review of determination of rate 46–303
Union Station, use by railroad, compensation, determination 7–1213
Witnesses
Before dental board, punishment for contempt 2–304

UNITED STATES EMPLOYEES
Free tuition for children of employees stationed outside the district 31–305

UNITED STATES GOVERNMENT EMPLOYEES
Eligible for jury service 11–1420

UNITED STATES MARSHAL
See Marshal

UNITED STATES NAVAL OBSERVATORY
See Naval Observatory

UNITED STATES PARK POLICE
See Park Police

UNITED STATES SOLDIERS' HOME
Michigan Avenue, abandoned portion, transfer in part to home 7–129
Michigan Avenue relocated, lands transferred to Home 7–127
Vacation of part of grounds for street purposes authorized 7–127, 7–128

UNIVERSITIES
See Institutions of Learning

UNLAWFUL ASSEMBLY
Definition and penalty 22–1107

UNSAFE STRUCTURES
See Insanitary Buildings
Abatement as nuisances 5–504
Abandoned vehicles 5–504
Accumulations of junk 5–504
Assessment of costs against property 5–504
Failure to abate after notice, penalty 5–504
Interest on assessment against property 5–504
Remedying of condition by Commissioners 5–504
Uncovered wells, cistern, or excavation 5–504

UNSAFE STRUCTURES—Continued
Building Inspector remedying conditions 5–501, 5–503
Assessment of cost against property 5–503
Collection of assessment 5–503
Immediate action required 5–501
Interest on unpaid assessment 5–503
Liability of lessee or other persons to owner 5–503
No immediate action required 5–503
Report of cost and expenses of work 5–503
Failure to remedy condition after notice 5–202, 5–503
Barring owner or interested person from premises 5–503
Building inspector rendering structure or excavation safe 5–503
No immediate danger, survey by disinterested persons 5–502
Report of committee of disinterested persons 5–503
Ten-day period allowed owner or interested person 5–503
Immediate action required, duty of inspector of buildings 5–501
Notice to remedy condition 5–501, 5–504
Report of unsafe conditions 5–501
Buildings, staging, or other structure 5–501
Examination of structure by Building Inspector 5–501
Survey by three disinterested persons 5–502
Appointment 5–502
Failure to remedy condition after notice 5–502
Report 5–503

UNSUBDIVIDED LANDS
Assessments for curbs and gutters 7–612b

UNWHOLESOME FOOD
Penalty for sale of 22–3421
Regulations by Commissioners 22–3419
Sale of, prohibited 22–3416

USED GOODS DEALERS
See Second-Hand Dealers

USE OF PROPERTY
See Zoning Regulations

USURPATION
Usurpation of office, remedy 16–1601—16–1611

USURY
See Interest and Usury
Credit of unlawful interest on principal debt 28–2705
Definition and penalty 28–2703
Legal interest rate 28–2701
Recovery of unlawful interest paid 28–2704

VACATION
Alleys and minor streets, sale of land, distribution of proceeds 7–325, 7–330
Employees of District 1–312—1–314
Judges of Municipal Court for District of Columbia 11–754

VACATION PERMITS
See Child Labor

VACCINATION
Rabies 1–230
Smallpox 31–1102

VAGRANCY
Burden of proof 22–3303
Definition 22–3302
Prosecution in police court 22–3305

VALIDITY
Suits to determine validity of marriage 16–422

VALUE
Definition, negotiable instruments law 28–101, 28–202

VAN BUREN STREET UNDERPASS
Closing of grade crossing 7–518
Use by street railway company, payment of share of cost 7–517

VANDALISM
Capitol grounds, injury to grounds or structures or shrubbery prohibited 9–122
Criminal offense 22–3112

VANITY SHOPS
Licenses 47–2310

VARIANCE
After verdict 13–314

VARNUM STREET VIADUCT
Use by street railway company, payment of share of cost 7–515

VAULTS
Use of space under sidewalk, rental 7–901

VEGETABLES
See Food and Drugs
Baskets, standard sizes 10–115
Hampers, dimensions 10–115
Sale by bunch authorized 10–115
Shelled beans, standard container 10–115
Shelled peas, standard container 10–115
Standard containers 10–115

VEHICLES
See Motor Vehicles
Larceny from 22–2204a
Purchase by commissioners, exchange of similar items 1–250
Sewer work, etc., purchase and employment 7–1237, 7–1238

VEHICLES FOR HAULING
License 47–2333
Stands 47–2333

VENDERS
Badge 47–2336
Definition 47–2336
Exemption from license 47–2336
License 47–2336

VENDING MACHINES
License 47–2319

VENTILATION
Houses, regulations, Commissioners' power to adopt 1–725

VENTILATION—Continued
Sewers, inspection by plumbing inspector 1–727
Shaft, height, fireproof construction 5–405

VENUE
Nonresidents, suing within District 11–306—11–308
General rule 11–308

VERDICTS
Defects in pleadings found after verdict 13–316
Ejectment 16–516
Eminent domain, land for streets 7–206
Alleys or minor streets, opening, widening, or straightening 7–315, 7–317
Objections and exceptions 7–209
Partial vacation of verdict, effect 7–209
Time allowed for exceptions 7–209
Vacation of verdict, power of court 7–209
Mistakes found after verdict, rectifying 13–315

VERIFICATION
Defendant's answer in mandamus 16–1003
Dilatory pleas 13–210
Non est factum 13–211

VETERANS
Benefits, when exempted from income tax 47–1557a
Loans, disability of minority removed for 45–1701
Recording certificates of discharge 45–711
Services to, in connection with black-outs 6–1015

VETERINARIANS
Applications for license 2–803
Educational requirements 2–803
Qualifications 2–803
Board of Examiners 2–801, 2–802
Annual report 2–802
Appointment 2–801
Bond, right to require of officers 2–802
Compensation of members 2–803
Expenses of administering law, payment 2–803
Meetings 2–802
Oaths, power of secretary to administer 2–802
President 2–802
Qualifications 2–801
Removal of member for cause 2–801
Rules and regulations, power to adopt 2–802
Secretary 2–802
Term of office 2–801
Vacancies filled for unexpired term 2–801
Vice-president 2–802
Definition under uniform narcotic drugs law 33–401
Display of license 2–807
Employed by Federal government, exemption from law 2–809
Examination for license, held quarterly 2–803
Existing practitioners, exemption from examination 2–805
Fees under Licensing Law 2–803, 2–805
Application for license 2–803
Licensing of practitioner exempt from examination 2–805
Fire Department 4–404
Inspection of place of business 2–807
Issuance of licenses 2–802, 2–803
Narcotic drugs, professional use 33–409

VETERINARIANS—Continued
Narcotics, prescription 2–610, 2–611
Content 2–610
Restrictions on right to issue 2–611
Official register of Board of Examiners, content 2–802
Outside practitioners, incidental practice within District, exemption 2–809
Penalty for violating regulatory law 2–810—2–812
Aiders and abettors 2–810
Prosecution by corporation counsel 2–812
Persons exempted from regulatory law 2–809
Pharmacy Law, exception from 2–601
"Practicing veterinary medicine" defined 2–808
Practitioners from other states, licensing, reciprocity 2–804
Refusal of license after examination 2–806
Appeal to Commissioners of District 2–806
Board of Review, appointment, re-examination 2–806
Revocation or suspension of licenses 2–810
Appeal to Court of Appeals 2–810
Ground 2–810
Procedure 2–810

VIADUCTS
Acquisition of necessary land 7–1215
Construction over railroad and canal rights of way 7–502
Collection and deposit of cost of work 7–502
Lien of cost 7–502
Construction under or over railroads, payment of share of costs 7–1214, 7–1215
Eastern Avenue Viaduct, use by street railway, payment of share of cost 7–515
Eminent domain proceedings 7–1215
Fern Street Viaduct 7–515, 7–516
Closing of grade crossings 7–516
Use by street railway, payment of share of cost 7–515
Michigan Avenue Viaduct 7–520—7–522
Closing of grade crossing 7–520, 7–522
Construction authorized 7–520
Division of cost between District and Baltimore and Ohio Railroad 7–520
Use by street railway company, payment of share of cost 7–521
Monroe Street Bridge, use by street railway, payment of share of cost 7–510
Pennsylvania Railroad Company required to construct over proposed street 7–1227
Railroads, construction and maintenance over 7–1214, 7–1215
Varnum Street Viaduct, use by street railway, payment of share of cost 7–515

VIEW
Eminent domain, land for streets, view of premises by jury 7–206
Land for park purposes, acquisition by District 8–102

VITAL STATISTICS
Birth reports 6–301—6–304
Acknowledgment of receipt of 6–301
Altering or falsifying prohibited 6–302

VITAL STATISTICS—Continued
Birth reports—Continued
Contents of 6–301
False or fictitious transcripts of record prohibited 6–302
Filed with director of public health 6–303
Illegitimate children, identity of parents, disclosure unnecessary 6–301
Inspection of records 6–303
Midwives, duty to report 6–301
Name of child, reporting 6–301
Penalties for violating law requiring 6–304
Each week's delay separate and distinct offense 6–304
Information filed by corporation counsel 6–304
Prosecutions in Police Court 6–304
Use of reports in evidence 6–304
Physicians, duty to report 6–301
Publication of abstracts and analysis of data 6–303
Stillbirths, when unnecessary to report 6–301
Time limit for making 6–301
Director of Public Health, enforcement of regulations 6–102

VOCATIONAL REHABILITATION
See Education

VOLUNTARY APPRENTICES
"Apprentice" defined 36–127
Apprenticeship agreements 36–128
Apprenticeship committees 36–126
Apprenticeship Council 36–122
Board of Education, responsibility of 36–125
Director of Apprenticeship 36–123
"Secretary of Labor" defined 36–132
Violation of agreements 36–130

VOLUNTEER FIRE ORGANIZATIONS
Use of equipment of regular department 4–411

VOLUNTEER SERVICES
Acceptance by District prohibited, exception 1–215

VOLUNTEERS
Civilian defense, liability for acts 6–1011

WAGES
See Minimum Wage Law
Assignment 28–2505
Females employed in excess of eight hours 36–301
Laborers and mechanics on public buildings and works 1–815
Prevailing wage rate paid 1–815
Minimum wage law 36–401—36–422
Payment in advance to prevent levy of process 16–312
Priority of unemployment compensation contributions over 46–304

WAIVER
Certified public accountant requirement 2–904
Negotiable instruments, benefit of law for protection of obligor 28–106
WAIVER—Continued
Notice of dishonor 28–721, 28–722
Embodied in instrument, effect 28–722
Written above signature of indorser, application 28–722
Pleading over does not waive demurrer 13–209
Protest of instrument 28–723
Presentment and notice of dishonor waived 28–723

WAR
See Rent Control
Blackouts during 6–1001
Evacuation from District 6–1008
Funds for defense purposes 6–1009
Hours of labor of females during 36–301
Special police appointed during 6–1006
Voluntary services for government 6–1007

WAR DEPARTMENT
Worn mounted equipment, furnishing to police 4–181

WAREHOUSE RECEIPTS
"Action" defined 28–2203
Adverse claims to goods 28–1910
Defense to action for failure to deliver, limitation 28–1912
Excuse for nondelivery, by warehouseman 28–1911
Warehouseman allowed reasonable time to determine validity 28–1911
Altered receipts 28–1906
Liability of warehouseman 28–1906
Attachment or levy upon goods 28–1919, 28–1920
Attachment of receipts by creditor 28–1920
Negotiable receipts outstanding 28–1919
Transferred nonnegotiable receipts outstanding 28–2006
Citation of act 28–2205
Definitions of terms used 28–2203
"Delivery" defined 28–2203
Delivery of goods by warehouseman 28–1901—28–1905
Cancelation of receipts 28–1904, 28–1905
Duty to deliver on demand 28–1901
Failure to cancel negotiable receipts, liability 28–1904
Failure to deliver goods, burden to prove lawful excuse 28–1901
Liability for misdelivery 28–1903
Lost or destroyed receipts 28–1907
Notice not to deliver goods, liability 28–1903
Offer to acknowledge delivery of goods 28–1901
Offer to satisfy charges made 28–1901
Offer to surrender receipts made 28–1901
Persons entitled to receive goods 28–1902
Prohibition against claiming title in himself 28–1909
Right to require surrender of receipts 28–1919
Unpaid seller, surrender of receipt for cancelation 28–2013
Duplicate receipts 28–1806
Liability of warehouseman for failure to mark 28–1806

WAREHOUSE RECEIPTS—Continued
Duplicate receipts—Continued
Marking as duplicates required 28–1806
Warranties of warehouseman 28–1908
Duress inducing negotiation, effect 28–2011
Duty to keep goods separate 28–1915
Expense and purpose of separation 28–1915
Essential requirements 28–1802
Fraudulent negotiation, effect 28–2011
Fungible goods 28–1916
Apportionment among owners 28–1916
Definition 28–2203
Liability of warehouseman to depositors 28–1917
Warehouseman's right to mingle 28–1916
General laws, when applicable 28–2201
"Goods" defined 28–2203
Hazardous goods, sale by warehouseman 28–1928
"Holder" defined 28–2203
Holder of negotiated receipts 28–2005
Extent of title acquired in goods 28–2005
Right as against warehouseman 28–2005
Holder of transferred nonnegotiable receipts 28–2006
Extent of title acquired in goods 28–2006
Loss of goods through attachment or levy 28–2006
Notice given warehouseman, effect 28–2006
"In good faith" defined 28–2203
Interpleader of claimant 28–1910
Judicial proceedings affecting title 28–1918
Liability for care of goods 28–1914
Lien of warehouseman 28–1921—28–1930
Charges and expenses giving rise to lien 28–1921
Charges prior to storage, listing on negotiable receipts required 28–1924
Goods subject to lien 28–1922
Loss of lien 28–1923
Negotiable receipts issued, subsequent charges 28–1924
Other remedies not precluded 28–1926
Remedies for enforcing lien 28–1929
Right to hold goods until lien satisfied 28–1925
Sale of goods to satisfy lien 28–1927—28–1930
Third person satisfying 28–1927
Lost or destroyed receipts 28–1907
Bond to protect warehouseman 28–1907
Delivery of goods under order of court 28–1907
Liability of warehouseman, goods delivered 28–1907
Proof of loss, delivery of goods 28–1907
Mortgaging or pledging goods, negotiation of receipt, effect 28–2012
Negotiable receipts 28–1805
Cancelation, goods delivered 28–1904
Definitions 28–1805
Indorsement in blank or to bearer 28–2001, 28–2002
Insertion of nonnegotiable provision in negotiable receipts, effect 28–1805
Methods of indorsing 28–2002
Negotiation by delivery 28–2001
Negotiation by indorsement 28–2002
Partial delivery of goods 28–1905
Persons empowered to negotiate 28–2004

WAREHOUSE RECEIPTS—Continued
Negotiable receipts—Continued
Power to compel indorsement after transfer 28–2006
Successive negotiations 28–2002
Negotiation through mistake, effect 28–2011
Nonexistence or misdescription of goods 28–1913
Goods described by mark or label 28–1913
Liability of warehouseman 28–1913
Statements of depositor used to describe goods 28–1913
Nonnegotiable receipts 28–1804
Can not be negotiated 28–2003
Definitions 28–1804
Duty to mark as nonnegotiable 28–1807
Indorsement, no additional rights transferred 28–2003
Letters or memoranda excluded 28–1807
Liability of warehouseman for failure to mark 28–1807
Transfer 28–2003
No particular form required 28–1802
Omission of required provisions, liability 28–1802
"Order" defined 28–2203
Outstanding receipts excepted from act 28–2204
"Owner" defined 28–2203
Partial delivery of goods, cancelation or notation on receipts 28–1905
Penalties 28–2101—28–2106
Delivery of goods without obtaining negotiable receipts 28–2105
Encumbered goods, negotiation of receipts 28–2106
Failure to mark receipt as duplicate 28–2103
False statements in receipts 28–2102
Issuing for goods not received 28–2101
No title to goods, negotiation of receipts 28–2106
Warehouseman owner or part owner of goods, failure to disclose 28–2104
Perishable goods, sale by warehouseman 28–1928
"Person" defined 28–2203
Prohibited terms and conditions 28–1803
"Purchase" defined 28–2203
"Purchaser" defined 28–2203
"Receipt" defined 28–2203
Required provisions 28–1802
Sale of goods by owner, retention of receipts 28–2012
Subsequent negotiation, effect 28–2012
Sale of goods to satisfy lien 28–1927
Advertisement of sale 28–1927
Disposition made of proceeds 28–1927
Effect of sale on liability of warehouseman 28–1930
Hazardous goods 28–1928
Method of conducting sales 28–1927
Notice given, contents 28–1927
Perishable goods 28–1928
Third person satisfying lien 28–1927
Stolen receipts, negotiation, effect 28–2011
Stoppage in transit, effect on right, receipts negotiated 28–2013

WAREHOUSE RECEIPTS—Continued
Transfer of receipts 28–2003
Receipts not negotiable by delivery 28–2003
"Value" defined 28–2203
Vendor's lien defeated by negotiation 28–2013
Warehouseman authorized to issue 28–1801
"Warehouseman" defined 28–2203
Warehouseman's right to claim title 28–1909
Transfer by depositor required 28–1909
Warranties on negotiation or transfer 28–2008—28–2010
Holder for security accepting payment, no implied warranty 28–2010
Indorser not guarantor 28–2009
Mortgagee accepting payment, no warranty implied 28–2010
Pledgee accepting payment, no warranty implied 28–2010

WARRANTIES
Duplicate warehouse receipts 28–1908
General indorsers 28–507
Negotiation of negotiable instruments by delivery 28–506
Qualified indorsers 28–506
Sale of stock certificates 28–2911, 28–2912
"That he will warrant generally the property hereby conveyed," effect in deeds 45–304
"That he will warrant specially the property hereby conveyed," effect in deeds 45–305
Under uniform sales act 28–1111—28–1116
Warehouse receipts, negotiation or transfer 28–2008—28–2010
Warranty by life tenant void as to heir 45–309
"With general warranty," effect in deeds 45–304
"With special warranty," effect in deeds 45–305

WARRANTS FOR ARREST
Execution by police 4–138
Municipal Court judges 11–705
Police making arrest without warrant, circumstances authorizing 4–140

WASHINGTON
District of Columbia successor to corporations of Washington 1–104
General laws and ordinances made applicable to Georgetown 1–107
Georgetown made part of 1–107
"Limits of city" defined 1–107
Records and other documents made property of District 1–106

WASHINGTON AQUEDUCT
Use in part as playground 8–130

WASHINGTON ASYLUM AND JAIL
See PRISONS AND PRISONERS
Superintendent, salary to be included in budget estimates 47–201

WASHINGTON ASYLUM HOSPITAL
See HOSPITALS AND ASYLUMS

WASHINGTON GAS LIGHT COMPANY
Taking up, laying, or replacing gas main before paving of street 7–605

WASHINGTON HUMANE SOCIETY
Alteration, amendment, and repeal, reservation of Congress 32–211
Bringing abused children before Juvenile Court 32–209
By-laws 32–204
Cooperation of Commissioners of District 32–209
Cruelty to animals, police to arrest for at request of member 32–205
Division of fines within 32–206
Evidence of membership 32–205
Incorporation 32–201
Law effective throughout District 32–207
Laws affecting children 32–209
Officers 32–202
Police to aid 32–209
Police to be detailed to aid in preventing cruelty to animals 32–210
Preventing cruelty to animals 32–205
Preventing cruelty to children 32–208

WASHINGTON NATIONAL AIRPORT
See AIRPORT

WASHINGTON'S MANUAL LABOR SCHOOL
Deed of transfer to Columbia Institution for the Deaf 31–1003

WASHINGTON STOCK EXCHANGE
Taxation 47–1707

WASHINGTON SUBURBAN SANITARY DISTRICT
Contract for District water diversion 43–1530

WASHINGTON TERMINAL COMPANY
Assessment of real property 47–718, 47–719
Establishment and maintenance of terminal station authorized 7–1212
Street lights, payment for, maximum charges 7–708
Enforcing payment 7–708
Union Station, operation 7–1213

WATCHES
Auctioneers, Police Department, supervisory powers 4–147, 4–148, 4–150

WATER
See WATER-MAINS; WATER-WORKS
Coal, charcoal or coke, restrictions as to contents 10–111
Making impure maliciously, penalty 22–3118
Meters, tampering with, penalty 22–3117
Pipes, tapping, penalty 22–3117

WATER-CRAFT
Jury service, exemption of officers and crew 11–1420
Tugboats, operating on Potomac River, regulations 7–509
United States owning and operating, exemption from Boiler Inspection Act 1–709

WATER DEPARTMENT
See PUBLIC UTILITIES
Chief of Engineers shutting off water to prevent waste 43–1507
Chief of Engineers to report unlawful tapping of water pipes to District Attorney 43–1535
Damage or defacement of water pipes, penalty 43–1536
Diversion of water beyond District 43–1529—43–1531
Acquisition of land and right-of-way for pipe lines to Virginia 43–1532
Contracts with Arlington County Sanitary District for diverting to Virginia 43–1531
Contracts with Washington Suburban Sanitary District for diverting to Maryland 43–1530
Prohibition, exceptions 43–1529
Erection of water-mains and service sewers 43–1510
Expenses to be included in budget estimates 47–210
Fire-plugs and hydrants, power of District Commissioners to erect 43–1501
Fire-plug tax 43–1525—43–1528
Levy on buildings without water service 43–1525
Levy on discontinuance of water service 43–1528
Rates 43–1526
To cease on introduction of water 43–1527
Fiscal year 43–1504
Large quantity users to erect and maintain meters 43–1509
Prevention of water waste 43–1507
Disregard of notice, effect 43–1507
Notice of waste 43–1507
"Service sewer" defined 43–1517
Service sewers, erection 43–1510
Assessment collections to be credited to appropriations 43–1516
Assessment of abutting property 43–1510, 43–1511
Assessment of land not subdivided 43–1514
Assessments payable in three installments 43–1513
Discretion of Commissioners of District 43–1510
Notice of assessments 43–1512
Relevy of assessments 43–1515
Subject to control of Commissioners of District 43–1502
Supplying water to charitable institutions and churches 43–1533
Unauthorized opening of water-mains and pipes, penalty 43–1538
Under direction of engineer's office 43–1502
Unlawful tapping of water pipes, penalty 43–1534
Use of Potomac water for private mechanical and manufacturing purposes or fountains 43–1508
Water-mains and pipes, power of District Commissioners to lay 43–1501
Water-mains, erection 43–1510
Assessment collections to be credited to appropriations 43–1516
Assessment of abutting property 43–1510, 43–1511
Assessment of land not subdivided 43–1514
Assessments payable in three installments 43–1513
WATER DEPARTMENT—Continued
Discretion of Commissioners of District 43–1510
District to pay for all but those supplying government property 43–1537
Notice of assessments 43–1512
Refund of overpaid assessment 43–1518
Relevy of assessments 43–1515
Water-main taxes to be uniform 43–1505
Water registrar 43–1506
Bond 43–1506
Duties 43–1506
Water rents
Authority to collect in advance 43–1521
Authority to stop service on failure to pay 43–1521
Constitute fund for maintenance, management and repair of water supply system 43–1522, 43–1523
From Washington aqueduct to be applied to its improvement 43–1524
Must be uniform 43–1505
Not to be source of revenue 43–1522
Rates 43–1520
Refund when erroneously paid 43–1519
Water supply, rules and regulations 43–1503
Water system 43–1539—43–1540
Defined 43–1539
Loans for expansion authorized 43–1540

WATER FUND
Investment in United States Government securities 47–135

WATER-MAINS
See ASSESSMENT; ASSESSOR; WATER DEPARTMENT
Building and lot connections 6–401—6–404
Construction, assessment of cost against abutting property 43–1510—43–1515
Damaging or defacing water pipes, penalty 43–1536
Laying in street before improvement 7–605
Meters, tampering with, penalty 22–3117
Permit system of public improvement 7–608
Street improvements, service connections, assessment of cost 7–610
Streets dedicated by landowners, right to lay in parking 7–117
Tapping, penalty 22–3117
Water, making impure maliciously, penalty 22–3118

WATER-POWER COMPANY
Definition 43–116

WATER REGISTRAR
Bond 43–1506

WATER STREET
Closing in part for park purposes 8–114
Consent of three-fourths of property-owners 8–114

WATER SUPPLY
Delivery to Falls Church 43–1531a
Distribution systems outside District 43–1531b
Land for pipes, acquiring 43–1531c

WATER SYSTEM

See WATER DEPARTMENT

WATER-WORKS

Fees for connecting with water system 1–726
Inspectors, draftsmen, etc., employment 7–1235
Meters, tampering with, penalty 22–3117
Temporary employees, commissioners authorized to employ 7–1236
Water, making impure maliciously, penalty 22–3118

WEAPONS

Altering identification marks 22–3212
Antique and toy pistols excepted 22–3213
Carrying concealed pistols 22–3204—22–3206
  Exceptions 22–3205
  In dwelling-house or place of business 22–3204
  Licenses to carry, issuance 22–3206
Constitutionality, saving clause 22–3216
Crimes of violence, committing while armed 22–3202
Deadly or dangerous weapons, dealer's license, fee 47–2340
Dealers to be licensed 22–3209
Definitions 22–3201
  Crime of violence 22–3201
  Machine gun 22–3201
  Person 22–3201
  Pistol 22–3201
  Purchase 22–3201
  Sawed-off shotgun 22–3201
  Sell 22–3201
Discharge of firearms in Capitol grounds prohibited 9–123
False information in sales prohibited 22–3211
Firearms
  Dealer's license, fee 47–2340
  Major and superintendent of police
    Approval of license 47–2340
    Report of sales to 47–2340
Licensing dealers 22–3210
Penalties for violating provisions 22–3215
Possession of certain dangerous weapons, exceptions 22–3214
Possession of pistol by criminals 22–3203
Regulations relative to, power to adopt 1–227
Selling pistols to minors and others 22–3207
Transfers of firearms, regulatons 22–3208

WEARING APPAREL

Exemption from process 15–401, 15–403

WEEDS

Cutting at public expense 6–902
  Cost taxed against property, interest 6–902
  Owner, occupant, or agent unknown 6–902
  Publication of notice 6–902
  Unoccupied land 6–902
Duty to cut 6–901
Notice to cut 6–901, 6–902
Prosecution for failure to cut 6–903

WEIGHING MACHINES

License 47–2319

WEIGHTS, MEASURES, AND MARKETS

Alteration of weighing or measuring devices, inspection and approval 10–104
Apples, standard box, dimension 10–115
Approval and sealing of weight and measure 10–103
Automatic measuring pump 10–122
  "Out of use" sign on pump, when required 10–122
  Subject to inspection and approval, or condemnation 10–122
Automatic vending devices, regulations concerning use 10–109
Beets, sale by bunch authorized 10–115
Berries, standard container 10–115
Boxes for small fruits and vegetables, standard container 10–115
Bread, regulations concerning weight and sale 10–113
Bushel box, dimension 10–115
Butter, sale by weight 10–120
Cheese, sale by weight 10–120
Cherries, standard container 10–115
Climax baskets 10–115
  Four-quart baskets, dimensions 10–115
  Twelve-quart baskets, dimensions 10–115
  Two-quart baskets, dimensions 10–115
Coal 10–108, 10–111
  Delivery ticket, content 10–111
  Delivery vehicle, name of seller of fuel displayed 10–111
  Original of delivery ticket, right of superintendent or inspector to demand 10–111
  Sale by weight required 10–111
  Sale, long ton used 10–108
  Sales of less than one ton 10–111
  Superintendent's power to require weighing while on way for delivery 10–111
  Wetting before weighing prohibited 10–111
Coin in slot machine, regulations concerning 10–109
"Commissioners" defined as meaning "Commissioners of District of Columbia" 10–131
Condemnation of nonconforming devices 10–103
Constitutionality of regulatory acts, provision separable 10–133
Corn 10–121
  Corn on cob, weight of barrel 10–121
  Shelled corn, weight of barrel 10–121
Crates for fruits and vegetables 10–115
  Four-basket flat crate, capacity 10–115
  Six-basket carrier crate 10–115
Department of Weights, Measures, and Markets 10–101—10–103
  Appointment by Commissioners 10–101
  Assistants, inspectors and other employees, power to appoint 10–101
  Superintendent 10–101—10–103
Director of 10–101a
Duty of owner to have scales and measuring devices tested 10–103
Enforcing officer, powers 10–126
False weighing or measuring devices prohibited 10–107
Fish sold by avoirdupois weight 10–120

WEIGHTS, MEASURES, AND MARKETS—Continued
Fish wharf and market 10–135
Location 10–135
Regulation and control by Commissioners of District 10–135
Wharfage and dockage fees 10–135
Fluid ounce, dimension 10–119
Food in package form 10–117
Tolerances and exemptions, Commissioners' power to establish 10–117
Weight, measure or numerical count indicated on package 10–117
Food, purchase authorized for investigation of misrepresentation, etc. 10–124a
Frequency with which weights and measures tested 10–103
Frozen food products 10–119
Frozen products, standard container 10–119
Gasoline pumps 10–119
Gill, dimension 10–119
Grape baskets, standard sizes 10–115
Hampers for fruits and vegetables, dimension 10–115
Heavy weighing scale or oversized measures, use by buyer prohibited 10–107
Ice cream, standard container 10–119
Ice, sale, regulation 10–112
Inspector, hindering in making inspections prohibited 10–105
Investigations, funds for 10–103a
Kale, sale at retail by weight 10–115
Lard, sale by weight 10–120
Liquid gallon, dimensions 10–119
Liquid half-pint, dimension 10–119
Liquid pint, dimension 10–119
Liquid quart, dimensions 10–119
Lug boxes, standard dimensions 10–115
Market stands, license fee 47–2327
Meat, sale by weight 10–120
Milk and cream, bottle or other container, regulations and requirements 10–114
Net weight used in selling commodity 10–108
One bushel hamper, dimensions 10–115
One-half bushel box, dimension 10–115
One-half bushel hamper, dimensions 10–115
One-half pint, dimensions 10–115
One-peck hamper, dimensions 10–115
Onion crates, dimensions 10–115
Onions, sale by bunch authorized 10–115
Oysters 10–120
Sale by numerical count authorized 10–120
Shucked oysters sold by liquid measure 10–120
Pears, standard box, dimensions 10–115
Penalties for violating law 10–134
"Person" construed to mean "partnership," "corporation," or "association" 10–132
Pint measure, dimension 10–115
Poultry, sale by weight 10–120
Prices
Investigations by superintendent 10–130
Restrictions on charges, etc. 10–107
Private residences, freedom from entry for purpose of making inspection of weights and measures 10–126

WEIGHTS, MEASURES, AND MARKETS—Continued
Proration of price with reference to quantity sold 10–123
Prosecution of violations of law by corporation counsel 10–134
Provisions of regulatory law deemed separable 10–133
Public scale, licensing and locating 10–128
Quart measure, dimension 10–115
Regulations by commissioners for markets owned by District of Columbia 10–130
Repair of weighing and measuring devices, inspection and approval 10–104
Rhubarb, sale by bunch authorized 10–115
Right of entry of superintendent and inspectors 10–126
Round-stave basket for fruits and vegetables, sizes and dimensions 10–115
Sale ticket, duty to furnish on request 10–110
Seal, stamp or mark, requirement for weighing and measuring devices 10–103
Searches and seizure of nonconforming weighing and measuring devices 10–103
Shelled beans, standard container 10–115
Shelled peas, standard container 10–115
Sherbets, standard container 10–119
Short weight or count by seller prohibited 10–115
Short weights or measures, advances to superintendent for investigation 10–103a
Short weight or measure by seller prohibited 10–107
"Singular" construed to include "plural" 10–132
Slot machine, regulations concerning use 10–109
Specifications for weights and measures, power of Commissioners to establish 10–127
Spinach, sale at retail by weight 10–115
Standard barrel 10–115
Cranberries 10–115
Dimensions and capacity 10–115
Fruit, vegetables, and other dry commodities 10–115
Standard container, use required 10–115
Superintendent of markets, "superintendent" defined 10–131
Superintendent of weights, measures, and markets 10–101—10–103
Advances by disbursing officer 10–103a
Amounts of commodities kept or offered for sale, right to inspect, weigh or measure 10–124
Appointment by Commissioners 10–101
Arrest, power to make 10–126
Bond, amount 10–102
Commodities in process of delivery, weighing and inspecting 10–124
Custody and control of standards 10–101
Enforcement of regulation regarding operation of market 10–130
Fees payable into Treasury 47–126
Food, purchase authorized for investigation of misrepresentation or false advertising 10–124a
Investigations concerning sale, distribution, or prices of commodity, report 10–130
Oath 10–102

WEIGHTS, MEASURES, AND MARKETS—Continued
Superintendent of weights, measures, and markets—Continued
Packages, right to inspect, weigh, or measure 10–124
Police power of superintendent and assistant 10–126
Powers and duties granted to and imposed on assistant and inspector 10–129
Powers in general 10–103
Record of inspection 10–106
Sale or interest in sale of weighing or measuring devices prohibited 10–125
Supervision over produce and other market owned by District 10–130
Testing of weighing and measuring devices and equipment 10–103
Title changed 10–101a
"Ton" defined 10–108
Tolerances, Commissioners' power to establish 10–127
Turnips, sale by bunch authorized 10–115
Unapproved scales or measuring devices, possession prohibited 10–103
Use of other than standard containers prohibited 10–116
Water, restrictions on contents of coal, charcoal or coke 10–111
Weighmaster 10–128
Appointment by Commissioners 10–128
Fees, determination by Commissioner 10–128
Wholesale producers' market 10–136
Charges for use of space, maximum 10–136
Disposition made of receipt 10–136
Wood for fuel 10–118
Cord of wood, dimension 10–118
Sale by standard load authorized 10–118
Wood more than eight inches in length 10–118

WELFARE AND RECREATIONAL ASSOCIATION
Bathing pools and beaches, operation 8–171

WELLS
Uncovered and dangerous, abatement as nuisance 5–504

WHARF PROPERTY
Basins, docks, and water-fronts included 9–101
Control by Commissioners of District 9–101
Lease, maximum duration 9–102
Piers, bulkheads, and structures included 9–101
Potomac River bank, control in part by Chief Engineer of Army 9–101
Rentals paid into Federal Treasury, apportionment between District and United States 9–102
Repair and maintenance 9–101
Rules and regulations for control and management 9–101, 9–102

WHARVES
Strangers and travelers, protection by Commissioners 4–119

WHISKY
Definition of "spirits" includes 25–103

WHITEHAVEN PARKWAY
Boundaries, readjustment 8–117
Dedication of land 8–119, 8–120
Exchange of land with property owners 8–119
Plats, preparation, approval, and recordation 8–120

WHITE HOUSE
Buildings fronting, grounds, plans, approval by Commission of Fine Arts 5–410

WHITE HOUSE POLICE
Age retirement allowance, conditions 4–507
Appointment from Metropolitan police force and park police force 4–302
Captain 4–302
Chief of Secret Service Division, supervising officer 4–301
Death benefits payable to widow and children, conditions 4–507
Death while in service, repayment of contributions to relief fund 4–504
Funeral expenses, amount contributed from relief fund 4–509
Lieutenants 4–302
Participation in police and firemen's relief fund 4–304
Personnel, appointment, vacancies 4–302
Powers, duties, and privileges 4–301
Privates, appointment, number 4–302
Reappointment, redeposit of refund in relief fund 4–504
Refund from relief fund on separation from force 4–504
Refund of payments to retirement fund 4–305
Relief fund, salary deductions, refunds 4–503, 4–504
Retiring and relief board, powers and duties, report of findings 4–510, 4–511
Salaries 4–303
Adjustment 4–803—4–806
Sergeants 4–302
Temporary disability allowance 4–506
Total disability allowance, conditions 4–507
Transfer to Metropolitan or park police 4–303
Transfer from park police force 4–305
Percentage of payment from basic salary into retirement fund 4–305
Refund of salary deductions 4–305
Reinstatement, payment of refund into retirement fund 4–305
Uniforms 4–303
Vacancies, method of filling 4–302
Voluntary retirement, payment of benefits, conditions 4–508

WHITE SLAVERY
See PANDERING
Compelling female to live life of prostitute, penalty 22–2705
Detaining female prostitute for debt 22–2709
Guardian consenting to prostitution of ward, penalty 22–2705
Inducing or compelling female to become prostitute 22–2705

WHITE SLAVERY—Continued
Parent consenting to prostitution of female child, penalty 22–2705
Procuring females for third persons, penalty 22–2711
Procuring for house of ill-fame, penalty 22–2710

WHOLESALE PRODUCERS' MARKET
Location, charges for space 10–136

WIDTH
Minor street 7–301

WILLS
See DECEDENTS' ESTATES; EXECUTORS AND ADMINISTRATORS; REGISTER OF WILLS
Admission to probate 11–503
Advancement as satisfaction of legacy 19–109
Alteration 19–103
Attestation by creditor valid 19–106
Bequests to institutions of learning 29–406
Capacity to make 19–101
Contingent estates conveyable by will 45–101
Criminal offenses 22–1403
- Destroying 22–1403
- Mutilating 22–1403
- Secreting 22–1403
- Stealing 22–1403
- Withholding 22–1403

Description of property by reference to subdivision 7–110
Devises in general 19–201
- After-acquired realty 19–205
- General devise of all property 19–203
- Land includes leaseholds 19–204
- Religious purposes 19–202

Devises to attesting witnesses 19–104
- Property not to be demanded or retained 19–105

Devises to charitable uses, rules against perpetuities inapplicable 45–102
Devises to institutions of learning 29–406
"Die without issue," meaning 45–205
"Die without leaving issue," meaning 45–205
Execution of power by will 19–107
Fee simple estate
- Created unless contrary intention appears 45–201
- Words of inheritance unnecessary to create 45–201

Foreign wills as evidence 14–402
Form 19–103
Future estate
- Conveyable by will 45–101
- Dependent on person's death without heirs, issue or children defeated by birth of his posthumous children 45–204
- Limited to heirs, issue or children, posthumous children take as though living at ancestor's death 45–204

"Have no issue," meaning 45–205
Jurisdiction of Probate Court 11–503
Lapsed or void devises 19–110
Life estates conveyable by will under seal 45–106
Limitation of actions 12–207
Nuncupative wills invalid, exception 19–102

WILLS—Continued
Opening, reading before delivery to Probate Court 19–111
Power to dispose by devise must be executed by will 45–1018
Power to dispose by grant can not be executed by will 45–1018
Present estates conveyable by will 45–101
Probate 19–301
- Caveat 19–307
  - Admission of prior will barred 19–310
  - Time for filing 19–309
  - Will not to be probated while pending 19–307
- Citation, publication 19–301
- Decree for admission 19–308
- Guardians ad litem 19–303
- Petition for 19–301
- Plenary proceedings 19–311
- Proof of execution can not be waived 19–304
- Proof of will 19–305
  - Production of witnesses 19–305
  - Register of wills taking testimony 19–306
  - Witnesses outside District 19–306
- Trial of issues 19–312
  - Judgment 19–312
  - Jury 19–312
  - Notice 19–312
- Waiver of notice 19–304
- Who may appear 19–302
- Wills filed prior to June 8, 1898 19–313

Remainder to heirs of life tenant does not give him fee simple estate 45–203
Revival after revocation 19–108
Revocation 19–103
Rule in Shelley's case abolished 45–203
Vested estates conveyable by will 45–101
Witnesses 19–103

WINDOWS
Fireproofing, when required 5–305

WIND STORM INSURANCE
See INSURANCE AND INSURANCE COMPANIES

WINE
See ALCOHOLIC BEVERAGES
Definition 25–103

WITNESSES
Attendance before public utilities commission compellable 43–405
Attesting witnesses, devises to void 19–104
Before courts-martial of National Guard 39–707
Board of Dental Examiners, power to call and examine witnesses 2–304
Board of Pharmacy hearings 2–606
Board of Podiatry Examiners hearing 2–703
Competency 14–301—14–309
- Assessor in condemnation proceedings 14–309
- Husband and wife 14–306
  - Confidential communications 14–307
  - Not compellable witnesses 14–306
- Interested persons 14–301
- Partners of deceased parties 14–304

WITNESSES—Continued
Competency—Continued
Party to cause 14–301
Death of other party 14–302
Decease after testifying, effect 14–303
Incapability of other party 14–302
Incapacity after testifying, effect 14–303
Physicians 14–308
Witness convicted of crime 14–305
Admitting conviction in evidence 14–305
Competent 14–305
Proving conviction 14–305
Coroner's inquests 11–1205
Criminal proceedings, detention 4–144
Place of detention 4–144
Unable to furnish security for appearance 4–144
Depositions
Aged or infirm witness 14–201
Fee for, effect of tender 14–202
Summoning witness 14–201
Used only when witness is unavailable 14–201
Witness in foreign country 14–201
Witness likely to leave District 14–201
Witness unable to attend during trial 14–201
Failure to obey subpoenas of superintendent of insurance 35–412
Fees, advances to clerk by disbursing officer 11–1521
Fees
Before public utilities commission 43–419
Board of assistant assessors 47–606
Board of equalization and review 47–606
Police Court 11–615
Police Court, in cruelty cases 11–603
Unemployment compensation hearings 46–311
Fees and costs at inquests 11–1515
Immunity in prosecutions under fire and casualty act 35–1346
Immunity in prosecutions under life insurance act 35–802
Immunity in unemployment compensation hearings 46–311
Impeachment of own witness 14–104
Investigation of municipal matters by Commissioners, oaths, powers to administer 1–237
Municipal Court, compelling attendance 11–740
Municipal Court for District of Columbia, power to compel attendance 11–756
Parental rights, assignment or transfer 32–786
Plats prepared for private owners 1–618
Building plat surveyed 1–620
Probate Court, refusal to give evidence, penalty 11–506
Trial boards of Police and Fire Departments 4–601—4–603
Unable to attend during trial, deposition 14–201
Unemployment compensation proceedings, power to compel attendance 46–311
Wills 19–103

WOMEN
See Married Women
Bequest to female 18–722
Employment 36–301—36–311

WOMEN—Continued
Employment, overtime for work in excess of eight hours 36–301
Employment
Forty-eight hour law 36–301
Hours of continuous labor restricted 36–303
Hours of, females under 18 36–302
Inspectors
Appointment by Commissioner 36–306
Enforcement of law 36–308
Entering buildings authorized 36–307
Reports 36–308
Penalties 36–309
Regulations to be posted by employer 36–304
Seats
Employer to provide 36–310
Penalty for failure to provide 36–311
Time book to be kept 36–305

WOOD
Fuel wood 10–118
Cord of wood, dimension 10–118
Standard load authorized 10–118

WORDS
Control over figures, negotiable instruments 28–118

WORDS AND PHRASES
See Definitions

WORKHOUSE
See Prisons and Prisoners
Working capital for industrial enterprises 47–131

WORKING CAPITAL FUND
Workhouse and reformatory 47–131

WORKMEN'S COMPENSATION
See Unemployment Compensation
Benefits exempted from income tax 47–1557a
Common carrier employers' liability act 44–401—44–405
Employees excepted 36–502
Law applicable generally 36–501, 36–502
Longshoremen's and Harbor Workers' Compensation Act made applicable with variations 36–501, 36–502

WORK OR VACATION PERMITS
See Child Labor

WORKS OF ART
Antique pistols 22–3213
Stealing or injuring, penalty 22–3106

WRITING
Contracts, statute of frauds 12–302

WRITS
See Executions; Habeas Corpus; Mandamus
Error, writ of, amendment 13–312
Habeas corpus, persons entitled to apply for writ 16–801, 16–808
Juvenile Court, power to issue 11–930
Municipal Court for District of Columbia, power to prescribe form 11–756
Municipal Court of Appeals for District of Columbia, form prescribed by 11–774

WRITTEN
Definition, negotiable instruments law 28–101

WRITTEN WORDS
Control over credit provisions, negotiable instruments 28–118

WRONGFUL DEATH
See NEGLIGENCE CAUSING DEATH
Damages 16–1201
Distribution of damages 16–1203
Recovery of damages 16–1201
Surviving spouse and next of kin 16–1201

X-RAYS
Radiographic laboratory, exception from dentistry regulatory law 2–315
Rates for services to persons not indigent 32–322
Technicians, exemption from Healing Arts Practice Act 2–134

YOUNG MEN'S CHRISTIAN ASSOCIATION
Property exempted from taxation 47–817

YOUNG WOMAN'S CHRISTIAN HOME
Property exempted from taxation 47–814

YOUNG WOMEN'S CHRISTIAN ASSOCIATION
Property exempted from taxation 47–815
Relieved from accrued tax liability 47–816

ZINC
Poisonous compounds, sale, restrictions 2–612

ZONING REGULATIONS
Administrative officer or body, term construed 5–425
Advisory Council 5–417
  Failure to submit opinion on amendment, right to proceed 5–417
  Qualification 5–417
Amendment by Board of Zoning Adjustment prohibited 5–420
Amendment of existing regulations 5–415, 5–416
  Contents of notice 5–415
  Majority vote of commission members required 5–416
  Notice of hearing 5–415
  Public hearing required 5–415
  Submission to Advisory Council 5–417
Appeals to Board of Adjustment 5–420
  Grounds 5–420
  Parties entitled to 5–420
  Procedure in 5–420
Board of Zoning Adjustment 5–420
  Appointment 5–420
  Majority vote of members required 5–420
  Meetings open to public 5–420
  National Capitol Park and Planning Commission represented 5–420
  Number of members 5–420
  Powers of 5–420
  Qualifications of members 5–420
  Record of meetings 5–420
  Salaries of members 5–426
  Selection of chairman and officers 5–420

ZONING REGULATIONS—Continued
Board of Zoning Adjustment—Continued
  Term of office 5–420
  Vacancies filled for unexpired term 5–420
  Zoning commission represented 5–420
Building permit, restrictions on issuance 5–422
Building regulations, "amend," "amendment," or "amended," terms construed 5–425
Bulk and size of buildings, power to regulate 5–413
Business streets, power of Commissioners to designate 7–1205
Character of district considered in establishing 5–414
Commission created 5–412
Commission, consent to location of public off-street parking facilities 40–806
Commission created
  Members of commission 5–412
  Powers and duties 5–413
  Purpose 5–412
Construction of buildings in violation of regulations, penalty 5–422
Definition of terms 5–425
Division of District into zones 5–413
Effect as to future construction 5–424
  Higher standards established, control over municipal regulations and statutes 5–424
Enforcement by Commissioners of District 5–423
Existing building not conforming to regulation 5–419
  Continued use 5–419
  Extension of nonconforming use, discretion of commission 5–419
  Structural alteration or enlargement, restriction 5–419
Existing regulation, continuance and effect 5–415
Federal public buildings 5–428
  Approval of plans by National Capital Park and Planning Commission 5–428
  Exception from act 5–428
Fees for permits, certificates and transcripts 5–429
  Collection by Building Inspector 5–429
  Display of schedule in office of Building Inspector 5–429
  Fixed by Commissioner 5–429
Height of building 5–405, 5–413
  Governed by width and character of street 5–405
  Power to regulate 5–413
Lessening of congestion 5–413, 5–414
Maps filed in office of Engineer Commissioner 5–421
Municipal regulation 5–423, 5–424
  Establishing higher standards, control over zoning regulations 5–424
  Power of Commissioners to adopt 5–423
Number of stories, power to regulate 5–413
Parking facilities, power to regulate 5–413
Percentage of lot which may be occupied, regulation 5–413
Promotion of proper distribution of population 5–414

ZONING REGULATIONS—Continued
Publication of regulation or amendment thereof 5–421
Purpose in establishing 5–413, 5–414
Repeal of prior law 5–427
Size of yards, courts and other open spaces, regulation 5–413
Statute establishing higher standard, control over regulations 5–424
Uniformity 5–413
Classes and kinds of buildings throughout each district 5–413
Different district, difference in regulations 5–413
Use of buildings 5–413
ZONING REGULATIONS—Continued
Zoning Advisory Council, member, method of selecting 5–417
Zoning commission
Appropriation, budget estimate 5–426
Designation of member of Advisory Council 5–417
Employment of personnel 5–426
Representation on Board of Zoning Adjustment 5–420
Right to provide for appeals from Board of Adjustment 5–420
Salaries fixed by Classification Act 5–426
ZOOLOGICAL PARK
See NATIONAL ZOOLOGICAL PARK